

# THEORIZING EU HUMANITARIAN AID POLICY

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## 1. Principal-Agent theory applied to EU humanitarian aid policy

Although the European Commission was not formally given authority in the humanitarian field by the Treaty of Rome, the humanitarian dimension of Community policy stretches as far back as the beginning of the 1970s. Despite the fact that humanitarian assistance was never included in the EU Treaty at the various revisions, the Community's competences in this field substantially expanded during the 1990s. Today the European Commission Humanitarian Aid Office (ECHO) is the second largest international humanitarian donor after the US, managing a budget of around €550-600 million, larger than that of any of the EU member states' humanitarian aid departments<sup>1</sup>. Drawing on Principal-Agent (P-A) analysis, the paper will try to explain why member states were willing to partially<sup>2</sup> devolve authority over humanitarian aid decisions to ECHO, how they have tried to keep control over ECHO, and what the consequences are of delegation with regard to ECHO's autonomy<sup>3</sup>.

Stephen Ross (1973: 134), who first introduced the Principal-Agent imagery, describes how a P-A relationship is created "between two (or more) parties when one, designated as the agent, acts for, on behalf of, or as the representative for the other, designated the principal, in a particular domain of decision problems". EU member state governments are modelled as the collective principal delegating to an agent, the European Commission, the responsibility for carrying out a set of tasks on their behalf in the domain of humanitarian aid provision<sup>4</sup>.

P-A analysis, while initially developed to study delegation of power to non-majoritarian institutions in the US<sup>5</sup>, has been increasingly applied in EU studies to explore the interaction between EU supranational institutions and EU member governments (Kassim and Menon 2003; Pollack 1997-2003a; Tallberg 2002; Doleys 2000). P-A analysis has mostly focused on internal EU policy domains. Scholars using P-A insights to study EU *external* relations have mainly concentrated on external trade policy (Meunier 2000, Kerremans 2004, Frenhoff Larsén 2006), with the exception of Biscop and Drieskens (2006) who use P-A to analyse the behaviour of the EU in the Security Council. An attempt will be made to assess whether the existing P-A models, which are strongly rationalist, offer a satisfactory explanation for delegation in the field of humanitarian aid – an external, distributive, shared EU policy

<sup>1</sup> In 2002 ECHO with a budget of €537 million managed 44% of the aggregate European humanitarian aid flow (Commission and EU member states together). The Netherlands (with €149 million) and Germany (with €140 million) were the largest member state donors.

<sup>2</sup> Humanitarian aid is an area of shared competences. A substantial part of the European humanitarian aid budget has been entrusted to the Commission, but each member state also conducts a national humanitarian aid policy.

<sup>3</sup> It is beyond the scope of this paper to examine why responsibility for humanitarian aid was only partially delegated to the EU level, or to discuss the democratic credentials of delegation to supranational agencies.

<sup>4</sup> Humanitarian aid provision is characterized by a long chain of delegation. Member states have delegated responsibility for humanitarian aid to the Commission/ECHO; ECHO finances humanitarian NGOs, UN agencies and the Red Cross for implementation of humanitarian projects in the field; and NGOs, the UN or the Red Cross might subcontract local NGOs. All these links could be analyzed using P-A language. This paper focuses on the relation between EU member states and the Commission.

<sup>5</sup> The P-A approach was not devised by political scientists, but is built on insights from transaction cost economics. See Doleys 2000.

domain – or whether alternative more sociological institutionalist-oriented approaches should be taken into consideration to enrich the understanding of delegation and agency in the humanitarian aid field. Because as Tallberg (2002: 42) posits, leaving P-A explanations of delegation unchallenged “neither lends credibility to the claims of P-A theorists, nor encourages theoretical refinement”.

## **2. Rationale of delegation: Why have member states decided to delegate authority to the European Commission in the field of humanitarian aid?**

### 2.1 Functional logic guiding the decision to delegate

Delegation by a principal to an agent resorts under the broader issue of institutional choice, viz. why does a group of actors decide upon a certain institutional design rather than another (Pollack 1997: 100-101). Principals have the active choice among alternative governance structures, of which delegation to supranational institutions is just one option (Tallberg 2002: 25). Hawkins et al. (2006: 10) emphasize that “delegation to an international organization must be compared to the ‘next best alternative’”. The question is why EU member states decided to transfer part of the responsibility for their humanitarian aid budgets to the Commission, rather than managing all humanitarian aid at the national level, or cooperating among them without delegating authority to a supranational institution. Rational-choice P-A analysis adopts a functional approach to the question of institutional design. Institutional choices are explained by the functions an institution is expected to perform and the rationally anticipated effects of institutional design on policy outcomes (Pollack 1997: 101-102, Tallberg 2002: 25). From a transaction-cost perspective on the design of institutions (Epstein and O’Halloran 1999), delegation takes place when the expected benefits of delegation for the delegating party outweigh the expected costs.

### 2.2 Benefits of delegation<sup>6</sup>

#### 2.2.1 Efficiency

##### 2.2.1.1 Demand for policy-relevant expertise

Central to the logic of delegation is the gains which can be drawn from the division of labour and specialization. Rather than performing an act itself, the principal delegates authority to a specialized agent with the policy-relevant expertise necessary to perform the task. Delegation then becomes “an effective substitute for the acquisition of expertise” (Alt and Alesina 1996: 658). The need for expertise is usually linked to policy uncertainty, i.e. the assumption that “political actors often know the outcomes they want to achieve, but are uncertain about which specific policies will achieve these outcomes” (Huber and Shipan 2004: 3). The combination of policy uncertainty and bureaucratic expertise provides a motivation for delegation by principals to an expert agent. Delegation motivated by the need for expertise is especially common in highly technical, fast-changing, or complex issue areas. In the words of Andrew Moravcsik (2002: 613-614), “[i]nsulated institutions reduce decision-making costs by encouraging specialization. They thus permit efficient and consistent decisions to occur in areas [...] where scientific, legal or administrative expertise is expensive to acquire, yet expert, informed decision-making is desired.”

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<sup>6</sup> A rich P-A literature has explored the motivations that lead principals to delegate authority to agents. For an overview see Kassim and Menon 2003: 123-124.

### *Applied to the humanitarian aid domain*

Member states have decided to entrust the European Commission with the execution of EU policies within specified domains because of its ability to develop and deploy relevant expertise. When the Commission formulates implementation measures, the expertise of its specialized Directorates-General is exploited for making decisions the technical character or complexity of which make them unsuitable to be debated in detail by the politicians in the Council (Tallberg 2002: 27). The delegation of authority to ECHO to make financial decisions on humanitarian aid provision and to outline humanitarian aid strategies, can be explained by the fact that humanitarian relief aid is considered a largely technical task, requiring specialized policy expertise and competences for instance in relief logistics and health care, which principals might not possess. Member states do not exclusively rely on the Commission as supranational expert to generate and disseminate knowledge on humanitarian aid. They have their own humanitarian aid departments which can provide information on developments in the humanitarian field. However, while small compared to many other Commission DGs, with a staff of approximately 100 desk officers in Brussels and another 100 experts in the field, ECHO is better equipped in terms of human resources than many national humanitarian aid departments, which often have fewer resources at their disposal and less expertise relative to that within the Commission.

The Commission claims that “there is a clear recognition and even expectations by all stakeholders, including Member States, that the Commission act as a catalyst and a facilitator for the formulation of quality aid strategies and techniques at EU level” (European Commission 2004: 4). ECHO has created tools which should allow it to serve as a reservoir of well-founded and objective know-how necessary to develop a humanitarian aid policy which efficiently addresses humanitarian needs. The Humanitarian Aid Office has developed a step-by-step approach for reacting to humanitarian emergencies (the awareness of an emergency, the assessment of humanitarian needs, the decision to allocate humanitarian aid, the setting up of operational contracts with implementing partners, the monitoring of the humanitarian operation, and the evaluation of the ECHO financed humanitarian project) which has made the EU way of responding to a crisis much more structured as opposed to the rather unformalised procedures characterizing the early Community actions in humanitarian aid provision. ECHO has developed a set of methodologies to assess humanitarian needs and provide information on the global humanitarian situation which should enable it to design quality humanitarian aid responses, viz. the Global Needs Assessment, entry and exit strategies, and criteria for identification of ‘forgotten crises’ and disaster prone countries (see 2.2.2). In addition, ECHO has steadily increased its field presence to improve the analysis of humanitarian crises, and get a better understanding of events at field level. Approximately 100 ECHO experts, specialists in key humanitarian sectors (such as health, water and sanitation, provision of food, shelter), are located in around 40 ECHO field offices throughout the world. ECHO has also established a Framework Partnership Agreement with the humanitarian organizations implementing ECHO funded humanitarian projects<sup>7</sup> to ensure that operational partners have a proven track record in humanitarian relief and are financially reliable.

#### 2.2.1.2 Efficient and rapid decision-making

Rather than member governments negotiating the minute details of all policy proposals in the Council, it might be more cost-efficient to adopt general guidelines the specific contents of which are then worked out through the Commission’s implementation measures (Tallberg

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<sup>7</sup> ECHO is not an operational donor, but relies on specialized humanitarian organizations (e.g. UN High Commissioner for Refugees, Médecins Sans Frontières, Red Cross, etc.) to carry out programmes in the field.

2002: 26-27). In addition to a reduced workload for principals, Pollack draws attention to the factor of speed. Delegation can help in ensuring “the swift and efficient adoption of implementing regulations that would otherwise have to be adopted in a time-consuming legislative process by the member governments themselves” (Pollack 2005: 33).

#### *Applied to the humanitarian aid domain*

Humanitarian policy, apart from requiring expertise, demands a quick response to emergency situations. It seems to be a policy domain which by its very nature asks for the attribution of large autonomy to an executive body such as ECHO, as delegating authority over humanitarian aid funding to a supranational agent speeds up decision-making. Furthermore, because of the limited predictability of humanitarian disasters, relief is not easily regulated through the use of forward-looking legislative instruments. Finally, it is necessary to preserve flexibility in the face of the sudden outbreak of disasters or conflicts causing humanitarian emergency situations, and in the face of quickly evolving circumstances in such crises.

#### 2.2.2 Credibility

States may delegate authority to an international organization to enhance the credibility of their policy commitments. The notion of credible commitment is connected to the time-inconsistency problem. “When a government’s optimal long-run policy differs from its preferred short-run policy”, as Majone puts it, “the government in the short run has an incentive to renege on its long-term commitments”. Delegating powers to an institution “operating at arm’s length from government” then becomes a “technology of commitment” (Majone 2001: 106, 109). Majone emphasizes that the type of delegation meant to enhance credibility of policy commitments implies that the agent should be independent, since “an agent who simply carries out the principal’s directives cannot enhance the latter’s credibility” (Majone 2001: 104). Kassim and Menon (2003: 125) similarly remark that sometimes “delegation to an agent is motivated by a concern to secure advantages that depend upon the independence of that agent”.

Absolute independence as described by Majone is extremely rare in the real world of international politics (Franchino 2002: 679-680, Pollack 2003a: 91-107). Hawkins et al. (2006: 19, our italics) suggest that principals can mitigate commitment problems by delegating policy to agents “with *high discretion* and, typically, *more extreme preferences* so that, left to their own devices, the agents will move policy in the desired direction”. The assumption is that the agent is less tempted to deviate from the optimal long-term policy than the principal. Agents are believed to have stronger incentives than governments to pursue the statutory objectives of the agency even when those objectives no longer enjoy popular support because of changed economic or political conditions (Majone 2001: 111). The more pro-integrationist, pro-environmentalist, pro-consumerist etc. preferences of agents are usually attributed to different time horizons (Franchino 2002). Elected officials in member state governments, for reason of the democratic process and the re-election seeking it implies, have a short time horizon and may face the temptation to go back on promises. Commissioners have a longer time horizon because of their appointment for at least five years. The absence of re-election concerns is all the more applicable to Commission *fonctionnaires* who may stay at the Commission for their entire career.

Hence, the ‘ally principle’ central to delegation theory – the idea that “politicians will delegate more discretion to bureaucrats who share the politicians’ policy objectives” (Huber and Shapin 2004: 8) – turns out to be fragile. One way of explaining the somewhat counterintuitive observation of principals delegating authority to agents with diverging

preferences, is to make a distinction between short-term and long-term interests. The very purpose is to create a divergence of short-term preferences, but this diversion is sought by the principal itself in order to secure the principal's own long-term interests (Büthe 2006: 7). Civil servants are insulated from political overseers and empowered to pursue an independent course of action as a means to establish credible commitments to principals' long-term aims, which might conflict with their short-term ambitions.

#### *Applied to the humanitarian aid domain*

In 1996 the member states adopted a Council Regulation which stipulates that Community humanitarian assistance must not be "guided by political considerations". Humanitarian aid decisions must be taken "solely according to victims' needs". Humanitarian aid is to be accorded "without discrimination on the grounds of race, ethnic group, religion, age, sex, nationality or political affiliation", and the sole aim of EC humanitarian aid "is to prevent or relieve human suffering". However, because external aid also constitutes a potentially influential foreign policy tool, donor governments might be more interested in achieving their political and economic goals rather than addressing the needs of crisis victims. Member states' short-term interests might lead them to devote all humanitarian funds to high-profile, mediatised crises allowing for donor visibility, or to allocate humanitarian resources on the basis of security considerations or historical ties with a particular third country. The European Commission Humanitarian Aid Office can be expected to have fewer incentives to deviate from the commitment to apolitical humanitarian aid than national governments in general and the Council's ministers in particular, because of purer pro-humanitarian preferences, because of its mandate which legally enshrines the apolitical nature of EC humanitarian aid, and because of its longer-term perspective in the absence of re-election seeking. Charging an independent Commission office with the delivery of humanitarian aid is one way of giving credibility to member states' commitment to equitably provide humanitarian assistance to the most vulnerable crisis victims, and avoid a situation in which some crisis situations receive too much aid and others too little. Instructions from the Council on how ECHO should allocate the humanitarian aid funds with which it has been entrusted are not allowed.

The Commission asserts that since member states tend to be influenced by political considerations, ECHO can balance this with a more objective allocation of funds directed to areas of highest need. Deciding where humanitarian needs are most pressing *in se* also rests upon a political decision. To counter possible suspicions of politically inspired or arbitrary decisions on humanitarian aid allocation, ECHO relies on a Global Needs Assessment (GNA) ranking countries in a list of relative need on the basis of selected indicators<sup>8</sup>, complemented by bottom-up assessments by ECHO field experts. Since 2001, ECHO has also developed a methodology to better define forgotten crises, emergencies which receive little media attention and insufficient funding from other donors. These instruments which measure humanitarian needs as objectively as possible and which allow for cross-country comparison, should effectively put ECHO in a position to make money available for those crises where needs are the most urgent. As such, expert authority reinforces the Commission's claims to depoliticized aid provision. Barnett and Finnemore (2004: 24-25) draw attention to the fact that "quantification vastly enhances the power of [international organizations'] claims of objectivity and impartiality". By using methodological tools which translate humanitarian

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<sup>8</sup> The basic assumption of the GNA is that humanitarian aid is most needed in the least developed and poorest societies, in those with the highest number of severe natural disasters or conflicts, with the highest refugee and internally displaced people caseload, with the highest prevalence of malnutrition and mortality rates, and the lowest amount of donor contributions.

needs in numbers, ECHO wants to make the figures speak for themselves and thus yield clear policy guidelines which need no further interpretation from bureaucrats.

