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Summary

This paper is a theoretical introduction to the second phase of the Institute of Public Affairs study conducted in three new EU member states: Poland, Lithuania and Estonia.¹ The study examines the functioning of **executive agencies tasked with implementing selected EU policies**. It focuses on an analysis of how European integration influences changes in the management style in public administration. This phase of the study will deal with agencies that manage agriculture and rural development policies. In Poland, this role is played predominantly by the Agriculture Modernization and Development Agency.

This paper looks into development of agencies and agency systems in enlarged European Union with particular attention to executive agencies and situation in new member countries. Paper examines basic theoretical concepts of this method of organizing public policies in EU. It analyses following theoretical questions and dilemmas: (1) two sorts of motivations to build up agency systems (functional and contextual), (2) concepts explaining relations among main actors in management structures, (3) dilemmas in ensuring agency effectiveness, (4) dilemmas of social participation and agency legitimization, (5) dilemmas and consequences of Europeanization of agencies, with particular attention to situation in new member countries. In closing remarks it is argued the importance of paradigm change in contemporary theoretical discussion about agencies and agency systems in EU. Delegation of public tasks to agency institutions, especially to European ones, as well as creation of networks of cooperation between the European technocracy and national agencies aims at increasing the effectiveness of the execution of public tasks. It also may have additional consequences, i.e. it may have an effect on the condition of the democratic system in Europe and deterioration of democratic legitimacy for public administration and EU public policies.

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¹ Comp. T. G. Grosse (2005): *Democratization, Capture of the State and New Forms of Governance in CEE countries, Inception Report*; Project no. CIT1-CT-2004-506392, NEWGOV.

I. What are Agencies and the Agency System?

Agencies are specialized administrative institutions that take over specific public tasks to make their execution more effective. Agencies are more or less separate from **majoritarian** (i.e. elected) **institutions**. In the case of national states, this primarily means that they are independent from the government (ministries), hence also from government politicians. In reference to European agencies, one can speak of independence from two categories of entities: (1) national government and national administration, as a method of countering excessive influence of national policy and limiting costs ensuing from disputes between the interests of individual member states, (2) European Commission, treated as the EU equivalent of a government, with respect to which a specialized agency should be autonomous in terms of organization and competencies.

Based on the example of European agencies, experts list four main types of agencies divided along the lines of specificity of the public tasks they perform: (1) **regulatory agencies**, which within the extent of entrusted competencies and legal framework regulate the functioning of a particular sphere of public affairs, (2) **monitoring and informing agencies**, which monitor the correct implementation of EU regulations and disseminate information and best practices of the specific segment of European law, (3) **agencies that promote social dialogue** at the European level, (4) **executive agencies**, responsible for providing specialized public services (e.g. translation) or carrying out a specific public policy.

Among national agencies, the differentiation between regulatory and executive agencies is particularly important. Regulatory agencies usually enjoy a higher level of organizational autonomy and operate outside the structure of government administration. In contrast, executive agencies have much closer links to government policy, particularly to sectorial policies pursued by particular ministries. This is why they are under much stricter government scrutiny. Executive agencies operate as a rule within the framework of a territorially decentralized government administration. This implies establishing agency field branches and delegating to them the local delivery of public policies and services. In this way, agencies create a system of hierarchical subordination of field branches to the central agency. In Poland, for example, the agency responsible for implementing EU agricultural and rural development policies has a central office in Warsaw and 16 field branches (one in every region). The organization of the executive agency system is tied in every country to its own administrative tradition, size and territorial division.

There are two **agency system** types in Europe. Both are associated with the **Europeanization of national agencies**, i.e. with the transfer of EU public management and policy standards to national agency routine operations.

(1) The first type includes agency networks at various EU administrative levels. Each network is composed of European and national agencies engaged in the same public policy area. This network system resembles a horizontal cooperation system, even though European agencies play the role of the network connector and coordinator². Their tasks most often involve ensuring collaboration between regulatory, monitoring and information agencies. Network agency systems practice “soft” forms of management involving dissemination of information about the application of European laws and monitoring how these laws are applied in national legislation. Agency networks also exemplify the devel-

² Comp. G. Majone (2000): *The Credibility Crisis of Community Regulation*, Journal of Common Market Studies, vol. 38, no. 2.

opment of the European Union as a regulatory state.³ According to this idea, the European Union pursues its activities primarily by using policies of regulation rather than redistribution. An important element of this system is found in cooperation between European and national institutions on implementing European laws at national levels. Participants in this system include judiciary institutions, but also regulatory agencies and even private individuals and businesses.

- (2) The second example of the European agency system is a network of cooperation between relevant European Commission management bodies and national executive agencies. This system deals primarily with EU redistribution policies. It practices a stricter hierarchical subordination of national agencies to European institutions, which ensues from the need to transfer detailed EU policy implementation instructions down to the national level and monitor the performance of national agencies.

II. Why public tasks are delegated to agencies?

Political and administrative science distinguishes between two groups of factors that justify delegation of public tasks to agencies. The first is associated with the functional improvement of the execution of public tasks and is based primarily on the *Principal-Agent model*. The other group refers to the context of the situation in the given country and is rooted mainly in the theory of sociological institutionalism⁴.

Functional justifications:

One of the reasons for delegating power outside *majoritarian institutions* lies in the intention to restrict the influence exerted by political parties and government politicians on the execution of public tasks. It is believed⁵ that such approach reduces transaction costs involved in negotiating the shape of policies between political actors. The approach is also based on the conviction that agencies better represent the public interest, i.e. the common good of all citizens, whereas institutions that rely on the outcome of elections represent particular interests of the elected majority⁶.

Empirical studies confirm that delegating public tasks to agencies can improve the long-term vitality of public projects⁷. This is associated with the **credibility doctrine**⁸, which states that

³ Comp. G. Majone (1996): *Regulating Europe*, London – New York: Routledge.

⁴ Comp. J. Tallberg (2002): *Delegation to Supranational Institutions: Why, How, and with What Consequences?* West European Politics, vol. 25, no. 1, January.

⁵ D. Epstein, S. O'Halloran (2000): *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*, Cambridge: Cambridge University Press; A. Héritier (2003): *New Modes of Governance in Europe: Increasing political efficiency and policy effectiveness*, w: T. Börzel, R. A. Cichowski, (eds.), *The State of the European Union, 6 – Law, Politics, and Society*, Oxford: Oxford University Press.

⁶ Comp. G. Majone, M. Everson (2001): *Institutional reform: independent agencies, oversight, coordination and procedural control*, in: O. De Schutter, N. Lebessis, J. Paterson (ed.): *Governance in the European Union*, Office for Official Publications of the European Communities, Luxembourg; F. W. Scharpf (2003): *Problem-Solving Effectiveness and Democratic Accountability in the EU*, MPIfG Working Paper 03/1.

⁷ E.g. F. Gilardi (2002): *Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis*, Journal of European Public Policy, December.

⁸ G. Majone, M. Everson (2001): *ibid*; G. Majone, (2001): *Nonmajoritarian Institutions and the Limits of Democratic Governance: A Political Transaction-Cost Approach*, Journal of Institutional and Theoretical Economics 157; G. Majone (2001): *Two logics of delegation: agency and fiduciary relations in EU governance*, European Union Politics, 2 (1).

in order to ensure credibility of public commitments and long-term execution of public policies there is a need to create public institutions separate from an excessive influence by politicians and *majoritarian institutions*. Otherwise public activities will be summary and prone to change under the impact of electoral cycles.

The delegation of tasks to specialized agencies stems out of the complexity of public policy management. For it to be done properly, it must be supported by measures aimed at improving the professional skills of managing civil servants and concentrating the needed skills in separate administrative units. Only that can ensure the high effectiveness of public policy delivery.⁹ The reason behind delegating tasks to agencies can also lie in politicians' reluctance to take responsibility for difficult and unpopular social decisions¹⁰. Another reason can be found in politicians' desire to hand over to agencies those technical and routine matters that they find uninteresting.

