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**Decision-Making Dynamics in EU Specialized Agencies<sup>i</sup>**

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## **Abstract**

This paper offers a systematic analysis of the decision-making processes within the management boards of the EU-level agencies. Using a methodology based on documentary analysis and semi-structured interviews, the present piece of paper explores the nature of the rules of decision-making at EU agencies management boards and suggests that in many of them the European Commission has geared agencies towards the progressive adoption of informal rules in order to facilitate agency governance.

## **INTRODUCTION**

The proliferation of EU specialized agencies over the last two decades has contributed to transform EU executive governance (Dehousse 2002; Egeberg and Trondal 2009; Wonka and Rittberger 2010). The agencification process, however, has been anything but uniform as they have growingly conformed a mix landscape of bodies with considerable variations as regards functions, size, internal organization and decision-making rules. An increasing bulk of the specialized literature has devoted attention to the formal aspects of agencies, including the rules of creation, autonomy and governance (Kelemen 2002; Groenleer 2009; Thatcher and Stone Sweet 2002; Pierre and Peters 2009; Martens 2010, Wonka and Rittberger 2010; Bovens 2007; Busuioc 2009). Yet, much less attention has been placed on the informal nature of the rules of decision-making within agencies' management boards. With informal governance as an underlying theoretical concern (Christiansen et al 2004; Farrel and Heritier 2003), this paper analyzes the relationships between formal and informal rules, and more precisely, it explores to what extent formal rules of decision making in agencies' management boards are growingly being supplemented, replaced or bypassed by informal codes and practices in EU agencies management boards. Formal rules are those laid down in the respective Founding Regulations of the agencies and normally are based on voting and majorities to adopt decisions, whereas informal rules refer to procedures, codes or agreements that are

not established in the founding regulations but broadly accepted and employed in order to seek consensus. This paper offers a systematic analysis of the formal and informal nature of the decision-making rules within the management boards of 25 EU agencies.

The theoretical relevance of this paper is twofold. On the one hand, it aims at nourishing the debates on the informal nature of EU governance (Christiansen et al, 2004; Farrel and Heritier 2003) by emphasizing the role of unwritten codes and procedures, personal relationships, informal arenas, non-institutional channels of deliberation and bargaining in EU politics and policy-making. On the other hand, this paper addresses the issue derived from the fact that although EU agencies are mostly intergovernmental in composition, intergovernmental bargaining and voting is not the prevalent rule of decision-making in the majority of them. Rather, non-written codes and practice are the prevalent rules of decision making in the majority of EU agencies, with formal voting only employed as a last resource. More interestingly is that while the formal composition of management boards may be rather similar, our empirical data show that the modes in which rules evolve towards more informal arenas presents variations across agencies. Partially in line with the argument posed by Farrel and Heritier (2003) as regards codecision, our findings have important theoretical implications as regards the value of formal rules as predictors of decision-making behaviors. Beyond formal rules, other aspects related with the political relevance and scope of the agency as well as the factual intergovernmental nature of its composition seem to better account for variations in the emergence and adoption of more informal rules of decision-making. Exploring the capacities of the Commission to define informal rules to attain pre-commitments and skip conflictive issues, thus circumventing voting procedures at management boards, is central to the argument.

The data source of this research is based on documentary analysis and 60 semi-structured interviews conducted between December 2010 and June 2011 with representatives of the European Commission and members of the management boards of 25 EU agencies.<sup>ii</sup> The main focus of the paper is the formal and informal decision-making rules established to facilitate the governance of these agencies, to

sketch out the interplay between formal and informal decision-making rules and to analyse how the European Commission has geared the agencies towards the progressive adoption of informal rules to facilitate decision-making within the MB. The expected contribution of this paper is to offer a comprehensive picture of the importance of informal rules in the governance of the EU agencies by scrutinising the different dynamics that govern the relationships between the actors and the decision-making dynamics within the pale of the MB.

