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Regulatory networks and regulatory agencification: towards a Single European Regulatory Space

David Levi-Faur

ABSTRACT The European regulatory space has been expanding rapidly since the 1990s. The double movement towards a single market on the one hand and a Single European Regulatory Space on the other is evident almost everywhere. A new regulatory architecture is emerging and is expressed in the extension of regulatory capacities beyond the European Commission via two major forms of institutionalization: agencies and networks. This paper explores the politics and architecture of the institutionalization and administrative rationalization of the EU regulatory space and demonstrates (a) how agencies replace networks in a process that might best be called ‘agencification’; (b) how agencies compete with networks and are often able to create, employ, and control them, creating what might best be called ‘agencified networks’; and (c) how networking empowers agencies creating a new type of regulatory organization that might best be called a ‘networked agency’.

KEY WORDS Agencies; European Union; governance; networks; regulation.

The European regulatory space has been expanding rapidly since the 1990s, and the double movement towards a single market on the one hand and a Single European Regulatory Space (SERS) on the other is evident almost everywhere. Of course, markets are still split across nations, regions, and even different neighbourhoods of the same urban space. Similarly, the multi-level, multi-spatial European regulatory space is still divided and fragmented between different types of institutions, actors, and instruments on the one hand and modes of co-ordination and decision-making on the other. Different principles of governance are creating interesting experimentalist architectures and unique governance mixes (Börzel and Risse 2010; Coen and Thatcher 2008; Eberlein and Newman 2008; Lehmkuhl 2008; Sabel and Zeitlin 2012). The SERS is composed of standing committees, committees of wise men, working groups, programmes, task forces, *ad hoc* high-level expert groups, forums, agencies, networks, and Directorates-General (DGs) – all operating in a multi-level and multi-spatial architecture. Its major administrative expression is still the European Commission and its departments (or DGs). Yet beyond the Commission, which can be thought of as the traditional and most capable actor in the EU regulatory regime, two important institutions have recently appeared:

agencies and networks (Coen and Thatcher 2008; Dehousse 1997; Eberlein and Newman 2008; Eberlein and Newman 2008; Eberlein and Grande 2005; Kelemen and Tarrant, 2011; Lehmkuhl 2008; Majone 1994; 1997; Thatcher and Coen 2008). Both institutions represent emerging modes of administrative governance, and their rise reflects a process of architectural design that might be called 'governancing', echoing the transformation from 'government' to 'governance' (Rhodes 2012; Peters 2012). While agencies commonly represent the fragmentation of regulatory authority and the delegation of responsibility (even if limited) from the 'political' Commission to 'professional' and independent institutions, networks represent an effort to harmonize the fragmented institutional landscape. The expansion and diversification of the EU regulatory space can be explored in various quantitative ways: via the horizontal and vertical administrative specialization and division of labour; via the growing numbers of regulations, directives, and other legal outputs of the EU; via the expansion in the number of EU regulatory regimes; via the growth of agencies; and via the emergence of regulatory networks. Here it is done via a survey of agencies and networks of 36 regulatory regimes. Regulatory regimes encompass the norms, the mechanisms of decision-making, the various institutions, and the networks of actors that are involved in regulation (Levi-Faur 2011).

While EU-level agencification was a marginal development before 1990, and while it started to grow in importance in the 1990s, it boomed after 2000. The first regulatory agency was established in 1975, but the second only in the 1990s. By the end of 1999, the number of agencies had grown to 8; by 2007 there were 24; and by the end of 2010 there were 28 regulatory agencies covering 29 of the 36 regimes surveyed here. No fewer than 6857 administrative posts were assigned to these bodies in 2010, representing a significant and growing share of the EU administrative space (see also Dehousse 2008; Wonka and Rittberger 2010). The cumulative budget of EU agencies for 2011 is expected to amount to about 1.5 billion euros (with the ECB's share being a third of this amount).

The expansion and institutionalization of regulatory networks is likewise an interesting feature of the SERS. Regulatory networks of public officials became a popular form of EU governance in the 1990s. The origin of regulatory networks in the regimes surveyed here goes back at least to the 1930s and, of course, the postwar period. Still, the first EEC/EU regulatory network that was identified in my survey is that of heads of EEC central banks ('Committee of Governors'), which was established in 1964.¹ The second is the TREVI network, which was established in 1975 as a secret intergovernmental policing forum in the context of domestic terrorism. These two networks are now both 'dead', and two agencies – the European Central Bank (ECB) and EUROPOL – now dominate the two regimes.

