

**ISOMORPHIC PRESSURES AND THE EUROPEAN UNION**  
**Why Public Accountability Mechanisms Develop at the Supranational Level**

by

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# **ISOMORPHIC PRESSURES AND THE EUROPEAN UNION**

## **The Transfer of Public Accountability Organizations to the Supranational Level**

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This research study addresses questions of institutional creation and change and contributes to two bodies of literature, namely, institutional theory and European Union politics. The broad question it asks is why different political systems contain similar institutions. I am specifically concerned with institutional similarities between the European Union and its member states. To provide an answer, I have conducted two extensive case studies, on the European Court of Auditors and the Office of the European Ombudsman. Both are European Union bodies which belong to a specific class of governmental institutions, namely independent organizations responsible for public accountability. I examine the two cases comparatively, in order to evaluate the explanatory power of the theory of institutional isomorphism against alternative perspectives on the basis of qualitative data, mainly official documents and elite interviews. Isomorphic theory asserts that similarities among different systems can be explained by the exercise of homogenizing pressures by actors. I examine which of the three main forces proposed by the theory are necessary to explain institutional similarity. On the basis of the two case studies, I find that the collusion of coercive pressures from member state governments and tendencies of EU institutions to mimic member state practices is a necessary condition for the transfer of institutions to the European Union structure.

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## PREFACE

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## 1.0 INTRODUCTION

The point of departure for this research project is a simple observation: certain organizations which are part of the European Union (EU) bear both in terms of structure and function a striking resemblance to organizations which are traditionally associated with nation states. Indeed, not only does the EU include in its ranks some basic democratic institutions, such as a legislature and a court, but also some more specialized organs, including independent regulatory agencies, a central bank and an anti-fraud body. These organizations have long traditions in the countries of Western Europe, all of which gradually became EU members. The objective of this project is to answer questions such as: What explains institutional similarity between the EU and its member states? Is it a random occurrence or a systematic pattern of institutional transfer? Moreover, the fact that narrowly specialized bodies have been created as the mirror image of national institutions makes the similarity between the EU and nation states even more puzzling. What then causes the need for such a particular type of organizations in the EU?

To be sure, as a set of institutional structures, the EU is quite unusual. It has been characterized as a “hybrid” (Rosamond 2000, p.110), because it does not fit neatly into any pre-existing institutional classification. Undeniably, the EU contains intergovernmental decision-making bodies, which are conventionally encountered in international organizations. Yet, it cannot be characterized as a typical intergovernmental organization, because it contains strong supranational bodies, which enjoy a significant degree of independence from the governments of

its member states in a number of policy areas. In addition, the EU does not qualify as a fully fledged multi-level polity either, equivalent to that of a federal nation-state, because its supranational bodies do not constitute a strong center with “supreme” powers, as the federal authorities in a federation (Sbragia 1993).

The school of thought which has developed a conception of the EU as a system of Multi-Level Governance aims at capturing the complexity of such an unusual system; it highlights the similarities of the EU with conventional polities, which are structured along local, regional and national or federal levels, without neglecting its intergovernmental character (Kohler-Koch and Rittberger 2006). By focusing on the similarities of organizational forms between the EU and the polities of Western European countries, the present study is built on the foundations of the theoretical tradition of Multi-Level Governance. In particular, I seek an explanation for these similarities by examining a specific set of organizations, namely independent bodies which are responsible for public accountability. I examine two supranational bodies in particular, the European Court of Auditors and the European Ombudsman. Both are equivalent to similar organizations in the countries of Western Europe. Hence, the European Court of Auditors belongs to the institutional family of public audit institutions, whereas the European Ombudsman resembles ombudsmen in many European countries. Additionally, both perform very specialized and technical functions which mirror the functions of their national counterparts. The Court of Auditors checks the soundness of the EU financial accounts, while the European Ombudsman investigates citizen complaints of maladministration by the institutions of the EU.

In order to explain the similarity between these two supranational institutions and their national equivalents, I trace their roots and reconstruct the conditions of their creation, on the

basis of qualitative information, which has been obtained primarily from official documents and secondarily from elite interviews.

## **1.1 THE ARGUMENT IN BRIEF**

In the present study, I regard organizations as clusters of normative templates and cognitive scripts (March and Olsen 1996). In other words, each organization is a specific manifestation of certain ideas about how things should and can be done. Hence, the role ombudsmen and public audit bodies fulfill is twofold. On the one hand, they reflect the normative expectation that in a democracy the members of the government apparatus must be held accountable for their actions. On the other hand, they constitute agents of a narrow set of practices by which the normative expectation of accountability is realized. More specifically, a public audit body holds government officials accountable by having developed a series of methods and ethical standards which it applies to control public finances. In the same vein, an ombudsman's duties represent a different set of practices which also aim at holding government officials accountable by investigating citizen complaints on their behavior.

The cognitive and normative properties of an organization may be important in explaining its desirability for transfer from one system to another: it is a convenient solution to a given problem. Yet, an organization's desirability by itself does not suffice to explain the process by which the transfer occurs. In order to understand this process, I study the role of specific political actors. The theoretical template which informs actor behavior in this study is provided by the logic of organizational isomorphism (DiMaggio and Powell 1983). According

to this model, actors driven by the cognitive and normative desirability of an organizational form will exercise pressures for its transfer to a new institutional context.

In the particular context of the EU, I find that for the creation of the European Court of Auditors and the European Ombudsman two types of actors were of special significance: supranational institutions and national governments. These two sets of actors exercised two separate types of pressures. Supranational institutions, especially the European Parliament and the European Commission, were critical in exercising pressures for or against the creation of their new peers; national governments were equally important in pressuring for or against the founding of a new supranational institution. In fact, the main empirical finding of this study is that the transfer of organizational forms to the EU was the outcome of collusion of these two types of demands. On the one hand, supranational institutions exercised influence from “inside” the EU, which isomorphic logic labels as mimetic pressure. On the other hand, member-state governments pushed from the “outside,” which isomorphic theory calls coercive pressure. As we shall see in the detailed accounts presented in this study this collusion of forces was not easy to occur. Moreover, institutional arrangements that were in place constrained the actions of actors. In the cases of founding EU institutions, the collusion of preferences needed to coincide with the opportunity of revision of the Treaties that determine the constitutional features of the EU.

Hence, this study answers the question why there is organizational similarity between the EU and its member states by stating that it is indeed the outcome of systematic processes. Yet, at the same time it suggests that these processes are not automatic, in the sense that when they are set in motion, the outcome of organizational transfer is not necessarily guaranteed. Existing institutional arrangements determine the path the processes will take. Furthermore, I suggest that

the motivation behind the transfer of an organization, no matter how broad or narrow its mandate, is determined by the needs for successful solutions to existing problems. The European Ombudsman and the European Court of Auditors represent successful solutions to the problem of public accountability.

The above explanation highlights the importance of normative historical institutionalism for understanding institutional change in the form of organizational transfer. In line with this version of the new institutionalism, firstly, this study reveals that the rationality of political and societal actors in propagating institutional change is informed by their normative and cognitive environment. Secondly, this explanation suggests that these actors operate in an institutional environment which constraints their room of maneuver. Thirdly, it recognizes the importance of entrepreneurship by political actors in managing expectations and navigating institutional rigidities in order to maintain or advance their position relatively to other actors.

Moreover, this study suggests a pattern of institutional evolution for the EU which is not fundamentally different from that of national political systems. Just like nation states (Jacoby 2000; Westney 1987), the EU develops institutionally as a system of governance by “borrowing” structures from other governance systems in its immediate environment, which in turn it adapts to its own particular circumstances. In other words, the EU may appear to be unique if we take a static snapshot of its structural configuration, but this uniqueness becomes less obvious when we think about the EU in terms of its evolutionary dynamic. Although this explanation does not allow us to make precise predictions about the future institutional setup of the Union, it nevertheless allows us to make inferences about its future trajectory.

## 1.2 PLAN OF THE DISSERTATION

The next chapter includes a detailed presentation of the theory of organizational isomorphism and its theoretical context. Besides presenting the theory as it was originally formulated in the field of organizational sociology, I also interpret it in political science terms. Then I position it in three theoretical debates which are characterized by three different layers of generalization. Hence, at the most general level, I treat isomorphism as a theory which contributes to our understanding of institutions. Specifically, I discuss it in light of the debate among the three strands of the new institutionalism (Hall and Taylor 1996). At the next level, I examine how isomorphism fits in the more narrow debate about institutional transfer between political systems. Then, at the least general level, I examine how it contributes to the understanding of a particular phenomenon, namely institutional change as the result of organizational transfer in the EU. The chapter also includes a discussion of the concept of accountability and the research design for this study.

The second and third chapters constitute the empirical heart of the dissertation. Each one is devoted to one of the two main case studies included in this work, namely, the European Ombudsman and the European Court of Auditors. Each chapter first provides an overview of the type of institution to which each of these organizations belongs. Hence, the chapter on the European Ombudsman contains information about what ombudsmen are, what they do and what variations of this type of organization exist. I do the same for the European Court of Auditors. The purpose behind those descriptions is not only to familiarize the reader with these relatively unknown organizations, but also to demonstrate their relevance to modern democratic governance as solutions to problems of public accountability. Then, I present the events that led to the creation of the two bodies and make a preliminary assessment of those developments.