The paper is structured as follows. It first analyses the evolution of the decision-making rules within the MB of the agencies, paying special attention to the interplay between legal, highly institutionalised formal decisions, and flexible, tacit, non-written informal rules. The following section focuses on the dynamics within the MB and presents different types of informal mechanisms played out by the Commission in order to facilitate decision-making within the MB, avoid voting and balancing the Member states off. The final section provides with some accounts of the intertwinement between the effervescence of informal mechanisms and the governance of the MB.

### **The argument, the research question and the hypotheses**

Usually the EU agencies are seen or identified as ‘agencies of the European Commission’ and it is this institution which the present document pays more attention to<sup>1</sup>. The Commission has a clear interest in controlling agencies and becoming a central actor of their governance. One of the most important control mechanisms is trying to maximize its role as guardian of the Treaties, doing everything possible to ensure the fulfilment of the basic Regulations by the agencies or expressing its legal interpretation. However, as a norm the Commission tries just to skip the vote to maintain its influence and informal mechanisms are used, enhanced or multiplied to reach consensus. The EC is always a minority in any MB and does everything possible not to vote because it could be, and indeed sometimes is outvoted. Despite this not being a new idea, as the consensus decision rule is widespread in the EU and informal

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<sup>1</sup> Interview 13

governance is uniquely inherent in EU politics (Christiansen et al, 2004), it could seem paradoxical that the Commission plays the dual strategy of acting as formally acting as the guardian of the Treaties and informally avoiding voting at the management boards. Nonetheless, one of the crucial issues of the debate on the EU agencies has been underemphasized, which is the decision-making dynamics and the governance of the Management Boards of the EU agencies. Over the last years we can ascertain some kind of evolution within the governance mechanisms of the agencies, which tend initially to be more formal – legalistic when the agency concerned is created but that over time are addressed towards a more flexible and informal configuration of decision-making mechanism and governance systems.

The main argument of the paper is that although the agencies are created with a very formalistic approach, and although over the first two years of existence the usual decision-making mechanism is the application of the system contained in the Founding Regulations -that is, voting by different majorities -, consensus reached though non-codified rules has become the predominant decision-making style in many agencies. They pace the way to modulate conflict, attain agreements and take decisions within the Management Board. Thus, in most agencies the Board only exceptionally takes decisions by the voting system. Despite conflict may arise within the Boards, consensus-seeking has become mainstream decision-making in many EU agencies, given that it avoids the outvoting of the Commission as well as further divisions. Within this context, our main research questions are: How relevant are informal rules of decision-making in EU level agencies? What are the determining factors of this interplay between a consensual-based style of decision making and the system of voting?

The paper is based upon two main hypotheses. The first one is that those agencies with a larger regulatory scope, including those holding powers to adopt legally-binding decisions for third parties and undertaking tasks whose legal extent is deeper, tend to adopt decisions rather based on formal rules. That is, they employ the majority voting rules quite often; on the contrary, those agencies with lesser scope, as they work gathering information or implementing specific policy tasks are expected to adopt

decisions that are rather based on informal, consensual rules of decision-making. The second hypothesis suggests that agencies in which decision-making is mostly based on informal procedures as a mode to build consensus are generally those narrowly depending on the Commission, whereas those in which voting is a more regular mode of decision-making are those covering policies in which the dominant dynamics is intergovernmentalism (Font *et al* 2011). Our dependent variable refers to the different formal and informal rules used and accepted by the different actors: voting rights and majorities as formal rules and a wide array of non-written norms to reach consensus as informal rules. The independent variable of our study is the regulatory scope of the different EU agencies, understood as the number, quality, extent and magnitude of the tasks entrusted to the agencies.

### **Formal and informal rules**

Agencies tend to vary considerably, not only in personnel and budget but also in the skills they have and the responsibilities they need to fulfil. Agencies are so varied that even the Commission finds it difficult to group them under a same label. The slogan used to promote them, 'whatever you do, we work for you', is fundamentally vague and ambiguous. Of course, being so different, one cannot expect the workings and behaviour of all the agencies to be equal, or even similar. The literature has already analyzed the origin and reason for the appearance of agencies and the explanation for this great variety of design (Dehousse 2008). However, when they are created, the agencies tend to share a similar basic structure (see Table 1).