### 2.2.3 Capability aggregation

Member states might be of the opinion that their interests are best served by pooling humanitarian resources at the EU level and supporting ECHO as a world leading humanitarian donor. This would seem especially true for those EU member states that do not have a strongly developed humanitarian aid policy or do not have large humanitarian aid budgets themselves. The EU level can offer a comparative advantage through its ability to mobilise a critical mass of funding with a real global impact, and sponsor humanitarian aid operations with a wide geographical scope and sector coverage, thus achieving more pronounced international visibility and greater influence on the international humanitarian agenda than any individual EU member state donor could do on its own.

### 2.2.4 Avoid free-riding

Hawkins et al. (2006: 16) highlight that when states can benefit from a global public good, such as the worldwide fulfilment of humanitarian needs, whether or not they contribute to its provision, the classic free rider problem is likely to arise in the absence of centralized provision. In such cases, the authors argue, “states may benefit by delegating to an international organization that they empower and finance to provide the public good.” The main source of ECHO’s funds is the general EC budget, to which all member states are obliged to make a fixed contribution. By transferring (part of) the responsibility for European humanitarian aid to the EU level, no national government can defect from its commitment to provide humanitarian assistance, while letting other EU member states bear the burden of responding to human suffering in third countries caused by disasters or fighting.

## 2.3 Costs of delegation

Functional demands for delegation always have to be seen in relation to principals’ concerns over a loss of sovereignty. As Moravcsik (1993: 509) puts it, governments might “refuse to assume the political risks of delegation, preferring instead imperfect enforcement and inefficient decision-making to the surrender of sovereignty”. By delegating responsibility to the European Commission, each EU member state loses part of its sovereign control over humanitarian aid policy, due to the collective nature of the principal, agency losses, and possible dysfunctional behaviour on the part of the agent.

### 2.3.1 Collective principal

The Council is a collective principal constituted of the 25 EU member states. Lake and McCubbins (2006: 367) point out that the pooling of sovereignty required before a collective principal can delegate responsibility over a certain policy to a supranational agent, brings with it the risk of producing “a collective policy for the Member States that is different from the ideal point determined at the national level”. For national governments the difference between delegating responsibility for relief to national humanitarian aid agencies or to ECHO is that the collective decision-making structures at the EU level take into account the policy preferences of states other than their own, with the risk of a discrepancy between a member state’s goals and ECHO’s final output. The institutional rules determining how decisions are made in the collective principal, i.e. how national preferences are aggregated at the EU level, play a role here. Humanitarian aid policy is governed by qualified majority voting, which

means that an individual member state cannot veto a decision which is not in line with its preferences. As the co-decision (previously the cooperation) procedure applies, EU humanitarian aid policy might also reflect the preferences of the European Parliament, presumably more supranational than the optimal policy some member states have in mind.

### 2.3.2 Agency losses

Central to P-A theory is the idea that the preferences of principals and agents are hardly ever perfectly aligned, and that agents will try to pursue their private interests (Kiewiet and McCubbins 1991: 5). Principals develop control mechanisms in order to constrain opportunistic agency behaviour, but such control devices, which are costly, are always imperfect. Resources are scarce and “principals never devote sufficient time or effort to control agents completely” (Hawkins et al. 2006: 32). Therefore, agents always possess a certain margin for autonomous action, what Tallberg (2002: 42) calls “residual non-compliance”. Because EU countries do not completely control the Commission, it is unlikely that aid provision will be the same as if it were bilateral. There is bound to be some slippage between the desired goals of the member states and the actions of their agent.

### 2.3.3 Agency dysfunction

P-A models tend to assume that agents are absolutely efficient. Huber and Shipan (2004: 6) draw attention to the fact that sometimes agents are not perfectly informed, nor perfectly competent. Similarly, Barnett and Finnemore (2004: 35) challenge the supposed rationality and effectiveness of international organizations in carrying out the tasks delegated to them, and point out that “bureaucratic pathologies” may emerge. Such agency dysfunction might decrease the advantages of delegating for the principal, as the agent’s ability to perform its mission efficiently diminishes.

Barnett and Finnemore (2004: 35-41) identify four sources of dysfunction in international organizations, all of which the European Commission can fall prey to. Firstly, principals themselves might be at the source of an agent being unable to deliver on its assigned tasks. An example is member state pressure on the Commission to allocate humanitarian funds to satisfy political goals rather than the most acute needs, as was the case in Kosovo (1999).

Secondly and unrelated to principals’ actions, competition amongst subunits over turf, budgets and staff might lead an organization to make decisions that may benefit parts of the organization at the expense of overall goals (Barnett and Finnemore 2004 : 37). Specialization and compartmentalization allow agents to generate and process policy-relevant expertise. However, these same features can also lead to a lack of organizational coherence. For example, the Commission has introduced the concept of ‘linkage between relief, rehabilitation, and development’ (LRRD) to ensure a smooth transition between ECHO financing and Commission instruments for development aid. However, institutional hurdles within the Commission’s aid architecture often hamper the realisation of LRRD. Responsibility for external aid is split up between DG Development (charged with programming of aid to ACP countries and focused on sustainable development), DG External Relations (responsible for programming of aid to non-ACP third countries and focused on foreign policy), EuropeAid (tasked with implementation of DG Development and DG Relex projects), and DG ECHO (responsible for humanitarian aid and apolitical). While there has been a great deal of talk on the link between relief and development, DGs compete for funds and responsibility, and coordination efforts to ensure coherence of the overall EU aid strategy (from relief, over reconstruction, to long-term development) remain hesitant.

Thirdly, dysfunctional agency behaviour may be triggered “when bureaucracies are given huge, aspirational tasks” but “a complex world defies the bureaucracy’s tidy boxes and neatly circumscribed division of labor (Barnett and Finnemore 2004: 44)”. The Commission’s mandate to provide apolitical humanitarian relief might clash with its ambition to promote human rights via aid conditionality. To put it sharply: if one denies basic relief assistance because of human rights abuses, what about the right to food, shelter and health care?

Lastly, while routines and standard operating procedures allow the bureaucracy to competently perform its tasks, sometimes rules and procedures become ends in themselves and start obscuring the overall mission of the organization. “Rather than designing the most appropriate and efficient rules and procedures to accomplish their missions, bureaucracies often tailor their missions to fit the existing, well-known, and comfortable rulebook.” (Barnett and Finnemore 2004: 39) NGOs working with ECHO have complained that the Commission’s ‘obsession’ with accountability and transparency causes delays in the disbursement of funds, and has a counterproductive impact on ECHO’s core goal of flexible and rapid response to humanitarian crises (Interview MSF Brussels 18/08/2005).

### **3. Design of delegation: What mechanisms do member states use to control ECHO?**

#### 3.1 Why control?

Principals expect a gap between their own preferences and the agent’s, and fear that the agent will use the policy room provided by delegation to pursue its self-interest, usually claimed to consist of budget or competence maximization, possibly at the expense of the interests of the principal. The potential for “incentive incompatibilities” (Doleys 2000: 538) between principals and their agents, combined with the temptation for agents to behave opportunistically, leads principals to establish control devices in order to limit agency losses.

#### 3.2 How to control?

##### 3.2.1 Costs of controlling

We would expect principals to adopt a full range of control mechanisms to constrain or even eliminate opportunistic agency behaviour. However, oversight procedures to minimize agency losses are likely to consume a considerable amount of principals’ resources (Kiewiet and McCubbins 1991: 27). From a transaction-cost perspective, “principals will adopt a given control mechanism only if the cost is less than the sum of the agency losses that it reduces” (Pollack 1997: 105).

##### 3.2.2 Trade-off between effective control and effective delegation

Moreover, as Tallberg points out, “what truly makes delegation a dilemma is the fact that its very rationale may prevent government principals from establishing effective control mechanisms”, since “certain functions delegated require that agents enjoy substantive levels of discretion in the execution of their powers”. The ideal level of monitoring is not necessarily the one which allows for complete control of the agent, but that which maximizes expected net political benefits. Thus, functional concerns play a role in determining the design of control mechanisms, and “the initial powers delegated to an agent heavily condition the oversight mechanisms that principals may employ” (Tallberg 2002: 29, also Tallberg 2000).

Majone (2001) predicts that when delegation is motivated by a demand for policy-relevant expertise principals will create constraining control mechanisms. If delegation is informed by the logic of credible commitment, principals will insulate their agents, “trustees” as they are called by Majone. Drawing on Majone’s two logics of delegation, Franchino (2002) hypothesizes that when exercising powers which are delegated to improve efficiency the Commission will be more constrained by member states than when exercising powers delegated to secure credible commitments. However, based on an analysis of 601 provisions of secondary EU legislation, he comes to the surprising conclusion that more constraints are associated with credibility than with efficiency-based delegation. One possible explanation for the fact that there is no straightforward correlation between the logic of delegation and the use of specific constraints is the fact that, more often than not, the delegation of powers to the Commission is justified by a mixture of credibility and efficiency concerns (Franchino 2002: 690). Mechanisms to constrain ECHO are quite extensive (see 3.3). This might seem contrary to the aim of insulating ECHO from national government influence in order to credibly allocate impartial humanitarian aid. It is, however, in line with Franchino’s findings, and might indeed be explained by the fact that both efficiency and credibility factors have guided the delegation of responsibility for humanitarian aid to the Commission.

Rather than the choice of control mechanisms being dependent on whether credibility or efficiency arguments motivated delegation, the issue area at stake might be of greater significance. Doleys (2000: 544) launches the hypothesis that Commission autonomy may be most pronounced in issues falling within the domain of regulatory policies, while member governments are likely to exercise more active control over the Commission for policies with a distributive component. This ties in with Majone’s (1994) description of the EU as a “regulatory state”. The general thrust of the argument is that Community competence, and hence Commission influence, is greater in the area of regulatory policies, the costs of which are borne by those who have to comply with the regulatory rules (individuals, firms, etc.), than with regard to distributive EU-level policies, the costs of which are borne by member state governments themselves via their obligatory contributions to the EC budget. Because member state principals are the ones bearing the financial burden, they are likely to keep a closer eye on the Commission when it engages in distributive policies, of which the allocation of humanitarian aid is a clear example.

### 3.2.3 Reliability of control mechanisms

A last question is to what extent the control devices created by principals can “be diverted from their objectives or even ‘won over’ by the very actors they are supposed to control” (Lequesne and Rivaud 2003: 707). It is not unthinkable that a coalition of interests emerges between a controller and the agent to be controlled, making controlling bodies less reliable to identify and check an agent that moves too far away from government principals’ preferences.

## 3.3 Controls on ECHO

### 3.3.1 Obligation for the Commission to provide information on its activities to principals

The most basic condition for avoiding agency losses is for principals to be as well-informed as possible on agents’ actions (Pollack 1997: 106). Not only might agents have conflicting interests which they try to attain, they also know more about their actions than their principals do. The combination of conflicting interests and informational asymmetry provides the agent “with both a motive and an opportunity to act autonomously in pursuit of its own interests, rather than those of the principal” (Tallberg 2000: 846). Control is complicated by the agent’s

informational advantage which makes it difficult for the principal to uncover unwanted agency activity after delegation. While specialization is part of the motivation for delegating, it simultaneously exacerbates the problem of hidden action or hidden information faced by the principal. "If the principal must learn everything that the agent knows and observe everything the agent does, the gains from specialization diminish accordingly. At the extreme, with perfect knowledge and monitoring, it is almost as if the principal has performed the task itself." (Hawkins et al. 2006: 26) The controllers would become, using the term by Lake and McCubbins (2006: 351) a "shadow" ECHO conducting the same studies and evaluations that ECHO itself carries out in order to determine the efficacy of EU humanitarian aid projects.

In order to acquire the necessary information to evaluate the Commission's performance in humanitarian aid provision, Article 19 of the 1996 Council Regulation on humanitarian aid stipulates that "at the close of each financial year, the Commission shall submit an annual report to the European Parliament and to the Council with a summary of the operations financed in the course of that year". In addition, the Commission "shall notify the Member States, within no more than one month of its decision [...] of the operations approved, indicating the amount granted, the nature of the operation, the people who have received aid and the partners involved". Acquiring information about the Commission's actions on the basis of self-reports is problematic in a context of informational uncertainty. Lake and McCubbins (2006: 350) pointedly remark: "The problem of hidden information which permits agency slack to arise in the first place cannot be solved simply by mandating the agent to tell the principal all that he knows." Due to the information asymmetry the principal can never be sure that the agent is in fact telling the whole truth.

Given the problems inherent to the reliance on self-reporting, third party testimony might be valuable to principals trying to obtain information on agency behaviour (Raustiala 1997, Lake and McCubbins 2006). Article 18 of the Regulation requires the Commission to "regularly assess humanitarian aid operations financed by the Community in order to establish whether they have achieved their objectives". ECHO evaluates the activities it funds via independent, external evaluations. These include not only an assessment of the partner organization carrying out the ECHO-sponsored project, but also of ECHO's performance with regard to managing the aid. These reports have to be made available to the member states. Unbiased<sup>9</sup> evaluations of ECHO activity by humanitarian aid experts to a certain extent mitigate the informational asymmetry arising from the technicality of the agent's decisions.

### 3.3.2 Administrative and oversight procedures to control agency behaviour

Apart from securing information on agency behaviour, the principal is likely to adopt procedures to limit the possibility of turf extension or bureaucratic drift on the part of the agent. Administrative procedures define *ex ante* the scope of agency activity, and the procedures it must follow. Oversight procedures allow principals *ex post* to monitor agency behaviour (Pollack 1997, Doleys 2000).

#### 3.3.2.1 *Ex ante* administrative procedures defining the scope of ECHO activity

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<sup>9</sup> It has to be noted that ECHO selects which firm is contracted for carrying out the evaluation. But the pool of experts specialized in humanitarian aid provision is small, and evaluators tend to be overbooked and hard for ECHO to get hold of (Interview ECHO 02/06/2006). This makes it more likely that they will produce objective, truthful reports on ECHO's performance rather than being under pressure to curry favour with ECHO in order to haul in new contracts.