In the last chapter, I discuss the conclusions and implications of this study. I examine the findings of the two case studies comparatively and outline the main answers this research project provides for the puzzle that triggered it. In light of these findings, I discuss the implications of the current research project for isomorphism, as well as for the theoretical debates in which the theory contributes.

## **2.0 ISOMORPHISM AS A THEORY OF INSTITUTIONAL CHANGE**

This research project has two related objectives, one empirical, the other theoretical. The empirical goal is to elucidate how two institutions of the European Union were established. Specifically, I study the forces and processes that led to the founding of the European Court of Auditors and the office of the European Ombudsman. In order to trace the origins of the two institutions, I seek empirical evidence which illuminates the events that contributed to their founding. The theoretical goal is to use the results of the empirical inquiry to draw conclusions about the institutional evolution of political systems in general and of the European Union in particular. I examine why political systems evolve either by adjusting already existing institutions, as the European Union did in the case of the European Court of Auditors, or by adopting entirely new ones, as was the case of the European Ombudsman. The theory of “institutional isomorphism” (DiMaggio and Powell 1983) informs and structures the empirical inquiry and constitutes the vehicle for theoretical generalization.

In this chapter, I start by presenting the theory of isomorphism. Then I explain how this theory fits into current theoretical debates about institutional evolution. Specifically, I place the theory in the context of the literature on the “new institutionalism” (Hall and Taylor 1996). Furthermore, I discuss the theory in light of current debates about institutional transfer in political science, as well as about the nature of the European Union. Placing isomorphic theory in its theoretical context helps me evaluate the degree to which it explains the empirical findings

better than rival approaches; in other words, it allows me to assess its limits of explanation and generalization. In addition, this chapter includes a brief discussion of the concept of accountability, which is central for the case studies that follow. I conclude with the presentation of the research design for this research project.

## **2.1 ISOMORPHISM**

The basic tenets of the theory of isomorphism were presented in a seminal paper written by Paul DiMaggio and Walter Powell (1983). The two organizational sociologists studied the behavior of organizations which were part of the same “organizational field,” that is, organizations which are related and depend on each other by performing functions that are mutually supplementary (DiMaggio 1983; 1986; 1991; Hinings et al. 2004). For example, organizations may belong to the same field when they are responsible for or affected by a certain governmental policy. Hence, large corporations and competition authorities constitute one field, while environmental agencies, pollutant-emitting firms and ecological groups comprise another. However, it is not necessary that an organizational field include government entities. For example, manufacturers, wholesalers and retailers of a certain product may also constitute one field. What defines a field is that the organizations which belong to it dependent on each other on the basis of established relationships.

DiMaggio and Powell observed a striking degree of structural similarity among organizations which are members of the same field. Hence, for example, in health care, all hospitals tend to be structured along the same hierarchical lines; the same is true for public high schools in the field of education. Even textbooks tend to look alike. How could this

homogeneity be explained? The authors were not satisfied by the conventional explanation, which was based on the Weberian notion of organizational rationality (Weber 1958; 1991). According to this logic, an organization's main goal is efficiency, which can be accomplished by increasing the bureaucratization of its structures. The implication is that organizations look similar because they adopt similar bureaucratic structures. However, DiMaggio and Powell noted, modern organizations are fully bureaucratized and yet they continue to change in ways that make them more similar to each other. Therefore, the motive of efficiency no longer suffices to explain similarity among organizations.

Instead, they posited, there are processes in place which make modern organizations "more similar without necessarily making them more efficient" (DiMaggio and Powell 1983, p.147). These processes compel organizations to adopt structures which are perceived as legitimate, that is, socially acceptable or imperative, thus sidestepping any consideration of efficiency. DiMaggio and Powell do not deny that organizational change is the outcome of rational thinking. Yet, they contend, what feeds this thinking process is not the idea of making organizations more efficient, but rather the desire to make them conform to expectations in their environment, and more specifically in their organizational field. Hence, for DiMaggio and Powell, the demands of an organization's external environment, rather than an organization's own desire for more efficiency, is what drives organizational change. They labeled the processes that cause this type of change as instances of "isomorphism."

The concept of isomorphism originally comes from mathematics. It indicates two arrows that "have essentially the same structure and [...] there is no need to distinguish between them" (Encyclopedia Britannica 2007). In organizational sociology it was originally used by Hawley (1968), whom DiMaggio and Powell cite, to describe a process that "forces one unit in a

population to resemble other units that face the same set of environmental conditions” (DiMaggio and Powell 1983, p. 149). Therefore, it was an appropriate name for the phenomenon they wanted to explain.

DiMaggio and Powell were able to identify three types of processes that caused an isomorphic effect to the members of an organizational field. The first is coercive pressure, which is exercised when societal actors place formal or informal demands on an organization to change its structures. Hence, in this case, an organization changes because standards of behavior or elements of structure are imposed on it externally. For instance, the reason all firms have to create accounting departments or adopt anti-discrimination policies is that the government expects them to pay taxes and comply with predominant cultural expectations on diversity.

The second isomorphic force is labeled as mimetic process. When faced with uncertainty, some organizations emulate the structures and the behavior of other organizations which are perceived as successful in the field. In this case, the need to adopt an acceptable behavior or structure is not imposed externally, as in the case of coercive pressure. Rather, it is recognized by individuals who are part of an organization. DiMaggio and Powell cite the examples of a wide variety of organizations, such as television stations, governmental agencies and even local arts councils. They argue that individuals with executive responsibilities in all these types of organizations have consciously sought time and again to copy models of successful structures. Some even consulted professional advisors on how to make the necessary changes.

DiMaggio and Powell dub the third and last isomorphic force as normative. This type of force is exerted by members of the same profession, who abide by common standards of behavior as a result of their common educational background and professional socialization.

When these professionals operate in different organizations, they tend to impact different organizational structures in the same way. Hence, the practices of accounting departments in different firms are not determined by the management of those firms but rather by the standards and norms of the accounting profession.

Each one of the three forces has its own logic and *modus operandi*. What is common among them is that they make organizations conform to the expectations of their environment. Because these expectations tend to be similar for the members of the same organizational field, all the organizations that belong to one tend to adopt similar structures. Thus, the degree of homogeneity among them increases. However, homogeneity does not imply that all organizations become identical. In fact, Kondra and Hinings (1998) point out that structural variation among the members of a field is not only persistent but it also means that isomorphic pressures will continue to be exercised. Indeed, there is no point in discussing the structural convergence of identical organizations.

The theory of isomorphism has been used extensively in the field of organizational sociology. It has been employed to generate hypotheses for a wide variety of issues, ranging from the uniform format of college textbooks (Levitt and Nass 1989) to the international spread of ISO 900 standards (Guler, Guillén, and Macpherson 2002), but the largest part of this literature concentrates on non-profit and for-profit organizations (Frumkin and Galaskiewicz 2004). Mizruchi and Fein (1999) conducted an extensive study of the use of the theory, and they found that the original article by DiMaggio and Powell has been cited at least 160 times. In addition, Mizruchi and Fein found that most of these studies tend to concentrated specifically on the impact of mimetic pressures, which they attribute to a tendency among North American

organizational sociologists to emphasize cognitive decision-making over intergovernmental power and coercion.

## **2.2 THE THEORETICAL CONTEXT**

### **2.2.1 The New Institutionalism**

The theory of isomorphism emerged in the context of the literature on the new institutionalism (Hall and Taylor 1996; Immergut 1998; March and Olsen 1984), the school of thought that rekindled the interest in the role of social and political institutions after a period of intense attention to the study of behavior (Powell and DiMaggio 1991). Moreover, the theory of isomorphism follows the tradition of sociological institutionalism, which along with the rational choice and historical institutionalisms form the three main strands of the new approach to the study of institutions (Hall and Taylor 1996). All three strands share a conviction in the importance of institutions for shaping social life. Moreover, all three agree that institutions are important because they constitute restrictions to the behavior of societal and political actors. However, each strand holds a different set of ideas about the nature and functions of institutions. Consequently, each one draws a different conclusion not only about the role of institutions in society, but also about why institutions are created and how they evolve. In this section, I examine the differences of the three institutionalisms comparatively and I situate the theory isomorphism in the conversation among them.

The three institutionalisms can be understood as three different conceptions of the relationship between agency and structure (Hay and Wincott 1998), that is, how institutions

influence actor behavior and *vice versa*. To begin with, sociological institutionalism tends to emphasize the primacy of structure over agency. It construes institutions not only as formal rules, procedures and norms, as the other two institutionalisms do, but also as cognitive scripts and moral templates (Hall and Taylor 1996; Meyer and Rowan 1977; Zucker 1977). Hence, on the one hand, institutions restrict and shape human behavior. On the other hand, they also determine the preferences of actors which function in the context of these institutions, by molding those actors' value system and cognitive perceptions. In this sense, they bestow legitimacy upon societal and political orders. Put differently, for sociological institutionalists actor preferences are endogenous to institutions. Moreover, sociological institutionalists have paid particular attention to how institutions, as elements of culture, influence the structure of formal organizations (Meyer and Rowan 1977; Powell and DiMaggio 1991; Zucker 1988).

