

HISTORICAL AND LEGAL PRECONDITIONS FOR THE ESTABLISHMENT OF EUROPEAN UNION AGENCIES

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Summary

The article examines the historical and legal preconditions for the establishment of European Union agencies as specific administrative bodies within the EU legal order. The relevance of the topic is determined by the fact that EU agencies have become important instruments for the implementation of Union policies, although their development was not initially directly provided for by the founding treaties. The article argues that the emergence of EU agencies was caused by the gradual complication of European integration, the expansion of the internal market, the need for technical expertise, the development of regulatory policies and the search for more flexible forms of administrative governance. Special attention is paid to the early stage of agency formation in the 1970s, the new wave of agencification in the 1990s, and the transformation of agencies after the Maastricht, Amsterdam, Nice and Lisbon Treaties. The study shows that the establishment of EU agencies was not a random institutional process but a response to functional needs of the Union. It is concluded that the historical and legal evolution of EU agencies reflects the transformation of the EU from a primarily economic community into a complex system of multilevel public administration.

Key words: agencification, administrative governance, institutional evolution, decentralized bodies, internal market, regulatory administration, functional specialization, multilevel governance.

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1. Introduction

European Union agencies occupy a special place in the contemporary institutional and administrative system of the Union. They are not among the main EU institutions listed in Article 13 of the Treaty on European Union, yet they perform important administrative, technical, regulatory, advisory, coordinating and operational functions. Their activities cover a wide range of areas, including the internal market, transport, food safety, environmental protection, health, medicines, financial supervision, border management, law enforcement cooperation, cybersecurity and digital transformation.

The development of EU agencies raises a number of theoretical and practical questions. One of the most important among them concerns the historical and legal reasons for the emergence of these bodies. The agencies did not appear as a fully designed institutional model from the beginning of European integration. On the contrary, their formation was gradual, uneven and closely connected with the changing nature of the European Communities and later the European Union.

The purpose of this article is to identify the main historical and legal preconditions for the establishment of European Union agencies and to determine their significance for the evolution of the EU administrative system.

The problem of EU agencies has been widely discussed in European legal doctrine. M. Chamon considers EU agencies as a manifestation of the transformation of the EU administration and analyses the legal and political limits of their development (*Chamon, 2016*). E. Chiti emphasizes that agencies have become an important part of the EU institutional machinery, although their legal nature remains complex and not fully unified (*Chiti, 2009*). R. Dehousse links the emergence of agencies with the development of regulatory networks in the European Community and the need for specialized administrative cooperation (*Dehousse, 1997*). G. Majone explains the growth of non-majoritarian institutions in the EU through the logic of delegation and the need for credible regulatory commitments (*Majone, 2001*).

Ukrainian scholars have also contributed to the study of EU institutional and legal development. V. Muraviov and other Ukrainian researchers analyse the legal nature of the European Union, its institutional system and the specific features of EU law as an autonomous legal order (*Muraviov, 2011*). I. Bratsuk emphasizes the importance of understanding the mechanisms of interaction between EU law and national legal systems, which is relevant for the study of EU agencies as instruments of implementation and administration of Union law (*Bratsuk, 2016*). H. Yudina examines the functioning of the institutional mechanism of the European Union and draws attention to its dynamic character (*Yudina, 2024*).

Despite the considerable number of studies, the historical and legal preconditions for the establishment of EU agencies still require a systematic analysis. This is especially important because agencies are often studied through their current powers, accountability mechanisms or judicial control, while the reasons for their emergence explain the very logic of their legal nature.

2. Functional complication of European integration as a precondition for the emergence of agencies

The first and most general precondition for the establishment of EU agencies was the gradual complication of European integration. At the initial stage, the European Communities were primarily focused on economic cooperation, the common market, customs union and sectoral policies. However, even at this early stage it became clear that the implementation of common rules required not only political decision-making but also permanent administrative support.

The founding treaties created the main institutional framework of the Communities, but they did not provide a detailed model of decentralized administrative bodies. The institutional system was built around the Commission, the Council, the European Parliament and the Court of Justice. Nevertheless, the expansion of common policies gradually created a need for specialized bodies capable of collecting information, conducting technical assessments, coordinating national authorities and supporting the implementation of Community law.