From a legal idealist perspective, administrative procedures are meant to guarantee the attainment of goals like open participation, accountability and fairness. Huber and Shapin (2000: 34-35) point out that the value of the transaction-cost tradition is the way in which it has illuminated how political actors strategically design procedures in order to increase the likelihood of obtaining the desired policy outcomes from their agents. By the adoption of legal instruments principals set the level of policy-making discretion an agent has during implementation of the delegated task. Such a ‘contract’ between the principal and the agent specifies the scope of agency activity, the instruments the agent is allowed to use, and the procedures to be followed by the agent (Hawkins et al. 2006: 28, Doleys 2000: 538). Each can be considered as “a preemptive attempt to reduce the incidence of shirking by effectively limiting the bureaucracies’ *capacity* to shirk” (Doleys 2000: 538, italics in original).<sup>10</sup>

#### 3.3.2.1.1 The scope of ECHO activity: no political mandate

The Commission used its right of initiative to decline the option of limiting ECHO’s interventions to primary humanitarian relief in the acute phase of emergencies, and proposed a Regulation which entrusts it with a more extensive humanitarian aid mandate. Member states accepted the Commission’s proposal. In addition to core humanitarian operations, short-term rehabilitation and reconstruction, as well as disaster prevention are included in the 1996 Council Regulation (Article 1). While allowing the Commission to engage in a relatively wide range of activities under the label humanitarian aid, member state principals clearly limited the possibilities for ECHO to undertake more foreign policy-oriented activities. The Regulation strongly emphasizes that humanitarian activities are not intended to realize political goals. This can be seen as a commitment to the humanitarian imperative, i.e. the moral duty to help crisis victims irrespective of political or economic considerations. At the same time, the political neutrality of EC humanitarian aid can be linked to member states’ desire, especially the larger ones, to limit the Commission’s role in foreign affairs, after all still a ‘fortress’ of sovereignty. Member states can blow the whistle on the Commission if they feel it attempts to pursue ‘real’ foreign policy via its humanitarian aid competence.<sup>11</sup>

#### 3.3.2.1.2 Instruments with which ECHO is permitted to carry out its task

In the 1996 Regulation, the Council conferred upon the Commission large discretion to decide upon the best way “for allocating, mobilizing and implementing” humanitarian aid (Article 11). ECHO has acquired responsibility for the entire project cycle of humanitarian operations. It decides which crises it wants to allocate money to, sets out the humanitarian aid strategy it will pursue, chooses which particular humanitarian projects it will finance, selects the implementing partners and draws up a contract with them, monitors the project, and evaluates it upon its completion. Significantly, the Regulation does explicitly limit the Commission’s humanitarian activities to civilian operations, and excludes the use of military means for humanitarian purposes. With blatantly political measures, let alone military ones, we clearly move beyond the domain of ECHO competences, to enter the intergovernmental Common Foreign and Security Policy and the European Security and Defence Policy, areas where EU member states have been especially reluctant to delegate authority to a supranational agent.

#### 3.3.2.1.3 Decision-making procedures to be followed by ECHO

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<sup>10</sup> This type of contract works in two ways. It allows principals to be more confident that the agent will not overstep its mandate, and also provides some guarantee for the agent that principals will not interfere with decisions delegated to the agent.

<sup>11</sup> However, somewhat paradoxically, member states have themselves on past occasions pushed for the use of ECHO humanitarian aid for more politically motivated purposes, as in the case of Kosovo.

Principals face the choice between, on the one hand, minimizing the risk of agency slippage through strict regulatory procedures or, on the other, allowing the agent sufficient independence to carry out its responsibilities efficiently (Kassim and Menon 2003: 125). Over time ECHO's authority has expanded in the event emergency decisions need to be taken, to the benefit of timely and flexible humanitarian aid provision and at the cost tighter scrutiny by member states. In the 1996 Regulation, the Council agreed on the need to establish, "where necessary", flexible and fast decision-making procedures for the financing of humanitarian operations. However, in 1999, a large-scale independent evaluation of ECHO-funded humanitarian assistance pointed out that the Commission's decision-making procedures were ill-suited to primary emergencies and unpredictable situations. In this type of situation, the Commission took too long to release funds and adapt to swiftly changing realities in the field (Franklin Advisory Services 1999). In 2001 a fast track procedure was introduced, which entrusts the Director-General of ECHO with the powers for making primary emergency humanitarian decisions within 24 to 48 hours, on commitments of maximally €3 million, and for a maximum duration of three months, without prior consultation with the member states or the College of Commissioners. While this fast track procedure provides ECHO with large decision autonomy, it is limited to small sums and so far it has only been used in case of natural disasters, suggesting that with regard to politicized emergencies member states are less willing to grant their agent autonomous power. Even since the adoption of the fast track procedure, red tape continues to slow down ECHO in efficiently carrying out its humanitarian mandate. Commissioner Louis Michel recently remarked that in the event of an emergency it does not make sense to have an interdepartmental consultation procedure (box below) allowing all Commission cabinets to voice their opinion on humanitarian decisions. Mobilizing money for humanitarian operations from the emergency reserve takes especially long according to Michel, because of the required trilateral agreement between the Commission, the Council, and the Parliament<sup>12</sup> (quoted in Bulcke 2006: 10).

**ECHO decision-making procedures according to degree of emergency and sum involved**

Fast-track delegation procedure: to speed up the response to sudden emergencies, the Commission has delegated powers to the Director-General of ECHO for making primary emergency humanitarian decisions within 24 to 48 hours, for a maximum of €3 million, and for a maximum duration of three months.

Empowerment procedure: the Commissioner responsible for humanitarian aid is empowered to take decisions on emergency operations up to €30 million for a maximum of six months, and non-urgent decisions up to a maximum of €10 million. These decisions are subject to an interdepartmental consultation procedure within the Commission. Emergency decisions exceeding €10 million and non-urgent decisions exceeding €2 million require approval by member state representatives in the Humanitarian Aid Committee (see 3.3.2.2.1.1).

Written procedure: for emergency operations exceeding €30 million, and non-emergency programmes amounting to more than €10 million, decisions are taken by the College of Commissioners, and need to be approved by the Humanitarian Aid Committee.

3.3.2.1.4 Rules-based or discretion-based delegation?

In the domain of humanitarian aid, it is impossible to foresee and accurately describe all possible contingencies that might arise. The 1996 Council Regulation resembles "discretion-based regulation" under which the principal formulates the general goals to be achieved and then leaves it to the agent to find the best method to fulfil the assigned task, rather than "rules-

<sup>12</sup> To be able to respond to aid requirements resulting from events which could not have been foreseen when the budget was established, ECHO may call on an Emergency Aid Reserve. For this to be mobilised, a trilateral agreement between the Commission, the Council and the Parliament is necessary.

based delegation” which describes in explicit detail how the agent is supposed to carry out its work (Hawkins et al. 2006: 28-29). For example, one of the objectives of humanitarian aid operations mentioned in the Regulation is “to ensure preparedness for risks of natural disasters” (Article 2). It does not specify that the Commission shall finance the construction of x number of flood barriers or typhoon shelters in x country. Discretion-based delegation, rather than tightly binding the agent by writing detailed rules, is useful when policy uncertainty is high, the delegated task requires specialized knowledge, or flexibility is required. It does, however, create greater opportunities for opportunistic agency behaviour (Hawkins et al. 2006: 28-29). Thus, unsurprisingly, member state principals submitted humanitarian aid policy to restrictive comitology procedures, which can be used for exercising stringent *ex post* control on the agent (see 3.3.2.2.1.1 and 4.1). This is called the substitution effect, viz. “if *ex post* opportunities to monitor are effective, independently of whether they are actually used, then as *ex post* monitoring becomes more reliable, *ex ante* limits on discretion should be less necessary” (Huber and Shipan 2004: 24).

### 3.3.2.2 *Ex post* oversight procedures to control ECHO

McCubbins and Schwartz distinguish between two types of oversight mechanisms. “*Police-patrol oversight*” comprises active monitoring of the agent’s behaviour by the principal “with the aim of detecting and remedying any violations of legislative goals and, by its surveillance, discouraging such violations”. Police-patrol procedures can be effective, but come at a high cost to the principal. Whereas in police-patrol the principal personally engages in continuous and detailed vigilance of agent action, “*fire-alarm oversight*” requires less direct centralized involvement by the principals, who instead rely on third parties (citizens, organized interest groups) to monitor agency activity and alert to potential agency transgressions. While less costly for principals, fire-alarm oversight covers only those agency activities that mobilize politically powerful groups to protest (McCubbins and Schwartz 1987: 426-434). Kiewiet and McCubbins add that principals can monitor their agents through the use of “*institutional checks*”, whereby one agent is charged with monitoring the activities of another agent and reporting this information to the principals; or one agent is given the power to block the activities of another agent, limiting the ability of the latter to pursue its private interests at the expense of the interests of the principals (Kiewiet and McCubbins 1991: 33-34).

#### 3.3.2.2.1 Police-patrol oversight over ECHO

##### 3.3.2.2.1.1 The Humanitarian Aid Committee (HAC)

Pollack (1997: 114) defines comitology<sup>13</sup> as the primary police-patrol oversight method over the European Commission. The 1996 Council Regulation on EC humanitarian aid (Article 17) provides for the establishment of the Humanitarian Aid Committee. This comitology committee gives member state representatives a say over humanitarian aid decisions exceeding €2 million, and especially ECHO’s Global Plans<sup>14</sup>. Emergencies form the exception, where ECHO can decide on interventions costing up to €10 million without HAC approval. While the 1996 Regulation makes no explicit reference to any of the three types of

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<sup>13</sup> The Treaty (Article 202 (3) TEC) obliges the Council to “confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down”. These implementation powers delegated to the European Commission may, however, be subject to “certain requirements” laid down by the Council, commonly referred to as ‘comitology’.

<sup>14</sup> Global Plans are designed for protracted crisis situations. They allow ECHO to establish country or region wide strategies usually for 12 months (24 when justified) at a time, and are used where ECHO has programmes of over €10 million.

committees distinguished in the Comitology Decision<sup>15</sup>, depending on the amount of money involved and on the degree of emergency, the HAC bears the characteristics of a management or, for Global Plans, a regulatory committee.<sup>16</sup> Member states clearly envisaged a committee which had more than a merely advisory role and could exert genuine control over ECHO. A qualified majority of HAC representatives can block a humanitarian aid plan proposed by the Commission. In reality, however, the HAC has never rejected an implementation measure proposed by ECHO. This might lead to the perception that the HAC is no more than a rubber-stamping mechanism, and that member states have only limited influence over ECHO's spending decisions. However, a no rejection rate does not necessarily imply that member states are unable to exert influence on ECHO's policy through their seat in the HAC.

(a) High-quality proposals by ECHO

The primary explanation for the 100% approval rate is the fact that Global Plans and Financial Decisions are generally found to be well-designed and need little alteration (Interview HAC representative 10/04/2006). This seems to confirm the value of delegating authority to a supranational body which functions as a reservoir of expertise, and as a neutral entity providing objective proposals. Inversely, it is in the interest of the agent to invest in high-quality work, as authority is granted only to the extent that the agent appears to perform the delegated tasks in a satisfactory manner.

(b) Rational anticipation

The HAC might have more influence than is at first assumed because of "rational anticipation" whereby an agent such as the Commission anticipates the reactions of the principals and adjusts its behaviour accordingly (Pollack 1997: 111). ECHO tries to anticipate member states' wishes and to put forward proposals which are as acceptable as possible from the perspective of all member states (Mowjee and Macrae 2002: 17; Macrae et al. 2002: 21). The Financial Decisions and Global Plans ECHO proposes to the HAC for adoption usually cover all the crises which are of importance to member states (Interviews HAC representatives 12/04/2006 and 08/05/2006).<sup>17</sup>

P-A tends to assume that the agent strives to escape control by principals. Kerremans (2004: 369-370), however, points out that control mechanisms might actually bring benefits from the agent's point of view. The HAC works as a self-protection mechanism for ECHO. Contacts with national HAC representatives allow ECHO to stay in close touch with member state sensibilities. This enables the Commission to anticipate principals' reaction, and avoid ending

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<sup>15</sup> Council Decision 87/373/EEC replaced by Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission. The Decision specifies three types of committees. Advisory committees provide the Commission with the greatest autonomy and member state representatives with the weakest influence. The management committee procedure is more restrictive. The regulatory committee procedure offers member states the greatest measure of control over the Commission.

<sup>16</sup> Regulation (EC) 1882/2003 of the European Parliament and of the Council amended the HAC procedures. While concrete reference is now made to the management and regulatory procedures, the comitology rules remain largely unchanged.

<sup>17</sup> This tendency to cater to the wishes of all member states would seem to contradict the strictly needs-based approach defended by the Commission. Yet, ECHO's desire to please member states apparently has its limits. For example, in 2003 Italy demanded humanitarian aid for Argentina. This country was at that point suffering from an economic crisis and Italy argued that in some of the slums this was turning into a humanitarian emergency. It was suspected that the objective was not so much to alleviate urgent humanitarian needs, but make a political gesture to Argentina, and rather than paying for it with national budgets have ECHO bear the financial burden. After an assessment in the field ECHO could prove that emergency humanitarian aid was unwarranted (Interviews HAC representatives 12/04/2006 and 08/05/2006).

up in a situation where it transgresses what is considered acceptable by principals and is heavily punished for afterwards.

(c) Cooperative problem-solving, socialization, Europeanization<sup>18</sup>

Apart from good work and anticipation by ECHO, the consensual nature of HAC meetings might explain the zero rate of referral. Rational-choice scholars conceive of comitology as a control mechanism designed by principals to supervise the Commission in its implementing duties. The rules governing a committee are carefully selected by member states in order to calibrate the discretion of the Commission in a given issue area (Pollack 2003a, Franchino 2000). Others argue that comitology committees are not so much institutions used by member states to exert strategic control over the Commission, but forums for deliberation among experts, in which committee procedures are less important than a collective search for the technically optimal solution to problems in a given policy domain.

Some authors go even further than depicting comitology as joint problem-solving on technical issues, and emphasize processes of socialization and persuasion which lead national delegates to adapt their preferences to EU policy goals (Joerges and Neyer 1997a/b, Van Schendelen 1998). Joerges and Neyer conceive of comitology as “deliberative supranationalism”, in which political actors do not simply bargain on the basis of fixed preferences, but engage in arguing in the course of which they question their own preferences, are open to persuasion and might even be prepared to change their own beliefs or interests in light of the power of the better argument. A condition for a committee to function as a control mechanism would seem to be that the national representatives sitting on the committee are ‘perfect’ agents of their governments. Referring to the literature on epistemic communities, Joerges and Neyer (1997b: 619) assert that the grip which governments have on national delegates can be rather weak. Committee representatives “perceiving themselves as part of a transnational problem-solving community, may be able to change their governments’ perceptions of interests or even simply bypass them”. It is predicted that committee members “slowly move from representatives of the national interests to representatives of a Europeanised interadministrative discourse” (Joerges and Neyer 1997a: 291).

This is in line with sociological institutionalist thinking which sees institutions as having a transformational effect on the prospects for common action. Institutions foster the emergence of an increasingly binding set of behavioural standards, which allows a supranational institution to move from being a forum for sharing information among governments to a more collective, binding, and community-sensitive system. A process of Europeanization can follow which progressively draws national policies closer. Neofunctionalist theory already drew attention to the prospects of socialization. Haas (1958: 522) states that “as the beliefs and aspirations of groups undergo change due to the necessity of working in a transnational institutional framework, mergers in values and doctrine are expected to come about, uniting groups across former frontiers”. Following this logic, interaction between national and EC humanitarian policy-makers within the HAC might contribute to a “Community-mindedness, by broadening perspectives, developing personal friendships, and fostering a camaraderie of expertise” (Lindberg 1963: 286). While member states are not legally obliged to harmonise their humanitarian policies, a strong sense of engagement and growing socialization might make up for the absence of legal obligations or enforcement mechanisms to ensure better coordination, and contribute to the emergence of a genuine European humanitarian aid policy.