The sociological approach's perception of institutions as cultural phenomena contrasts sharply with its polar opposite, namely, rational choice institutionalism, the proponents of which sees institutions as the outcome of rational and strategic behavior (Scharpf 1997; Shepsle 1989; Tsebelis 2000). Rational choice institutionalism construes institutions as formal rules and procedures. Actor preferences are formed outside of those institutional structures. In other words, actor preferences are exogenous. In fact, institutions reflect those independently formed preferences. Furthermore, institutional structures are put in place deliberately, as the result of strategic calculations. They constitute solutions to collective action problems. As such, not only do they facilitate interaction, but they also constrain behavior. Hence, rational choice institutionalism maintains the primacy of agency over structure.

Historical institutionalism lies between the two "extreme" positions presented above. As far as the nature of institutions is concerned, historical institutionalists are divided into two

camps, which Hall and Taylor (1996) have labeled as the “calculus” and the “culture” approaches. On the one hand, followers of the “culture” approach perceive institutions as formal structures which act as vessels of normative and cognitive scripts (March and Olsen 1989; 1996). They tend to side with sociological institutionalists because they recognize the cultural properties of institutions. Yet, at the same time they diverge from the sociological institutionalist paradigm because they do not consider institutions to be elements of culture in themselves. On the other hand, thinkers who follow the “calculus” approach also perceive as formal rules or structures. However, they tend to agree with rational choice institutionalists that strategic and rational calculations are important in shaping institutions (Pierson 2000). Besides their common perception of institutions as formal rules and structures, what primarily unites the two camps is the belief that once institutions are in place they shape the preferences of the actors who are bound by them. Thus, in effect, historical institutionalism perceives actor preferences as endogenous to institutions. Therefore it accepts the primacy of structure over agency.

How do the three institutionalisms explain institutional creation and change? Given their divergent perspectives on the relationship between structure and agency, as well as on the nature and function of institutions, each of the three institutionalisms answers this question differently.

Among the three versions of institutionalism, the rational choice tradition has the most actor-oriented approach for explaining why institutions are created and how they evolve. In a nutshell, for rational choice thinkers, institutions are formed as the result of purposeful action by societal actors and their evolution reflects the shifts in the preferences of those actors (Shepsle 1989). By contrast, for the proponents of the sociological approach, institutional evolution is equated with change in cultural expectations and is reflected on organizational structure. Change can occur either over time, as cognitive scripts and moral templates evolve or are replaced by

new ones, or across space, as they spread to new societal contexts (Meyer and Rowan 1977). In either case, institutional changes are beyond the control of specific actors. Instead, institutional evolution is the outcome of rather diffuse societal processes. Hence, the rational choice and sociological approaches contrast sharply on whether humans can manipulate institutions. We can deduce further that while rational choice institutionalists see the creation of institutions as the result of purposeful human action, sociological institutionalists largely take them for granted and therefore do not provide a clear account of how they are created.

Just like its sociological cousin, historical institutionalism also tends to take institutions as given. Therefore, it lacks a coherent approach to explaining their creation. This lack of coherence is further exacerbated by the ontological division between the two camps that comprise this approach. Despite their differences, however, both camps are united in their understanding of institutional evolution which is expressed in the concept of “path dependency.” This term refers to the notion that institutions tend to perpetuate themselves by favoring certain societal actors. Historical institutionalists contend that these actors will tend to support existing arrangements either because they are perceived as appropriate or as beneficial to them, depending on which of the two camps they belong to. In other words, institutional evolution is not the outcome of an open-ended process. Rather, it is conditioned by the institutions already in place.

In addition, historical institutionalists tend to identify two ways in which institutions evolve. More specifically, change can occur either abruptly at “critical junctures,” that is, change is the outcome of an extraordinary event after long periods of stability (Collier and Collier 1991; Katznelson 2003) or it can incrementally over a long period of time, without necessarily being obvious (Streeck and Thelen 2005; Thelen 2004). In both cases, evolution is

caused by the adjustment of actors to new historical realities, but at the same time it is also constrained by their normative and cognitive rigidities or rational calculations, depending on which ontology a given historical institutionalist subscribes. Hence, just like rational choice institutionalism, historical institutionalism sees change as the outcome of actor preferences, but only up to a limited degree. At the same time, however, it agrees with sociological institutionalism's claim that actor preferences are conditioned by institutions themselves.

How does the isomorphic logic fit into the preceding theoretical classification? Isomorphism is a theory of institutional change, which is rooted in the tradition of sociological institutionalism. As such, it seeks the reasons for change in the cognitive and normative scripts which are present in the environment of the entities which are subject to transformation. In fact, the three types of isomorphic pressures are mechanisms through which environmental demands are channeled to organizations and cause change. They transform predominant ideas about how an organization can or should be into specific structures. To return to an earlier example, by pressuring organizations to adopt anti-discrimination policies, governments become conduits of predominant societal views which value the equal treatment of people with diverse backgrounds.

By contrast, isomorphic processes pose a direct challenge to the rational choice argument on institutional change. As we saw in the beginning of the section, this was the intention of DiMaggio and Powell; they were disputing the efficiency axiom of those who advocate the rational behavior of organizations. The isomorphic theory is "irrational" in the sense that societal actors respond to cultural demands when they contemplate change. Isomorphic logic does not deny that actors propagate change as a result of a thought process. Yet, the preferences that inform this thought process are not determined by a calculation of cost and benefits. Such a calculation would aim at increasing efficiency, which is not the case. Rather, actor preferences

for change are determined by the perceptions of legitimate behavior which are present both in the field and in the society more generally.

Lastly, isomorphic theory shares similarities with the “culture” approach of historical institutionalism. Although it is not explicitly mentioned, the logic of isomorphism is compatible with the notion of “path dependency.” Isomorphic change is caused because organizations either adopt or impose new structures, which they perceive as legitimate. Yet, change does not take place in a vacuum. The organizations that accept or impose change aim at maintaining their position relatively to other actors in the field. Hence, isomorphic rationale takes into account the asymmetrical relationships among organizations. By doing so, it explains why specific cognitive or normative patterns are channeled through the three isomorphic processes instead of others. Moreover, it clarifies how the adoption of these patterns tends to privilege certain organizations over others.

### **2.2.2 Institutional Transfer Literature**

Institutions are major components of political life. As a result, political science has been fertile ground for research which is based on the premises of the new institutionalism. Indeed, the volume of political science literature which has been inspired by all three strands of the new institutionalist paradigm is vast. In fact, research has indicated that governmental organizations are actually more susceptible to isomorphic pressures because of their need for public legitimacy (Frumkin and Galaskiewicz 2004). Therefore, although the isomorphic theory was originally developed in organizational sociology, its institutionalist foundations lend it explanatory potential for the study of political institutions as well. More specifically, it is a theory of change

which can illuminate how political systems evolve as a result of pressures from their immediate environment to adopt new institutions.

In this study, coercive, mimetic and normative pressures are perceived as vehicles for the transfer of institutions, perceived as organizational forms, from one system to another. These transfers are justified as legitimate by the specific actors which initiate and advocate them. The main condition for the three forces to yield results is that the political systems among which they are exercised need to maintain relations and depend on each other. Otherwise, the homogenizing effect of coercion, imitation and normative pressure cannot be observed. This condition is equivalent of an organizational field in DiMaggio and Powell's original formulation. Put differently, the theory cannot explain similarities between political systems which are independent of each other.

Hence, first, coercive pressure is applied when certain political actors in one political system, such as a national government or the military, are in a position to impose certain institutional arrangements on another. Second, a political system succumbs to mimetic pressure when it adopts institutions which have been developed elsewhere and are recognized as effective in dealing with a particular problem, which its current institutions are not in a position to solve. It is important to stress the distinction that while mimetic pressures are produced by actors which are located inside the political system that accepts an institutional transfer, coercive pressures originate in other systems. Third, normative pressures are exercised by the members of elite groups, such as "epistemic communities" (Haas 1992), which share a set of norms, such as the members of the same profession, and operate in multiple political systems. The members of those elite groups are driven by their shared background of norms and generally accepted

practices to put pressure simultaneously on the different political systems in which they operate to adopt similar solutions to the same problems.

Thus, on the basis of sociological institutionalist premises, isomorphism can help us understand how the belief that an organizational form is legitimate can contribute to its transfer from one system to the other. Only forms which are perceived as successful or culturally desirable are copied between political systems. Moreover, because of its compatibility with historical institutionalism, isomorphism allows us to comprehend why among legitimate organizational forms some but not others are singled out for transfer. That is, only those forms are selected which help maintain or advance the positions of certain actors in a political system.

Hitherto, research on how political systems evolve in response to influence by their environment is consolidated into two distinctive approaches, namely, the “actors pulling in” and the “goodness of fit” paradigms (De Jong, Lalenis, and Mamadouh 2002). Both are concerned with political systems primarily at the nation state level and both conceive the environment as consisting of other nation states. In addition, both seek to discover the reasons why institutional elements, such as policies, programs and organizational structures are transferred from one political system to the other and what makes such a transfer successful. However, each perspective highlights different elements of the process of institutional transfer and as a result the two come to different conclusions about what is important for a successful transfer.