Agencies and networks may be understood as administrative innovations that complement or compete with each other and with older and more established modes of regulatory governance, such as the Commission. If the Commission represents a mode of regulatory governance that is hierarchical and political,

then agencies represent a mode of regulatory governance that is based on a professional hierarchy of authoritative experts. When compared with the Commission and agencies, networks appear to represent less hierarchical and more open and collegial modes of governance. If agencies represent the fragmentation of regulatory authority, then networks represent an effort to harmonize the fragmented institutional landscape. Taken together, however, they open a window on the politics of the design of EU regulatory institutions (Pierre and Peters 2009). Networks and agencies coexist in most of the regimes surveyed here, but not all. In telecoms, for example, the network is the preferred mode, and the Commission, mainly because of opposition from regulators in the EU member states, tried but failed to create an EU agency (Simpson 2009; Groenleer and Kars 2008). Instead, an independent network that existed in the telecoms sphere was brought under the formal influence of the Commission. In aviation safety, to offer another example, the Commission managed to establish an agency in a move that led to the dismantling of a well-established regulatory network (Pierre and Peters 2009). Are networks only a temporary and provisional step on the long road to higher and more developed forms of institutionalization, or are they perhaps an independent, stable, and new regulatory institution? The survey suggests a trend towards agencification as the major instrument of choice in the EU governance system, and the deliberate institutionalization of dependent networks by the agencies and the Commission. Yet networks are still important for understanding the SERS, and network relations play an important role in legitimization and co-ordination. The boundaries between networks and agencies are becoming more blurred. Two interesting hybrid organizations, a 'networked agency' and an 'agencified network', were identified, and the relations between the networks and the agencies are understood as important features of the European governance mix (Börzel 2010; Brown and Scott 2010; Christensen and Nielsen 2010).

The discussion proceeds as follows. The first section presents the literature and the main findings so far on the dynamics of the European Regulatory Space, focusing on the institutionalization, de-institutionalization, and re-institutionalization of agencies and networks. The second section presents the methodology, while the third presents the findings from a mapping exercise of 36 regulatory regimes and discusses the relations between agencies and networks within them. The fourth section concludes.

1. MAPPING THE SERS

Agencies, networks, and new instruments of regulatory design are some of the most interesting aspects of the changes in regulatory governance and the reform of bureaucracy since the 1980s (Levi-Faur and Gilad 2004). They imply new ways of policy-making, represent new venues and challenges for accountability, transparency, and participation, and suggest changes in the

power relations within the state administration, between types of bureaucrat, between politicians and bureaucrats, and between citizens and administrators. Neither agencification nor networks are new features of bureaucratic organization; but the extent to which they have grown since the 1980s in some countries and political arenas may represent a radical change in the way the modern state is constructed and exercises its authority (Slaughter 2004). In short, agencification on the one hand and 'networkation' on the other may serve as indicators of changes in the organization of the state, of the economy, and of civil society.

An agency is defined as an administrative organization with a distinct, formal identity, an internal hierarchy, functional capacities, and, most important, at least one principal (cf. Christensen and Lægreid 2006; Pollitt and Talbot 2004). My interest here is in special types of agencies: those that are separate from formal political organizations and are given specific tasks that are considered to be less political than the tasks of the parent organization or the principal. I am also mainly interested in regulatory agencies rather than agencies that are also or mainly involved with planning, administration of services, distribution, and redistribution (Levi-Faur 2011). It is important to note that in the EU system of governance, despite the rise of agencies and networks, the Commission is generally the major regulatory institution. The four functional tasks of regulation – information gathering, rule setting, monitoring, and enforcement – are strictly divided between different actors and institutions; both the regulatory fragmentation (Flinders 2004) and the formalization of roles and responsibilities on the other hand are much greater than in other regulatory systems, including the system of check and balances of the US constitution. Most EU agencies do not have rule-making responsibilities; and although their role and capacities are probably expanding, the Commission still guards its rule-setting prerogatives.

A network is a set of relatively stable relationships of a non-hierarchical and interdependent nature which link a variety of actors (cf. Ahrne and Brunsson 2011: 6; Börzel 1998: 254; Podolny and Page 1998: 58). Unlike agencies, networks often do not have principals or administrative and independent financial capacities. Their decision rules are flexible and informal, and membership of them is voluntary. The literature on policy networks distinguishes between intergovernmental and supranational networks, between public and private networks, between informal and formal networks, and between advocacy, regulatory, and strategic networks. While the literature often distinguishes networks from markets and hierarchies (Ahrne and Brunsson 2011: 6; Klijn 2008; Rhodes 1990; Sørensen and Torfing 2007) and tends to see networks as informal organizations, in the EU intergovernmental networks are increasingly being institutionalized and formalized (this seems to be true also in other regions; see for example Berg and Horrall 2008). There is, however, scant literature on the question of the independence of networks and on the institutional platforms that encourage, inhibit, accommodate, and challenge their independence and relations with agencies.