Table 1: Voting rules at EU agencies' management boards

AGENCY	Nº EC REPR	VOTING RIGHTS EC	MEMBERS MB	VOTING
CdT	2	2	71 (MSt, EU agencies, EU institutions)	2/3 majority
CEDEFOP	3	3	87 (27 + 27 business + 27 trade unions + 3 EP + 3)	Absolute majority
CFCA	6	6	33 (27 + 6)	Absolute majority
CPVO	1	No	28 (27 + 1)	Simple majority of MSt
EASA	1	1	28 (27 + 1)	2/3 majority
ECDC	3	3	32 (27 + 2 EP + 3)	Simple majority or 2/3 majority
ECHA	6	3	35 (27 + 2 EP + 6)	2/3 majority
EEA	2	2	31 (27 + 2 EP + 2)	2/3 majority
EFSA	1	1	15 (14 independent + 1)	Simple majority
EIGE	1	1	19 (18 + 1)	Simple majority
EMA	2			
EMCDDA	2	2	31 (27 + 2 EP + 2)	2/3 majority
EMSA	4	4	31 (27 + 4)	2/3 majority
ENISA	3	1 globally	30 (27 + 3)	2/3 majority
ERA	4	4	31 (27 + 4)	2/3 majority
ETF	3	1 globally	30 (27 + 3)	2/3 majority
EUROFOUND	3	3	84 (27 + 27 business + 27 trade unions + 3)	Absolute majority
FRA	2	2	30 (27 + 1 CoE + 2)	Simple majority or 2/3
FRONTEX	2	2	29 (27 + 2)	Absolute majority
GSA-GNSS	5	5	32 (27 + 5)	2/3 majority
OHIM	1	No	28 (27 + 1)	Simple majority or 3/4
OSHA	3	3	84 (27 + 27 business + 27 trade unions + 3)	Absolute majority
EDA	1	No	27 (26 + 1)	QMV of MSt
EUST	1	No	28 / 27 + 1)	QMV of MSt
ISS-EU	0	0	27	QMV of MSt
CEPOL	0	0	27	2/3 majority
EUROJUST	0	0	27	2/3 majority
EUROPOL	1	1	28 (27 + 1)	2/3 majority

Source: own elaboration based on official documents

Firstly, all agencies share the equivalent of an executive power in the role of the president or executive director. The director tends to take care of the general representation of the agency vis-à-vis the rest of the agencies and institutions of the EU, as well as the Member States and the public in general. Besides this formal role of representation, the executive director has the responsibility of fulfilling the annual and 5-year programs of the agency within the expected budget approved by the other

institutions. The executive director must also control the correct functioning of the agency within the powers delegated by the community regulations. The mandate of the executive director is usually 5 renewable years and generally he is under the control and supervision of the other branches of the agency as well as the Commission itself.

Apart from the executive director, the agencies have an Administrative or Management Board (MB) which, in a certain way, shares the executive power. This partition of power replicates in a smaller scale the division on the EU institutions. Basically, the MB formulates the general guidelines of the agency, participates along with the Commission and the European Parliament in the process of authorization of the budget proposed by the executive director, examines and controls the annual and strategic plans as well as the activities of the agency and specially the executive director. The MB also has a role with the Commission in designating the executive director.

The composition of the MB varies, but there is always a representative of each of the Member States, and at least one representative from the Commission. Depending on the agency, there can also be representatives from stakeholders which generally cannot vote. The mandates of the representatives can last up to 5 years, but tend to be 3 renewable years.

Besides these two main bodies, the agencies include a variety of auxiliary branches. Usually there is a Budget Committee, which assigns the resources along the priorities of the agencies. There tends to be also a Bureau, which organizes the day to day workings of the agency and usually sets the agenda of the MB meetings. Depending on the obligations of the agency, there can also be scientific committees or specialized committees of varied sorts. There is also, of course, a bureaucratic body of functionaries.