On the one hand, as its name implies, the “actors pulling in approach” emphasizes the critical role played by political actors in transferring institutions from one country to the other. In one widely cited study of this type, Eleanor Westney (1987) examines the conscious efforts of Japanese elites to copy Western administrative practices during the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> century. In the same vein, Wade Jacoby (2000) focuses on the interaction

between elites and civil society organizations to explain the success or failure of the transfer of educational structures and industrial relations from the USA to West Germany after World War II and from West to East Germany after unification. In his well known book *Asian Power and Politics*, Lucian Pye (1985), explains why the cultural predispositions of elites and masses in Asia prevent Western notions of authority and governance to take root in that part of the world. Numerous other researches have focused more specific issues of policy transfer between nations and the role of policy makers in those transfers (Dolowitz and Marsh 2000).

On the other hand, the main position of the “goodness of fit approach” is comprised in the notion that the compatibility of cultural elements and systemic structures between the host and donor country increases the probability of a successful adoption of a foreign institution. In this vein, the compatibility of legal cultures has been used to explain the success or failure of the transfer of legal instruments between countries (Örücü, Attwooll, and Coyle 1996; Watson 1974). Reversing this rationale, Claus Offe (1996) has argued that the transfer of Western democratic institutions to the post Communist countries of Central and Eastern Europe will require significant adaptations because of the differences in civic culture between East and West.

One of the most prominent concepts in the “goodness of fit” tradition is that of “families of nations” (Castles 1993). Countries with common historical roots, similar legal systems, congruent cultural values or a combination of these elements can be thought of as constituting members of the same family (Castles 1993; Lalenis, De Jong, and Mamadouh 2002). Thus, for instance, in one classification Western European countries are divided into Anglo-Saxon, Scandinavian, Germanic and Napoleonic on the basis of their constitution, state society relations, degree and type of decentralization, as well as public administration and policy style (Loughlin 1994; Loughlin and Peters 1997). The “goodness of fit” approach does not rule out the

possibility that a successful institutional transfer may occur between dissimilar countries or even that structural similarity guarantees success. However, when two or more countries belong to the same family, the chances of success for an institutional transfer between them increase significantly.

This discussion of the two perspectives on institutional transfer denotes that while the “actors pulling” approach emphasizes the role of agency, the “goodness of fit” model emphasizes the importance of structure. Yet, this difference is not based on different ontologies. In fact, most studies on institutional transfer employ a combination of structural and actor-related factors in their research design. The difference is mostly a function of the analytical emphasis each approach chooses to place on either agency or structure. In addition, both the “actors pulling in” and the “goodness of fit” approaches follow the rationale of historical institutionalism. Specifically, either consciously or unconsciously, both contain an element of “path dependency.” In the case of the “actors pulling” approach, the probability that one or several political actors select and “pull in” a foreign institution, as well as the “pull’s” probability of success, depends on how it fits not only with the interests but also with the cultural expectations of those actors. In the case of “goodness of fit” approach, path dependence is guaranteed by the compatibility of the new institutions with the existing one. The ones that do not fit will either adjust to the conditions of their new host or they will be aborted eventually.

The logic of isomorphism is compatible with the “actors pulling in” approach and provides an alternative to the “goodness of fit” rationale. First, it does not deny the significance of political actors in either encouraging or blocking institutional transfers. Quite on the contrary, isomorphic pressures are exercised through such actors. Moreover, it highlights the importance of culturally desirable structures in determining those actors’ preferences. Second, it provides an

alternative the idea of compatibility of political systems in order to explain the success or failure of a transfer. Instead, it focuses on the relations that connect the systems together. Put differently, it does not rely on structural similarities to define the members of a “family.” Rather, a “family” is composed of political systems that are dependent on each other. Concentrating on relations rather than on systemic features has the potential to provide an explanation for why transfers may succeed between countries that do not belong in the same family or why transfers between the members of the same family may not be successful or occur at all.

### **2.2.3 The European Union Literature**

In this section, I contend that isomorphism can be employed to shed light on a particular political phenomenon. Specifically, I explain how I can use the theory to explain aspects of European integration, namely, the set of processes that gave birth to the European Union (EU) and contribute to its continuing evolution. Currently, the Multi-Level Governance (MLG) and the Liberal Intergovernmentalism approaches are the two main theoretical paradigms that seek to explain European integration. In essence, each constitutes a different approach to institutional change. Each one represents a different view of what drives the evolution of the structures of the EU. Because isomorphism aims at explaining institutional change as well, it can contribute significant insights to this debate, especially by drawing on the views of the MLG approach. Before I can explain how this is possible, however, I need to provide a short description of these two main approaches to the understanding of the EU.

The intergovernmental approach has been developed within the political science subfield of international relations. It has spawned out of the broader theoretical perspective of neoliberal

institutionalism. This perspective questions traditional realist and neorealist theories and recognizes the role of international institutions and regimes in constraining the behavior of nation states and in facilitating their interaction on the international scene (Keohane 1984; 1988). A specific strand of the neoliberal institutionalist approach, which has been labeled as Liberal Intergovernmentalism, has been employed to explain the phenomenon of European integration. Exemplified in the work of Andrew Moravcsik (1991; 1993; 1998), Liberal Intergovernmentalism perceives the EU and its evolution as the outcome of a “two level game” (Putnam 1988) between domestic demands and intergovernmental politics in the EU arena. Hence, for the proponents of this approach, the interests and strategies of nation-states which are members of the EU drive European integration. Because the intergovernmental approach emphasizes the importance of actors external to the European institutions and their interests, it mirrors the rational choice institutionalism logic, although this is not done consciously (Rosamond 2000).

The MLG approach paints a much less parsimonious picture of EU evolution. MLG is successor to the neofunctionalist approaches (Haas 1958; 1964; Lindberg 1963), which perceived supranational institutions as autonomous actors, the preferences of which were independent of those held by member-state governments. In fact, for neofunctionalists, the preferences of supranational actors were the motors that drove European integration. MLG shares the neofunctionalist view that supranational institutions are significant autonomous actors, but at the same time it differs from it, by recognizing that member-state governments are also important in driving integration forward. However, for MLG, the significance of member states preferences increases disproportionately during limited periods of “cataclysmic” change, particularly when the Treaties, the constitutional documents of the EU, are revised. The rest of the time, that is,

during periods of regular decision-making, the voice of each member-state government is not but one among many, including those of supranational institutions. Thus, some of the most prominent proponents of MLG (Hooghe and Marks 2001; Marks, Hooghe, and Blank 1996) reconstruct the neofunctionalist argument by recognizing the significance of every-day policy-making within the context of EU rules, which is seen as the main arena where EU integration moves forward in small but decisive steps. Despite the smallness of those changes, their cumulative effect on the shape the EU takes is tremendous.

Hence, for MLG, both member states and supranational institutions drive European integration, but the intensity of their influence varies across time. Moreover, unlike both the intergovernmental approach and its theoretical ancestors, MLG does not focus on the big moments of change in the history of institutional evolution of the EU, but rather on more mundane aspects of every day policy-making.

The assumption behind MLG, which not coincidentally has been developed in the subfield of comparative politics, is that the EU is not a *sui generis* system, as the neofunctionalist and intergovernmental approaches imply. Rather, the EU resembles conventional national polities. In fact, some of the pioneering works that follow this school of thought tend to compare politics of the EU with politics in nation states and they are concerned more specifically with the policy-making function of the EU (Héritier 1996; Majone 1994; Pollack 1997; Sbragia 1992; Scharpf 1988). At the same time, however, the governance approach is not blind to the fact that the EU system is more complex than most national polities. On the contrary, it recognizes the EU polity as a hybrid of intergovernmental relations and regular policy-making functions (Rosamond 2000).

Just like research in comparative politics more generally, the governance approach to the EU has been influenced by the new institutionalism (Pollack 1996). In fact, most of the literature that is based on MLG premises follows the logic of historical institutionalism. Indeed, regardless of whether they follow the “calculus” (Pierson 1998) or the “culture” approach (March and Olsen 1998), MLG-inspired researchers conceive the evolution of the EU as path-dependent. The preferences of national or supranational actors for the evolution of EU institutions, conceived as organizations, decision-making rules or policies, are conditioned by the institutions that are already in place in the EU. Thus, for example, the intergovernmental Treaties constrain regular decision-making by creating the rules of the game, but at the same time the policies and procedures that are produced by regular policies create expectations about the future shape of the Treaties.

As I discussed earlier in this chapter, the isomorphic logic is inspired by sociological institutionalism and complemented by normative historical institutionalism. Specifically, isomorphism’s main contribution to the study of the EU is that it provides a set of mechanisms, through which supranational and national actors transform normative and cognitive scripts into specific organizations. While national and supranational actors may be constrained by existing institutions, they can nevertheless be subject to influence by cognitive scripts and normative templates, which can actually provide the impetus for change. In the case of this study, evolving ideas about public accountability provided the main incentives for the adoption of two new organizations.

In the context of the EU literature, there have been some attempts to use the theory of isomorphism, mostly within the context of “Europeanization,” that is, the notion that nation-states participation in the EU has had a homogenizing effect on their policies (Featherstone and

Radaelli 2003). Hence, Radaelli (2000b) interprets the role of EU institutions in encouraging policy transfers between member states as agents of isomorphic pressures and Pedersen (2006) examines how the model of Independent Regulatory Agencies is spread among EU member states as a “cognitive script” through isomorphic forces. Lodge (2000) employs isomorphism to explain the “Europeanization” effect on German competition and public procurement policies, while Dimitrakopoulos and Passas (2004) use the theory to explain how Greek policies have been altered as a result of Greece’s participation in the EU.