In our golden age of regulation, even networks are defined by procedures, rules, and formalities. Informal organizations of power are conceived of as by definition non-transparent and unaccountable. The rise of regulation can be understood as a 'war on the informal' and an effort to formalize all social and political institutions. Yet not all social and political institutions are easily and uniformly susceptible to formalization. Recognizing this leads me to conceptualize agencies and networks as two distinct types of organization. They differ in the extent and scope of the formalization of their decision rules; the extent of their administrative capacities; the extent of their internal hierarchies; and the existence of external principals. Each has its own advantage. When voluntarism and mutual interdependence are prioritized, networks are the preferred institutional form. Another way to think about and conceptualize their advantages is to see them as agenda setters, consensus builders, co-ordination mechanisms, exchanges of information and knowledge, and norm setters (Berg and Horrall 2008; Martinez-Diaz and Woods 2009). Yet these functions can be performed also by agencies. The most important difference between agencies and network is not so much in function as in the degree to which they can develop administrative and regulatory capacities, and can be subject to accountability and transparency requirements. On these three grounds – capacity, accountability, and transparency – agencies are the 'natural' choice. Yet agencies require resources (financial) and degree of political commitment (delegation) that are not in the interests of all the actors involved. When resources are limited and political commitment is weak – network might be the preferred form of choice. Yet, as will be shown below, in practice the institutional distance between network and agency is not that great, at least when networking becomes a strategic choice of weak agencies.

Three processes of institutionalization and de-institutionalization are important to understanding the intuitional architecture of the SERS: governancing, agencification, and networkation. 'Governancing' is the act of designing governance systems. If governing is the act of government and the design of a hierarchy of governmental institutions, then governancing is about decentralization of power and the creation of decentralized, informal, and experimental systems of governance. Governancing thus refers to governance-in-action (Barkay 2009). 'Agencification' is one strategy of governancing. It is the process of formalizing roles and missions in organizations with spatial boundaries and formal identities, either by the devolution of functions from the core organization or the creation of new organizations for performing new functions. The literature on agencification has focused so far on the agencification of ministerial units into autonomous agencies (Christensen and Lægreid 2006; Pollitt and Talbot 2004) but, as we demonstrate below, the EU Commission has managed to agencify networks and to turn them into mechanisms of European governance and integration, so creating a hybrid organization, a potential innovation that might usefully be adopted at the global level more generally. 'Networkation' – or the creation and formalization of networks – is also a strategy of governancing because networks are associated with governance rather than governing. It is

the process of formalizing roles and missions in loose organizations in a way that bridges the gaps between insulated hierarchies to form a network of stable and interdependent relations. To recognize networkation as a governing strategy is to recognize the importance of the informal aspects of power and the ability to shape it, accumulate it, and apply it outside the boundaries of formal organizations (Ansell 2000; Slaughter 2004). As we will demonstrate, agencies are more resilient than networks, which tend either to disappear or to become more dependent on agencies and other hierarchies.

2. METHODOLOGY AND CASE SELECTION

The empirical analysis starts with the mapping of the regulatory terrain. In order to structure the exercise, the starting point is not agencies or networks but regulatory regimes. Case selection is based first on a data set from Jordana *et al.* (2011) which identifies 15 regulatory regimes for data collection: competition, electricity, environment, financial services, food safety, gas, health services, insurance, pensions, pharmaceuticals, post, security and exchange, telecommunications, water, and work safety. Twenty-one more regimes that were surveyed for this paper on the basis of the existing literature on EU public policy bring the total number to 36: administrative integrity, aviation safety, broadcasting, consumer protection, central banking, drug addiction, chemicals, fisheries, fraud, gender, human rights, intellectual property rights, justice, network communications, policing, privacy, product safety, shipping safety, railways safety, trademarks, and working conditions. This selection is based on the author's reading of the literature and observation of policy discussion at the EU level and in national policy-making institutions. While wider than in other exercises, the scope of the regimes covered is not clear because we simply do not have an exhaustive list of regimes from which a random sample can be drawn. The selection is thus biased towards the current issues and policies covered in the public policy literature, contested or otherwise visible on the public agenda, and ones that are reflected the EU administrative structure.