This need became particularly visible in areas where political institutions lacked sufficient technical capacity. The Commission had broad executive and administrative responsibilities, but it could not independently provide all the expertise necessary for the development and implementation of increasingly complex policies. Therefore, the establishment of agencies became one of the ways to respond to the functional needs of integration.

The first agencies appeared in the 1970s. The European Centre for the Development of Vocational Training and the European Foundation for the Improvement of Living and Working Conditions were established in 1975 (*Council Regulation (EEC) No 337/75, 1975*; *Council Regulation (EEC) No 1365/75, 1975*). Their creation reflected the growing social dimension

of European integration and the need for specialized information, research and coordination in employment, vocational training and working conditions. These bodies were not created as powerful regulatory authorities. Rather, they performed information, analytical and advisory functions.

This early stage shows that the initial logic of agencies was not connected with the transfer of broad discretionary powers. Agencies were established as auxiliary and expert bodies. Their main function was to provide knowledge, data and administrative support. This corresponded to the cautious approach of the Court of Justice to delegation of powers, especially after the *Meroni* judgment, which limited the possibility of transferring broad discretionary powers to bodies not established by the Treaties (*Meroni v High Authority*, 1958).

Thus, the first historical and legal precondition for the emergence of EU agencies was the need to support the growing functional complexity of integration without fundamentally changing the treaty-based institutional balance.

3. The internal market and the development of regulatory administration

The second important precondition was the development of the internal market. The completion of the internal market required not only the adoption of common legal rules but also their effective and uniform implementation. The removal of barriers to the free movement of goods, persons, services and capital increased the need for coordination between national administrations and EU-level bodies.

The internal market created new regulatory challenges. In many areas, it was not enough to adopt harmonizing directives or regulations. The Union also needed mechanisms for technical assessment, risk evaluation, standardization, supervision and exchange of information between national authorities. These tasks required institutional forms more flexible than traditional political institutions.

This explains the emergence of a new wave of agencies in the 1990s. During this period, the European Environment Agency, the European Medicines Agency, the Office for Harmonization in the Internal Market, the European Training Foundation and other bodies were created. Their establishment was closely linked to the practical needs of market integration and sectoral regulation. The contemporary legal framework for the Agency's activities was subsequently consolidated by Regulation (EC) No 726/2004 (*Regulation (EC) No 726/2004*, 2004).

The European Medicines Agency is a particularly illustrative example. The free movement of medicines and the protection of public health required a specialized mechanism for scientific evaluation and coordination of national competent authorities. The agency model made it possible to combine EU-level coordination with national expertise. This reflected the broader logic of European administrative governance: the Union increasingly relied on networks, expertise and specialized bodies rather than only on centralized command.

R. Dehousse rightly notes that agencies became important elements of regulatory networks in the European Community (*Dehousse*, 1997). They were not designed to replace national administrations completely. Instead, they connected national and European levels of administration. This network character became one of the defining features of EU agencies.

The internal market also strengthened the need for credibility and stability in regulation. According to G. Majone, delegation to non-majoritarian institutions can be explained by the need to ensure credible commitments in complex regulatory areas (*Majone*, 2001). In the EU context, agencies helped to depoliticize certain technical decisions and to provide more stable and expert-based administration.

Therefore, the development of the internal market was a decisive historical and legal factor in the growth of EU agencies. It created a demand for specialized administrative structures capable of ensuring the practical application of common rules.

4. Treaty evolution and the expansion of EU competences

The establishment and development of EU agencies were also closely connected with the evolution of the founding treaties. Although the treaties did not create a single general legal framework for agencies, the expansion of EU competences created legal and functional conditions for their development.

The Maastricht Treaty marked an important stage in the transformation of the European Communities into the European Union. It expanded the scope of integration and introduced new areas of cooperation, including justice and home affairs and common foreign and security policy. This contributed to the gradual emergence of bodies involved in operational coordination and information exchange.