What all the studies on isomorphism in the EU have in common is their interest in isomorphic effects on member states as a result of their participation in the EU. This study is interested in filling a gap in the literature by examining the opposite effect, namely the consequence of isomorphic pressures on the EU itself. More specifically, this study relies on isomorphic theory to answer the following questions: Is the EU becoming more similar to its member states? What is the role of ideas about public accountability shared by individuals who work both in the EU and in member-state in shaping the EU? How are these ideas used by specific actors in order to maintain and promote their positions in the EU institutional edifice?

### **2.3 ACCOUNTABILITY**

The concept of public accountability is pivotal for this study. The European Ombudsman (EO) and the European Court of Auditors (ECA), the two organizations on which the study concentrates, each is composed of a set of practices and structures, all of which contribute to the accountability of European Union (EU) officials. Moreover, as I will discuss in more detail in the following chapters, the importance a number of diverse actors placed on public

accountability served as one of their principal motivations to exercise the isomorphic pressures that resulted to the establishment of the EO and the ECA. However, accountability has different meanings. In this section, I discuss those different meanings, I present the main mechanisms through which it is realized and outline the specific conception of accountability on which this study relies.

At the most basic level, accountability is a relationship between two parties, where one party holds the other “to account” for its actions. The relationship is asymmetrical, because the party that holds to account is provided with rights, while the party that is held accountable is burdened with obligations. However, as agency theory informs us, this unevenness only remedies a concomitant asymmetry in the opposite direction, whereby the account holder or principle delegates a function or authority to the party that is held accountable or agent (Kiewiet and McCubbins 1991b; Lupia and McCubbins 2000). Hence, the obligations that an accountability relationship entails for the agent, and the parallel rights for the principal, only counterbalance the privileges that the agent enjoys as a result of delegation.

This type of relationship can be observed both in the private and in the public domains of society. Public accountability sets obligations to agents that are governmental entities, whereas private accountability does the same to agents who are not. For example, in the private sector, shareholders hold members of a company’s executive board to account for the general management of the company, the price of the stock or for sales figures, while in public life the electorate holds the national or federal government accountable for the state of the economy or the effectiveness of policies. Although an accountability relationship is fundamentally the same in the private and public sector, at the same time it manifests itself in ways so particular to the circumstances of each of those two domains. Therefore, public and private accountability are

conventionally treated as two separate phenomena. (For a more detailed discussion on the differences between private and public accountability, see Mulgan 2003) As the preceding examples hinted, the discourse on the public version of accountability is concerned primarily with the needs of modern democratic governance, whereas the discussion of accountability in the private sector concerns primarily, but not exclusively, corporate governance.

This study is concerned exclusively with public accountability. The obligations and rights that a public accountability relationship involves are consolidated into specific routines, which constitute, in effect, accountability mechanisms. However, what those routines involve, and thus how mechanisms of accountability are perceived and constructed, is subject to different interpretations. Indeed, there are various typologies of accountability mechanisms. Day and Klein (1987) divide accountability into two broad categories, each one of which corresponds to a separate set of methods. The first is political accountability and it targets the governmental bodies and individuals that make decisions about the general directions and of a polity. The essence of this type of accountability is found in a “discourse of justification” for the decisions and actions taken by the institutions and individuals with delegated authority. In other words, the party subject to this type of accountability needs to be able to justify her actions convincingly to the party that holds her accountable. By contrast, managerial accountability entails the evaluation of the performance of the party that is held accountable, and it is based on the comparison of facts against pre-specified obligations and a code of conduct. Mulgan (2003) mirrors this distinction and identifies elections, legislative scrutiny of the executive, policy dialogue and control by the media as mechanisms of political accountability. Moreover, he points out a set of additional mechanisms, such as judicial review, audit bodies and ombudsmen, which perform a function equivalent to what Day and Klein call managerial accountability.

Behn (2001) identifies three categories of accountability mechanisms, depending on whether we want to stress fairness (process), performance (results) or financial results, while Oliver (1991) classifies accountability according to its institutional direction. More specifically, in Oliver's classification, accountability is labeled as political if it is directed toward the executive and legislature, legal, if it involves the courts, administrative, if it is performed by ombudsmen and auditing bodies, and public, if it involves scrutiny by the citizens.

In the aforementioned as well as other typologies, accountability mechanisms which are labeled as political target the holders of elected office, while the rest of accountability routines concern mostly public administration organizations and departments. Political and administrative mechanisms of accountability complement each other by targeting different components of the policy making and implementation cycle. Specifically, political accountability targets mostly decision-makers who are responsible for policy making, while administrative accountability is directed toward members of the public sector who are entrusted with the task of policy implementation. In addition, political accountability tends to be more diffuse, while administrative accountability tends to be more task-specific. Moreover, we need to keep in mind that administrative control is not entirely a-political. Information that surfaces as the result of administrative investigations reflects the behavior of political entities or individuals who are responsible for the administration of policy. Therefore, it can be used to hold elected office holders accountable. Taking this insight into account, this study concentrates on mechanisms of administrative accountability, which, however, have political implications.

One principal dispute that permeates the theoretical discussion on public accountability is whether an accountability mechanism, however it is classified, should include the right of the account holder to impose sanctions on the party that is held to account. Whereas there is general

consensus that the imposition of sanctions or the threat thereof, is not the only way to prevent elected or unelected government official from performing transgressions, there is disagreement on the degree to which the inclusion of rectification measures defines a mechanism of accountability. Hence, for example, on the one hand, Day and Klein (1987) and others (Harmon 1995; Jabbara and Dwivendi 1988) accept that forcing government officials to explain their actions in public is an instance of “holding to account.” This can occur, for instance, by increasing the transparency of government through the publication of reports or through the dialogue of the electoral process. On the other hand, Mulgan (2000; 2003) stresses the need of some type of retribution, such as an electoral loss or the imposition of a fine, as necessary to define a control mechanism as one of accountability.

Another debate questions the very nature of accountability as a relationship. In fact, the nature of accountability has been the subject of a long lasting dispute that started in the 1940’s between Finer (1941), who conceived accountability as a relationship which imposes external obligations on the entity or individual held into account, clashed with Friedrich (1940), who viewed accountability as the result of norms internalized by individuals. Not only do norms vest individuals with a sense of duty, but also prevent them from wrongdoing. There are echoes of this dispute still today. Richard Mulgan (2000; 2003), for example, maintains that while external constraints and internalized norms are so intertwined in reality that sometimes they are almost inseparable, the two have to be separated analytically. Hence, only the former qualify as accountability mechanisms, while the latter constitute an entirely different concept, that of responsibility. However, other theorists tend to conflate the two notions of external and internal accountability. Mark Bovens (1998), for instance, sees the aforementioned two conceptions of

accountability as two different variations of responsibility, while Romzek and Dubnick's (1987) classification of accountability includes both "internal" and "external" dimensions.

The current study does not seek to provide answers to the questions posed by the disputes on the punitive nature of accountability mechanisms and the nature of accountability. However, the different views expressed in those debates inform this study analytically. Hence, while the importance of personal responsibility (or internal accountability, depending on the terminology one chooses) is recognized, this study concentrates exclusively on relations among actors that are bound together with rights and obligations that structure accountability relationships. It is much more difficult to assume a clear position on the issue of the punitive character of accountability. The reason is that in modern democracies, the mere exposure in public of wrongdoing can have as much of a deterring role for legitimacy-conscious elites as a court ruling or demotion. However, the notion "holding to account" does imply some type of retribution to the principal and remedy to the agent.

### **2.3.1 "Police Patrols" and "Fire Alarms"**

In an influential paper about congressional oversights in the US, McCubbins and Schwartz (1984) distinguish between two mechanisms through which the US Congress oversees policy-makers. Matthew McCubbins and his collaborators call these mechanisms "fire-alarm" and "police-patrol" mechanisms of accountability (Kiewiet and McCubbins 1991a; McCubbins and Schwartz 1984). The first mechanism is a centralized system of controls through which the Congress seeks to find for itself how government agencies perform, and to what extent, the duties that have been assigned to them by Congress. This includes a number of instruments such as "commissioning scientific studies, conducting field observations, and holding hearings to

question officials and affected citizens” (McCubbins and Schwartz 1984, p. 166). Essentially, the Congress judges the performance of government agencies by examining samples of their work. Because this mechanism resembles the procedure followed by the police force, when officers are sent to patrol neighborhoods in order to potentially catch criminals, McCubbins and Schwartz call this mechanism “police patrol.”

The second oversight method is decentralized, and it involves the collection of information from those affected by government policies. Thus, the Congress has established “a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decisions [...], to charge the agencies with violating congressional orders, and to seek remedies from agencies, courts, and the Congress itself” (McCubbins and Schwartz 1984, p. 166). Because this method resembles the alarms that alert authorities when a fire breaks out, they call it the “fire alarm” mechanism.

Although ombudsmen and public audit bodies, the two types of organizations this study is concerned with, have been created in a different institutional context and satisfy different needs of accountability, I have included a brief discussion of these two mechanisms of accountability here only because of their descriptive value. Specifically, a “fire alarm” is an accurate analogy for an ombudsman, whereas the same is true for “police patrol” and auditing bodies.