When taking decisions at the MB meetings, regulations tend to indicate that each of the representatives of the Member States has one vote. Given the circumstance when

neither the representative nor the alternate of a Member State can make it to the meeting, some agencies provide a legal mechanism of voting through proxy, where the vote is transferred to a representative of another Member State. As far as the votes of the representative or representatives of the Commission, the criteria vary as well. In some agencies, the vote of the Commission carries more value than the single votes of each Member State, while in others the vote carries the same value, and there are even some agencies, such as the CPVO, in which the Commission has no vote at all. On the other hand, in agencies where there are other representatives such as stakeholders or professionals, they generally do not vote but express their position.

As we have said above, the debate on the EU agencies has underemphasized the decision-making dynamics and the governance of the MBs of the EU agencies. Even if agencies are created with a basic structure similar to what was described and a legally formalized working procedure, the progress and evolution of the agencies have led them to implement a multitude of different decision-making mechanisms, much more flexible and informal. As a representative clearly stated, “informality is our key”.<sup>2</sup>

The bulk of informal rules of decision-making at EU agencies management boards is considerable. As Stone Sweet *et al* (2001) point in defining the informal rules of the game in EU policy-making, there can be no definite list of informal unwritten rules as they extend as the system matures. This study describes some of the most outstanding informal rules observed. The first and main difference that we have found in our interviews was the fact that when deciding at the MB meetings in most agencies, representatives tend to leave aside formal voting. Even though internal rules and regulations specify rigorously the method to be used for voting, decisions in the great majority of occasions tend to be taken by general consensus. In the adoption of this informal rule of decision-making we can see another reflection of the decision-making at the EU central institutions, mainly the Council of the EU, where since the times of the unanimous rule they have always tried to avoid the vote. The representatives interviewed have clearly stated that if they are confronted with a difficult decision or if they want to explicitly leave the position of each representative on an issue, they can

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<sup>2</sup> Interview 41

always fall back to a formal voting procedure or, less frequently, to a simple show of hands. Nevertheless, the search for consensus seems to have been adopted as the prevalent rule in most if not all of the MB we have researched. One of the interviewees described the process very clearly when stating:

*'We try to adjust our decisions in order to reflect all opinions (...) If the voting rights really come to an essential point, we at the MB have the culture to discuss until we see every opinion reflected in the decision, so that the explicit voting is a very rare occasion at our MB.'*<sup>3</sup>

The fact that decisions are taken by consensus might pose a dilemma for the Commission in its role as a 'guardian of the treaties'. Even if on one side it needs to enforce the rules and procedures, by which it should try to take decisions through voting, it is clear that the Commission will always be in disadvantage in relation to the representatives of Member States. This gives the Commission a strong incentive for promoting the search for consensus on decision-making. On the other side, the representatives of Member States also do not wish to be obliged to accept a decision which they do not support; therefore the informal rule of deciding through informal rules leading to consensus tends to work in their favour as well. In the end, this procedure can lead to a result which can be in a certain way unsatisfactory, as another interviewee declared:

*'The representatives can have a loose conversation among themselves and come to a loose consensus, that gets put into a melting pot and some of the results that come out of that collective discussion looks strange almost to everybody from what it started.'*<sup>4</sup>

Other procedures are applied transversally in most of the MB of the agencies have to do with the informal dealing of the decision-making rules. The meetings of the MB tend to take hours or even days, and a wide variety of issues are dealt at the table, but generally when discussing face to face there has already been a previous debate and a

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<sup>3</sup> Interview 31

<sup>4</sup> Interview 47

demarcation of positions. According to a representative of one of the biggest Member States:

*‘We work together since we open the sessions at 9.30 in the morning up to 6 in the afternoon. We are together but not always in the meeting room. We are also in the hallways, where we talk and concert, “Why are we proposing this? I have talked to the UK and they agree...”, and then, as you can see, we don’t go blindly to the meeting room, of course.’<sup>5</sup>*

These discussions in the hallways and the “internal kitchen” of each agency have a crucial importance in the final decision. In agencies where stakeholders can express their opinion, they have almost no other way of being seriously heard. Their positions tend to confront mostly their natural opposition in other stakeholders, such as workers against industry representatives, more than one representative of a Member State against another. The internal logic of each MB leads to a discussion dynamic that tends to be repeated along different meetings. The division lines sometimes are transversal through Member States of different size or depend on the administrative culture of each country. It is because of this dynamics that hallway discussions and coffee breaks become crucial for the final decision-making procedure. The position of the chairman of the MB becomes determinant as well. He or she must know when to pause the meetings and when to put an end to discussions and force a vote or a show of hands, as rarely as this must be. His or her capacity to deal with these situations can mean the difference between arriving to a conclusion that everyone agrees with or having to postpone the decision.