Contextual justifications:

The successive group of reasons that justify delegating tasks to autonomous agencies is associated with the **concept of isomorphism** - transfer of institutions from one country to another. The shift of regulatory or executive agencies between countries is particularly common at the time of administrative reforms, especially those accompanying systemic transformations in Central and East European countries. When discussing this topic, certain experts¹¹ bring into relief the significance of intellectual trends that accompany administrative reforms as well as the impact of supranational institutions on the directions of reforms being introduced. For example, the intellectual trend toward delegating public tasks to autonomous agencies has started in the late 1980s. It has its roots in American administration and was first implemented in Great Britain¹². The trend is associated with the neo-liberal economic doctrine, introduction of private-sector management techniques in public administration and pursuit of ways to raise the effectiveness and frugality of managing public tasks¹³. Central and East European countries engaged in systemic transformations have been particularly vulnerable to western intellectual trends. In the 1990s, their administrative reforms were heavily influenced by advice received from international institutions such as the World Bank, International Monetary Fund, OCDE and later also the European Commission.

Theories about isomorphism¹⁴ distinguish between two primary levels of institutional transfer: voluntary and coercive. For example, the first contains the **mechanism of learning from**

⁹ A. Héritier (2003): *New Modes...* *ibid*, p. 203.

¹⁰ M. Thatcher (2002): *Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation*, West European Politics, vol. 25, no. 1, January; R. Elgie (2006): *Why Do Governments Delegate Authority to Quasi-Autonomous Agencies? The Case of Independent Administrative Authorities in France*, Governance, vol. 19, no. 2, April; M. Thatcher, A. Stone Sweet (2002): *Theory and Practice of Delegation to Non-Majoritarian Institutions*, West European Politics, no. 25 (1).

¹¹ C. Radaelli (2000): *Policy Transfer in the European Union*, Governance, vol. 13, no. 1, January.

¹² M. A. Pollack (2002): *Learning from the Americanists (Again): Theory and Method in the Study of Delegation*, West European Politics, vol. 25, no. 1, January.

¹³ Comp. M. Döhler (2002): *Institutional Choice and Bureaucratic Autonomy in Germany*, West European Politics, vol. 25, no. 1, January; K. Nakano (2004): *Cross-National Transfer of Policy Ideas: Agencification in Britain and Japan*, Governance, vol. 17, no. 2, April; M. Thatcher (2002): *ibid*, K. R. McNamara (2002): *Rational Fictions: Central Bank Independence and the Social Logic of Delegation*, West European Politics, vol. 25, no. 1, January.

¹⁴ P. J. DiMaggio, W. W. Powel (2004): *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, in: F. Dobbin (ed.) *The New Economic Sociology. A Reader*, Princeton University Press, Princeton and Oxford; also: M. Thatcher (2002): *ibid*.

the experience of other countries. Selected foreign practices are applied to operations of the national institutional system. The characteristic feature of that mechanism is that it uses an in-depth analysis of the costs and benefits involved in such application. In addition, only those practices are applied which meet the needs and fit into the administrative circumstances of the target country. A mechanism of **blind mimicry** also exists. Then foreign solutions are transposed to the target country without any prior analysis of its needs. This process is largely driven by intellectual trends and the desire of national and foreign elites to minimize the political uncertainty present in the country's situation. Foreign solutions are implemented largely out of the desire to raise the **external legitimization** of the reform process. The primary concern driving such conduct is to secure approval of international institutions, rating agencies, foreign investors, etc. for specific public activities. Another process mentioned in relevant literature¹⁵ is the **normative pressure** exerted by scholars and specialists of the subject (*epistemic communities*), who come up with proposals of changes in currently performed public tasks based on their international expertise.

A country can be coerced into accepting institutions from abroad as a result of external political pressure or dependence on foreign entities, or because it has made international commitments. European integration is a good opportunity for exercising such coercion, and the European Commission certainly can coerce member states into applying institutional solutions of its choice¹⁶. Coercion also exists because some countries have enough economic muscle to impose their preferred economic institutions on other countries.

The way by which foreign institutions are implemented in a country is influenced by its internal circumstances¹⁷. Foreign institution models are "filtered" through the context of national culture: local bureaucratic standards and attitudes, administrative tradition, national administrative system, etc. As a rule, foreign institutions are also adapted to the *state model* operating in the given country¹⁸.

The procedure involved in delegating tasks to an autonomous agency is an example of a diversified transfer of foreign institutional models to a particular country. Models borrowed from American administration, strongly influenced by the neo-liberal view of the role that the state should have in society and economy, were best applied in Great Britain.¹⁹ In other countries they had to be appropriately modified to fit the local circumstances. For example, the German government is hardly ever willing to outsource its public tasks to agencies. A few exceptions notwithstanding, the role of agencies is secondary and they are strictly supervised by relevant ministries. There are also informal dependencies between ministries and agencies. For example, most agency management personnel come from government institutions. As a

¹⁵ P. J. DiMaggio, W. W. Powel (2004): *ibid*.

¹⁶ E.g. C. Radaelli (2000): *ibid*.

¹⁷ Comp. K. R. McNamara (2002): *ibid*, J. B. Goodman (1991): *The Politics of Central Bank Independence*, Comparative Politics, vol. 23, no. 3, April; M. Thatcher (2002): *ibid*; K. Nakano (2004): *ibid*.

¹⁸ The definition of state model I have adopted refers to the following list of issues: (1) attitude of state administration toward social partners and the so-called civic society, (2) method of defining state capacity and state tasks in relation to social security and economic development, (3) internal rationality and functionality of the administrative system, e.g. is it based on hierarchical or network methods of operation, (4) administrative culture, mainly in relation to the transparency of administration, readiness to cooperate with social partners and the media, extent of administration politicization, etc. Comp. T. G. Grosse (2006): *New Modes of Governance in New European Union Member States. A report on social dialogue in selected European Union countries*, NewGov, Project no. CIT1-CT-2004-506392, ref. No. 17/D08.

¹⁹ M. Thatcher (2005): *The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe*, Governance, vol. 18, no. 3, July.

consequence, agencies operate in the tradition of hierarchical administration management and there is a clear division of responsibilities between apolitical civil servants and supervising politicians. Also, the German federal system limits the possibility of creating central sectorial agencies (supervised by central ministries). It is interesting to know that one of rare autonomous regulatory agencies operating in Germany (the Federal Cartel Office) was created as a result of intense pressure exerted on the German government by the U.S. Administration²⁰. In contrast to the German situation, agencies in France and Italy continue to be rather strongly politicized in the administrative tradition of those countries. Members of their management and supervisory boards are usually political appointments, who, particularly in Italy, are replaced as soon as a new government coalition comes into power²¹.

In closing the discussion of the role played by the national context in agency operations, let us mention the agency that comes closest to the ideal model by virtue of its apolitical nature and autonomy – the European Central Bank. There is nothing incidental in this fact: ECB is reputed to be freer of influence by majoritarian institutions and government economic policies than any other central bank in the world²². It may be that such vast autonomy of that institution stems in part from the fact that national context played no part in its establishment. Even though ECB was founded on the German model, it is not dominated by the German cultural or administrative tradition.

III. “Political economy” of an agency

Four theories can be applied to analyze the relationship between agencies and other public institutions:

- (1) The predominant one is the **Principal-Agency theory**²³. The principal specifies the amount of power delegated to the agency and the agency delivers public policies in the principal’s name. The principal also establishes mechanisms to oversee the agency’s performance. Consequently, this theory assumes the principal’s dominance of the agency. That dominance can be expressed by the nature of public tasks handed down to the agency, by controlling the budget set aside for their delivery, by scrutinizing the agency’s performance, etc.
- (2) The principal-agency theory is similar to the **concept of power dependency networks** existing between agencies and majoritarian institutions that oversee agency performance²⁴. This idea assumes a less hierarchical relationship between the two sides, a relationship based on functional interdependence and homogenous cultural environment.
- (3) The principal-agency theory is also related to the **concept of delegation to non-majoritarian institutions**²⁵. This idea accentuates the independence of agencies from representative organs. That independence is expressed in the apolitical nature of agencies,

²⁰ M. Döhler (2002): *ibid*.

²¹ R. Elgie (2006): *ibid*; M. Thatcher (2005): *ibid*.

²² Comp. K. R. McNamara (2002): *ibid*.

²³ Comp. S. Ross (1973): *The Economic Theory of Agency: The Principal’s Problem*, American Economic Review, vol. 63, no. 2; M. Pollack (1997): *Delegation, agency and agenda setting in the European Community*, International Organisation, vol. 51, no. 1; M. A. Pollack (2003): *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU*, Oxford: Oxford University Press.

²⁴ D. Marsh, R. A. W. Rhodes (1992): *Policy Networks in British Government*, Oxford: Clarendon Press, p. 251.