## **2.4 RESEARCH DESIGN**

To sum up the argument thus far, the theory of isomorphism contributes to understanding the evolution of the EU for three reasons. First, because of its sociological institutionalist

foundations, it allows us to explore the role of cultural factors on the evolution of the EU as a system of governance. More specifically, it allows us to explore how isomorphic pressures transform normative templates and cognitive scripts into concrete institutional structures. Second, as a theory of institutional transfer, it defines the space where the impetus for change originates as a group of political systems which are interdependent, but not necessarily culturally similar. This is especially important for the EU, which is characterized by significant diversity on a number of different dimensions, such as religion, civic culture or dedication to public transparency. Third, isomorphic theory accepts the basic premises of the MLG approach, which relies mostly on historical institutionalist logic, but at the same time it increases the explanatory power of the governance approach by providing a comprehensive view of how cultural expectations as experienced by both national and supranational actors collude to produce change.

I would like to point out that the current study aims at explaining institutional transfer only to the extent that it involves formal organizations. According to a well cited definition, institutions are characterized by their “triadic” nature (Offe 1996). They constitute rules which regulate interaction among a set of actors. Yet, they are enforced by “third” parties which are not involved directly in the interaction. While, thus defined, institutions can take a variety of forms, such as government policies or programs, this study is concerned only with one subset of institutional arrangements. Specifically, it concentrates on institutions that are embedded in formal organizations. Organizations are perceived as clusters of institutions, which are defined by the goal-directed activity they generate within socially constructed boundaries (Aldrich 1979; Aldrich and Ruef 2006). In other words, organizations rely on institutions in order to achieve a specific goal, and they distinguish themselves from their environment not only by determining the conditions of membership but also by assigning specific roles to their members.

In order to assess the analytical value of the theory of isomorphism for the EU, I rely on the case study method. I apply the theory on two specific instances of institutional evolution in the EU, which involved the establishment of the European Court of Auditors and the European Ombudsman. Both bodies are institutions of the EU, which have equivalents in the member states. Moreover, they are both elements of accountability mechanisms. The European Court of Auditors performs independent control of public finances, while the European Ombudsman investigates citizen complaints on the conduct of public officials when they implement policies and the laws. Hence, both the European Ombudsman and the European Court of Auditors belong to the same class of institutions, namely independent bodies with the responsibility to perform objective control of government. Therefore, I expect them to be the outcome of similar cognitive and normative pressures, concerning accountability of government.

Not only does the selection of these two cases allows me to control for the type of organization on which the theory is applied, but by choosing organizations which are part of the EU structure, I am also able to control for the environment in which they were established. Granted, the establishment of the two organizations took place almost twenty years apart, during which many significant changes occurred in this environment. However, one of the greatest advantages of the case study approach is that it allows the researcher to consider a large array of factors that may have contributed to the observed outcome and assess the relevance explanatory value.

For each case, I trace and then analyze the historical developments that led to the creation of the respective organization, primarily on the basis of official documents and secondarily on elite interviews. Then I examine which of the three isomorphic forces were necessary conditions for its adoption (Dion 1998; George and Bennett 2005). Let me clarify that I do not expect to

prove that whenever any or all of the three pressures are observed a new institutional transfer takes place, but that whenever it does take place this cannot happen without observing any of the three pressures. I assess the necessity of each of the three pressures by two standards. First, I examine which isomorphic pressures (if any) are observed in each case. Second, I expect to find that there is a causal link between the exercise of that pressure and the observed outcome, namely the creation of an independent organization responsible for public accountability.

How is the logic of isomorphism operationalized in the case of the creation of the European Ombudsman and the European Court of Auditors? Lapses in public accountability are a problem we encounter in all political systems. However, accountability poses a particular challenge to the EU, because of the latter's supranational character. As evidence of coercive force I expect to observe that member state governments push for the addition of the ombudsman and the court of auditors to the institutional edifice of the EU as a solution to the accountability problem. I expect to see those actors exercise pressure on decision-makers in the EU for the adoption of the institution of the ombudsman as a desirable solution to this problem. In my observations, I treat only supranational actors as part of the political system of the EU. Member state governments are seen as forces external to the institutional edifice of the EU. As evidence of mimetic pressure, first I expect to observe the identification of the accountability problem by EU actors. Lastly, as evidence of normative pressure I expect to point out that the members of professional groups which are dispersed across different member states and the EU, such as national ombudsmen or public auditors in national capitals, exercised pressure for the adoption of the institution of the ombudsman and the court of auditors by the EU.

### **3.0 THE EUROPEAN OMBUDSMAN**

The aim of this chapter is to explain why the European Ombudsman (EO) was established in the European Union (EU). The institution of the ombudsman has been a staple of the governmental infrastructure in Sweden for centuries. From the beginning of the twentieth century, however, it began spreading to other countries, first in Scandinavia, then in Europe and around the world. The creation of the EO was part of this wave of worldwide dissemination of the ombudsman as an institution. In this chapter, I explore the dynamics that made the transfer of this institution to the system of the EU possible. I begin with a description of the institution of the ombudsman, an account of its historical development and a classification of its different variations. This information aims at familiarizing the reader with the rather unknown institution of the ombudsman. It also illustrates the potential appeal of the institution to decision-makers in the EU and its member states. I proceed with a profile of the EO. Then I shall present the facts on the history of the creation of the EO. I conclude with an evaluation of the thrust of the theory of organizational isomorphism (DiMaggio and Powell 1983) in explaining these historical events. The evaluation includes a methodological assessment of whether each of the three types of isomorphic pressures satisfy the condition of necessity for the successful establishment of the new institution.

### 3.1 DEFINITIONS OF AN OMBUDSMAN

The term ombudsman typically refers to an institution of the state that investigates citizen complaints against public administration while the term also applies to the individual who performs that role.<sup>1</sup> Although the ombudsman functions within a constitutional or other legal framework, the effectiveness and the direction of the institution rest to a significant degree upon the experience, the personality, and the dynamism of the individual who occupies the position. In his duties, the ombudsman is supported by small staff, which constitutes the “office of the ombudsman.” In most cases, an ombudsman’s office is led by one individual, but in some cases the same office can have two or more ombudsmen, each one with a different area of responsibility.

An ombudsman aims at finding solutions by reaching compromise between members of the public and public administration departments and organizations. In this sense, the ombudsman is a mediator. Because the institution of the ombudsman has been designed to launch investigations mainly upon the request of the public, it constitutes a “fire-alarm mechanism” of accountability (McCubbins and Schwartz 1984). As an extra-judicial means for solving citizen problems, an ombudsman has the advantage of avoiding the long delays and high cost of cumbersome judicial procedures. Thus, not only do ombudsmen provide the citizen with an additional channel to seek redress for administrative problems, but they also ease the

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<sup>1</sup> The word “ombudsman” is the Swedish word for “representative.” The term is used unchanged in many languages as well as in English when in singular form. Although the proper plural in Swedish is “ombudsmannen,” conventionally in the English language the form “ombudsmen” is used to indicate more than one ombudsman. Yet, an ombudsman can be either a man or a woman. The term “ombudswoman” is used sometimes to refer to a female occupant of that position and the more gender-neutral “ombudsperson” is used often as well. However, the terms “ombudsman” and “ombudsmen” are most commonly encountered in the literature. In this chapter, following the convention in the literature and for the purpose of brevity, I use the terms “ombudsman” and “ombudsmen” and refer to them with male pronouns whenever I refer to the ombudsman as an institution and not to specific individuals who hold the position.

workload of the courts, by settling cases which otherwise would have to come before a judge. An ombudsman's jurisdiction does not include the holders of elected office. Hence, government ministers and members of the legislature are not subject to the ombudsman's inquiries. Those individuals and the institutions they belong to are subject to political control, which is exercised either by political bodies (mainly, the legislature and its committees) or directly by voters during elections (Mulgan 2003).

Although the tools ombudsmen have in their disposal differ among political systems, usually they do not have the power to impose sanctions, even if they find that the law has been breached by a public official. However, they may have the right, or even the obligation, to report a breach of the law to the appropriate law enforcement authorities. The most extensive powers in this respect belong to the Swedish ombudsman, who is legally provided with the option to work with a public prosecutor to bring a case to the courts. Even in this instance, however, from a legal point of view, it is up to the discretion of the prosecutor to bring a case to the court. In general, not only is such authority rarely provided to an ombudsman, but even when it is, it is deliberately exercised sparingly and it is meant to provide more leverage to his core function of mediation.

The most important tool in the hands of an ombudsman is information. Ombudsmen retrieve information for cases brought before them by launching investigations. Each ombudsman and his staff collect information either by contacting public officials directly for explanations or by requesting documentation, both of which public servants are legally obligated to provide. The ombudsman uses this information as basis for judgment, in the same way a judge would. However, while a judge relies on the careful juxtaposition of one-sided information provided by the prosecution and the defense to make her or his judgment, the

ombudsman relies on facts which have been retrieved through his own impartial investigations with the help of his staff. Since an ombudsman plays the roles of both the prosecution and the defense, independence and impartiality toward both the source and the target of each complaint are critical for his work. Absence of these two attributes from an ombudsman's investigation leads to loss of credibility by either or both sides of a complaint. In other words, because ombudsmen do not have coercive powers, members of the public and the administration respect their decisions as objective and impartial.