The Amsterdam and Nice Treaties further developed the institutional and legal framework of the Union. They contributed to the communitarization of certain areas and strengthened cooperation in justice, security and external action. These changes increased the need for bodies capable of supporting practical cooperation between national authorities.

The Lisbon Treaty had particular significance for the legal status of EU agencies. It did not create a unified codified regime for all agencies, but it strengthened the general constitutional framework of the Union and confirmed the complexity of its institutional system. Article 15 of the Treaty on the Functioning of the European Union refers not only to institutions but also to bodies, offices and agencies in the context of openness. Article 263 TFEU expressly allows judicial review of acts of bodies, offices and agencies intended to produce legal effects vis-à-vis third parties. Article 265 TFEU also refers to the failure of agencies to act, and Article 267 TFEU allows questions concerning the validity and interpretation of acts of bodies, offices and agencies.

These provisions are important because they demonstrate that agencies became recognized elements of the EU legal order. The Lisbon Treaty did not transform them into main institutions, but it integrated them more clearly into the system of legal accountability and judicial control. This means that agencies are no longer merely auxiliary administrative structures. They are now legally relevant actors whose acts may have external effects and may be reviewed by the Court of Justice of the European Union.

Therefore, treaty evolution created an increasingly favourable legal environment for the development of agencies. The expansion of EU competences required more specialized administrative capacity, while the Lisbon Treaty strengthened the legal framework for controlling agency action.

5. Agencification as a response to the limits of the traditional institutional model

Another precondition for the establishment of EU agencies was the limited capacity of the traditional institutional model to manage the growing number of administrative tasks. The European Commission has a central role in ensuring the application of Union law, but the expansion of EU policies created a significant administrative burden.

Agencies offered a solution to this problem. They allowed the Union to distribute administrative tasks without formally changing the institutional architecture of the treaties. This

process is often described as agencification. It refers to the increasing reliance on specialized bodies to perform administrative, regulatory, technical and coordinating functions.

Agencification was not unique to the European Union. Many national legal systems also experienced the growth of independent regulatory authorities and specialized agencies. However, the EU model has specific features. EU agencies operate in a multilevel legal order, interact with national administrations and are subject to both EU institutional control and judicial review. They are not identical to national administrative agencies, because they derive their powers from EU law and function within the institutional balance of the Union.

M. Chamon emphasizes that EU agencies represent both a transformation and a challenge for the EU administration (*Chamon, 2016*). Their development makes EU governance more effective and specialized, but it also raises questions about legitimacy, accountability and control. This dual nature is rooted in the historical conditions of their emergence. Agencies were created to solve functional problems, but their growth required legal mechanisms to prevent excessive autonomy and institutional imbalance.

E. Chiti also notes that agencies became an important part of the EU institutional machinery while remaining legally heterogeneous (*Chiti, 2009*). There is no single model of an EU agency. Some agencies mainly collect information and provide expertise. Others adopt individual decisions, coordinate national authorities or participate in operational activities. This diversity reflects the gradual and pragmatic development of the agency system.

Thus, agencification emerged as a response to the limits of the traditional institutional model. It allowed the Union to strengthen administrative capacity without creating new treaty institutions.

6. The role of expertise, risk regulation and technocratic governance

The rise of EU agencies was also influenced by the growing importance of expertise in public administration. Modern regulation often concerns technically complex areas, such as medicines, chemicals, food safety, aviation safety, energy, financial markets, cybersecurity and environmental protection. These areas require scientific knowledge, risk assessment and professional evaluation.

Political institutions are not always able to conduct such assessments directly. Therefore, agencies became instruments for institutionalizing expertise within the EU legal order. They provide scientific opinions, collect data, assess risks and support decision-making.

This precondition is especially important for understanding the legal nature of EU agencies. Their authority often comes not from democratic representation but from expertise, professionalism and procedural reliability. This creates both advantages and risks. On the one hand, agencies improve the quality of decisions and strengthen the evidence-based character of EU governance. On the other hand, expert bodies must be subject to accountability and control, because technical decisions may have significant legal, economic and social consequences.

The development of risk regulation strengthened this tendency. Food safety crises, environmental risks, public health challenges and financial instability demonstrated that the Union needed specialized bodies capable of responding quickly and professionally. The establishment of agencies such as the European Food Safety Authority and the European Banking Authority reflected this logic.