The regimes covered often have blurred boundaries. Thus, the railway safety regime also deals with the interoperability of railways, which has direct and immediate implications for economic issues. The aviation and maritime safety regimes have more subtle implications for competition among airlines and producers of aviation equipment. Yet the existence of both regimes at the EU level should not distract us from the fact that economic regulation – mainly determining market conditions and rules of competition – is limited, in these spheres as in many others, to the authority of competition law, and does not fall within the remit of sector-specific agencies. These three examples – all drawn from the transport industry – suggest that there might be a bias in the mapping exercise and that economic regulation regimes are under-represented here. In other words, the scope of agencification and networking is likely to be somewhat less than the data collected may suggest. This may reflect selection bias on the dependent variable (meaning positive power of

the EU), the ability of the Commission's departments to retain some issues outside the scope of agencies, and the lack of regulatory power over some issues at the EU level.

Deciding what is an agency was not always simple. Not all the agencies are called 'agency'. Four are called 'authority', another four 'office' and two 'centre'. In other cases we have a 'unit', a 'supervisor', an 'institute', a 'foundation', an 'ombudsman', and another is simply a 'central bank'. Only 11 out of the 28 regulatory agencies identified (40 per cent) are called straightforwardly 'agency'. The situation is similar in the organizations that were identified and classified as networks: their titles include 'forum', 'working party', 'conference', 'system', 'advisory committee', 'joint authority', 'group', 'council', and 'platform'. Only 19 out of the 51 networks identified (38 per cent) are straightforwardly called 'network'. Nine are titled 'Committees', seven 'Groups' and four 'Forums'.

The extent to which an agency or a network is also regulatory is likewise not easy to determine. Agencies' mission statements and legal mandates are determined by negotiations and political compromises. Governancing as a political activity does not necessarily prioritize analytical clarity, and the EU governance system distributes functions and responsibilities more widely than any other political system. Neither agencies nor networks necessarily stick to their mission statements. I therefore adopted a different approach here. If a regime was regulatory in nature (the EU system of governance is indeed predominantly regulatory), and if its major function was not the direct distribution or provision of goods and services, then for the purpose of this study, its agencies and networks were classified as regulatory. Agencies that collected information for the purpose of fact finding, rule setting, monitoring, or enforcement were defined as regulatory. Agencies whose major function was administration, research, or service provision were not included (thus, I excluded agencies such as the European Training Foundation and the Education, Audiovisual and Culture Executive Agency).

Networks sometimes have principals, and this is all the more evident amid processes of institutionalization when formal structures make the networks less informal. Who initiates, finances, and controls transnational networks is an issue that requires some attention. We do not have elaborate measures of formal and informal independence of networks, such as we have for agencies (Gilardi and Maggetti 2011). What we do know, however, is who is financing the agency and where its secretariat is located. On the basis of these two indicators, networks were classified as independent or dependent, with respect to either the relevant agency in the regime or the Commission.

A distinction is commonly made between economic regulations and social regulations. Economic regulations include those that aim to shape the organization and the governance of the market. They can be constitutive (about the creation of markets) or corrective, that is, directed towards market failures such as monopolies and cartels. Social regulations include those that aim to shape the organization and the governance of the social aspects of human life. Social

regulation agencies have more diverse functions and institutional designs than economic regulation agencies. They come in multiple forms such as safety regulation, health regulation, integrity regulation, moral regulation, rights, and environmental regulation. Again, not all agencies fall into clear-cut categories. Politicians are not there to please researchers or to draw sharp analytical lines but to produce compromises. They rarely read regulation manuals. The maritime safety agency, for example, operates systems promoting safety and preventing pollution and thus plays managerial as well as regulatory roles. Another relevant distinction is that between sector-specific regulation (for example, the regulatory regimes for telecoms or workplace health) and multi-sector regulation, where an agency has responsibilities for more than one sector (for example, environmental and consumer protection, or labour conditions and antitrust regimes). For our purposes it is also important to distinguish between EU regulation of second parties (such as European businesses or member states) and EU regulation of its own conduct (regulation inside governance, such as the European Anti-Fraud Office).

3. FINDINGS

Table 1 provides a comprehensive overview of the findings. Twenty-eight of the 50 agencies that were identified in the survey play a regulatory role.² A regulatory agency was identified in 29 of the 36 regulatory regimes that were explored (28 agencies in total as one agency covers both electricity and gas). In seven regimes I did not identify any agencies – namely, in broadcasting, competition, telecoms, water, post, product safety, and consumer protection. Agencies were identified in 8 of the 11 economic regimes (73 per cent) and in 21 of the 25 other regimes (84 per cent). EU regulatory agencies tend to retain a stable organizational identity. None of the agencies was dismantled, and the two changes in organizational identity that have occurred so far were in the context of role expansion. Fifteen of the agencies that were identified in the survey were established between 2001 and 2010, another 11 between 1990 and 1999, and 1 in 1975. The agencies vary considerably in size of staff and budget. In the largest group of 16 agencies, the annual agency budget ranges from 5 million to 25 million euros and the number of staff from 30 to 175. In a second group of 7 agencies, the annual agency budget ranges from 36 million to 70 million euros and the staff from 170 to 440. Finally, in the smallest group of four agencies – European Medicines Agency (EMA), Europol, Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), and the ECB – the annual agency budget ranges from 100 million to 400 million euros, and the staff from 470 to 1500. While the total budget of the EU regulatory agencies is about 1.5 billion Euros, it is minuscule compared with the regulatory budget of the US federal agencies (with the notable exception of the ECB, which has a similar budget and staff to the Federal Reserve). In terms of both their ability to set rules and their financial and human resources, US federal agencies such as the Securities and Exchange