Besides collecting information, an ombudsman also disseminates it to the public, either through publicly accessible reports or by responding to citizen requests for information on specific cases. In this way, the ombudsman increases the transparency of administration. Moreover, the publication of information on maladministration is an important source of power for the ombudsman in two ways. First, it can act as a catalyst for settling cases already in front of the ombudsman, because public officials are pressured to pay attention to those cases in order to avoid damage to their public reputation. Second, the potential publication of cases of maladministration by the ombudsman can function as a deterrent for future breaches of the law by public officials.

An additional source of power is that an ombudsman works closely with an elected political body, which can be either the legislature or the executive government. Either of these two institutions possesses extensive political powers, which the ombudsman lacks. Although the ombudsman himself is always independent of political influence, he is free to yield influence on the political body with which he is affiliated in two ways. First, an ombudsman is obligated to report the progress and/or the outcome of the cases he undertakes to his governmental partner, which may then deem it necessary to take action. For example, if the ombudsman has received a

significant number of complaints against a specific public service organization or about the application of a specific aspect of the law, then the legislature or the relevant government ministry may deem it necessary that it takes action to discipline the organization or re-consider the problematic piece of legislation. Second, the ombudsman can make suggestions directly to the political body with which he works most closely for modifications to a law, whenever he may perceive that the law may be outdated, ineffective or conflicting with other legislation.

Thus, the ombudsman has a very distinctive role in a political system as one among the many available mechanisms of public administration accountability. At the very core, an ombudsman is a mediator. His ultimate goal is not punishment of the perpetrator. This is a goal sought by other institutions of the state, such as the courts, law enforcement, or even legislative committees. The office of the ombudsman is not intended to substitute or even antagonize such mechanisms of public administration accountability. Instead, the role of the ombudsman is to be a flexible, inexpensive and readily accessible supplement to those mechanisms.

### **3.2 TYPES OF OMBUDSMAN**

The institution of the ombudsman is the product of evolution in the Swedish political system. Its precursor was established for the first time by King Karl XII in 1713 under the title of *Chancellor of Justice* (Justitiekansler). The Chancellor's role was to exercise oversight on the royal court's officials on behalf of the monarch, when he was out of the country for war (Eklundh 1994). When Sweden became a constitutional monarchy in 1809, the new constitution established a second office, that of the *Representative of Justice* (Justitieombudsman), which would eventually evolve into what we call ombudsman today. Reflecting the balance of powers

in a democratic polity, the holder of the new office of the Representative of Justice was appointed by and acted on behalf of the legislature, the *Rikstag*, with a mandate to check the executive. Specifically, he was assigned the task to protect citizen rights against public administration. Both institutions still exist in Sweden. The Chancellor is an official who checks the civil service on the behalf of the executive, whereas the Representative of Justice or Ombudsman is an official who acts on behalf of the legislature. Yet, as democracy consolidated in the Swedish kingdom, the Ombudsman's importance increased and the Chancellor's waned, in spite of the fact that the Chancellor's tasks were reformed to resemble those of the Ombudsman.

Hence, the evolution of the Swedish political system produced not only the institution of the ombudsman itself but its two main types as well (Gellhorn 1967). On the one hand, there are legislative ombudsmen, appointed by and reporting to the legislative branch of government. On the other hand, there are executive ombudsmen, appointed by and reporting to the executive government. In the modern world, ombudsmen who are affiliated with legislatures are the most common. Their strong association with representative assemblies provides them with enhanced democratic legitimacy. The issue of legitimacy notwithstanding, the distinction between legislative and executive ombudsmen is more legal than substantive. Modern executive-affiliated ombudsmen see themselves as independent protectors of citizen rights against public administration just like their legislative counterparts. A prominent example is that of the *Mediator of the Republic* (Médiateur de la République) in France (Bardiaux 1994).

An additional distinction is between general and specialized ombudsmen. General ombudsmen deal with complaints that concern all departments of public administration for the implementation of all policies. Although a significant number of general ombudsmen exist in modern democracies, the expansion and complexity of the modern state has resulted in the

proliferation of ombudsmen with specialized mandates. The specialization has either a functional or a regional basis. On the functional dimension, some ombudsmen have competence to process complaints that target specific administrative units, such as the military, the police and tax collecting authorities, or specific policy areas, such as environmental protection, health and pensions. On the regional dimension, specialized ombudsmen are responsible for processing complaints that concern the authorities in a specific geographical area only, such as a particular municipality or region. The ombudsmen of the Italian regions constitute an example of this type. Often an ombudsman may be specialized on both dimensions, such as the Scottish police ombudsman.

The past two decades have seen the creation of some additional types of ombudsman. These new variants diverge to such a significant degree from the classic definition, that in fact one could argue that they constitute an entirely different kind of institution. Although this study is not concerned with them, they are nonetheless worth including in a classification of ombudsmen. The new variants also function as mediators. However, the targets of their investigations are entities other than national or regional bureaucracies.

One important novelty has been the establishment of ombudsman-type institutions which are entrusted with the authority to investigate human rights violations by governmental authorities. This type of ombudsman is encountered mostly in emerging democracies and countries or regions with a human rights violation record (Giddings, Sládecek, and Bueso 2000) (See Table 1 in the Annex for examples, particularly in Latin America and Eastern Europe). It has been argued that even institutions which are attached to intergovernmental organizations and receive complaints against national governments on the application of international human rights treaties, such as the United Nations High Commissioner for Human Rights, the Council of

Europe Commissioner for Human Rights and the Organization for Security and Cooperation in Europe High Commissioner on National Minorities, also belong to this category (Reif 2004).

An additional relatively new trend is that large corporations have created ombudsman positions, which are staffed by individuals who process either consumer or employee concerns, and they aim at alleviating organizational conflict (Kolb 1987; Rowe 1987; Ziegenfuss, Rowe, and Munzenrider 1993). In fact, with the passage of the Sarbanes-Oxley Act of 2002 in the United States, many companies established ombudsman offices to fulfill the requirement of a confidential venue to submit ethics concerns. Companies such as Starbucks, American Express, and Tyco have created such positions (Lerner 2005; Singhania 2004).

### **3.3 SPREAD OF THE OMBUDSMAN**

The institution of the ombudsman gained in popularity around the world during the second half of the 20<sup>th</sup> century. Sweden's example was originally followed by Finland in 1919, Denmark in 1954, and Norway in 1963, which established a number of general and specialized ombudsmen themselves. New Zealand was the first English-speaking country to establish an ombudsman office in 1962. Soon thereafter, in 1969, the state of Hawaii founded the first ombudsman on US soil. Beyond Nordic Europe, the first European ombudsman offices were first created in France (*le Médiateur de la République* in 1973) and the U.K. (*Parliamentary Commissioner for Administration* in 1967).

Around the world, dozens of ombudsman offices were created and adapted to local governmental and administrative realities in two main waves. The first wave comprised mainly the 1950s and 60s and affected established liberal democratic regimes for the most part, whereas

the second wave took place in the 1980s and 90s and involved mostly emerging democracies (Roy and Giddings 2000). The two factors which are most often credited for pulling the ombudsman out of Nordic obscurity are the active promotion of the institution of the ombudsman internationally by the first person to hold the position in Denmark and its discovery by the Anglophones via New Zealand (Gellhorn 1967; Rowat 1985). At present times, more than one hundred different nations around the world have ombudsmen at the national or sub-national levels (See tables 1 and 2 in the Annex). In Europe, today all members of the EU have an ombudsman at the national level, with the exception of Italy, which keeps ombudsmen only at the regional level (Table 2 in Annex) and Germany, where the Petitions Committee of the Bundestag plays an equivalent role.

Although the Swedes invented the original, it was its Danish adaptation that has been more widely imitated in Europe and elsewhere. Both models are elected by and report to the national legislature. In general, however, the Danish ombudsman follows tactics which are milder, compared to those of the Swedish prototype (Gellhorn 1967). The Swedish ombudsman has powers which approximate those of a prosecutor (without however making him one), rather those of a mediator (Lane 2000). Here are some of the most important differences. First, while the Danish ombudsman will review cases only by plaintiffs who have exhausted all other administrative mechanisms of redress, the Swedish one will take up even the cases of plaintiffs who have not done so. Hence, in a way, the Danish ombudsman has a function roughly equivalent to that of an appellate court. Second, the Danish ombudsman will not launch investigations into the legality of decisions which have been made by the judiciary, while in fact this type of cases make up the main bulk of the Swedish ombudsman's workload. Third, although both types of ombudsman have the right to perform random and unexpected inspections

on public officials, the Danish ombudsman only uses this tactic rarely, while the Swedish one does so frequently. Fourth, according to the Swedish model, all information which is made available to the ombudsman is accessible to the public, as in fact is the case for all government institutions in Sweden. This is not the case for the Danish ombudsman, who is subjected to restrictions in regard to the release of information to the public. Fifth, while in Denmark one person fulfills the role of the ombudsman, in Sweden the office of the ombudsman is shared by more than one individuals who hold the office simultaneously. Generally, the personal effect of the individuals who occupy ombudsman positions is extremely important for the way the institution is perceived by the public and the administration and consequently for their effectiveness as mediators. However, this is particularly critical in the case of the Danish ombudsman because the position is highly personified. Last, as I already mentioned in the previous section, the Swedish ombudsman can potentially work with public prosecutors to bring a case to the courts. This is not an option for the Danish ombudsman, although he can co-operate with law enforcement authorities if necessary.