The historical development of EU agencies therefore shows a shift from simple administrative support to expert-based governance. Agencies became important actors in the production and application of specialized knowledge within the EU legal system.

7. Institutional balance and the legal limits of agency development

The establishment of EU agencies was always accompanied by concerns about institutional balance. Since agencies are not main institutions under Article 13 TEU, the transfer of powers to them must not undermine the competences of the Commission, the Council, the European Parliament or the Court of Justice.

The Meroni doctrine played a fundamental role in this context. The Court of Justice held that delegation of clearly defined executive powers may be permissible, while delegation of broad discretionary powers may disturb the balance of powers established by the treaties. This doctrine influenced the development of agencies for decades and explains why early agencies were mainly advisory or technical bodies.

Later case law, especially the ESMA case, demonstrated a more flexible approach. The Court accepted that an agency may exercise certain binding powers if they are clearly defined, limited by objective criteria, subject to procedural guarantees and open to judicial review (*United Kingdom v Parliament and Council*, 2014). This case showed that the Meroni doctrine is not an absolute barrier to agency empowerment. Rather, it requires that delegation be legally controlled.

The historical development of agencies therefore reflects a constant search for balance between effectiveness and legality. The Union needed agencies to improve administration, but it also had to ensure that they did not become autonomous centres of political power outside the treaty framework.

This balance is one of the key features of EU agencies. Their establishment was possible because they were designed as specialized bodies with limited mandates, specific legal bases and accountability mechanisms. Their legitimacy depends not only on their usefulness but also on their integration into the EU system of control.

8. Significance of historical preconditions for the current legal nature of EU agencies

The historical and legal preconditions for the emergence of EU agencies explain their current legal nature. Agencies are not accidental or secondary bodies. They are the result of the gradual transformation of the Union into a complex administrative and regulatory system.

Their legal nature is shaped by several factors. First, they are created by acts of EU secondary law and derive their powers from EU law. Second, they have functional specialization and usually operate in technically complex areas. Third, they possess a certain degree of organizational autonomy. Fourth, their powers are limited by their founding regulations. Fifth, their acts may be subject to administrative, political, financial and judicial control.

This combination makes EU agencies *sui generis* administrative bodies. They cannot be fully equated with EU institutions, because they do not have the same treaty status. They also cannot be equated with national administrative bodies, because they operate within the EU legal order and participate in the implementation of Union policies.

For Ukrainian legal science, the study of the historical development of EU agencies is important for several reasons. First, Ukraine's European integration requires a deeper understanding of the institutional mechanisms of the Union. Second, cooperation with EU agencies may become increasingly important in areas such as food safety, aviation, medicines, border management, law enforcement cooperation and cybersecurity. Third, the EU agency model may provide useful lessons for the transformation of public administration in Ukraine, especially in terms of specialization, accountability, expertise and administrative capacity.

9. Conclusions

The establishment of European Union agencies was caused by a combination of historical and legal preconditions. The most important among them were the functional complication of European integration, the development of the internal market, the expansion of EU competences, the limits of the traditional institutional model, the growing role of expertise and risk regulation, and the need to ensure effective implementation of Union policies.

The first agencies emerged as auxiliary and expert bodies. Later, as European integration deepened, agencies became more diverse and obtained broader administrative, coordinating, regulatory and operational functions. Their development reflects the transformation of the EU from a primarily economic community into a complex system of multilevel public governance.

At the same time, the growth of agencies has always been limited by the principle of institutional balance. The case law of the Court of Justice, especially the Meroni doctrine and later the ESMA judgment, demonstrates that delegation to agencies is permissible only when it is legally defined, limited, procedurally regulated and subject to control.

Thus, EU agencies should be understood as specialized administrative bodies *sui generis*. Their historical development explains their mixed legal nature: they combine autonomy and dependence, expertise and accountability, functional specialization and legal control. The study of their historical and legal preconditions is therefore necessary for a proper understanding of their place in the EU legal order and their significance for the future development of European administrative governance.

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