²⁵ M. Thatcher, A. Stone Sweet (2002): *ibid*.

for example in the fact that management positions therein must not be occupied by politicians or elected officials. The concept assumes a wider scope of agency independence than the principal-agency model. As a rule, that independence is constitutionally guaranteed, which puts agencies (e.g. central banks) on an equal footing with government institutions and frees them from hierarchical dominance by state administration. The concept reduces the range of control instruments to those ensuring the legality of agency performance or to “soft” means of supervision, such as annual reports addressed to parliament. Consequently, this concept places the primary mechanism of control in the balance of power between constitutional institutions²⁶ rather than in top-down control as in the principal-agency theory.

- (4) The **trustee concept** replaces the agent from the principal-agency theory with a trustee²⁷. The position of trustee creates a fiduciary relations between delegating institutions and agencies. They are based on mutual trust, high professionalism of the trustee and his much greater independence than that of the agent in the principal-agency model. The trustee is only accountable for the effect of his actions. How he organizes and conducts his activities is left totally up to him. This idea deals with delegation of powers from national to European institutions. What makes this concept more advanced than those mentioned earlier is that, in addition to handing over public tasks to European institutions, their national counterparts also transfer thereon their **political property rights** to these tasks. The logical consequence of this new approach is that the European Commission and European-level agencies gain a great deal of power over individual member states. In some areas of competency they are free to act as a **quasi-principal** in their relations with national majoritarian institutions. The European Commission acts this way as a supervisor of the performance of state powers in ensuring the assimilation of European legislation at the national level. In fact, it can coerce them into compliance. In addition, it has the power to introduce secondary legislation without consulting member states. It can come forward with European legislative initiatives and then control their implementation in member states.

As the IPA study focuses on agencies that implement European policies in three new member states, it will deal primarily with the principal-agency theory. A study of this model of relations between executive agencies and ministries that control them focuses on how that control is carried out and what it covers. One common control mechanism is to change the agency’s mode of operation. Such adjustment can proceed along three lines²⁸: (1) by enhancing control over agencies; (2) by closing them (and assigning their public tasks to units within the ministry or to other public institutions (e.g. local self-governments) or merging them with others; (3) by creating new more subservient and better controlled agencies. The latter scenario contains a paradox inherent to making operating changes. A new structure will inevitably go hand in hand with the appearance of new organizational interests and, consequently, carry the threat of new areas of disagreement developing between the principal and the agent.

The effectiveness of changes in an agency’s mode of operation depends on a few factors. Firstly, on the level of the agency’s operating experience (*institutional learning*). Secondly, it depends on the principal’s political clout and organizational strength which will allow him to

²⁶ M. Everson (1995): *Independent Agencies: Hierarchy Beaters?* European Law Journal, vol. 1, no. 2.

²⁷ G. Majone (2005): *Dilemmas of European integration. The ambiguities and pitfalls of integration by stealth*, Oxford – New York: Oxford University Press, pp. 64-106.

²⁸ A. Menon (2003): *Member States and International Institutions: Institutionalizing Intergovernmentalism in the European Union*, Comparative European Politics, no. 1.

use formal and informal instruments to institute those changes. Thirdly, it depends on the agent's political clout and organizational strength which will allow him to call on the formal possibilities of vetoing the changes or to mobilize his political allies and the public opinion against their introduction. It is also probable that executive agencies that are in firm charge of redistribution policies and deal in large amounts of public money will be able to successfully defend their interests in disputes with their principals. Fourthly, the extent of changes in the mode of agency operation can also depend on the attitude thereto of international institutions, particularly the European Union. This applies particularly to agencies that function within the European agency system. Even though there are no mechanisms in the European Union that harmonize the activities of administrative structures responsible for policy implementation, such as the *acquis communautaire* that governs the activities of the public administration in member states²⁹, the European Commission has started in the late 1990s to pay increased attention to securing the potential of administrative institutions called to carry out EU policies, particularly in new member states³⁰.

Political scientists distinguish between three types of rivalry for political influence and power in the European Union, reflected in a competition for the institutional character of European agencies. The first potential area for conflict lies in the rivalry between member states, which act as political controllers (principals) and European technocracy (agents). This happens because the appointment of a new agency is accompanied by new organizational interests represented by agency officials. Consequently, the agency will strive toward maximizing its own bureaucratic interests, which can turn out to be at odds with its political mission or with the interests of particular member states³¹. Thus, delegation of competencies to the agency may lead to unexpected public policy consequences incompatible with the interests of individual countries³².

Secondly, there is a rivalry between member states for influence in agencies and for the power to shape their nature or adjust their mode of operation. Therefore, European agencies are both an instrument and a field of mutual rivalry between countries. This stems from the conviction that the benefit achieved from an agency's existence may differ from one member state to the next. As a result, some countries will want to alter the way the agency operates and increase their influence over it, whereas others may stand in defence of the agency's autonomy and its current mode of operation, which benefits them more³³. For example, states that subscribe to the market capitalism (neo-liberal) model will be inclined to support those European agency institutions that promote the liberalization of the common market. States where cooperative capitalism is in place will aim at restricting the autonomy of such agencies and at appointing new ones that will promote social dialogue at the European level³⁴. Moreover, the large number of principals – and, particularly, their competing interests – give agencies more room for own decision-making, the so-called *zone of discretion*³⁵. This is in part why the European

²⁹ E. C. Page (2003): *Europeanization and the Persistence of Administrative Systems*, w: J. Hayward, A. Menon (eds.): *Governing Europe*. New York.

³⁰ Comp. J. P. Olsen (2003): *Towards a European administrative space?* Journal of European Public Policy, vol. 10, nr 4.

³¹ Comp. D. R. Kiewiet, M. D. McCubbins (1991): *The Logic of Delegation; Congressional Parties and the Appropriation Process*, Chicago: University of Chicago Press, s. 5.

³² A. Menon (2003): *ibid.*

³³ A. Menon (2003): *ibid.*

³⁴ For a similar approach to the topic, see F. W. Scharpf (1999): *Governing In Europe: Effective and Democratic?* Oxford-New York: Oxford University Press, p. 49.

³⁵ M. Thatcher, A. Stone Sweet (2002): *ibid.*

Commission is able to expand its field of independence – by playing on the differences between member state interests.

In specialized literature³⁶, the European Commission is treated both as an *agent* appointed by member states to pursue certain public tasks on their behalf and as the *principal* for newly established agencies. This is why the third level where a potential dispute concerning the shape of European agencies can take place is between member states and the European Commission.³⁷ Member states would like to submit European agencies to a great intergovernmental control within the EU, for example by putting their representatives in agency management boards. At the same time they are reluctant to transfer more powers to control agencies to the European Commission. The Commission, in turn, opposes this trend and objects to the establishment of new European technocratic structures. It would need to compete with them in a situation where it would not have much say about their organization or decision-making powers. The position advanced by member states is supported by the so-called **Meroni doctrine**. According to this legal formula based on the decisions of the European Court of Justice³⁸, member states can delegate powers only to community institutions specified in the treaties. That creates a problem as there is no clear definition for the time being of the range of competencies and control mechanisms which member states are expected to transfer under the European treaties. Meanwhile, the European Commission's position in the dispute with member states over European agencies is supported by the earlier-mentioned *credibility* doctrine.

The rivalry between member states and the European Commission for power over European agencies is also indicative of a larger dispute over the concept of management in the European Union. Two logical approaches are waging a battle here. One is the **intergovernmental management logic**. It underlines the supreme role played by states in the EU power structure and assumes that the decisive impact on EU policy will be left to institutions that group national government representatives or technocratic institutions, but under a strict control by intergovernmental institutions³⁹. The other is the **community management logic**. The basis for its development lies in the independence of European technocratic institutions from an excessive influence by member states and in the supremacy of EU regulations over national laws. Public policies function within the framework of **policy networks**⁴⁰, in which EU technocratic institutions hold a privileged position⁴¹.

Let us now try to transpose our discussion on the competition of interests in the European Union onto the national level. Just as in the case of the European Union, here too there are three dividing lines. Firstly, there is a rivalry between the government (or a government ministry) that plays the role of the *principal* and the agency that delivers public policies (*agent*). Secondly, there may be competition for the institutional shape of the agency within the government, particularly between ministries that deal with associated public tasks. Thirdly, the di-

³⁶ Comp. R. Dehousse (2002): *Misfits: EU Law and the Transformation of European Governance*, Jean Monnet Working Paper no. 2/02, New York University School of Law.

³⁷ R. Dehousse (2002): *ibid.*

³⁸ Comp. Case 9/56 Meroni v. High Authority (1957-8), ECR 133.