Table 1 European regulatory agencies and regulatory networks

No.	EU regime	Regulatory agency				Regulatory network		
		Agency name	Est. year	Budget (€m)	Staff	Network name	Est/death year	Independence/dependence of network
1	Judicial	The European Union's Judicial Co-operation Unit (EUROJUST)	2002	23.3	175	European Judicial Network	1998	Council dependent
2	Drug addiction	European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)	1993	14	107	European Crime Prevention Network The European Information Network on Drugs and Drug Addiction (Reitox) ^a	2001 1993, 2003, 2006	Independent Agency dependent
3	Policing	European Police Office (EUROPOL)	1995	64	605	TREVI Informal meeting of the Chiefs of Police of the European Union	1975–1992 2010	Independent Independent
4	Network security	European Network and Information Security Agency (ENISA)	2004	8	102			
5	Migration and borders	Agency for Management of Operational Co-operation at the External Borders (FRONTEX)	2004	70	198	Frontex Risk Analysis Network (FRAN) European Migration Network (EMN)	2006 2003	Agency dependent Commission dependent

6	Environmental risks	European Environment Agency (EEA)	1990	36	169	European Environment Information and Observation Network (EIONET)	1994	Agency dependent
						Network of the Heads of EPA	NA	Independent
						EU Network for the Implementation and Enforcement of Environmental Law (IMPEL)	1992	Agency dependent
						EEAC	1993	Independent
						European Network of Heads of Nature Conservation Agencies (ENCA)	2007	Independent
						GreenForce (Conservation practitioners)	2005	DG environment dependent
						Green Spider Network (environmental information officers)	1995	DG environment dependent
7	Fisheries	Community Fisheries Control Agency (CFCA)	2005	8.5	49			
8	Chemical safety	European Chemicals Agency (ECHA)	2006	21	358			
9	Human health risks (medicines)	EMA	1993	173	565	The European Heads of Medicines Agency Regulatory Network	1996	Independent
10	Health and safety at work	European Agency for Safety and Health at Work (EU-OSHA)	1994	15	64	The European Network for Workplace Health Promotion	1996	Independent
11	Disease prevention	European Centre for Disease Prevention and Control (ECDC)	2004	41	64			
12	Food safety regime	European Food Safety Authority (EFSA)	2002	66	389	The European Food Safety Network	1999–200x	Independent
13	Product safety	None				The General Product Safety Directive (GPSD) Committee	1997	Commission dependent
						The Consumer Safety Working Party (CSWP)	1998–2008	Commission dependent
						Product Safety Network (PSN)	2004–2008	Commission dependent
						Consumer Safety Network (CSN)	2008	Commission dependent

(Continues)

Table 1 Continued

No.	EU regime	Regulatory agency				Regulatory network		
		Agency name	Est. year	Budget (€m)	Staff	Network name	Est/death year	Independence/dependence of network
14	Broadcasting	None				European Platform of Regulatory Authorities	1995	Independent
15	Consumer protection	None	NR			Euroguichets	1992–2005	Commission dependent
						Network for the Extra-judicial Settlement of Consumer Disputes (EEJ-Net)	2001–2005	
						The European Consumer Centers Network (ECC-Net)	2005	
16	Gender equality	European Institute for Gender Equality	2006	7	34	Expert Forum	2009	Agency dependent
17	Human rights	European Fundamental Rights Agency (FRA – previously EUMC)	2007	15	31	EU Network of Independent Experts in Fundamental Rights (CFR-CDF)	2002–2007	Commission dependent
18	Privacy	European Data Protection Supervisor	2001	5.4	35	European Conference of Privacy Commissioners	2004	Agency dependent
19	Maritime safety	European Maritime Safety Agency (EMSA)	2002	47	181	Data Protection Working Party	1995	Agency dependent
20	Aviation safety	European Aviation Safety Agency (EASA)	2002	102	467	European Civil Aviation Conference Joint Airworthiness Authorities	1955 1970–1987/ 90	Independent Independent
						JAA's	1987/90– 2007	Independent
21	Railways safety	European Railway Agency (ERA)	2004	18	116	JAA – Transition (JAA-T) The Working Party on Rail Transport	2007–2010 1951	Independent UNECE'S network