Postponement to avoid a ruling is another of the regular informal tools for decision-making at the MB. Even though the agenda of the meeting may call for a decision on a certain issue, there can be the case when the moment may not be the most appropriate or the consensus cannot be realistically achievable. The chairman may then decide to pause decision-making and try to come back to the issue on a different occasion, after discussion is continued through other informal channels. Postponement may also be applied on those occasions where the Commission

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<sup>5</sup> Interview 55

representative considers, because of multiple different reasons, that the declaration has not been sufficiently elaborated or the moment is not suitable for an MB decision on a certain matter. Postponement, as it can be seen, becomes an important tool for achieving to a better decision at a more proper time. One of the interviewees also defined postponement as a way for representatives to prevent, at least momentarily, a certain decision that may be disadvantageous:

*'If one board member has convincing arguments that this is not the right point in time to make a certain decision (...) then it might be a wise decision to postpone the discussion, so there is no legal point of order which enables a member to prevent the MB of discussing something, but if there are good arguments we will listen to them and maybe decide to postpone it.'*<sup>6</sup>

Particularly interesting for the work and the decision-making procedures of the MB is the increasing role of the Bureau in the management of the agency. The Bureau can have an enormous responsibility when setting the agenda of the MB meetings. Even though the process of agenda-setting always leaves an opportunity for each representative to add points for discussion, the Bureau generally has the responsibility of applying strictly (or not) the rules for the inclusion of new points to the agenda. The Bureau has, in a certain way, a final say on what is going to be treated at the MB meeting. Representatives of Member States have declared that they have always been able to add issues to the agenda, but the procedure is nevertheless controlled by the Bureau.

On the other hand, the Bureau also tends to take to MB meetings issues already discussed on a "small table" of representatives. This means that even if the Bureau formally only deals with the day to day management of the MB and the organization in general, in many times in the advanced meetings and during the preparation of the MB agenda decisions are already being taken, or at least general guidelines are being applied. The issues to be discussed and decided at the MB meetings are simplified and treated previously by the Bureau. This mechanism, when occurs, is of course supported by the MB. If it weren't for the work done by the Bureau, decision-making

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<sup>6</sup> Interview 30

at the MB meetings would be impossible. It is useful to remember that these meetings include always more than 30 different representatives with differing opinions.

Sometimes, it is the MB itself which assigns ad hoc working groups to advance the discussion of certain issues that can be more specific or polemic. In extreme cases of conflict inside the MB, they may take the decision to apply a writing procedure which slows down the decision-making and at the same time obliges the application of formal rules. This rarely used tool is always a bargaining chip at the hand of the chairman of the MB if positions become too intransigent. It is useful to highlight that in most cases of postponement it is decided that the conflictive issues be treated in “small tables” or ad hoc working groups that can achieve a common position much more easily. This working methodology seems to have achieved very positive results in those agencies where it has been applied, as a representative told us:

*‘Three or five people with expertise, maybe in finance if it is a finance issue, or HR if it is an HR issue, can look into more detail than in the MB meeting. And they can come back and report to us on the work they have done, and often give us the steer on what the view is that we should put to decision. (...) This ad-hoc working groups approach is much better. It’s specific, you only have it when you need it on particular issues that require a big focus, and you get the right expertise’<sup>7</sup>*

Following this brief description, it can be seen that the informal or unwritten rules and procedures for the decision-making in the MBs of the agencies are abundant and varied. Even though we have described most of the informal rules we have found, there are still others which are much more subtle and related to the specific personalities of people working at each MB. It can be the case that representatives at the MB have been working together for years, know each other personally and have developed special working and cooperation dynamics that go beyond any regulation. Some interviewees even highlighted the importance of body language at the moment of discussing or taking a decision, as a negotiating tool or a way to establish beforehand a certain position by the chairman, the Commission representatives or any