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<sup>18</sup> Europeanization is understood here as the process through which EU institutions or policies influence member states’ national institutions or policies.

(d) The Humanitarian Aid Committee: control or deliberation?

Reportedly, the HAC was established in reaction to suspicions of fraud in ECHO (Interview HAC representative 12/04/2006). The 1996 Council Regulation which foresaw in the creation of the HAC was indeed issued at a time when ECHO was under fire for poor management, long delays in disbursements of funds, insufficient control of its partner organizations, and lack of rigor in analysis, project management and evaluation (Brusset and Tiberghien 2002: 56). At its establishment, the HAC was therefore obviously conceived as having a control function, a fact which is further confirmed by the choice for the stringent management and regulatory procedures. Rhys Dogan (2000: 48) found that between 1987 and 1995 in approximately 80% of all EU legislation no comitology procedures were included. The setting-up of a comitology committee in itself might be interpreted as an indication of member states' intention to genuinely control the Commission.

Pollack (2003b: 140-141) hypothesizes that if rational-choice predictions are correct and comitology procedures matter in determining the Commission's discretion, it can be expected that the actors involved will have systematic preferences regarding the choice of committee type. The Commission will prefer the lighter advisory procedure to the more stringent management one, and the latter to the most restricting regulatory procedure. The Council can be expected to prefer stricter comitology procedures than the Commission. The Council and Commission will be willing to accept the costs of negotiating over comitology procedures in order to secure their preferred type of committee. If sociological institutionalist accounts are closer to the truth and deliberation rather than formal voting rules shape policy outcomes, EU member governments and the Commission will not bother to engage in detailed calculations on which comitology type can be expected to maximize utility. With regard to the Council Regulation on humanitarian aid, the rationalist vision of interinstitutional disagreement over comitology procedures seems to be confirmed. The Commission's initial draft proposes that "the Commission will be assisted in certain cases in its decision making by a committee of advisory character", while the final Regulation adopted by the Council established a committee with powers which go far beyond simply giving advice.

Then again, how much do these interinstitutional disputes on comitology procedures tell us about the actual functioning of committees? When confronted with the choice between EU legislation governed by stringent comitology and no EU legislation at all, the Commission usually drops the issue of comitology (Dogan 2000: 55-56). This might be an indication that the Commission is aware that in day-to-day reality the specific comitology procedures are of relatively limited importance, and that more restrictive comitology procedures are not necessarily the equivalent of less Commission autonomy. Dehousse (2003: 803) indeed suggests that the Commission has often been prepared to agree with the Council on the choice of formally strict forms of committee control, precisely because in practice the work of committees is characterized by a high degree of consensus.

The description of HAC meetings certainly provides some support for the point of comitology as a search for consensual problem-solving. Rather than being the subject of intense control, the Commission chairs the meeting and largely sets the agenda. ECHO presents a Global Plan or Financial Decision to the HAC. Then a discussion round is held during which member states ask questions and make remarks on particular details of the proposed humanitarian operations. In general, ECHO introduces small adaptations to its proposals on the basis of member states' remarks. A formal vote is taken, but HAC delegates always vote in favour (Interviews HAC representatives 12/04/2006 and 08/05/2006).

By bringing together ECHO and representatives from national humanitarian aid departments, the HAC is meant to be a coordination mechanism and a forum for exchanging information on how different European donors are responding to a crisis. According to the 1996 Council Regulation the HAC examines “the whole question of the coordination of community and national humanitarian aid”. Information tended to flow from ECHO to member state representatives rather than in both directions (ICG 2001: 3), confirming the predictions of P-A theory on the importance for principals to secure information on agency behaviour. More recently, however, to avoid overlapping of efforts, the member states have agreed to inform ECHO when they approve funding for humanitarian aid activities<sup>19</sup>.

At informal HAC meetings, organized twice a year, participants engage in discussions on the broader content of EC humanitarian aid policy which surpass the merely technical details of humanitarian operations addressed during formal HAC meetings. Informal HAC meetings are held at the level of senior officials, viz. the directors of national humanitarian aid departments and the Director-General of ECHO. At these meetings a certain degree of socialization among participants has been discerned, further strengthened by the fact that these national and ECHO senior officials regularly meet in other humanitarian forums such as Geneva and the Montreux process<sup>20</sup> (E-mail exchange HAC representative 08/05/2006).

However, despite a degree of reported “camaraderie of expertise” among participants, the Humanitarian Aid Committee so far has not been successful in serving as a platform for anything more than – rather hesitant – information-sharing between national and ECHO representatives. The HAC has contributed little to the development of a truly Europe-wide humanitarian policy. Member states have been reluctant to accept any form of EU-driven soft regulation or open coordination (Interview ECHO 20/09/2005). While it is true that interaction between member state and Commission representatives in the HAC is cooperative rather than conflictual, apparently a friendly atmosphere does not automatically lead to Europeanization. This is in line with findings of Egeberg et al. (2003), Beyers (2002), and Hooghe (1999) which suggest that EU socialization plays a relatively minor role compared to national socialization in determining attitudes of officials working in EU institutions.

In its daily working the HAC indeed continues to exhibit many intergovernmental features. HAC representatives’ dominant institutional allegiances are with their national institution, to which they devote most of their working time and energy. Representatives in the HAC tend to see themselves and their colleagues in the committee as government representatives rather than as independent experts, diminishing the probability that shared professional allegiances will trump national concerns. While HAC representatives do not always receive government instructions, national delegates’ hands are tied when it comes to humanitarian aid decisions involving politically sensitive conflict situations. For example, one HAC representative was against the allocation of €100 million of relief to Iraq in 2003, because in his opinion this did not reflect the real level of humanitarian needs. Officially he voted in favour, however, to avoid “an angry phone call from higher hand” (Interview HAC representative 12/04/2006).

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<sup>19</sup> The ‘HOLIS 14 point’ application, introduced in 2002, has to ensure that information on humanitarian aid funding is available as soon as a member state or ECHO has confirmed a donation. According to an ECHO desk officer, in 2005 more or less all member states (including the new ones) reported regularly in HOLIS 14 on their humanitarian aid decisions (Interview ECHO 27/04/2006).

<sup>20</sup> Since 2000 a yearly retreat bringing together humanitarian aid donors is organised in Montreux, to discuss the Consolidated Appeals Process (the planning tool used by the United Nations to respond to humanitarian crises) and to identify possible improvements in coordination during humanitarian emergencies.

The value attached to the Commission's role in a committee "may be interpreted as reflecting an element of supranational identity among the committee participants" (Egeberg et al. 2003: 19). The national delegates interviewed tended to agree that the Commission has the necessary expertise, delivers quality humanitarian aid proposals, and does not usually succumb to pressure from individual member states to design plans which reflect national desires but are not in line with ECHO's needs-based humanitarian aid philosophy. However, sometimes the Commission was perceived as a bit brash. One national delegate showed some irritation with the fact that ECHO officials tend to consider themselves as autonomous. He stressed that ECHO has to justify its decisions since the money it allocates comes from the member states. He also explicitly emphasized that, if they wanted, member states could block ECHO decisions, and hence that member states and not the Commission are the ones who have the final say (Interview HAC representatives 12/04/2006 and 08/05/2006).

Sequencing might offer a solution to overcome the empirical ambivalence. One can argue that while the choice of comitology committees was determined by strategic bargaining, a shift has been made to non-hierarchical, deliberative problem-solving among fellow experts in the day-to-day workings of comitology committees. However, according to Pollack (2003b: 153), the sequencing approach "in which rationalists explain institutional choice and constructivists explain the workings of those institutions" is problematic because "[i]n theoretical terms, it is unclear why rational actors would expend considerable time and energy to secure specific comitology rules as instruments of control if we posit at the same time that those rules are regularly put aside in favour of supranational deliberation in committees."

To sum up, the findings on the HAC suggest a comitology system in which deliberation indeed takes place, but in which the actors involved seem to be aware of the implications the committee procedures have for Commission autonomy and member state control. Albeit only as ultimate option, when the Commission is perceived as straying too far from member governments' preferences, committee representatives seem willing to use comitology as a control mechanism. The evidence does not support the prospects of collective preference formation predicted by sociological institutionalism. When it comes to the politically sensitive question of harmonisation of national humanitarian aid policies, member state representatives tend to revert to national positions. This also brings us back to the importance of issue area. Joerges and Neyer's evidence for comitology as deliberative supranationalism is based on the field of foodstuffs regulation. Arguably this is a policy domain, because of its regulatory character and the emphasis on scientific questions of risk assessment, which provides an ideal setting for problem-solving deliberation within a transnational community of experts. With regard to humanitarian aid, a distributional rather than regulatory policy, member state representatives might be more inclined to control the Commission.

#### 3.3.2.2.1.2 Council of Ministers Development Cooperation Working Group

Apart from the HAC, the other link between ECHO and member states is the Council's Development Cooperation Working Group<sup>21</sup>. In theory, the working group deals with policy issues while the HAC deals with programme issues<sup>22</sup>, though there is an overlap in their responsibilities (Mowjee and Macrae 2002: 17). For example, the large-scale evaluation of ECHO's performance carried out in 1999 and crucial in deciding the fate of the Humanitarian

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<sup>21</sup> At the Council level there is no working group dealing exclusively with humanitarian aid. While the Development Council was abolished in 2002 and EC development policy is now dealt with during the General Affairs and External Relations Council, the Development Cooperation Working Group still exists.

<sup>22</sup> According to the Treaty, "basic elements" of the matter to be regulated must be decided by the Council itself, while the committees are supposedly confined to implementation issues (Dehousse 2003: 801).

Aid Office (see 3.4.3) was supervised by the Development Cooperation Working Group, and the Council's conclusions on the evaluation were discussed and formulated in the Council Working Group, not in the HAC.

#### 3.3.2.2.2 Fire alarms with regard to ECHO

##### 3.3.2.2.2.1 Humanitarian NGOs

A decentralized system of monitoring in which outside parties alert principals of possible agency transgressions has the advantage that it is low-cost for the principals, since the cost of oversight is borne by the interested third party. The prospect of third party fire alarms seems especially promising in the EU, which has been characterized as a multi-level governance system with multiple access points for interest groups and NGOs (Hooghe and Marks 2001). On average, 50 to 60% of ECHO's humanitarian aid budget is channelled through European NGOs. Since ECHO depends heavily on European civil society to carry out humanitarian projects, the potential of fire alarm oversight logically exists. VOICE (Voluntary Organisations in Cooperation in Emergencies), created in 1992, constitutes an elaborate lobbying network in Brussels of European NGOs active in humanitarian aid delivery.

While monitoring by humanitarian NGOs may provide principals with important information on the Commission's behaviour, there is no reason to assume that the interests of these third parties coincide with member state principals' preferences. Both ECHO and humanitarian NGOs can be expected to be pro-humanitarian. Tellingly, a spokesperson of Médecins Sans Frontières remarked that there exists a certain "communality of values" between ECHO and MSF staff (quoted in Petiteville 2001: 10, our translation). Indeed, NGO advocacy in general is collegial rather than explicitly directed against ECHO policies. Despite some problems, the contacts between ECHO and VOICE seem to have contributed to mutual trust. One VOICE member recalls that at the first meetings with ECHO there was a very distant atmosphere, while "at one of the last meetings, I walked in and had the feeling as if I was meeting friends" (VOICE 2004: 13). One might wonder in particular whether NGOs' potential for pulling the fire alarm is not thwarted by their financial dependence. NGOs need ECHO funding for carrying out their activities, and hence are likely to be mild in their assessment of ECHO. Moreover, a tendency towards greater donor 'managerialism' possibly reduces NGOs' ability to function as fire alarms. Pressures for compatibility with ECHO-defined priorities and objectives have grown, as have accountability requirements, and increasingly detailed guidelines for implementing partners to adhere to (Interview Caritas International Brussels 09/08/2005; Interview MSF Brussels 18/08/2005).

Then again the financial dependence of European NGOs should not be exaggerated. They can generally rely on considerable levels of private funding, and also enjoy considerable latitude in choosing between various sources of public funding. Apart from the European Commission, the various EU member state governments provide funding to humanitarian NGOs. Furthermore, the relationship between ECHO and its NGO partners is one of *mutual* dependence, with ECHO relying on NGOs for the actual execution of humanitarian assistance projects. NGOs receiving ECHO funds do not appear to be mere executors of ECHO's set policy objectives. Even NGOs which heavily depend on ECHO sponsoring do not have the feeling that they have lost their autonomy in the choice of intervention zones, or in the planning and implementation of humanitarian operations (Petiteville 2001: 9).

##### 3.3.2.2.2.2 Media

Media form an additional potential source of fire alarm on ECHO response to humanitarian emergencies. Considerable attention has been devoted to the so-called CNN effect, viz. the way in which media coverage of international crises is important in triggering humanitarian operations. Some authors argue that the CNN effect is not a determining factor in the provision of emergency assistance (Robinson 1999). However, others claim that where strategic interests are low the media do play a key role. The media can force overdue humanitarian action, or can make the difference between a generous response and a less magnanimous one (Rothberg and Weiss 1996, examples in Smillie and Linear 2003: 13-14).

While media can play a role in holding donors such as the Commission accountable for their humanitarian efforts or lack of them, there are limits to the media's fire alarm potential. Olsen (2004: 89) points out that for the press to be on the spot during a crisis, geographical accessibility (airfields, roads, etc.) as well as a reasonable level of personal security for reporting journalists are preconditions. More importantly, the media's fire alarm function is uneven because for a crisis to be covered it has to be newsworthy (Smillie and Linear 2003: 14, Olsen 2004: 90). A humanitarian crisis like the 2004 Indian Ocean Tsunami is more 'photogenic' and easier to 'sell' than the problem of the Sahrawi refugees which have been living in camps in the desert region of Algeria since 1975, and are entirely dependent on humanitarian aid. Another problem is the quality of media coverage which is sometimes patchy and brief, and might even be incorrect due to a lack of direct investigation (Smillie and Linear 2003: 14). Lastly, the media might be 'used' by the donors they are supposed to hold accountable. It has been suggested that governments have manipulated the media to justify disproportionate spending in high-profile emergencies like Kosovo or Afghanistan (Smillie and Linear 2003: 14).

Further research is required to gauge the extent to which media can alert member state principals to inconsistencies in ECHO's humanitarian funding decisions. For one thing, an explicit component of the Commission's humanitarian aid philosophy is the attention to forgotten emergencies where media attention is absent. In such neglected emergencies (30% of ECHO activities) the media obviously does not function as a potential fire alarm.