22	Administrative fraud	European Anti-Fraud Office (OLAF)	1999	57	438	OLAF Anti-Fraud Communicators Network	2001	Agency dependent
						the Advisory Committee for the Co-ordination of Fraud Prevention (COCOLAF)	1994	Agency dependent
23	Citizen responsiveness					European Ombudsman dependent	1992 (1995)	9
63	The European Network of Ombudsmen	1996		Agency			24	Welfare at Work Regime
	European Foundation for the	Improvement of Living and Working Conditions (EUROFOUND)	1975	20	97			
25	Trade marks	Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	1993	319	643			
26	Property rights (new plants)	CPVO	1994	12.6	45			
27	Competition regime (Antitrust)	None				European Competition Network	2002	Commission dependent
28	Monetary	European Monetary Co-operation Fund	1973			Committee of Governors	1964–1994	Independent
		European Monetary Institute	1994–			1998		
		European System of Central Banks	1994	Agency 1563		dependent	ECB	1998
29	401 Securities	European Securities and Markets Authority (ESMA)	2010	14.2	43	Group of Chairmen High-Level Group Forum of European Securities Commission (FESCO)	1990s–1997 1990s–1997 1997–2001	Independent Commission dependent Commission dependent
30	Banking	European Banking Authority (EBA)	2010	12.5	40	CESR CEBS	2001–2010 2003–2010	Commission dependent Commission dependent

(Continues)

Table 1 Continued

No.	EU regime	Regulatory agency				Regulatory network		
		Agency name	Est. year	Budget (€m)	Staff	Network name	Est/death year	Independence/dependence of network
31	Social insurance	European Insurance and Occupational Pensions Authority (EIOPA)	2010	10.5	40	CEIOPS	2003–2010	Commission dependent
32	Electricity	Agency for the Co-operation of Energy Regulators (ACER)	2009	5.1	40	Florence Forum for Electricity The Council of European Energy Regulators (CEER)	1998 2000	Commission dependent Independent
33	Gas					European Regulators Groups for Electricity and Gas	2003	Independent
						Madrid Forum for Gas	1999	Commission dependent
						The Council of European Energy Regulators (CEER)	2000	Independent
						European Regulators Groups for Electricity and Gas	2003–2010	Commission dependent
34	Telecoms	None	NR			Independent Regulators Group	1997	Independent
35	Water	None (to some extent the EEA)	NR			European Regulatory Group	2002–2010	Independent
						BEREC	2009	Commission dependent
36	Postal	None	NR			Informal Meetings of the Water and Marine Directors	2000	Commission dependent
						ERGP	2010	Commission dependent

NA: Information not available; ^adates of reorganization; Data for December 2010.

Notes: Where available and relevant the table shows the existence of previous networks. The 'historical' survey is not exclusive.

Sources: Groenleer (2009), Christensen and Nielsen (2010), and Wonka and Rittberger (2010) agencies' annual reports, email questionnaires for agencies and networks; EU budget books. Budget data for 2008 except for agencies that were established in 2010. In these cases the data refer to the proposed budget for 2011.

Commission, the Environmental Protection Agencies, the Federal Aviation Agency, and the Food and Drug Administration are bigger and more resourced than EU agencies.

The survey identified a total of 57 regulatory networks in the 36 regimes. As can be seen from Table 1, some of these networks were dismantled and replaced by new networks but others were replaced by agencies. In 22 (61 per cent) out of the 36 regulatory regimes there was at least one active network by the end of 2010. These figures most probably underestimate the number of informal and *ad hoc* networks because of their short life span and the fact that they tend to escape public and academic attention. In some cases, such in the environmental regime, more than one network was identified. The extent of governing via networking is greater than I expected. It varies across regimes, with the environmental regime as one of the more networked (see more below). Some of the networks were established outside the scope of the EU but were attracted and reoriented gradually into the EU policy arena. This is the case with aviation safety but also policing, post, telecoms and broadcasting. The only regime in our survey that included a network outside the scope of the EU and with no EU-oriented counterpart is that of rail transport, where an early form of institutionalization in the form of The Working Party on Rail Transport (established in 1951) existed as a network in the United Nations Economic Commission for Europe (UNECE).