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<sup>7</sup> Interview 31

relevant or influential representative. These informal behaviours, of course, cannot be typified, given that they are more related to personal relationships inside the MBs than to a practice that has been normalized through time and repetition. As regards the mostly codified informal rules and procedures described, we propose three categories:

*Ex ante:* We consider as ex ante informal procedures those that precede the meetings of the MB. Among those previously describe, we can classify as ex ante the work done by the Bureau, given that one of their responsibilities is the preparation of the meetings and the setting of guidelines in a “small table” beforehand to avoid possible derailing during the MB meetings. Another ex ante procedure is the informal agenda-setting. Even though the rules sometimes establish a process for the setting of issues to be discussed, most of the interviewees stated that the rules of agenda-setting tend to be quite relaxed.

*Ongoing:* We consider as ongoing rules and procedures those that take place during the meetings of the MB. The most important informal ongoing rule is that of the search for consensus in decision-making. This informal rule allows for most of the decisions in the agency to be accepted much easily by those involved, instead of being imposed by a majority. Besides consensus, we can include as an ongoing procedure the hallway discussions and the informal talks amongst representatives. This conversations and delimitation of positions are quite common, as in every human decision-making process, and tend to have a fundamental role in the final results. The strategies used by the chairman to dilate or shorten discussion are also considered ongoing informal procedures. Another ongoing informal procedure is postponement. Even though it implies that the final decision will be taken at another time, it is a tool that the MB has to arrive to better results in the end. Lastly, the informal dynamics amongst representatives which know each other personally, though hard to classify, tend to also be ongoing informal procedures.

*Ex post:* We consider ex post informal procedures those that occur after the meetings of the MB have taken place. Generally, ex post informal rules and procedures are mechanisms that are adopted when there is some unsolved conflict during the

meeting. Amongst the most commented by the interviewees is the transference of the issue to ad hoc working groups, where they can be discussed much more deeply by people more related to the matter and where it is easier to find common ground. This procedure tends to be a consequence of a postponement, and tends to be administered by the Bureau, which organizes ad hoc groups and “small table” meetings. A second informal ex post rule we have discussed, though rarely used, is the bargaining with the possibility of the adoption of procedure by writing.

As it can be seen, there is a double play in the procedures of the MB, between the formal rules established at the founding moment of the agencies and the informal rules that have been adopted along the years of work. Even though the functioning of MBs tends to be legally specified by regulations, the informal procedures have nevertheless always appeared and have occupied a space needed to maintain the agencies performing the tasks entrusted to them. Although these informal rules do not have a legal basis in the regulation, they are subject to fundamental political considerations, and are adopted willingly and eagerly by the MBs. Of course, not all the agencies apply these informal rules, and amongst those who do apply them, their importance and regularity vary considerable. Some rules, such as the search for consensus, are almost unanimously applied while others, such as the writing procedure, are seldom used. All in all, these informal rules are applied mainly for issues of efficacy and efficiency, besides political scheming. In our conclusions, we will try to expand on our possible explanations for this informality in the decision-making processes of the MBs of European agencies.

### **Concluding remarks**

This paper set out to explain what the determining factors to explain the interplay between the formal and the informal styles of decision-making within the MB of the EU agencies are. Our main conclusion is that the use of informal rules to adopt decisions within the Boards has become the norm, and this is exemplified by two main trends. On the one hand, there is the consensus-seeking in the Board of all agencies. Consensus is a proof that all the members of the agencies can get to an agreement and

can cooperate. This does not necessarily involve the absence of conflict, but rather the capacity to attain agreements collectively. To a certain extent consensus is related to what the EU actors want to show to the public. On the other hand, the growingly frequent meetings of the Bureau, that precede the meetings of the MB and that serve to prepare the position of the different actors within the MB, to solve possible disputes and, most crucially, to avoid voting within the MB as much as possible. Consequently, voting in the MB of the agencies is confined to those issues in which the Founding Regulation explicitly lays down that voting (usually by qualified majority) is required, and which normally refers to the approval of the budget, the annual work programme, the internal Rules of Procedure and the Code of Conduct, and the nomination and dismissal of the Executive Director. Nonetheless, there are some cases in which the formality of decision-making is more present and the use of informal tools to adopt decisions is dizzier. What explains these variations?