### 3.3.2.2.3 Institutional checks on ECHO activity

The European Union governance structure offers a prime example of how member state principals can use one agent to exert checks on another supranational agent.

#### 3.3.2.2.3.1 European Parliament

##### *-Dismissal of the European Commission*

The Parliament has the power to dismiss the Commission (Article 201 TEC). While it has never actually done this, the threat of dismissal is not void. Criticism from the Parliament on fraud in the Commission led to the voluntary resignation of the Santer Commission in 1999. The Prodi Commission, bearing the painful resignation of its predecessor in mind, pursued an agenda more in line with member state preferences, providing proof for the effectiveness of institutional checks on agency (mis)behaviour.

##### *-Steering humanitarian aid activities through legislative competence*

The Parliament has co-decision with the Council on humanitarian aid legislation. However, it is not necessary to adopt a new regulation for every single allocation of humanitarian resources. Legislation on humanitarian aid is largely restricted to the 1996 Council

Regulation<sup>23</sup>. This leaves the Parliament only limited scope for influencing humanitarian policy through its right to co-decision.

Moreover, implementation power resides with the HAC, which bring together the Commission and member states to the exclusion of the Parliament. The 1999 framework decision on comitology<sup>24</sup> allowed the Parliament to issue a Resolution if it was of the opinion that the proposed measures exceeded the Commission's implementing powers. The Commission had to take the Parliament's opinion into account, but was free to choose whether it would act upon the Parliament's comments or not. In July 2006, a new procedure was adopted which for the first time confers on the Parliament the formal right to intervene in comitology. The Parliament will be able to block, by an absolute majority of MEPs, quasi-legislative implementing measures in domains governed by co-decision. ECHO's proposals now have to be sent simultaneously to the HAC and the Parliament. While the Parliament is entitled to examine whether ECHO has not gone beyond the limits of the implementation powers as stipulated in the 1996 Council Regulation, it cannot give ECHO instructions on how to allocate the EC humanitarian aid budget, and oblige ECHO to finance humanitarian operations in Kosovo rather than in Rwanda. It remains to be seen whether much will change. The absolute parliamentary majority needed constitutes a significant barrier, and it is unclear whether decisions on humanitarian aid will be considered as 'quasi-legislative' or not.

#### *-Steering humanitarian aid activities through budgetary competences*

ECHO is allowed to decide quite autonomously which specific humanitarian aid projects it wishes to finance. The European Parliament, as part of the EU Budgetary Authority, does have the final say over the total annual budget granted to ECHO<sup>25</sup>. Periodically differences have arisen between the humanitarian needs that ECHO would like to meet and the budget actually made available (Interview ECHO 24/04/2006).

#### *-Scrutiny of humanitarian aid policy by Parliamentary Committees*

Apart from short bursts of interest during high-profile emergencies, parliamentary committees dealing with external aid generally show little concern for humanitarian assistance, which constitutes only a small part of total aid programmes (Collinson and Buchanan-Smith 2002: 3-4). The EU level seems to form no exception, as sustained scrutiny by the European Parliament of humanitarian aid policy remains relatively weak. The potential for parliamentary oversight is further constrained by the fact that there is no separate sub-committee at the Parliament dealing with humanitarian aid. Humanitarian aid issues travel between the Development Committee and the Foreign Affairs Committee depending on the beneficiaries' ACP affiliation or lack of it.

#### *-Scrutiny of humanitarian aid policy through parliamentary questions*

Individual Members of European Parliament (MEPs) make more extensive use of parliamentary questions as a tool for supervision of the Commission in the humanitarian aid field. However, one cannot help but wonder whether MEPs have the relevant expertise to

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<sup>23</sup> In 1996, the legislative input from the European Parliament was even more restricted as it was involved in humanitarian aid legislation only through the cooperation procedure. Since the Amsterdam Treaty (1997) humanitarian aid has become an area governed by the co-decision procedure.

<sup>24</sup> Council Decision 1999/468/EC.

<sup>25</sup> ECHO has three sources of funding: the general EC budget, the European Development Fund (EDF) for humanitarian relief in ACP countries, and the emergency reserve. In 2005, out of a total budget of €652 million, €494 million (75.8%) came from the general budget, €23 million (3.5%) from the EDP, and €135 million (20.7%) from the emergency reserve. The Parliament's budgetary powers are limited to the general budget and the emergency reserve. The Council sets the EDF budget via agreements that are ratified by national parliaments.

form a sound opinion on ECHO decisions. Some of the parliamentary questions seem to indicate that MEPs do not know which institutional structures or procedures govern EU humanitarian policy, assuming for instance that the Council decides on humanitarian allocations, or asking for basic information which can easily be found on ECHO's website. This confirms that the informational advantage arising from the technicality of the agent's decisions can shield the agent from intrusive scrutiny by control mechanisms established by member state principals. Humanitarian NGOs, which of course do possess expertise, can increase the number of channels at their disposal for scrutinizing ECHO policy by lobbying MEPs and convincing them to formulate parliamentary questions on EU humanitarian aid policy. In this way, the various control mechanisms established by principals (NGO fire alarms and parliamentary control) can reinforce each other in monitoring agency behaviour.

#### *-European Parliament as reliable institutional check?*

The possibility of complicity between the Parliament and the Commission, fellow supranational institutions, might compromise the Parliament's capacity to exercise impartial oversight over the Commission. However, this complicity has to be nuanced as the co-decision procedure has increased interaction between the Parliament and the Council (Lequesne and Rivaud 2003: 698). The 1999 Santer Commission episode as well as the Parliament's critical attitude before approving the Prodi and Barroso Commissions indeed show that the Parliament is increasingly willing to flex its muscles vis-à-vis the Commission.

#### 3.3.2.2.3.2 European Court of Justice (ECJ)

If a EU member state can demonstrate to the ECJ that the Commission has acted beyond its mandate, the offending Commission act may be declared void "on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this treaty or any rule of law relating to its application, or misuse of powers" (Articles 230 and 231 TEC). In addition, Article 232 TEC allows the Court to rule on the Commission's failure to act upon its responsibilities under the EU Treaties. Not only member states or EU institutions, but any natural or legal person who can demonstrate that a Commission action is of "direct and individual concern" to him/herself can complain before the ECJ (Article 230 TEC). The Court has interpreted the condition of direct and individual concern narrowly, making it relatively difficult for EU citizens to have their case handled by the ECJ. Nevertheless, the ability of individuals to file a complaint on Commission behaviour before the Court constitutes an additional fire alarm (Pollack 1997: 109) and provides a further example of how various constraint mechanisms (citizen fire alarms and judicial overview) can interact.

#### 3.3.2.2.3.3 European Court of Auditors

The European Court of Auditors (Articles 246 to 248 TEC) has the mandate to carry out a detailed examination of a Commission department's financial and managerial performance. The Court of Auditors' special report 2/97 covered humanitarian aid provided by the EU between 1992 and 1995. Special report 2/2001 dealt with ECHO's management of emergency humanitarian aid for the victims of the Kosovo crisis. While it has been noted that audit offices often concentrate on issues of financial probity and value for money, and do not focus on the humanitarian policy itself (Collinson and Buchanan-Smith 2002: 3), the two reports on ECHO activity by the Court of Auditors go further than mere financial scrutiny.<sup>26</sup>

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<sup>26</sup> Other institutional checks which are not further elaborated upon are the Commission's Anti-Fraud Office OLAF and the European Ombudsman.

### 3.4 Mechanisms to sanction ECHO

The extent to which principals can control an agent depends not only on the efficacy of monitoring, but also on the ability of principals to apply sanctions in the event of non-compliance (Pollack 1997: 105). Sanctions serve a two-fold purpose. Sanctioning punishes deviant agency behaviour. It also provides a negative incentive, as the mere threat of sanctions might prevent agency shirking (Doleys 2000: 538). As is the case with control mechanisms, imposing meaningful sanctions brings with it costs for the principal. Cutting the agent's budget or firing agency staff might also have the effect of (further) hampering the agent in effectively accomplishing the assigned tasks. The cost of sanctions has implications for the credibility of the threat to sanction (Pollack 1997: 109). If agents are relatively confident that their opportunistic behaviour will not be punished by principals because the cost of sanctioning is too high, they will be less hesitant to pursue their own interests.

#### 3.4.1 Cutting ECHO's budget

A first sanction is cutting the agent's budget (Pollack 1997: 112). In the first half of the 1990s, EU member states channelled a growing proportion of the humanitarian aid budget through the Commission. By 1994, ECHO had become the world's largest humanitarian donor managing more than half of the funds devoted by Europe (EC and member states) to humanitarian aid. However, human resources and administrative capacity at headquarters in Brussels could not match the increased workload. David Lennon (2001: 138) remarks: "The failures of the overstretched Commission to spend the funds allocated and poor supervision of funds spent have led to a serious revision of the tendency of member states to donate a growing share of their bilateral aid through the EU." Not surprisingly, ECHO's budget gradually declined, from €764 million in 1994 to €441 million in 1997. Since the beginning of the new millennium, ECHO has made efforts towards more professionalism and better management of the funds it is entrusted with (see 4.2). This demonstrates that the power of the purse provides principals with considerable leverage over an agent's behaviour. The increase in ECHO's budget noticeable over the last few years (from €492 million in 2000 over €652 million in 2005 to €910 million agreed upon for 2007-2013) might be partly attributable to member state principals' restored confidence in the Humanitarian Aid Office.

#### 3.4.2 Dismissing ECHO personnel

A second option is to dismiss or refuse to reappoint agency personnel perceived to be drifting from the preferences of the principals (Pollack 1997: 112). Each member state nominates one Commissioner, and the member states collectively name the President of the Commission. The power of appointment/dismissal is relatively ineffective, since for the Commission it can only be exercised every five years (Kassim and Menon 2003: 132; Franchino 2000: 68). While member states may have some influence over the choice of the Commissioner for Development and Humanitarian Aid, they have no input in the recruitment of ECHO personnel which is selected through standard Commission procedures. Even the appointment of ECHO's most senior official, the Director-General, is the result of an internal decision by the College of Commissioners in which member states have no formal say.

#### 3.4.3 Revising ECHO's mandate

The most radical sanction against a drifting agent is the revision of its mandate by amending the treaty or regulation that delegates authority to it (Pollack 1997: 109-110). Article 20 of the 1996 Council Regulation on Humanitarian Aid stipulates: "Three years after entry into force

of this Regulation, the Commission shall submit an overall assessment of the operations financed by the Community under this Regulation to the European Parliament and to the Council, together with suggestions for the future of the Regulation and, as necessary, proposals for amendments to it.”<sup>27</sup> This provided member states with the opportunity to “clip the Commission's wings” if it was found acting in a way that diverged from their interests (Pollack 1997: 112). The ensuing Article 20 Evaluation did not lead to the adoption of a new regulation, nor was the existing one substantially amended.<sup>28</sup>

Firstly, the institutional hurdles to be surmounted were significant. The introduction of new legislation on humanitarian aid requires a qualified majority, which is a less demanding decision rule than unanimity. But, since the Amsterdam Treaty, it also requires the coordinated effort of EU member states and the European Parliament, under the relatively time-consuming co-decision procedure. Secondly, in a first pillar domain like humanitarian aid, the Commission has the exclusive right to initiate legislation. Without a prior proposal from the Commission for a new regulation, member state principals in the Council are unable to change the Commission’s humanitarian mandate. Credible policy commitment as the rationale for delegation indeed calls for substantial barriers to re-contracting by principals. The act of self-commitment by member state principals to a given policy is only credible in so far as the supranational agent does not face the immediate threat of a revision of its mandate, which might lead to a withdrawal of part of its authority or even its replacement.

The Commission decided not to submit a proposal for a modified Humanitarian Aid Regulation. This was justified by pointing out that the Article 20 Evaluation concluded that the Regulation was basically sound, and that ECHO’s mandate should be prolonged and its status as a separate service within the Commission be maintained. Moreover, in the Commission’s view, the level of detail in the evaluators’ suggestions for adaptations to the 1996 Regulation “would not normally find its way into a Regulation of this kind, and might be counterproductive in reducing aspects of the flexibility which has proven so useful in the past” in implementing humanitarian operations (European Commission 1999: 3).

The European Parliament (Article 192 TEC) and the Council (Article 208 TEC) are allowed to request the Commission to submit a proposal for new legislation. Even while having a monopoly on the initiation of legislation, extensive political pressure by a majority of member states or MEPs to propose a new Humanitarian Aid Regulation would have been hard for the Commission to staunchly ignore. Yet, member state principals generally agreed on the lack of overriding reasons to modify the 1996 Council Regulation or do away with ECHO. The Development Council<sup>29</sup> concluded that, while improvements were needed, “the existence of ECHO has been and remains amply justified”. The Court of Auditors (1997, 2001), as well as the European Parliament (2000), while uttering a good deal of criticism on ECHO’s performance, came to a similar overall positive assessment.

#### **4. What is ECHO’s discretionary power within the Principal-Agent relationship?**

##### **4.1 Communicating vessels: stronger delegation accompanied by more control**

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<sup>27</sup> The 1991 Commission Decision on the establishment of ECHO already limited the existence of the Humanitarian Aid Office to an initial trial period of 7 years, after which its performance would be subjected to a thorough evaluation (European Commission 1991).

<sup>28</sup> In 2003, minor amendments were introduced to the comitology procedures of the Humanitarian Aid Regulation. See Regulation (EC) 1882/2003 of the European Parliament and of the Council.

<sup>29</sup> Development Council of the European Union (2000) 2263<sup>rd</sup> Council Meeting – Development – Brussels – 18<sup>th</sup> May, PRES/00/156, p 11-17.

The Commission gradually expanded its humanitarian aid policy without an explicit competence in the Treaties. Humanitarian aid entered the realm of Community competencies as a type of instrument for development policy towards ACP countries in the 1969 Yaoundé II Convention. From the ACP countries, the geographical scope of the Community's humanitarian aid operations was extended progressively to all third countries. The 1991 decision to create ECHO was an internal Commission decision independent from any formal member state input. The competence of the Commission in the field of humanitarian aid (apart from the article in the various ACP Conventions) only received a legal basis in 1996 when the Council adopted a Regulation on EC humanitarian aid, in which member states conferred important competences to the Commission in humanitarian aid provision. The Constitutional Treaty, if ratified, would turn humanitarian action into a treaty-based EU competence. Member governments were thus faced with “a strategic context in which the basic rules of the game ha[d] been dislocated by supranational shirking”, and adjusted to this new political reality by ratifying the moves of the supranational institution (Tallberg 2002: 39-40). The fact that member state principals *a posteriori* legalized and institutionalized a situation which was the result of Commission competence maximization, points to the presence of an independent agent able to pursue its own agenda.