While the scholarly and public image of a network is that of an informal voluntary forum of exchange and advice, the findings here reveal that agencies and the European Commission are making considerable investments in institutionalizing them as their agents. Only in 9 regimes of the 36 surveyed (25 per cent) it was possible to identify independent networks, that is, networks that controlled their own agendas and operated with their own members' financial resources. In four of the nine regimes independent and dependent networks coexisted (drugs, environment, electricity, gas, and telecoms). One example of a network that was not independent is the European Regulators Group for Postal Services (ERGP), which was recently set up by the Commission. Its existence, procedures, and institutional design were established by Commission Decision (2010/C 217/07) on the basis of directives on the internal market in general and postal services in particular. The decision determines the name of the network, its membership, its operation, and its meeting expenses. All these four tasks make the Commission the *de facto* principal of the network. The network's budget will be set by the Commission, and the network is obliged to submit an annual report of its activities to the Commission and the Commission or the Agency is represented in meetings. A similar legal style of networkation is evident in all financial regimes, telecoms, energy, competition, justice, and crime.

Table 2 presents the data on the coexistence of networks and agencies in the 36 regimes surveyed. It shows that networks and agencies exist in 15 of the 36 regimes but, as reported earlier, in most of these cases the networks are not independent from the agencies or the Commission. In a similar number of

Table 2 Networks and/or agencies in 36 regimes (data for December 2010)

		Agency	
		Yes	No
Networks	Yes	15 of 36 regimes (42%)	7 of 36 regimes (19%)
	No	14 of 36 regimes (39%)	0 of 36 regimes (0%)

cases (14 of the 36) only an agency exists. In only about one-fifth of the regimes did I find a network but not an agency (7 agencies or 19 per cent of the regimes). Regulatory regimes do not necessarily have administrative institutions for monitoring or enforcement, yet in this paper survey I found no regime with neither an agency nor a network.³ While in most of the cases, networks and agencies coexist, the relations are not simple. I could not find a case where the creation of a network led to the dissolution of an agency, but I found cases where agencification implied the dissolution of a network. For example, the Joint Aviation Authority (JAA) will be almost completely dissolved as soon as the aviation safety agency is finally able to take over its functions. It was the European Commission that was the major force that pushed in this direction against the resistance of the established and highly effective network (Pierre and Peters 2009). Power and prestige mattered in the European Commission's decision to extend and tighten its control over aviation governance. A similar process of dissolution of a network is expected with the recent establishment of the three new agencies in banking, securities, and insurance. Another example of dissolution is the EU network of independent experts on fundamental rights. In telecoms, however, network organization – in a much enhanced form – was the compromise arrangement after the failure of the Commission to establish a regulatory agency. These are clearly cases where institutional competition and a preference for formalization led to the rise of one institution on the expense of another.

At the same time, we observe that until recently agencification was strongly prevalent in safety and social regulation, while networks were the instrument of choice in economic regulation. The agencification of networks in electricity and gas in 2009 and in securities, insurance, and banking in 2010 suggests a trend towards agencification of the SERS. It is likely that in the coming decade agencies will participate in the regulatory space also in the seven economic regulation spheres of telecoms, post, water, product safety, consumer protection, broadcasting, and competition. Still, it is important to note that currently the development of the EU as an economic regulator is lagging behind that of the EU as a social regulator. Not only do these seven regimes lack agencies but so too do spheres such as transport (aviation, maritime, and rail) and pharmaceuticals, where EU-level regulation mainly focuses on safety and risk issues. In other words, agencification still tends to focus on social

and risk issues – with the notable exceptions of The ECB, the Community Plant Variety Office (CPVO), and the OHIM.

Coexistence and intensive co-operation are evident in some other cases as well. For example, networks exist around the office of European Ombudsman and energy and workplace health agencies. Interesting enough are not only the competition and co-operation between agencies and networks but also the creation of hybrid institutions that reflect and express regulatory experimentalism (Sabel and Zeitlin 2010). Two hybrid organizations, a ‘networked agency’ and an ‘agencified network’, were identified, and demonstrate the accountability and efficacy challenges facing EU governance. The European Environmental Agency (EEA) demonstrates the extent to which agencies can collaborate with networks and indeed acquire network characteristics. The EEA collaborates with at least five different networks. Some of the five enjoy a more formal status than the others. The Environmental Protection Agency’s (*EPA*) network is an informal grouping bringing together the directors of environment protection agencies and similar bodies across Europe. The network exchanges views and experiences on issues of common interest to organizations involved in the practical day-to-day implementation of environmental policy. The *Eionet*, established in 1994, is a partnership network of the EEA and its member and cooperating countries. The European Union Network for the Implementation and Enforcement of Environmental Law (*IMPEL*) is an international non-profit association of the environmental authorities. IMPEL was set up in 1992 as an informal network of European regulators and authorities concerned with the implementation and enforcement of environmental law (Martens 2006). The European Network of Heads of Nature Conservation Agencies (*ENCA-Network*) was established to strengthen nature conservation in the European Union by enhancing co-operation between its members. Finally, European Environment and Sustainable Development Advisory Councils (*EEAC*) aims to enrich the quality of policy advice at national and regional levels by exchanging information with colleagues from other countries and ‘to exert, where appropriate, an influence on policy developments at EU level by acting cooperatively’. Two more intergovernmental environmental networks exist in connection with DG Environment rather than the environmental agency: *GreenForce* (conservation practitioners) and the *Green Spider Network* (environmental information officers).