³⁹ Comp. A. Moravcsik (1998): *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*, Ithaca - New York: Cornell University Press.

⁴⁰ R. A. W. Rhodes (1997): *Understanding Governance*, Buckingham: Open University Press, p. 32. J. Peterson (2003): *Policy Networks*, in A. Wiener and T. Diez (ed.), *European Integration Theory*, Oxford – New York: Oxford University Press.

⁴¹ A. Héritier (1999): *Policy-Making and Diversity in Europe: Escape from Deadlock*, Cambridge and New York: Cambridge University Press, s. 97.

viding line may also run between different levels of public administration that aspire to the *principal's* position with respect to the given agency. For example, it may assume the form of a competition between central government institutions and various local government levels. Consequently, the agency's position in this power structure will depend on the extent of decentralization of public tasks from the national government to local authorities. This is also an example of a dispute between two approaches to management. The first will favour centralized and sectorial management, i.e. one that strongly stresses hierarchical relations in collaboration within the framework of the central administration. The second will opt for decentralized management, where various public policies are coordinated at a lower management level⁴².

IV. Dilemmas in ensuring agency effectiveness

The main instrument in ensuring effectiveness of agency operations is through their professionalization. This is done by creating separate units dedicated to collecting reference materials and delivering public policy. A part of that specialization is reserved for developing civil service managers – training them and ensuring their stable employment. Agencies have been also introducing cost-management techniques to improve the effectiveness of spending public funds. These are: (1) management methods borrowed from the private sector, (2) partial commercialization of public service management, (3) introduction of self-financing with the freedom to decide how to spend potential financial surplus. In some cases, however, these methods may contribute to reducing the standard of public services (from the perspective of the citizen who uses them). Such situation may happen when there are no standards set for the delivery of services by the given agency or when there is no proper quality control over that delivery. Financial self-management may also lead to the agency squandering public funds⁴³.

Another method meant to ensure the effectiveness of agency operations is by separating agencies from excessive influence by politicians and election politics. There are opinions⁴⁴ that excessive politicization of the European Commission, including the influence on its functioning by politicians who represent the interests of individual member states, as well as excessive influence by the European Parliament and member states on European policies, reduces their effectiveness. It also threatens the credibility and long-term vitality of these policies. According to that view, building autonomous European agencies may be the remedy against excessive influence by member states and against politicization of the European Commission. It

⁴² Management sciences distinguish between two basic models related to the organizational shape of the implementing agency system. The first is *unitary* (U-form model), which organizes the management process functionally, i.e. around main substantive issues. In public administration, this means around individual public policies and sectors (ministries). It is relatively strongly centralized. Whereas the *multidivisional* model (M-form) is organized geographically, around regional branches. This management model is more effective in responding to local conditions and development needs, and is better in coordinating individual public policies, both at the level of strategic planning and implementation. It is more flexible at introducing reforms and, hence, is more innovative and adaptable to changes in external conditions. It seems that the development of the executive agency system in a given country promotes introduction of the unitary management model. On the other hand, the decentralization of executive agency tasks down to local governments will relate to the multidivisional model. Comp. Y. Qian, G. Roland, Ch. Xu (2003): *Coordinating Tasks in M-form and U-form organizations*, Discussion Paper no TE/03/458, London School of Economics and Political Science, London.

⁴³ A. M. Bartelli (2006): *Delegating to the Quango: Ex Ante and Ex Post Ministerial Constrains*, Governance, vol. 19, no. 2, April.

⁴⁴ Comp. G. Majone (2000): *The Credibility Crisis... ibid.*

seems that the issue of separating agencies from political influence concerns mainly regulatory institutions, i.e. those that handle regulatory policies. That view applies not only to designing European institutions, but also relates to the practical functioning of national states.

The issue of the effectiveness of regulatory agencies free of political influence can be looked at from another perspective. *Majoritarian institutions* enjoy a higher level of societal legitimation in terms of public policy delivery. That may have a positive impact on the practical aspect of that function, particularly when it deals with systemic reforms. Social acceptance of such reforms prevents unrest and ensures the country's long-term political stability. That may have a positive effect the efficiency of regulatory policies. This argument speaks in favour of the fact that regulatory agencies cannot be completely independent of *majoritarian institutions*. Democratic institutions must have the power to adjust the functioning of agencies if their long-term efficiency is to be maintained. Consequently, systemic reforms attempted in specific public domains by elected politicians may relate not only to the way of delivering public policies by agencies but also to the very idea of regulatory agency autonomy.

A slightly different attitude should be assumed when discussing the effectiveness of executive agencies. It seems that here the importance of autonomy gives way to a proper control maintained by government ministries. An excessive autonomy of executive agencies from political decision-makers may render the delivery of government policies more difficult. For example, it may lead to a situation where cabinet policy may be at odds with the activities pursued by executive agencies. This most often ends up in conflicts between ministries and agencies, and, therefore, also lowers the effectiveness of public policy implementation. This is why problems with agency operations that are mentioned most often are associated with the cost of providing a full-proof control system⁴⁵. There exist several negative consequences of an inadequate control of agency operations that can reduce the effectiveness of public policies: (1) incompatibility between government policy and agency activities; (2) agency capture by an interest group, including subjugation of agency operations to the redistribution interests of the beneficiaries of public policies delivered by the agency; (3) misspending public resources⁴⁶ in various ways such as through corruption. Another problem is found in the difficulties associated with sharing information between the agency and the controlling ministry. This includes, for example, a situation where the agency withholds information from the ministry and the resulting problem of ministerial dependence on information held by the agency⁴⁷.

This is why the fundamental importance for the effectiveness of the delivery of public policies by executive agencies is their **systemic integration**, in other words good relations between government ministries and agencies, and between central agencies and their field branches. Here we must examine the concept of *power dependency network* of agencies and controlling ministries⁴⁸. Most often, ministries play the programming role, i.e. they plan public policies on the basis of the government's political program and the state's economic and social strategies. Executive agencies, in turn, specialize in carrying these policies through. Therefore, the popularity of a government depends to a large degree on how effectively agencies implement its policies. Moreover, when preparing political programs, the government often relies on information collected by agencies. This is why good cooperation between these two segments of public administration is an indispensable condition of the effectiveness of public policies.

⁴⁵ Comp. M. Pollack (1997): *ibid.*

⁴⁶ Comp. R. Andre (1985): *On Beyond Quango: The Evolution of Business-Government Cooperation in Northern Ireland*, Journal of General Management, no. 11.

⁴⁷ A. Menon (2003): *ibid.*

⁴⁸ D. Marsh, R. A. W. Rhodes (1992): *ibid.*, p. 251.

Experts⁴⁹ distinguish several elements that impact the level of *systemic integration*. Firstly, formal dependency rules, including the extent of control exercised over the agency (or the extent of its autonomy). Secondly, informal rules and procedures concerning mutual relations, especially with respect to sharing information. They create an organizational culture of both administrative levels. Particularly important is the acceptance of fundamental standards and values of that culture by both organisms. Thirdly, there must be mutual trust.

The discussion of *systemic integration* of executive agencies and ministries takes us to a realm of issues that relate to “soft” forms of management applied in network structures and epistemic communities⁵⁰. This entails using non-hierarchical management techniques based on the interdependency of various public institutions and on cultural commonality. An important element of “soft” modes of governance is found in the so-called **accountability network**⁵¹. It is a system of “soft” control methods operating in the given policy network, such as use of the public opinion, mutual trust, professional ethos and common values characteristic to the given community. The main question concerning the effectiveness of executive agency operations is whether their control can be based only on “soft” aspects of the *accountability network*, or should it rather be grounded in “hard” supervisory mechanisms, such as various post-inspection sanction possibilities ranging from reduced funding to management replacement.

V. Dilemmas of social participation and agency legitimization

Specialized literature provides the following methods of determining the boundaries of social participation in agency activities⁵²:

- (1) **Separation of the agency from social influence.** In other words, maintaining the apolitical nature of the agency and its separation from the influence by government politicians and majoritarian institutions. Some authors⁵³ also point out the possibility of reducing the influence by interest groups on agency activities. For example, in certain situations, majoritarian institutions have limited possibilities of effectively realizing certain public activities because community organizations (*veto players*) may successfully block them. Delegation of tasks to an autonomous agency, which is separated from the influence by such community groups, may render realization of public policies easier.