In P-A theory discretionary power is commonly defined as “the powers delegated to agents, and the various forms of control mechanisms established by principals”, i.e. “delegated powers – control mechanisms = discretion” (Tallberg 2007: 11). Therefore it should not come as a surprise that, while legally enshrining the Commission's responsibility for humanitarian aid, the 1996 Council Regulation was also used by member states to significantly step up control over the Commission. Mowjee (1998: 259) and Ascroft (1999: 187-188) assert that the adoption of the 1996 Council Regulation aid was motivated by member states' search to regain control over ECHO's operations. According to a former UK official the aim of the Regulation was to give monetary and political control over humanitarian aid policy back to the member states (quoted in Mowjee 1998: 259).

Prior to 1996 member states were simply informed of the Commission's funding decisions at quarterly meetings (Brusset and Tiberghien 2002: 56; Mowjee and Macrae 2002: 17). The Council Regulation established a comitology committee which can block the Commission's implementing measures by qualified majority. And while the Commission's draft provided for an annual report to the Parliament and the Council, the final text requires the Commission to notify member states within no more than one month of the approved humanitarian aid operations. This obliges ECHO to provide information on its humanitarian activities on a much more continual basis than the once a year originally suggested by the Commission. Last but not least, the Council added the notorious Article 20 to the Regulation.

#### 4.2 Indirect principal influence via the Commission's rational anticipation

The Commission's reluctance to amend the existing Humanitarian Aid Regulation might lead one to think that the control mechanisms set up by principals are of no significant influence. Yet, a closer analysis shows that they were quite effective in inducing change in ECHO's agency. In late 1999, ECHO engaged in an internal reform process to improve the management of humanitarian aid. It worked on the introduction of results-based management techniques, started efforts to improve its relations with NGO and UN partners, and undertook to improve the professional skills of its staff both at headquarters and in the field. In addition, while the humanitarian aid mandate as set out in the 1996 Regulation remained unchanged, the way it was filled in shifted, as ECHO started concentrating on a more limited set of core

humanitarian tasks than what it is legally allowed to do. ECHO began focusing on immediate, life-saving relief in emergencies, withdrawing from activities in the 'grey zone' between relief and development, and maintaining its independence from crisis management.

At first sight ECHO's 'self-imposed' censure through the tightening of management procedures as well as the more restrictive interpretation of its mandate seem to contradict the expected mission creep attempted by a supranational agent. However, this self-restraint was undoubtedly less 'voluntary' than it might seem, and (though not exclusively) triggered by the police oversight and potential sanction mechanisms in place. A 'strong' P-A position holds that organizational change is the result of explicit decisions by member state principals such as an amendment of the agent's legal mandate. However, the absence of overt sanctions is not necessarily an indication of large agency autonomy. In a 'softer' P-A version change without explicit state intervention can occur through the process of rational anticipation. The permanent control exercised by member states, the European Parliament, and the Court of Auditors, together with the institutional fragility of ECHO initially set up for a trial period of 7 years ending in 1999, and the declining budget for ECHO in the second half of the 1990s, undeniably imposed constraints on the Commission's behaviour. These were further intensified by the trauma of the Santer Commission's collapse in 1999, an experience which presumably was all the more traumatic for ECHO since one of its own senior staff members had been found guilty of malpractice in 1998. In a 'dramatic' period in EU politics, ECHO – guided by the rational anticipation of the probability of sanctions – felt the need to brush up its reputation in the view of member state principals in order to avoid the imposition of the ultimate sanction, viz. its shutting down. Tellingly, the reforms in the Commission's humanitarian aid policy correspond exactly to those shortcomings in ECHO's functioning criticized in the various reports by the Court of Auditors, the Article 20 Evaluators, the Development Council, and the European Parliament issued around the turn of the millennium.

#### 4.3 ECHO autonomy within the zone of apolitical humanitarian aid

The Commission seems to "neither run amok nor blindly follow the wishes of governments but rather pursue [its] own preferences within the confines of member state control mechanisms" (Pollack 1997: 114). The Commission used its delegated powers with regard to association with ACP countries and agriculture (emergency food aid was originally part of the Common Agricultural Policy) to accumulate new tasks in the field of humanitarian aid. When the Commission was felt to bump against its zone of discretion (e.g. by crossing into the foreign policy domain under the label of humanitarian assistance), or perceived as not performing its tasks in a satisfactory way (e.g. due to bad management of humanitarian aid budgets), member state principals reacted. They drew up a 'contract' with their agent, the 1996 Council Regulation on EC humanitarian aid, which limited ECHO's scope of action to apolitical interventions and established control mechanisms. At the end of the 1990s, controllers identified continuing problems due to underrate management of ECHO aid and due to the overstretching of ECHO's humanitarian mandate. No overt sanctioning took place, yet – through rational anticipation – the Commission engaged in a reform process in order to be more in line with member states' desires.

Currently, ECHO is indeed very careful not to transgress its zone of discretion, and offend member state principals by venturing in more political waters. For instance, in reply to a remark on the weak political stance of the Commission with regard to the conflict in Lebanon, Commissioner for Humanitarian Aid and Development Louis Michel stated: "It is not my responsibility to intervene on a political level. The most important member states of the Union and Javier Solana are intensely engaged in negotiations. And for the rest the Middle East is

not my responsibility but that of the Commissioner for External Relations, Benita Ferrero-Waldner. [...] That is all I want to say on the issue. I have already gone to the limits of my competences by pleading for humanitarian corridors. [...] I concentrate on the humanitarian aspects.” (quoted in Bulcke 2006: 10, our translation) Inversely, member states seem largely prepared not to intrude on ECHO’s humanitarian ‘territory’. For instance, a Council representative did not feel in a position to answer a parliamentary question on humanitarian aid allocation to the Saharan population. “We shall support humanitarian aid in accordance with the proposals we receive from the European Commission. The point is what the European Commission’s intentions are, not what the Council’s intentions are.”<sup>30</sup>

#### 4.4 Post-delegation dynamics increasing agency autonomy

The agent will acquire more and more expertise, while principals, to benefit fully from having delegated the specialized task, will reduce their expertise. The growing differential in expertise makes the agent ever more indispensable to the principal, and increases the cost of reversing the delegation. It also leads to greater agency autonomy because “the principal increasingly lacks the expertise to assess the agent’s behaviour in detail” (Büthe 2006: 8). Such a development creates “positive returns” (Pierson 2000: 259) which make a supranational agent more stable over time, even when it starts escaping member state control.

A “network effect” over time makes a reversal of the granting of authority more difficult. Third parties which have an interest in authority being delegated to the agent “are likely to make investments that are specific to the particular institutional arrangement created by the initial delegation of authority, such as building a lobbying infrastructure to influence the particular agent or administrative procedures to efficiently comply with its decisions” (Büthe 2006: 9). These parties will oppose attempts to withdraw authority from the agent, and thus make such a move politically more costly for the principal. An agent may also actively build coalitions to support its autonomy. Strengthened support for the agent’s continuing exercise of authority among the principal’s constituency, here the European citizens, again makes it politically more costly for the principal to re-contract (Büthe 2006: 9, 10). Pollack (1997: 120) indeed observes that “the influence of supranational institutions is greatest in situations where those institutions possess clear transnational constituencies of subnational institutions, interest groups, or individuals within the member states”, which can act “as a counterbalance to the influence of the member governments”.

Because humanitarian aid policy is a shared competence, principals have not reduced their expertise after delegation, as national humanitarian aid departments continue to exist. On the one hand, by holding on to national channels to conduct humanitarian aid policy, member states do not fully exploit the potential benefits of delegation. On the other, they limit their dependence on the Commission as the unique expert agent. With regard to the network effect, European humanitarian NGOs have invested in the establishment of a body to lobby ECHO, viz. VOICE. They have also spent resources on workshops for their staff on how to better comply with ECHO procedures and reporting requirements. Undoubtedly, the European humanitarian NGO community would strongly object to the discontinuation of the existing institutional arrangement. Eurobarometer results indicate that a majority of EU citizens is in favour of a humanitarian assistance policy at the EU level. However, the polls also reveal relatively low recognition levels for the role played by ECHO<sup>31</sup>. In an effort to build a

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<sup>30</sup> Debates 9 April 2003 – Strasbourg – CRE Wednesday 9 April 2003 – Item 006.

<sup>31</sup> Eurobarometer 2001, section 55.1.

supporting coalition, ECHO has stepped up its investments to make its accomplishments as humanitarian aid donor known to the European public.

These post-delegation developments increase the economic or political costs for principals of reversing delegation, which might in turn lead to greater agent autonomy. From a transaction-cost perspective, “increased costliness of reversal allows the agent to move further from the principal’s preference without crossing the threshold that would make the termination or substantial change of the P-A relationship a net gain for the principal” (Büthe 2006: 10). Here again, however, there are limits to how far an agent can bump against the borders of its zone of discretion. “As an agent takes advantage of the increased costliness of reversal or modification of the P-A relationship for the principal – by selecting outcomes that diverge from the principal’s preferences – it also increases the benefit that the principal can attain from institutional change.” (Büthe 2006: 11)

To sum up, while member state principals were ‘forced’ to *a posteriori* legalize the humanitarian aid activities developed by the Commission, they seized this opportunity to upgrade control on the Commission. Principals have exerted influence on ECHO’s behaviour mainly via rational anticipation. ECHO enjoys autonomy within a clearly circumscribed zone of discretion. Post-delegation dynamics increase the cost for principals to reverse the initial delegation, which provides the Commission with greater leverage to behave autonomously.

## **5. Explanatory value of P-A models**

### 5.1 Sociological institutionalist hypotheses about delegation and agency

The following section briefly lays out sociological institutionalist hypotheses on delegation and agency autonomy and, very tentatively, assesses whether these might more accurately capture patterns of delegation in EU humanitarian policy than rational-choice P-A arguments.

#### *-Institutional choice as a result of symbolic diffusion*

Sociological institutionalism challenges the assumption that agents and principals are rational actors with fixed, exogenous preferences driven by strategic calculations on how best to maximize expected utility. Rather, actors behave according to a “logic of appropriateness” (March and Olsen 2004). They follow institutional norms, expectations, and roles as they form their preferences and select the appropriate behaviour in an institutional environment. Principals delegate authority not so much to reduce the transaction costs of decision-making, but because delegation is seen as legitimate and appropriate (Finnemore 1993/1996, McNamara 2002). Martha Finnemore (1996: 329) argues that “bureaucratic structures did not spread as a result of their functional virtues as efficient coordinators of complex relationships (they may or may not be so) but because the wider environment supports and legitimizes rational bureaucracy as a social good”.

#### *-Alternative sources of agency autonomy*

Sociological institutionalism asserts that agents’ scope for autonomous action is not only determined by delegated powers, control mechanisms, and resultant zones of discretion. International organizations possess other sources of influence, such as persuasion through convincing arguments (Risse 2000, Johnstone 2003) or moral authority (Barnett and Finnemore 2004). Barnett and Finnemore (2004: 22-27) identify four sources of authority which international organizations can enjoy, viz. delegated authority, expert authority, rational-legal authority, and moral authority. This authority confers on international organizations both autonomy and the potential to get other actors to defer to them. Delegated

authority emerges from an explicit mandate from the member states. Expert authority arises from the fact that international organizations generate and control specialized information relevant to a particular policy area. Rational-legal authority refers to the fact that bureaucracies derive authority from their missions, i.e. a valued social purpose, and the ways they pursue that mission, i.e. in an impartial and technocratic way along impersonal rules. Finally, international organizations possess moral authority arising from their claim to represent the values and interests of the community rather than the partial, self-seeking interests of individual member states.

Barnett and Finnemore ascribe not only a regulatory role to organizations, as P-A theory does, but also a constitutive one. International organizations create social reality. “By establishing categories, fixing meanings, and diffusing norms, IOs use their authority to exercise power and influence the world.” (Barnett and Finnemore 2004: 34)

## 5.2 Sociological institutionalism applied to EU humanitarian aid policy

### *-Delegation to European Commission*

Did member states delegate responsibility over humanitarian aid to the European Commission not because of functional benefits, but in response to international norms and taken-for-granted institutional forms? The post-Cold War period indeed witnessed a new attitude towards humanitarian aid. While previously humanitarian action was considered a minor aid instrument in the margins of international relations carried out by a relatively small set of specialized humanitarian workers, from the early 1990s onwards humanitarian aid came to be seen as a new duty incumbent on the international community. Donor governments stepped up both the budgets allocated to humanitarian action as well as their involvement in the provision of humanitarian aid (Macrae et al. 2002: 30). At the UN level, a 1991 General Assembly Resolution foresaw in the creation of a special office charged with improving UN and international humanitarian relief, the Department of Humanitarian Affairs. The chronologically concomitant upgrading of humanitarian aid responses at both the EU and UN level is an indication of an increased need for humanitarian assistance due to the outbreak of a multitude of both natural and man-made humanitarian disasters after the end of the Cold War. There is no clear evidence, however, of a UN agency actively promoting a certain preferred organizational form for conducting humanitarian aid policy, of a worldwide symbolic diffusion of a particular type of institutional design for humanitarian aid, or of EU politicians drawing on the UN example when deciding on the EU’s humanitarian aid architecture.

There is no evidence of ECHO being created for purely symbolic reasons independently from the functions it was expected to accomplish. The efficiency concerns proposed by P-A models seem to have been the main drive for creating a Humanitarian Aid Office at the EU level<sup>32</sup>. “The EU tried to respond to the challenges posed by the growing humanitarian demand, and at the same time, decided to correct the inadequacies and weaknesses of its humanitarian aid system, by creating ECHO.” (Scappucci 1998: 33) The Commission had been involved in providing emergency assistance to third countries since the late 1960s on an *ad hoc* basis. Until 1992, financing of humanitarian aid was scattered between different Directorates-General according to the nature of the aid and the urgency of the situation. As the scale of and spending on humanitarian activity increased<sup>33</sup>, and confronted by the evidence of inadequate

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<sup>32</sup> Pollack (2006: 11) interestingly remarks that the legitimacy of an international organization may very well be linked to its functional benefits, “since a high degree of normative legitimacy for an institution may simply reflect an accurate assessment by the public of its functional benefits.”

<sup>33</sup> Humanitarian assistance allocated by the European Commission more than doubled between 1986 and 1991.

preparation for the humanitarian crisis in Iraq after the first Gulf War and by the looming war in former Yugoslavia, the Commissioners then in charge of external relations agreed on the need to establish an administrative structure exclusively dedicated to the management of humanitarian aid. The main objective was to improve internal coordination and efficiency in the delivery of EC humanitarian relief (European Commission 1991).