The paper started off with two main hypotheses. The first one did posit that those agencies with far-reaching regulatory scope tend to adopt decisions much more formally, in the sense of using the majority voting much more often; on the contrary, those agencies with lesser scope are expected to be based much more on informal, consensual style of decision-making. We have seen that this hypothesis holds true, given that the agencies in which the use of formal rules is higher are those whose legal extent and whose assigned tasks are deeper; this is the case of agencies such as the EASA, the EFSA, the ECHA, the CPVO or the CFCA. On the contrary, we see much more margin of manoeuvre for informality in the agencies with less legal competences and with a lesser profile, such as the Translation Centre, the ETF, the ENISA, the EMCDDA or Eurofound. These findings contribute to the theoretical debates reinforcing the idea of informal governance in EU politics, with formal rules being increasingly complemented, replaced or bypassed by informal ruling. It also downplays the theoretical assumption that formal rules conform an institutional context that is determinant in the emergence and adoption of informal codes. This research suggests that it is rather the regulatory scope of the tasks undertaken by agencies as well as the actual intergovernmental nature of the agencies, rather than the formal

intergovernmental composition, those factors leading to the emergence of more informal styles of decision-making.

The second hypothesis referred to the fact that agencies in which decision-making is extensively based on consensus are generally those narrowly depending on the Commission, whereas those in which voting is a more regular mode of decision-making are those presenting a more intergovernmental nature. We can as well validate the accuracy of this hypothesis, given that consensus has been widely accepted within the MB of all agencies as the most important informal decision-making mechanism, there are many cases in which formal majority voting occurs. And voting usually takes place in agencies with a clear intergovernmental nature, with few representatives from or no right to vote for the Commission, and with a relevant regulatory scope. This is the case of important agencies of the EU, such as the EASA, FRONTEX, the CPVO or the OHIM. Only when the Commission is an outsider or a very secondary player at management boards, decisions are more likely to be adopted by majority voting. And the reverse holds true. In those agencies with a low regulatory profile and just a formal but not practical intergovernmental structure, the Commission manages to exert greater control over appointments, agenda-setting and strategic planning, and finds ways to employ informal rules allowing conflictive issues to be redirected, postponed or dropped out of the agenda. In brief, we suggest that less regulatory scope and more communitarized tasks set better conditions for informal decision-making, while far-reaching regulatory scope and actual intergovernmental tasks restrain decision-making to more formal arenas.

This leads us to reaffirm the main argument of the paper and to reply to the research question formulated above: what are the determining factors of the use of formal and informal rules? The argument referred to the progressive leap of decision-making within the MB of the EU agencies from a legal, formalistic approach to a more informal, consensus-based style. This holds true for the majority of the EU agencies, notwithstanding there are some cases in which formal rules and majority voting are more frequent. What explains this? What are the decisive factors? We can conclude that two aspects are worth mentioning.

The first factor is the regulatory scope of the agencies. It has been demonstrated that those agencies which adopt individual decisions which are legally binding on third parties or that provide direct assistance to the Commission and, where necessary, to the Member States, tend to rely more on formal procedures and to vote more frequently. The specific tasks assigned to the agency are more relevant than the EU policy / legal framework under which the agency falls.

The second factor related to a crucial institutional figure, the Chairman of the Management Board. Formal and informal decision-making rules are to a large extent dependent upon the management style of the agency's chairmanship, and in this regard those agencies in which the Commission has a direct influence in the Chairman (because the Commission holds the Chairmanship or because the direct relation established) the general tendency is to look for informal decisions. On the contrary, where the intergovernmental nature is more relevant concerning the Chairman, formality is more present.

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