It should be kept in mind, however, that, in practical terms, agencies are not neutral with respect to social interests. More often than not there are “winners” and “losers” of the process of transferring power to non-majoritarian institutions⁵⁴. For example, delegation of tasks to regulatory agencies dealing with financial markets is associated with a bias toward macro-economic stability and anti-inflationary measures than support economic growth and higher

⁴⁹ F. Gains (2003): *Executive Agencies in Government: The Impact of Bureaucratic Networks on Policy Outcomes*, Journal of Public Policy, vol. 23, no. 1.

⁵⁰ P. M. Haas (1992): *Epistemic communities and international policy coordination*, International Organization, vol. 46, no. 1.

⁵¹ Comp. C. Harlow, R. Rawlings (2006): *Promoting Accountability in Multi-Level Governance: A Network Approach*, European Governance Papers, Eurogov, No. N-06-02.

⁵² In the case of executive agencies, we can distinguish between three forms of participation: (1) social consultations on the method of executing public tasks; (2) participation of social partners vs. implementation of public policies; (3) sharing information about agency activities with the public or social partners.

⁵³ E.g. M. Everson (1995): *ibid.*

⁵⁴ M. Thatcher, A. Stone Sweet (2002): *ibid.*

employment⁵⁵. In other words, one should not expect agencies to execute public policies in an unbiased manner, because, in practice, their activities favour certain social interests. Independent central banks, for example, will favour groups connected to the financial sector or financial investors, and also social groups which live off their savings⁵⁶.

- (2) **Balancing between various social interests.** This model searches for an equilibrium in agency activities to satisfy all benefiting social groups. A particularly good example of this is found in the balancing act performed by agencies that deal with service providers on one hand (for example utility companies) and users of public services on the other⁵⁷.
- (3) **Steering the selection of social participants**⁵⁸. The model in question assumes a preferential and steered inclusion of specific social groups in the participatory process by the agency management. The objective thereof is to increase social legitimization of agency activities without reducing the effectiveness of the execution of public tasks. Therefore, this selection process aims at attracting social partners who will join in the implementation of public policies and at limiting access to groups which may block or hinder an effective delivery of public tasks.

A steered approach to the selection of social participants in agency activities may, therefore, meet the expectations placed before new modes of governance, hence combine a higher social legitimization of public policies with a higher effectiveness of public activities⁵⁹. However, it may also become a source of administrative pathologies – for example, it may lead to the occurrence of *agency capture*.

The agency's freedom from excessive influence by politicians and election politics does not guarantee that it will not succumb to influence by other interest groups. Experts⁶⁰ believe that a reduced control by political institutions increases the agency's *zone of discretion* and promotes access to it by interest groups. This may lead to the capture of control over the agency by particular interests, which I call *agency capture*. This term refers to the phenomenon of *state capture*, defined as pressure exerted by individuals or interest groups on the shaping of law or public policies for the purpose of achieving private gains⁶¹. It usually refers to pressure exerted on public decision-makers by business groups, particularly for the purpose of having them pass legislation favourable to the latter. Such legislation is meant to bring high economic benefits to business elites (also known as oligarchs) but at the same time is harmful to the rest of the economy. It carries high social costs and weakens state capacity and effectiveness of public policies. In the case of countries engaged in systemic transformations, the *state capture* phenomenon is associated with adopting a reform strategy that is expensive socially but beneficial only to a small economic and political elite⁶². The *state capture* definition ap-

⁵⁵ Comp. K. Rogoff (1985): *The Optimal Degree of Commitment to an Intermediate Monetary Target*, Quarterly Journal of Economics, vol. 100, no. 4.

⁵⁶ J. B. Goodman (1991): *ibid*, K. R. McNamara (2002): *ibid*.

⁵⁷ M. Everson (1995): *ibid*.

⁵⁸ G. Majone, M. Everson (2001): *ibid*.

⁵⁹ A. Héritier (2003): *ibid*.

⁶⁰ M. Thatcher, A. Stone Sweet (2002): *ibid*.

⁶¹ Comp. J. Hellman, D. Kaufmann (2001): *Confronting the Challenge of State Capture in Transition Economies*, Finance & Development, International Monetary Fund, September, vol. 38, no. 3; J. S. Hellman, G. Jones, D. Kaufmann (2000): "Seize the State, Seize the Day". *State capture, Corruption, and Influence in Transition*, Policy Research Working Paper, 2444 Synthesis, World Bank Institute.

⁶² Comp. J. Hellman (1998): *Winners Take All: The Politics of Partial Reforms in Post-Communist Transitions*, World Politics, no. 50, January.

plies primarily to regulatory agencies but can be expanded to cover executive agencies as well.

Consequently, *agency capture* can be defined as a systematic and dominant influence exerted by a particular interest group on the functioning of an agency. It is meant to take advantage of agency activities for the purpose of maximizing the group's profits at the expense of other social interests or public policies pursued by the agency. Topical literature⁶³ provides examples of "top-down" agency capture - by interest groups made up of large corporations that use the services of the agency and high-ranking government officials or parliamentary politicians who oversee the agency (the so-called *iron triangle*). An agency can be also captured "from the bottom up", i.e. by most influential local beneficiaries of its services, who most often create an interest group jointly with the agency management and supervisory board. Such occurrences, although based on examples drawn from the U.S. administration, can also be present on the old continent, where *agency systems* are modelled on American solutions.

It seems that effective *agency capture* countermeasures require an appropriate range of control over non-majoritarian institutions. It is generally accepted⁶⁴ that *agency capture* can be effectively combated by joining two control mechanisms: (1) proper supervision by majoritarian institutions (ministries) and (2) supervision of agency activities by a representative group of local recipients of its services. Agency politicization can increase the risk of *agency capture* and, consequently, its use for political-party ends. Particularly detrimental to the execution of public tasks is strong agency politicization combined with slack control by supervisory institutions, hence with a large amount of freedom left to the agency⁶⁵. To sum up, we can distinguish three interest groups standing behind *agency capture*: (1) beneficiaries of assistance programs executed by executive agencies or enterprises dependant on decisions of regulatory agencies; (2) a group made up of agency officials who use the agency to maximize organizational or personal goals at the detriment of a proper delivery of public services; (3) politicians who manage or oversee agency activities and use their position for personal, party or election gains. Very often these interest groups cooperate with one another.

Poorly organized societal participation can be a source of pathologies in the functioning of the agency. For example, a social partnership may be a cover for favouring particular social interests, which in reality serve to reinforce the *agency capture* phenomenon. A steered selection of participants in social consultations may agree with the policy adopted by the agency management in accordance with the favoured organizational interest of the agency, whereas a proper representation of social partners can counteract *agency capture* or other forms of biases in agency activities. Such mechanism of social partnership may also have other functions regulating agency activities. It constitutes a form of social control over the correctness of the fulfilment of the agency's statutory tasks and over the effectiveness and quality of delivering public services. It can also play an important legitimizing role.

The societal participation in agency activities can, therefore, raise the legitimization of public policies pursued by the agency (*public accountability*) and gives credibility to the functioning of the agency which is otherwise not subjected to democratic processes⁶⁶. It seems that the perception of this issue is different in new EU member states than in West European coun-

⁶³ G. McConnell (1967): *Private Power and American Democracy*, New York: Alfred A. Knopf.

⁶⁴ L. Raymond (2002): *Localism in environmental policy: New insights from an old case*, Policy Sciences, no. 35.

⁶⁵ Comp. A. M. Bartelli (2006): *ibid.*

⁶⁶ M. Everson (1995): *ibid.*

tries. There are even times when making an agency separate from majoritarian institutions and election politics can win approval of the society. In Poland, for example, that can happen because of the very low level of trust in democratic institutions and politicians. Eurobarometer studies show that as many as 84% of Poles do not trust the government, 88% - the parliament, and 91% - political parties⁶⁷. The same studies clearly indicate that new member states are characterized by a higher level of mistrust of politicians and majoritarian institutions than members of the “old” Union. In addition, new EU member states are decidedly less satisfied with the functioning of democracy. No wonder, therefore, that a strong politicization of an agency is viewed in these countries as something negative – a pathology. Consequently, ensuring the autonomy of agencies in relation to unpopular political institutions may contribute to their better acceptance by the society. In new member states, the primary importance in delegating tasks to agencies lies in *external legitimization*, i.e. in legitimizing public policies to supranational institutions (including European) and foreign investors. Whereas *internal legitimization*, i.e. acceptance of public policies by local communities, is not treated by political elites as a serious problem or a political challenge.