Rather than acting according to a logic of appropriateness and establishing a fixed institutional template for humanitarian aid, the form which the Community's humanitarian body assumed had to be adapted to the functions it had to exert. The possibility was preserved of altering the institutional form in response to changing circumstances. In the 1991 Decision to create ECHO, the existence of ECHO was initially limited to a trial period of 7 years after which an in-depth evaluation would take place, with the possibility of discontinuing ECHO and setting up a Europe-wide agency for humanitarian aid (European Commission 1991). The 1996 Council Regulation allowed for a possible revision of the existing legal and institutional arrangements three years after its adoption.<sup>34</sup>

#### *-ECHO autonomy*

ECHO's authority arguably comes not only from delegation in the Humanitarian Aid Regulation (delegated authority) and its expertise on humanitarian relief (expert authority), but also from its claim to represent humanitarian principles and the interests of crisis victims worldwide (moral authority), and its use of impersonal, objective bureaucratic rules (rational-legal authority). Providing needs-based humanitarian assistance seems to be a prime example of a mission considered legitimate and good, and of an act of "self-effacement" in which bureaucracies "present themselves as impersonal and neutral – as not exercising power but instead serving others" (Barnett and Finnemore 2004: 21). A telling example of how these sources of authority can be used to claim the right to autonomous action is the way in which the technical, supposedly non-political nature of humanitarian aid – a service to be rendered rather than an action with a political connotation requiring member state oversight – was invoked by the Commission to defend the absence of control by a committee of member state representatives prior to 1996 (Brusset and Tiberghien 2002: 55).

Barnett and Finnemore (2004: 23) predict that "in no small measure, the moral authority of IOs is dependent on a contrary discourse of states protecting their own national and particularistic interests". ECHO indeed frequently contrasts its neutrality, impartiality, and objectivity with the supposedly self-serving claims of member states. ECHO staff is of the opinion that the commitment to provide aid for crises where needs are highest even if media attention is absent "makes ECHO 'special', particularly when compared with Member State humanitarian efforts, where there is a tendency to focus upon high profile emergencies and 'compete for publicity'" (quoted in Bretherton and Vogler 2006: 131). The Commission also contrasts ECHO's independence with member states' national humanitarian aid agencies which are presented as less shielded from political interference, as they are more often than not part and parcel of foreign policy departments.

Sociological institutionalism predicts that ECHO has constitutive power because (1) it defines what is considered a humanitarian crisis and what not, (2) it chooses which actors have responsibility for responding to the humanitarian problem identified, and (3) it identifies what the proper solution is to the humanitarian crisis in question (Barnett and Finnemore 2004: 34). First, ECHO runs a classification scheme that distinguishes between high-needs areas,

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<sup>34</sup> In this regard it is worth noting that the 1996 Council Regulation does not mention ECHO, but designates the European Commission as a whole as responsible authority for the implementation of EC humanitarian aid.

forgotten crises, etc. ECHO's decision not to classify a certain situation as a humanitarian emergency, and hence not to allocate money, can leave people without help. Second, by framing humanitarian action as non-military, non-political, and non-development oriented ECHO creates boundaries for who gets to do humanitarian work. Humanitarian aid as defined by ECHO is not the responsibility of European military forces, but has to be carried out by humanitarian NGOs, the UN, or the Red Cross. Inversely, by asserting 'this is not a humanitarian project, but a political undertaking or a development activity' ECHO protects its resources from being used for activities which it does not consider to be part of its core humanitarian mandate. Third, by indicating in relative detail in its Financial Decisions and Global Plans what type of humanitarian activities it deems necessary and will sponsor, ECHO shapes what is to be the appropriate response to a humanitarian disaster.

Thus, state preferences do not appear to be the only component determining the behaviour of an international organization. The bureaucratic culture of an international organization – i.e. “the solutions that are produced by groups of people to meet specific problems they face in common” which then “become institutionalized, remembered, and passed on as the rules, rituals, and values of the group” (Barnett and Finnemore 2004: 19) – also shapes agency staff action. According to Karen Alter (2006: 318) international organizations are guided more by professional norms than by concerns about principals' preferences, “sometimes dying on their sword rather than be seen as caving to political pressure”. An example: In 1999, the Council agreed to supply heating fuel in former Yugoslavia to alleviate harsh winter conditions, but only to those municipalities controlled by Serb opposition forces. The rationale for the Energy for Democracy (EfD) initiative was that the population of these towns run by opposition parties would recognize the benefits of closer proximity to the West and thus become convinced of the advantages of a change of regime. ECHO prevented the use of its funds to finance this explicitly political programme, arguing that it would violate its mandate to provide humanitarian relief impartially (Fox 2001: 282).

### 5.3 Limits and strengths of rationalist P-A models compared to sociological institutionalism<sup>35</sup>

In answer to the question of *why* member states thought that apolitical humanitarian aid provision would be performed in the most optimal way by delegation to the Commission, the sociological institutional theory of symbolic diffusion does not offer a more convincing explanation than the efficiency and credibility arguments developed by P-A analysts. In answer to the second research question on *how* to delegate, the various control and sanction mechanisms identified by P-A scholars are all used in varying degrees by principals to constrain the behaviour of the Commission in the execution of EC humanitarian policy. The perception of comitology committees as forums for deliberation is to an extent confirmed. Evidence does suggest, however, that the P-A account of comitology as a control device cannot easily be dismissed. With regard to the third research question on the degree of ECHO *autonomy*, however, the P-A account seems rather 'meagre'. While rationalist P-A accounts can accommodate the sources of delegated and expertise authority identified by Barnett and Finnemore (2004), arguably more precisely than the sociological framework, even a devoted adherent of rationalist P-A like Pollack (2006: 14) admits that legal-rational and moral sources of authority, as well as the prospect of a constitutive role for international organizations lie outside P-A analysis.

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<sup>35</sup> These observations are based on one particular case only. The advantage of an empirical case study is that is rich in description and precise and detailed in its explanations of the events uniquely related to the case under examination. The drawback of such a one-at-a time case study is that it does not readily permit generalizations. Therefore, these conclusions should be handled with caution.

If both rational-choice and sociological institutionalist perspectives are found partially wanting in their pure form, would it be possible then to develop a framework which blends the two? Hawkins et al. (2006: 8, emphasis in original) argue that the P-A framework is “*relatively* theory-neutral” and can be gainfully employed by many specific theories. However, mixing rational choice P-A with sociological institutionalist elements might prove to be a tricky game. Their ontological bases, viz. individual rationality versus rule-following actors, as well as the implications this has for institutional design, viz. institutional variation and efficiency versus institutional sameness and legitimacy, seem to stand in sharp contrast (Huber and Shapin 2000: 47). Yet, some scholars argue that the divide is surmountable (Jupille et al. 2003, Aspinwall and Schneider 2000). According to Jupille et al. (2003: 15-16), while at the meta-theoretical level of epistemology and ontology the gap between the two institutionalisms is enormous and they “might just as well occupy separate universes”, from “a problem-driven, empirically oriented perspective, such divides rapidly begin to melt away”. The case of humanitarian aid indeed seems to indicate that while rational-choice P-A goes a long way in explaining patterns of delegation, insights from sociological institutionalism might provide additional insights<sup>36</sup>.

#### *-Sequencing of theories*

Jupille et al. (2003: 21-22) suggest that in a domain of application approach “the respective turfs and ‘home domains’ of each theory” can be identified, after which each “home turf” is brought together in some larger picture, all the while preserving the integrity of each theoretical contribution. It might indeed be possible to devise a sequencing of theories in which rational-choice explains the one time decision to delegate and the bargaining over the institutional design of delegation, while sociological accounts help understand how after a gestation period, the European Commission Humanitarian Aid Office’s behaviour is increasingly influenced not only by member state preferences but also by epistemic professionalism and bureaucratic culture. Sociological accounts can be brought in to clarify why ECHO over time seems to have become more successful in safeguarding its independence of action, by pointing to the way in which ECHO benefits not only from delegated and expert authority, but also from a certain amount of legal-rational and moral authority, as well as a degree of constitutive power. The different ontological commitments of the two approaches make theoretical conversation through a sequencing approach hard to accomplish without running into serious theoretical inconsistencies.

#### *-Open-endedness of the utility concept*

The path proposed here is a ‘soft’ rational P-A approach, which tries to find a *rational* explanation for the impact of organizational culture and norms. The philosophy of apolitical humanitarian aid is hard to reconcile with the rationalist view of actors fully motivated by material interests. Nevertheless, as demonstrated, P-A is fruitful as soon as a substantive act of delegation can be observed by which principals grant conditional authority to an agent and design institutions to control possible opportunistic agency behaviour. This confirms Hawkins et al. (2006: 5)’s observation that the P-A approach “is equally consistent with theories that posit rational, egoistic, wealth-maximizing actors and those that assume boundedly-rational altruistic actors”. Snidal (2002: 74-75) likewise points out that, while rational-choice focuses on actors’ goal-seeking, these goals “are not restricted to self-regarding or material interest

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<sup>36</sup> The qualitative approach and the inductive, case-study oriented, ‘thick’ description of EU humanitarian aid policy combined with the use of P-A models can already be seen as methodological bridge-building between rational-choice and sociological institutionalism. Often (though not necessarily) quantitative research and formal deductive theories are associated with rational-choice, while qualitative research and empirical and case-study oriented work is more common in the sociological tradition (Aspinwall and Schneider 2000: 28).

but could include other-regarding and normative or ideational ‘goals’”. In addition, rational-choice theory assumes that, while individuals behave in such a way so as best to obtain their goals, they also act within constraints which need not be material, but can also be informational, institutional, or social. Snidal (2002: 75) continues that “[t]hese institutional constraints also provide the means by which rational choice can move beyond its focus on actors (that is, its ‘ontological commitment’) to investigate how institutions impose structural constraints on the actors”. If P-A accepts that an actor’s utility may contain altruistic or ideational elements, and that social structures might constrain individuals, the rationality claims of P-A accounts are relaxed. How, in a next step, can we conceive of a rational explanation for the fact that apart from material constraint such as resource limitations, beliefs and collective institutional constraints might affect individual goal-seeking?

#### *-Rhetorical action*

Schimmelfenning (2001: 48) – in an effort to combine rationalist and sociological accounts of the Eastern enlargement of the EU – introduces the concept of “rhetorical action”, defined as “the strategic use of norm-based arguments” as intervening mechanism. He argues that, because EU member governments are concerned about their reputation and the legitimacy of their interests, political actors who can justify their policy objectives by referring to a norm accepted as legitimate at the EU level, can ‘shame’ their opponents into norm-confirming behaviour. Translated to the humanitarian aid case, the European Commission can shame the more reluctant member states into accepting a large degree of independence for ECHO by strategically drawing on the EU value of solidarity with victims of humanitarian crises. As such, the importance of discourse and norms emphasized in sociological accounts is combined with the rationalist idea that actors use the best means available to achieve their goals. ECHO strategically presents itself as the guarantor of professional and equitable humanitarian aid provision to disaster victims worldwide, because this presentational stance can help generate autonomy from member state principals. Using Burley and Mattli’s metaphor (1993), the “mask” of political neutrality and professionalism allows the Commission to “shield” its decisions from member state intrusion.

#### *-No more than rhetoric?*

The question is of course whether the Commission appeals to the arguments of expertise and impartiality merely to convince member states to ‘outsource’ humanitarian aid rather than performing the function ‘in house’ and to safeguard ECHO’s independence, or whether the Commission is indeed better placed to guarantee apolitical humanitarian aid than member states. In other words, what is behind the mask? Financing patterns indicate that ECHO has strengthened its efforts to provide genuinely needs-based aid. The former Yugoslavia received over half of ECHO’s budget between 1993 and 1999, which seems to reflect a political desire to respond to European security concerns rather than providing humanitarian aid strictly on the basis of need. However, the latest tendency is to focus more on Africa, the continent arguably facing the most severe and enduring humanitarian needs. In 2004, 52% of ECHO’s funds went to Africa, up from 16% in 1999. Moreover, ECHO’s support to forgotten crises has been steadily growing, reaching more than 30% of its budget in 2005.

#### *-Strategic importance of reputation*

Most P-A models do not seem to be able to explain why, in a rational world, it would be in the Commission’s interest to pursue its mission of apolitical humanitarian aid devotedly even if it means getting into a conflict with member state principals. From a typical P-A perspective, agents can be expected to avoid engaging in actions which might irritate principals and bring down sanctions on the agent (Pollack 2006: 4). David Kreps’ (1990) theory provides a possible answer. Slightly simplified, Kreps’ argument proceeds as follows.

Some transactions are characterized by the fact that one party has more authority in saying what adaptation will take place if an unforeseen contingency emerges. For example, an employee will accept the firm's right to specify how his/her working time will be spent as contingencies arise. If an employee grants such an authority to a firm s/he believes that it will be used fairly. The source of this faith, according to Kreps, is the firm's good reputation. "The way an organization adapts to an unforeseen contingency can add to or detract from that reputation, with consequences for the amount of faith future employees [...] will have. [...] Those in the organization who have decision-making authority, will have an interest in preserving or even promoting a good reputation to allow for future beneficial transactions." (Kreps 1990: 92) Because contingencies are unforeseen, it is impossible to specify *ex ante* how they will be met. What the organization can do at best is set some sort of widely applicable principle. The organization will be characterized by the principle(s) it selects. To promote its reputation, Kreps argues, the organization will apply the principle even when its application might not be optimal in the short run.

This process of abiding by an identifying principle in order to protect the reputation on which the grant of authority is dependent seems perfectly applicable to this case. The needs-based policy is the 'principle' which allows ECHO to highlight its uniqueness on an overcrowded humanitarian aid scene, and which becomes ECHO's 'trademark' or 'quality label'. The informational advantage of the Commission makes it more difficult but not impossible for member state principals to uncover agency behaviour. Thus, the Commission cannot simply claim that it is doing its job apolitically, irrespective of whether this is true or not. Rhetoric and posturing alone are not sufficient to stand in good repute, and therefore it is in the strategic interest of the Commission to do as it says. In order to be trusted by member states and be given authority, ECHO can offer only policies that are supported by its humanitarian expertise and consistent with its stated commitment to impartial humanitarian aid. Not observing its apolitical humanitarian aid mandate might prove to be, to phrase it in transaction-cost language, costly to the Commission because its power is not absolute, but conditional precisely on its reputation for being a provider of professional and impartial aid. It might even be in the Commission's interest to take decisions which go against the grain of member state principals' preferences, but which allow the Commission to maintain its authority as provider of aid which transcends the political fray, the reputation which motivated the delegation in the first place.

## **6. Conclusion**

P-A theories were found to capture the patterns of delegation between EU member states and the European Commission in the field of humanitarian aid policy quite accurately. To further enrich the analysis, a careful attempt was made to incorporate into the P-A framework the impact of norms and bureaucratic culture emphasized by sociological institutionalism, while relaxing but nevertheless preserving the utility concept and the strategic goal-seeking central to rational-choice P-A.