The postal services regime is an example of the institutionalization of networks that is so broad that a new hybrid institution, which we might call an ‘agencified network’, should be recognized. The degree of institutionalization – formalization of decision rules, administrative capacities, formal hierarchy, and the existence of an external principal of the network – suggests that we need to rethink the relations between hierarchy and networks and to recognize the extent to which networks can be institutionalized as agents in global and European governance. While only one ‘networked agency’ (the EEA) was identified in the survey, it is possible to identify at least five similar cases, such as the Committee of European Securities Regulators (CESR), the Committee of

European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions supervisors (CEIOPS), the Body of European Regulators in Electronic Communications (BEREC), and the Agency for the Co-operation of Energy Regulators (ACER). In each of these cases, the new institution seems to be a temporary solution in the Commission's and supranationalists' quest for agencification. In the three cases of finance (CESR, CEBS, and CEIOPS) an agency was already established, replacing the 'agencified network' form. In one case (ACER) the agencification was so advanced that it is codified as an agency in Table 1. In other words, in some cases the difference between agency and network is one of degree; what is important is to identify trends and processes.

4. CONCLUSIONS

Bringing together agencies and networks within one framework of analysis demonstrates (a) how agencies replace networks, displaying an evolutionary trajectory of development (Thatcher and Coen 2008) in a process that might best be called the 'agencification of networks'; (b) how agencies compete with networks and are often able to create, employ, and control them, creating what might best be called 'agencified networks'; and (c) how networking empowers agencies (Martens 2006; 2010; Zitto 2009), creating a new type of regulatory organization that might best be called a 'networked agency'. The extent of agencification across the regimes examined here is surprising, even though regulatory institutionalization is lagging in some important regulatory spheres despite the likely selection bias in the choice of the 36 regimes (see methodological section). Still, networks, both in their 'captured' form and in their 'independent' form, seem to allow the agencies and the Commission to deal flexibly with the more restrictive institutional constraints on their formal spheres of authority.

The findings and analysis also allow us some insights into the EU system of regulatory governance. The patchwork of regulatory institutions, instruments, committees, observatories, directives, rules, and networks at various levels and arenas that together make up the SERS is diversifying and expanding. The scale, depth, and scope of agencification create the world's largest and probably most complex transnational regulatory system. The European regulatory system is constantly changing and reinventing itself in order to keep pace with Europeanization, liberalization, and market integration on the one hand and new and old risks and occasional economic, social, and environmental crises on the other. As demonstrated in this paper, and in line with the work of scholars of both agencies and networks, there are increasing pressures for agencification and expansion of regulatory power in the SERS. Agencification is not, of course, a guarantee of successful Europeanization, especially given the small size of the EU regulatory budget when compared with that of the federal government in the USA. Moreover, it is neither the sole nor the most effective mechanism of governance. Yet it is fast becoming a dominant form: agencies are extending their reach via networks, and networks are becoming similar to

agencies. The forces that advance their institutionalization, shape a choice between agency and network, and are responsible for convergence on 'agencified network' or 'networked agency' are clearly beyond the scope of this paper; but they clearly raise some of the most interesting questions facing scholars of regulatory governance.

Biographical note: David Levi-Faur is an Associate Professor at The Hebrew University, Jerusalem. He is currently a Senior Fellow at the Kolleg-Forschergruppe 'The Transformative Power of Europe', Free University of Berlin, Germany.

Address for correspondence: David Levi-Faur, Free University of Berlin, Otto-Suhr-Institute for Political Science, Ihnestr. 26, 14195 Berlin, Germany. email: levifaur@mscc.huji.ac.il

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NOTES

- 1 The oldest network in the survey is the railways network (est. 1951), which is organized from the UN Economic Commission for Europe and therefore outside the EU's jurisdiction.
- 2 Agencification also encompasses service provision, distributive functions, and research management (Groenleer 2009; Egberg and Trondal 2009). See complete list on the author's website.
- 3 Although the water network is loose and the railways transport network exists outside the EU formal competences.

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