VI. Dilemmas associated with the Europeanization of agencies

EU laws and policies affect the *modus operandi* and operational structures of member state administrations. These processes are referred to as Europeanization of member state administrations.⁶⁸ Under the influence of European integration, member states change their administrative structures to a larger or smaller degree. This is primarily associated with the need to implement EU policies and laws, and also with the growing interest of national and EU decision-makers in the effectiveness of EU policies and regulations.⁶⁹ Administrative changes are inspired by the European Commission and also ensue from a mutual observation of experiences between member states. As a result of these activities and in relation to the administrative reality in the given country, there takes place a process of selective introduction of changes in the administration.⁷⁰ However, these changes are most often neither revolutionary

⁶⁷ Comp. *Eurobarometer 63. Public Opinion in the European Union*, Standard Eurobarometer, European Commission, September 2005, pp. 21, 24, tables: QA7.2, QA7.3, QA7.4. Also compare other relevant international studies: *Zaufanie do rządu, przedsiębiorstw, ONZ i organizacji pozarządowych w 20 krajach świata* (Trust in the Government, Enterprises, UNO and NGOs in 20 countries of the world), Centrum Badania Opinii Społecznej (CBOS), Warsaw, January 2006; *Zaufanie do instytucji publicznych w krajach Europy Środkowej i Wschodniej* (Trust in Public Institutions in Central and East European Countries), CBOS, Warsaw, October 2004.

⁶⁸ The term "Europeanization" has at least a few connotations in political sciences. Europeanization of a national administration means adaptation of the administration to the conditions of the EU membership as well as all internal changes associated with the country's functioning inside the EU. Additionally, Europeanization means broadening the geographical borders of the EU (as the EU is successively enlarged), development of community institutions at the EU level, export of institutional solutions functioning within the EU to other countries or international organizations. Moreover, Europeanization also signifies the development of a political program in the EU. It consists in creating an integrated political organism in Europe covering various institutional structures (both EU and national) and a cohesive pan-European political system. See various definitions of Europeanization in Olsen J.P. (2002): *The many faces of Europeanization*, Journal of Common Market Studies, no. 40 (5).

⁶⁹ Kadelbach, S. (2002): *European administrative law and the law of a Europeanized administration*, w: Jørges C., Dehousse R. (red), *Good Governance in Europe's Integrated Market*, Oxford: Oxford University Press.

⁷⁰ Por. Olsen J.P. (2002): *The many faces of Europeanization*, Journal of Common Market Studies, no 40 (5).

nor do they lead toward a unification of solutions applied in individual EU countries.⁷¹ Strong institutional differences continue to persist at the level of national administration. They result mainly from the specificity of the organizational culture and different historical traditions that shape both legal structures and norms, as well as formal and informal conduct of the civil servants.⁷²

Scientific literature describes several types of influence the European integration exerts on the legislation and the functioning of public administration in the Member States. First, there is *inertia*, where the European integration does not exert any substantial influence on the specified areas of public issues or segments of public administration. Second, there is a process of *absorption* of particular political, organizational, or legal solutions. Absorption means that EU legislation or EU policies are adopted in a practically unchanged form and shape. Most frequently, the above process takes place in the 'aura' of great compliance of the national policies with EU legal standards and EU policies and entails the adoption of *acquis communautaire* by the accessing countries. In this case, absorption is somewhat asymmetrical, as the accessing party cannot negotiate the solutions already functioning in the European Union. Third, there is *transformation* which means that specific policies or legal recommendations are adopted by way of an adjustment to the national administrative, socio-economic, or political conditions⁷³. A special example of such transformation is the adoption of specific solutions in the context of the capitalist model, social culture, and administrative traditions functioning in a given country⁷⁴. It is also worth mentioning that in some cases the EU initiatives can provoke a serious national debate or interfere with the interests of influential social groups. In consequence, it may be conducive to an active participation of national administration at the European level in the final formulation or revision of a given EU policy. That way, the process of transformation of the implemented law is not restricted solely to its creative introduction into the administrative practice in a given Member State, but can introduce adequate legal alterations due to the possibility to exert influence on the legislative process at the European level.

The manner and extent of Europeanization of member state administrations and national policies depend on two fundamental factors. Firstly, on the pressure exerted by the EU on the given member state. That pressure consists of a few elements, the most important of which seems to be the formula of implementing the European law. Is it to be applied unconditionally and *en masse*, or with a certain interpretative freedom left to member states, or maybe only in the form of recommended guidelines? Consequently, the extent of Europeanization depends

⁷¹ For more on this subject see: Lægveid P., Steinthorsson R., S., Thorhallsson B. (2004): *Europeanization of Central Government Administration in the Nordic States*, Journal of Common Market Studies, Vol. 42, Nr 2.

⁷² Comp. Olsen J.P. (2003): *Towards a European administrative space?* Journal of European Public Policy, no 10 (4), August.

⁷³ Comp. Héritier A. (2001): *Differential Europe: new opportunities and restrictions for policy-making in member states* w: A. Héritier (red.), *Differential Europe: European Union Impact on National Policy-Making*, Rowman & Littlefield, Lanham; T. Börzel (1999): *Toward convergence in Europe? Institutional adaptation to Europeanization in Germany and Spain*, Journal of Common Market Studies, Vol. 39, Nr 4; M. G. Cowles, J. Caporaso, T. Risse (2001): *Transforming Europe: Europeanization and Domestic Change*, Cornell University Press, Ithaca.

⁷⁴ Comp. Schmidt V. A. (2002): *Europeanization and the mechanics of economic policy adjustment*, Journal of European Public Policy, 9 (6).

on the specificity of the European policy and on whether it is dominated by "hard" or "soft" European law and governance methods associated therewith.⁷⁵

Secondly, the extent of Europeanization of member state administrations depends on the specific features of the member state in question. An important factor here is the quality of the local administrative system, especially the quality of organizational structures and qualifications of civil servants responsible for European integration. A significant role is played by national long-term policies, the national legal system and the capitalist model functioning in the given country. The extent to which European laws and policies are compatible with national systems and policies will determine the scale of support given to the implementation of specific solutions. An important role is played by the administrative tradition of the given country as well as its administrative and political culture, which will influence the manner of implementing European blueprints. The overall attitude toward European integration is also an important criterion. In those countries where Euro-sceptical movements are strong (within the administration, society or political elites), there will be obstacles and delays in the process of Europeanization of the administration.

The Europeanization of national agencies is a process associated with each country's participation in European integration and with inclusion of national agencies in the *European agency system*. Agency Europeanization in new member states served the cause of an effective implementation of the European law (*acquis communautaire*) in the relevant area of public affairs practiced by the given agency⁷⁶. This referred primarily to regulatory agencies, but also applied to executive agencies, which would often use EU financial resources in ensuring a proper assimilation of European law by individual nations. Also, the Europeanization of executive agencies is associated with a transposition of EU management standards, including a transfer of detailed regulations governing management of EU funds, auditing methods, control systems, etc. Using national agencies to implement EU policies is also associated with bending national public policies to EU policies.

The assimilation of *acquis communautaire* into national law, also into the practice of national administration, is recognized as an example of *coercive isomorphism*⁷⁷. This phenomenon is also expressed in the transfer of institutional solutions from the dominant countries to the European Union or to other member states⁷⁸. Experts also stress the fact that the European Commission is an active promoter of transferring various institutions and management modes to member states, including delegating tasks to autonomous agencies⁷⁹. This is partly because the Europeanization of regulatory agencies and their inclusion in the *European agency system* reinforces the power of the European Commission (and European agencies) as concerns coordination of public policies in Europe⁸⁰. The reinforcement of the position of EU technocracy

⁷⁵ More on "hard" and "soft" methods in European Union policies: D. M. Trubek, P. Cottrell, and M. Nance (2005): *"Soft Law," "Hard Law," and European Integration: Toward a Theory of Hybridity*, Jean Monnet Working Paper 02/05, NYU School of Law, New York.

⁷⁶ Comp. Ch. Koutalakis (2004): *"Smoothing" Eastern Enlargement through New Modes of Governance? Conceptualising the Role of Independent Regulatory Agencies and Non-Hierarchical Steering in Pre-accession Negotiations*, Project no. CIT1-CT-2004-506392, ref. No. 14/D01.

⁷⁷ M. Thatcher (2002): *ibid*; C. Radaelli (2000): *ibid*; M. Thatcher, A. Stone Sweet (2002): *ibid*.