- Alt, James E. and Alberto Alesina (1996), 'Political Economy: An Overview', in Robert E. Goodin and Hans-Dieter Klingemann (eds), *New Handbook of Political Science*, New York: Oxford UP, pp 645-674.
- Alter, Karen J. (2006), 'Delegation to International Courts and the Limits of Recontracting Political Power', in Darren Hawkins, David A. Lake, Daniel Nielson, and Michael J. Tierney (eds), *Delegation and Agency in International Organizations*, New York: Cambridge UP, pp 312-339.
- Ascroft, Emma (1999), 'ECHO – Humanitarian Aid', in Carol Cosgrove-Sacks (ed.), *The European Union and Developing Countries. The Challenges of Globalization*, Houndmills Basingstoke: Macmillan Ltd, pp 179-189.
- Aspinwall, Mark and Gerald Schneider (2000), 'Same menu, separate tables: The institutionalist turn in political science and the study of European integration', *European Journal of Political Research*, Vol. 38, pp 1-36.
- Barnett, Michael and Martha Finnemore (2004), *Rules for the World: International Organizations in Global Politics*, Ithaca: Cornell UP.
- Beyers, Jan (2002), 'Multiple Embeddedness and Socialization in Europe: The Case of Council Officials', ARENA Working papers, WP 33/2002.
- Biscop, Sven and Edith Drieskens (2006), 'Effective Multilateralism and Collective Security: Empowering the UN', Karen Smith and Kati Laatikainen (eds.), *Intersecting Multilateralisms: The European Union and the United Nations*, Houndmills Basingstoke: Palgrave Macmillan.
- Bretherton, Charlotte and John Vogler (2006), *The EU as a Global Actor*, London and New York: Routledge.
- Bulcke, Bernard (2006), 'Europese bureaucratie staat snelle hulp in de weg', *De Standaard*, 24/07/2006, p 10.
- Brusset, Emery and Christine Tiberghien (2002), "Trends and risks in EU humanitarian action", in *The new humanitarianisms: a review of trends in global humanitarian action*, Joanna Macrae (ed), Humanitarian Policy Group Report 11, London: ODI, pp 51-62.
- Burley, Anne-Marie and Walter Mattli (1993), 'Europe before the Court', *International Organization*, Vol. 47 (1), pp 41-76.
- Büthe, Tim (2006), 'Institutional Persistence and Change in International Delegation', Paper prepared for the Workshop on Delegating Sovereignty, Duke Law School, 3-4 March 2006.
- Collinson, Sarah and Margie Buchanan-Smith (2002), 'International humanitarian action and the accountability of official donors', Humanitarian Policy Group Briefing Paper Nr. 6, London: ODI.
- Council of the European Union (1996), Council Regulation (EC) No. 1257/96 of 20 June 1996 on humanitarian aid, *OJ L 163*, 02/07/1996, pp 1-6.
- Court of Auditors (1997), Special Report No 2/97 concerning humanitarian aid from the European Union between 1995 and 1995, *OJ C 143* of 12 May 1997, pp 1-36.
- Court of Auditors (2001), Special Report No 2/2001 concerning the management of emergency humanitarian aid for the victims of the Kosovo crisis (ECHO), *OJ C 168* of 12 June 2001, pp 1-25.
- Dehousse, Renaud (2003), 'Comitology: who watches the watchmen', *Journal of European Public Policy*, 10 (5), pp 798-813.
- Dogan, Rhys (2000), 'A cross-sectoral view of comitology: incidence, issues and implications', in Thomas Christiansen and Emil Kirchner (eds), *Committee Governance in the European Union*, Manchester: Manchester UP, pp 45-62.
- Doleys, Thomas J. (2000), 'Member states and the European Commission: theoretical insights from the new economics of organization', *Journal of European Public Policy* Vol.7 (4), pp 532-553.
- Egeberg, Morten, Guenther F. Schaefer and Jarle Trondal (2003), 'The many faces of EU committee governance', ARENA Working Papers, WP 03/2.
- Epstein, David and Sharyn O'Halloran (1999), *Delegating Powers*, Cambridge: Cambridge UP.
- European Commission (1991), Commission Decision to set up a European Office for Humanitarian Aid, P/91/69, 06/11/1991, Brussels: European Commission.
- European Commission (1999), *Communication from the Commission to the Council and the European Parliament on assessment and future of Community humanitarian activities (Article 20 of Regulation (EC) 1257/96)*, COM (1999) 468 final, Brussels: European Commission.
- European Commission (2004), Working Document of the Commission Services. The Humanitarian Aid Instrument in the new Financial Perspectives 2007-2013, Fiche no. 39, Brussels: European Commission.
- European Parliament (2000), Resolution on the Communication from the Commission to the Council and the European Parliament: Assessment and future of Community humanitarian activities (Article 20 of Regulation (EC) 1257/1996), PE 286.789.
- Finnemore, Martha (1993), 'International Organizations as Teachers of Norms: The UNESCO and Science Policy', *International Organization*, Vol. 47 (4), pp 565-597.
- Finnemore, Martha (1996), 'Norms, Culture, and World Politics: Insights from Sociology's Institutionalism', *International Organization*, Vol. 50 (2), pp 325-347.
- Fox, Fiona (2001), 'New Humanitarianism: Does It Provide a Moral Banner for the 21<sup>st</sup> Century?', *Disasters*, Vol. 25, No.4, pp 275-289.
- Franchino, Fabio (2000), 'Control of the Commission's Executive Functions. Uncertainty, Conflict and Decision Rules', *European Union Politics*, Volume 1 (1), pp 63-92.

- Franchino, Fabio (2002), 'Efficiency or credibility? Testing the two logics of delegation to the European Commission', *Journal of European Public Policy*, Vol. 9 (5), pp 677-694.
- Franklin Advisory Services (1999), *Evaluation of Humanitarian-Aid Actions Stipulated under Article 20 of Council Regulation (EC) No. 1257/96 of 20.6.96. Third Phase – Synthesis*. Brussels, European Commission-European Community Humanitarian Office.
- Frennhoff Larsén, Magdalena (2006), 'The EU as an International Trade Negotiator', Paper presented at the EUSA workshop 'EU Foreign Policy: Current Challenges, Future Prospects', 3 April 2006, Washington.
- Haas, Ernst B. (1958), *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, Stanford: Stanford UP.
- Hawkins, Darren et al. (2006), 'Delegation under Anarchy. States, International Organizations, and Principal-Agent Theory', in Darren Hawkins, David A. Lake, Daniel Nielson, and Michael J. Tierney (eds), *Delegation and Agency in International Organizations*, New York: Cambridge UP, pp 3-39, forthcoming.
- Hooghe, Liesbet (1999), 'Supranational Activists or Intergovernmental Agents? Explaining the Orientations of Senior Commission Officials Toward European Integration', *Comparative Political Studies*, Vol. 32 (4), pp 435-463.
- Hooghe, Liesbet and Gary Marks (2001), *Multi-level Governance and European integration*, Lanham: Rowman & Littlefield.
- Huber, John D. and Charles R. Shipan (2004), 'Politics, Delegation, and Bureaucracy', <http://www.uiowa.edu/~c030310/H&S%202004June22.pdf>.
- ICG (2001), *The European Humanitarian Aid Office (ECHO): Crisis Response in the Grey Lane*. Brussels: International Crisis Group.
- Joerges, Christian and Jürgen Neyer (1997a), 'From intergovernmental bargaining to deliberative political process: The constitutionalization of comitology', *European Law Journal*, Vol. 3 (3), pp 273-299.
- Joerges, Christian and Jürgen Neyer (1997b), 'Transforming strategic interaction into deliberative problem-solving: European comitology in the foodstuffs sector', *Journal of European Public Policy*, Vol. 4 (4), pp 609-625.
- Johnstone, Ian (2003), 'The Role of the UN Secretary General: The Power of Persuasion Based on Law', *Global Governance*, Vol. 9 (4), pp 441-458.
- Jupille, Joseph, James Caporaso, and Jeffrey Checkel (2003), 'Integrating Institutions. Rationalism, Constructivism, and the Study of the EU', *Comparative Political Studies*, Vol. 36 (1/2), pp 7-40.
- Kassim, Hussein and Anand Menon (2003), 'The principal-agent approach and the study of the EU: promise unfulfilled?', *Journal of European Public Policy*, Vol. 10 (1), pp 121-139.
- Kerremans, Bart (2004), 'What went wrong in Cancun? A principal-agent view on the EU's rationale towards the Doha development round', *European Foreign Affairs Review*, 9(3), pp. 363-393.
- Kiewiet, Roderick and Matthew McCubbins (1991), *The logic of delegation: Congressional parties and the appropriation process*, Chicago: University of Chicago Press.
- Kreps, David M. (1990), 'Corporate culture and economic theory', in James E. Alt and Kenneth A. Shepsle, *Perspectives on Positive Political Economy*, Cambridge: Cambridge UP, pp 90-143.
- Lake, David A. and Mathew D. McCubbins (2006), "The logic of delegation to international organizations", in Darren Hawkins, David A. Lake, Daniel Nielson, and Michael J. Tierney (eds), *Delegation and Agency in International Organizations*, New York: Cambridge UP, pp 341-369, forthcoming.
- Lennon, David (2001), 'The EU: A leader in Humanitarian and Development Assistance', in Robert J. Guttman (ed), *Europe in the New Century. Visions of an Emerging Superpower*, London: Lynne Rienner, pp 127-141.
- Lequesne, Christian and Philippe Rivaud (2003), 'The Committees of Independent Experts: expertise in the service of democracy?', *Journal of European Public Policy*, Vol. 10 (5), pp 695-709.
- Lindberg, Leon N. (1963), *Political Dynamics of European Economic Integration*, Oxford: Oxford UP.
- Macrae, Joanna et al. (2002), *Uncertain Power: The Changing Role of Official Donors in Humanitarian Action*, Humanitarian Policy Group Report 12, London: ODI.
- Majone, Giandomenico (1994), 'The rise of the regulatory state in Europe', *West European Politics*, Vol. 17 (3), pp 77-101.
- Majone, Giandomenico (2001), 'Two Logics of Delegation. Agency and Fiduciary Relations in EU Governance', *European Union Politics*, Vol. 2 (1), pp 103-122.
- March, James G. and Johan P. Olsen (2004), "The logic of appropriateness", ARENA Working Papers WP 04/09, [http://www.arena.uio.no/publications/wp04\\_9.pdf](http://www.arena.uio.no/publications/wp04_9.pdf).
- McCubbins, Matthew, and Thomas Schwartz (1987), 'Congressional Oversight Overlooked: Police Patrols versus Fire Alarms', in Matthew McCubbins and Terry Sullivan (eds), *Congress: Structure and Policy*, New York: Cambridge UP, pp 426-440.
- McNamara, Kathleen (2002), 'Rational Fictions: Central Bank Independence and the Social Logic of Delegation', *West European Politics*, Vol. 25 (1), pp 47-76.
- Meunier, Sophie (2000), 'What Single Voice? European Institutions and EU-US Trade Negotiations', *International Organization*, Vol. 54(1), pp. 103-135.

- Moravcsik, Andrew (1993), 'Preferences and Power in the European Community. A Liberal Intergovernmental Approach', *Journal of Common Market Studies*, Vol. 31 (4), pp 437-524.
- Moravcsik, Andrew (2002), 'In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union', *Journal of Common Market Studies*, Vol. 40 (4), pp 603-624.
- Mowjee, Tasneem (1998), 'The European Community Humanitarian Office (ECHO): 1992-1999 and Beyond', *Disasters*, Vol. 22(3), pp 250-267.
- Mowjee, Tasneem and Joanna Macrae (2002), *Accountability and Influence in the European Community Humanitarian Aid Office*, Humanitarian Policy Group Background Paper, London: ODI.
- Olsen, Gorm R. (2004), 'Changing European concerns: security and complex political emergencies instead of development', in Karin Arts and Anna K. Dickson (eds), *EU Development Cooperation: from Model to Symbol?*, Manchester: Manchester UP, pp 80-100.
- Petiteville, Franck (2001), 'Les ONG et l'action humanitaire dans la mise en scène internationale de l'UE', Paper presented at a colloquium on 'ONG et action humanitaire', La Rochelle, 12-13 April 2001.
- Pierson, Paul (2000), 'Increasing Returns, Path Dependence, and the Study of Politics', *American Political Science Review*, Vol. 94 (2), pp 251-267.
- Pollack, Mark A. (1997), 'Delegation, Agency, and Agenda Setting in the European Community', *International Organization*, Volume 51, Issue 1, pp 99-135.
- Pollack, Mark A. (2003a), *The Engines of Integration*, Oxford: Oxford UP.
- Pollack, Mark A. (2003b), 'Control Mechanism or Deliberative Democracy? Two Images of Comitology', *Comparative Political Studies*, Vol. 36 (1/2), pp 125-155.
- Pollack, Mark A. (2005), 'Theorizing EU Policy-Making', in Helen Wallace, William Wallace, Mark A. Pollack (eds), *Policy-Making in the European Union*, pp 14-47.
- Pollack, Mark A. (2006), 'Principal-Agent Analysis and International Delegation: Red Herrings, Theoretical Clarifications, and Empirical Disputes', Paper prepared for presentation at the Workshop on Delegating Sovereignty, Duke University, 3-4 March 2006.
- Raustiala, Kal (1997), 'States, NGOs, and International Environmental Institutions', *International Studies Quarterly*, Vol. 41 (4), pp 719-740.
- Risse, Thomas (2000), "'Let's Argue!' Communicative Action in International Relations', *International Organization*, Vol. 54 (1), pp 1-39.
- Robinson, Pierson (1999), 'The CNN effect: can the news media drive foreign policy?', *Review of International Studies*, Vol. 25 (2), pp 301-309.
- Rothberg, Robert I. and Thomas G. Weiss (eds) (1996), *From Massacres to Genocide. The Media, Public Policy, and Humanitarian Crises*, Washington DC: The Brookings Institution.
- Ross, Stephen A. (1973), 'The Economic Theory of Agency: The Principal's Problem', *The American Economic Review*, Vol. 63 (2), pp 134-139.
- Scappucci, Gioia (1998), *The Humanitarian Aid of the EU: 'Alibi', 'Smokescreen' or 'Solidarity in Action'?* *The response of the EU to the Humanitarian Disaster in Rwanda*, Brussels: European Interuniversity Press.
- Schimmelfenning, Frank (2001), 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organization*, Vol. 55 (1), pp 47-80.
- Smillie, Ian and Larry Minear (2003), *The Quality of Money. Donor Behaviour in Humanitarian Financing*, Somerville (MA): The Feinstein International Famine Center.
- Snidal, Duncan (2002), 'Rational Choice and International Relations', in Walter Carlsnaes, Thomas Risse, and Beth Simmons (eds), *Handbook of International Relations*, London: SAGE, pp 73-94.
- Tallberg, Jonas (2000), 'The Anatomy of Autonomy: An Institutional Account of Variation in Supranational Influence', *Journal of Common Market Studies*, Vol. 38 (5), pp 843-864.
- Tallberg, Jonas (2002), 'Delegation to Supranational Institutions: Why, How, and with What Consequences', *West European Politics*, Vol. 25 (1), pp 23-46.
- Tallberg, Jonas (2007), 'Executive Politics', in Knud Erik Jorgensen, Mark Pollack, and Ben Rosamond (eds), *The Handbook of European Union Politics*, London: Sage, forthcoming.
- Van Schendelen, M.P.C.M (ed) (1998), *EU Committees as Influential Policymakers*, Aldershot and Brookfield: Ashgate.
- VOICE (2004), 'Partners in Humanitarian Aid. The FPA consultation as a model of EC partnership with NGOs', Brussels: Voluntary Organisations in Cooperation in Emergencies.