⁷⁸ A. Héritier, C. Knill, S. Mingers (1996): *Ringing the Changes in Europe: Regulatory Competition and the Redefinition of the State. Britain, France, Germany*, Berlin-New York: Walter de Gruyter.

⁷⁹ Comp. C. Radaelli (2000): *ibid*, M. Thatcher (2002): *ibid*.

⁸⁰ E.g. C. Radaelli (2000): *ibid*.

in this area often occurs at the expense of the power of national governments, especially those which supervise the activities of national agencies less strictly.

It seems that the impact of the Europeanization of agencies in new member states on the transfer of EU regulations and management modes, and on directions of national public policies, is greater than in West European countries. A few factors cause this situation. Firstly, CEE countries discarded old administrative practices, particularly those of the socialist period, and were searching for new methods of managing public policies. This opened them up for adoption of models arriving from the European Union. Moreover, the implementation of European law and adoption of several organizational solutions in public administration were a pre-accession requirement. The fact that integration with European structures was an absolute priority for political elites in the countries of this region made the transfer of European institutions and management modes that much easier. Secondly, systemic transformations weakened the political leadership of administration and lowered the effectiveness of control mechanisms used by ministries to oversee subordinate executive agencies. This provided an atmosphere where European institutions could increase their influence over agencies. Thirdly, new member states spend less on public policies than the amount set aside for the same policies in the EU budget. This has increased the influence of European policies on the direction of national policies, including those executed by executive agencies.

It seems that the Europeanization of executive agencies in new member states can reinforce the sectoriality of management and deepen problems involved in coordination with other public policies. This is associated with long-standing difficulties in EU policy coordination between particular European Commission Directorates General. This situation is exemplified by separating management and financing of the European rural development policy and the cohesion policy for 2007-2013, despite the fact that both policies deal for the most part with the same regions – those that lag behind in social and economic development⁸¹.

Another consequence of the Europeanization of executive agencies may be found in the centralization of management and imposition of many organizational standards and substantive guidelines directly by the European Commission. This also implies a reduced possibility for a flexible insertion of local developmental needs to public policies and inability to adjust these policies at the local level. This, however, does not mean that agencies implementing European programs will not be vulnerable to the influence of local interest groups that benefit from European funds. In addition, in countries with a strong tradition of politicized administration (like Poland), one can expect a strong politicization of agencies, not necessarily associated with a stricter control by relevant ministries. To the contrary, Polish experience indicates that the level of control exerted over agencies is low⁸², which in combination with strong politicization creates conditions for *agency capture* by political parties.

⁸¹ T. G. Grosse (2006): *Euro-Commentary: An Evaluation of the Regional Policy System in Poland: Challenges and Threats Emerging from Participation in the EU's Cohesion Policy*, European Urban and Regional Studies, April, vol. 13, no. 2: 151 - 165.

⁸² Comp. *Informacja o wynikach kontroli wykorzystania środków finansowych Państwowego Funduszu Rehabilitacji Osób Niepełnosprawnych na realizację programów dotyczących rehabilitacji zawodowej i społecznej osób niepełnosprawnych ("Report on the inspection of the spending of resources of the State Fund for the Rehabilitation of the Handicapped on programs dealing with occupational and social rehabilitation of the handicapped")*, Najwyższa Izba Kontroli (Supreme Chamber of Control), Warsaw 2005; *Informacja o wynikach kontroli działalności Agencji Rozwoju Przemysłu SA na rzecz wspierania wybranych podmiotów gospodarczych ("Report on the performance of the Industrial Development Agency in assisting selected economic entities")*, Najwyższa Izba Kontroli, Warsaw 2005; *Informacja o wynikach kontroli wykonywania zadań ustawowych przez Wojskową Agencję Mieszkaniową w latach 2001-2004 ("Report on the inspection*

The Europeanization of agencies operating in new member states could reinforce their position in relation to ministries that oversee their activities. Indeed, agencies take advantage of the clout they enjoy by virtue of implementing European policies and having at their disposal EU financial resources. They also take advantage of the attention given by the European Commission to the improvement of their administrative potential and professionalism, and to eliminating operating irregularities that may hinder the delivery of European policy tasks.

It must be kept in mind that the scope and results of Europeanization of agencies in new member states depend on the specificity of the European policy and law under which the given agency operates. Moreover, they depend on governance methods associated with the given European policy and transferred to the member state, and the pressure exerted by the European Commission to implement these methods into the administrative practice. It can also be assumed that the functioning of regulatory agencies linked to the European agency network will be different than the functioning of agencies responsible for implementing EU redistribution policies. Regulatory agencies will be absorbed by the European agency network to a greater extent and achieve a greater autonomy from national governments and other national institutions. In the case of agencies implementing European redistribution policies, the situation may be different. This is because these agencies remain in a strong hierarchical relationship with respect to national ministries. At the same time, the national government position within the framework of these policies is that of the "gatekeeper".⁸³ It means that the national government is the centre of management of the given EU policy within the country and acts as an agent between EU institutions and the structures of national administration. In this case, the tendency to centralize and sectorialize the management of EU policies will be reinforcing the hierarchical dependency of executive agencies on ministries to which they are subordinate. In addition, such relations are made stronger by the conditioning of the administrative system in new member states, including the administrative tradition and culture, which originate from the socialist state period.

In summing up this part of the discussion, we should take a moment to consider how will the Europeanization of executive agencies in new member states affect the shaping of the state model. Will it serve a gradual transformation of structures and management modes in these countries from the *administrative state model* to the *network state model*?⁸⁴ The first model is characterized by a strong accentuation of the role of state administration in relation to social partners and by preference given to hierarchical management modes. According to this idea, state capacity and effectiveness of public policies depend primarily on the efficiency of state administration and not on its ability to cooperate with social partners or other institutions within the framework of network structures. In addition, the effectiveness of executing public policies in the administrative state model depends on the quality of mechanisms supervising agencies and not on the extent of their *zone of discretion* or ability to draw in social partners

of the performance of statutory tasks by the Military Housing Agency in 2001-2004"), Najwyższa Izba Kontroli, Warsaw 2005.

⁸³ Comp. S. Bulmer, Ch. Lequesne (2005): *Introduction, Conclusion*, in: S. Bulmer, Ch. Lequesne (eds.). *The Member States of the European Union*, Oxford University Press; S. Bulmer, Ch. Lequesne (2002): *New Perspectives on EU-Member State Relationships*, Centre d'études et de recherches internationales, Research in Question, no 4, January. An example of the discussed role played by member states is provided by the redistribution of EU resources under the cohesion policy: I. Bache (1999): "The extended gatekeeper: central government and the implementation of EC regional policy in the UK." *Journal of European Public Policy* 6, 1.

⁸⁴ Comp. the differentiation between the administrative and network state models in: T. G. Grosse (2006): *New Modes of Governance... ibid.*

to their activities in a flexible way. At the end, the efficiency of implementation of state policies becomes more important than the efficient adaptation of state policies to local needs.

On one hand, the inclusion of national agencies in the European network of agencies can promote construction of the network state model in new member states. The more so since the Europeanization of agencies could reinforce their position in relation to supervising ministries and creates less hierarchical and unilateral dependency structures. Such situation may occur particularly in relation to regulatory agencies. On the other hand, the reinforcement of management sectoriality and centralization as a result of Europeanization of executive agencies may lead to opposite conclusions. It may strengthen the hierarchical dependency of executive agencies on relevant ministries to which they are subordinate. In such case, Europeanization of executive agencies will be subject to a functional adaptation to the conditions of local administrative culture. This means that, in fact, it will be reinforcing the traditional way administration has been operating – in accordance with the administrative state model. This would confirm the thesis about the persistence of the administrative state model and socialist legacy in new member states, which was the conclusion of Phase I of the IPA study of the social and civic dialogue.

VII. Is delegating public tasks to agencies a “new mode of governance”?

The division of modes of governance into “old” and “new” is not clear. Some researchers in the NewGov consortium discard this typology as one devoid of much analytical value⁸⁵. But when it comes to new member states, the difficulty of differentiating between “old” and “new” modes of governance is apparent. These are countries with a strong socialist legacy and with management modes characteristic to the administrative state model. Executive agencies are not new. They were not created only to facilitate European integration or deliver European Union policies. Executive agencies also existed under the socialist state. They were the conduit for delegating tasks down to local authorities and for putting into practice public policies within particular sectors (ministries). Executive agencies were strongly subordinate to particular ministries and, therefore, they propped up centralized management in administration and reinforced sectoriality of government policies. Consequently, during the socialist period, delegating tasks to executive agencies was a form of the hierarchical management mode that curbed social-partner participation in putting public policies into action. Executive agencies stayed away from “soft” management forms such as voluntarism, persuasion, negotiation, self-governance, etc. They closely followed the administrative state model pattern.

Delegation of public tasks to agencies was also a commonly used management mode during systemic transformations. The administration delegated tasks to agencies primarily out of its desire to remove public funds out of the state budget and thus limit politicians’ involvement in deciding about public finances and about the size of public deficit. At the same time, the relatively large degree of financial independence enjoyed by agencies allowed a partial commercialization of public services. That was a period when regulatory agencies joined implementing in managing decentralized implementation of public policies. Regulatory agencies enjoyed more independence from ministries and were statutorily protected against government influence.

⁸⁵ O. Treib, H. Bähr, G. Falkner (2005): *Modes of Governance: A Note Towards Conceptual Clarification*, European Governance Papers, Eurogov, No. N-05-02.

In accordance with the definition adopted by the NewGov consortium, new management policies must meet two fundamental conditions⁸⁶. Firstly, they must serve the purpose of steering public tasks in a non-hierarchical manner⁸⁷. They must ensure that institutions involved in public policy delivery are not subjected to the hierarchical power structure, have a formal or informal right to veto within a specified range of public policies, are autonomous in certain fields of competency and, consequently, are free to participate in public policies voluntarily and in accordance with their own preferences. These features of non-hierarchical management assume activities within the boundaries of a specified autonomy of competencies and belong to the roster of “soft” management techniques. Non-hierarchical management is also the fundamental feature of *policy network* idea⁸⁸, i.e. functional structures of cooperation related to particular public policies.

Secondly, an important feature of new management modes is found in a systematic inclusion of private players, also those operating for profit, as well as social partners and non-governmental organizations⁸⁹. This formula can be also expanded to include administrative institutions, but not those that are in relations of hierarchical dependency or subordination. This includes agency-type institutions, territorial government administrations (of various levels), foreign state administrations, supranational administrations, etc.⁹⁰

Topical literature⁹¹ points to a reference between new modes of governance and the principle of subsidiarity and delegation of power to specialized agencies. However, considering the definition of new modes of governance adopted by the NewGov consortium, it can be assumed that agencies must meet three criteria to be recognized as new modes.

- (1) Firstly, they must be relatively autonomous to reduce the possible hierarchical dependency upon all levels of administration.
- (2) Secondly, they must allow participation by social partners in the execution of public policies.
- (3) The third condition for defining an agency as a new management mode must be its participation in *policy networks*, particularly in the European agency system.

When these assumptions are applied to the IPA study it becomes evident that executive agencies are least independent from government structures among all agency types. The less independence an agency has the more it falls into the roster of “old” hierarchical management modes. Executive agencies in new member states are particularly dependent on government ministries. They function in a strongly centralized and sectorial administrative tradition dating

⁸⁶ T. A. Börzel, S. Guttenbrunner, S. Seper (2005): *Conceptualizing New Modes of Governance in EU Enlargement*, NewGov project no. CIT1-CT-2004-506392, ref. No. 12/D1, Berlin.

⁸⁷ T. Risse (2004): *Global Governance and Communicative Action*, Government and Opposition, 39 (2); A. Héritier (2002): *New Modes of Governance in Europe: Policy-Making without Legislating?* w: A. Héritier (red.), *Common Goods: Reinventing European and International Governance*, Lanham: Rowman and Littlefield.

⁸⁸ R. A. W. Rhodes (1997): *ibid.*

⁸⁹ T. A. Börzel, et. all, *ibid.*

⁹⁰ The involvement of many types of actors from various management levels in the European Union is the main assumption of the multi-level governance concept. Comp. G. Marks, L. Hooghe, K. Blank (1996): *European Integration from the 1980s: State-Centric v. Multi-level Governance*, Journal of Common Market Studies, Vol. 34, Nr 3.

⁹¹ Comp. Ch. Koutalakis (2004): *ibid.*; G. Majone, M. Everson (2001): *ibid.*; M. Thatcher, A. Stone Sweet (2002): *ibid.*

back to the socialist period, and operate within the *administrative state model*. Studies conducted by the NewGov consortium⁹² show that the mode of delegating public tasks to a European agency specializing in information delivery meets only to a limited degree the requirement of social participation characteristic of new modes of governance. Therefore, one can expect an equally low level of societal participation in executive agencies.

Agencies studied by IPA implement European agriculture and rural development policies. The Europeanization of these agencies may be a factor in promotion of new modes of governance. Firstly, it could build up the institutional strength of these agencies in relation to the government and, therefore, it also contributes to reinforcing their formal or informal independence from relevant ministries. Secondly, it introduces the principle of social partnership in the execution of public policies. Thirdly, it includes agencies in *European policy networks*.

On the other hand, the extent and form of implementing EU regulations and management methods into day-to-day activities of these agencies seems at odds with the specificity of new modes of governance. Indeed, they leave very little room to voluntarism, discretionary powers, and self-governance. The European Commission has very diligently transferred most of them to EU-level national agencies. This method of a top-down imposition of regulations and operating procedures, combined with strict supervision of their correct implementation, brings to mind the “old” hierarchical modes of managing public tasks.

VIII. Closing remarks: toward a paradigm change?

Delegation of public tasks to agency institutions, especially to European ones, as well as creation of networks of cooperation between the European technocracy and national agencies aims at increasing the effectiveness of the execution of public tasks. It also may have additional consequences, i.e. it may have an effect on the condition of the democratic system in Europe. Many scholars stress the fact that EU technocratic institutions suffer from a deficit of democratic legitimacy⁹³. In spite of that, the European Commission is one of the greatest promoters of the transfer of administrative institutions to member states, and vigorously supports delegation of public tasks to autonomous agencies. The development of EU policies to date has been based not only on the evolution of the *regulatory state*, but also on shaping the *European agency system*. It is noteworthy that the establishment of these networks gradually weakens the national government impact on the execution of public policies and, at the same time, reinforces the position of the European Commission and European agencies in this field. In step with the *trustee concept* and based on the transfer of political property rights to agency institutions, they increasingly become *quasi-principals* in relation to member state *majoritarian institutions*. What is more, member state regulatory agencies that participate in European agency systems also evolve toward their new role of *quasi-principal* in relation to national institutions, including government administration. It seems that the process of steady reinforcement of the autonomy of agencies in relation to national supervisory institutions may involve not only regulatory agencies but also, to a growing extent, agencies that implement EU policies. All these remarks lead to the conclusion that the current state of mutual relations between member states and EU technocratic institutions, and between Europeanized national agencies and overseeing ministries, casts doubt on the assumptions of the current *Principal-*

⁹² For an example of *Agency for Safety and Health at Work*, see: S. Smismans (2006): *New Modes of Governance and the Participatory Myth*, European Governance Papers, Eurogov, No. N-06-01.

⁹³ E.g. Ch. Crombez (2003): *The Democratic Deficit in the European Union. Much Ado about Nothing?* European Union Politics, vol. 4, no. 1; J. Weiler (1996): *European Democracy and Its Critique*, West European Politics, vol. 18, no. 1; F. Scharpf (1999): *ibid*.

Agent theory. Maybe the time has come to formulate a new theoretical paradigm that will define these relations.

As I have mentioned earlier, the reason for delegating tasks to agencies may lie in politicians' desire to flee responsibility for difficult or unpopular social decisions. It is noteworthy that there is a growing trend in European countries to delegate tasks both to the European level and to autonomous national agencies. This may lead to a situation where politicians will be less and less involved in substantive issues concerning the shape of public policies and concentrate on personal rivalries, meanings of historical symbols and their own image. Will the society not lose interest in politics, which will gradually reduce its involvement in solving real social problems? This may lead to a crisis of confidence in democracy. This tendency is particularly visible in new member states, where the societal confidence in democratic institutions is low and where politics is treated more like a media spectacle than a forum for a public debate of genuine substantive problems.

And so, the popularity of delegating public tasks to autonomous agencies in unified Europe creates a double-track mechanism that is weakening democracy - on one hand, by reducing the competencies of national *majoritarian institutions* and undermining their position in the society; and on the other, by standing in the way to solving the democratic legitimacy deficit among Community institutions. The development of these processes would have to be associated with the tendency to depart from the *intergovernmental management logic* in the European Union in favour of the *community management logic* based on the autonomy of European technocratic institutions and development of functional *policy networks*.