The main reason for these differences is that while Danish public administration is part of a ministerial hierarchy, the Swedish one is independent of ministerial control (Allardt 1981; Gress 1988; Micheletti 1984). More specifically, while government ministers in Sweden are politically accountable to the legislature, they are not held responsible for the actions of civil servants. In fact, Swedish civil servants bear personal responsibility for their actions. On the contrary, in Denmark government ministers can be held accountable for the actions of public administrators by the legislature as well as the ombudsman. Hence, in the Danish system the independent control the ombudsman performs exists alongside political control. The absence of equally rigorous political control mechanisms in the Swedish system makes the need for

providing the ombudsman with more potent means of investigation and control more imperative. Since most political systems in Europe resemble the more hierarchically structured parliamentary Danish system, it appears more natural that they would be inspired by the milder Danish type of ombudsman.

The function of the modern ombudsman as a mediator, rather than a prosecutor, follows from the Danish adaptation as well. In a decentralized political system, such as that of Sweden, the citizen needs a vociferous advocate to defend his rights against government institutions, which are not subject to political control. Although Swedish civil servants are characterized by a high degree of integrity and professionalism, in the absence of political ramifications, the fear of prosecution as a result of an ombudsman investigation can act as the equivalent incentive of last resort for compliance to potentially deviant civil servants. On the contrary, in a hierarchical political system, such as that of Denmark, the Swedish tactics are less necessary. Since political control is the main way in which civil servants are held accountable, the ombudsman can be more effective in representing citizen rights to the administration, if he is perceived as someone who approaches public officials in good faith and not as having the responsibility of imposing punitive measures.

### **3.4 PROFILE OF THE EUROPEAN OMBUDSMAN**

The EO is one of the newest institutions in the EU and works closely with the European Parliament (EP). As a parliamentary ombudsman, the EO shares many similarities with his Danish counterpart. The EO was officially established as a community institution by the *Treaty on European Union* of 1991 and his office opened to the public in September 1995. In the

twelve years since then, two individuals have held the position of EO. Mr. Jacob Söderman was the parliamentary ombudsman in Finland until he was elected first EO by the European Parliament in the summer of 1994. In April 2003 he was succeeded by Nikoforos Diamandouros, who until then occupied the position of national ombudsman in Greece. The seat of the EO is in Strasbourg, but it maintains an office in Brussels. Since its establishment, the office of the EO has experienced a steady rise in the number of complaints it receives from citizens of the EU (See Table 3 in the Annex). In addition, as a newcomer to the EU institutional edifice, it has been consolidating its position in the web of relations among EU institutions as well as between EU and national bodies.

The main tasks of the EO, as well as the procedure of his appointment, are outlined in Article 195 of the European Community Treaty (EC Treaty), and in the EP's *Rules of Procedure* (European Parliament 2006b), which include the *Statute of the European Ombudsman* as an attachment (European Parliament 2006a). The EO is selected by the EP and has rank equivalent to that of a judge at the European Court of Justice. His selection follows immediately after the election of a new EP and his mandate lasts for the duration of the parliamentary term, which is four years long. He can be dismissed by the European Court of Justice only at the request of the EP. The Committee on Petitions is the Parliamentary body which manages relations between the EP and the EO. Hence, among all of the MEPs it is the members of this committee which are most actively involved in the appointment of the EO and in receiving and processing the EO's annual and specialized reports. Although the EO is affiliated with the EP, his office constitutes an entirely independent institution with its own constitutional basis in the EU Treaties and is completely independent in its actions. Nobody is allowed to interfere with the EO's investigations, including member state governments or other Community bodies.

The EO's main task is to mediate in disputes between EU institutions only and either EU citizens or employees of those institutions, regarding instances of maladministration. Exceptions to his authority constitute the European Court of Justice and the European Court of First Instance, but only when they act in their judicial capacity (Statute, Article 1.3). For example, the EO can be asked to mediate in issues of judicial staff payment and promotion, but he cannot be involved in complaints which challenge decisions by one of the courts. Complaints against national authorities for their failure to apply EU legislation are not included in his mandate either. Hence, in his investigative and mediating capacity, the EO is a specialized ombudsman because he focuses only on administrative action at one layer out of the many that comprise the system of governance in the EU. In addition, because the jurisdiction of the EO covers exclusively the activities of supranational institutions, he does not fit in the classic classification of regional and national ombudsmen.

Complaints of maladministration can be submitted to the ombudsman either directly or through a member of the EP. In addition, the EO has the right to conduct investigations on his own initiative. This happens especially when an instance of maladministration has been exposed by the media. This was the case, for example, when it was revealed in the press that the European Anti-fraud Office (OLAF) had claimed that a German journalist had bribed OLAF officials to obtain information on anti-fraud investigations (Parker 2005). The Statute of the EO clearly states in Article 8 that a complaint can be brought to his attention only after all other available administrative means of redress have been exhausted by the complainant in the organization against which the complaint has been lodged. Only after a complaint has been received and deemed to lie within the EO's jurisdiction, does the EO launch a fact-finding investigation. Then, every year the EO is obligated to submit a report to the EP, which is

basically an account of all the cases the office of the EO has handled during the preceding year. It includes information on the nature, the geographical origin of the complaints, as well as a description of the various cases and their outcome.

Like all his counterparts around the world, the EO has privileged access to a wide range of information. More specifically, the EO has the right to request documents relevant to the case from other Community institutions and from the member states through their permanent representatives to the EU (effectively, their ambassadors to the EU). He can also obtain information which originates in member states but is in the possession of other Community institutions, subject to member states' consent. The public can request access to all of those documents, with the exception of those which are covered by laws of secrecy. Moreover, documents which are produced by member states need the approval of the member states before they are publicized (European Parliament 2006a, Article A.2).

Hence, although the access of the EO himself to information is quite extensive, his ability to divulge this information to the public is not unconditional. Nevertheless, the ombudsman makes a significant amount of information available to the public, which otherwise would not have been informed. However, because the EO functions as a mediator, a certain degree of discretion toward the national and supranational institutions he investigates is a necessary component of his work. Discretion does not compromise his investigations but allows him to gain the trust of national governments or other Community bodies. Since the EO cannot impose any sanctions, lack of trust would make co-operation with these other institutions extremely difficult.

The EO's positioning at the supranational layer in a complex system of multilevel governance has resulted to establishing relations with other Community institutions with similar

functions and with peer institutions at the national level. The EO's main partner at the EU level is the Committee on Petitions of the European Parliament. Besides the fact that the Committee on Petitions is the one assigned by the EP to maintain relations with the EO, the two share the task of receiving complaints by the public in regard to the application of EU legislation. However, there is a very strict division of labor between the two, which is enshrined in the EU Treaty. On the one hand, as we already discussed, Article 195 of the EC Treaty gives the EO the mandate to process all complaints that involve the application of Community law by Community institutions, namely, maladministration by supranational bodies. Article 194, on the other hand, assigns the Petitions Committee with task of processing complaints that involve the application of Community legislation by member state administrations. This division of labor is justified by the fact that the EP is elected directly by member state nationals and in no way does it preclude co-operation on the handling of complaints. In fact, the two can forward complaints to each other, which have been erroneously submitted.

In addition to working closely with the EP, the EO has established close links with peer institutions in the member states. The legal basis for this activity is provided in Article 5 of the *Statute of the European Ombudsman* (European Parliament 2006a). This coordinative role for the EO reflects practical considerations, and in particular the realization that Community legislation is implemented on the ground by national authorities. As a result, national ombudsmen have a significant role to play in safeguarding the implementation of this legislation. Moreover, the complexity of issues which often involve multiple national jurisdictions and the adjacent need for uniform application of EU law across all member states make the need for co-operation among ombudsmen important.

The office of the EO has been engaged in establishing close cooperation with ombudsmen at the national level. In 1996 the EO established a network of national ombudsmen and similar bodies,<sup>2</sup> which was originally known as the *Liaison Network*, but was renamed as the *European Network of Ombudsmen* in 2004. As EO officials repeatedly stressed in interviews, there is no hierarchical relationship between the EO and national ombudsmen. All members of the network are equal. However, the office of the EO, apart from having provided the leadership for the establishment of the network, functions as the secretariat of the network and has a major role in providing logistical support. In addition, the EO functions as a main source of expertise on EU legislation. Currently, the network has 25 members, one from each member state. More specifically, it includes the national or federal ombudsmen of 23 countries, the Petition Committee of the German Bundestag and the ombudsman of the Italian region of Valle d' Aosta which acts as representative and coordinator of the regional ombudsmen in Italy.<sup>3</sup> A parallel network of local and regional ombudsmen has been created as well.

The *European Network of Ombudsmen* has two related goals. The first is to facilitate the transfer of complaints regarding the application of EU legislation to the appropriate body. Very often complaints are submitted to the EO, when they lie in the jurisdiction of a national ombudsman, or they are submitted to the wrong national ombudsman. This is frequently the case, particularly when the problem involves authorities in more than one countries. The members of the network can forward complaints to each other or instruct the complainant to re-direct his or her complaint to the appropriate body at the national or supranational level (See the second column in Table 3 in the Annex for the amount of complaints forwarded by the EO to his

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<sup>2</sup> The term “similar bodies” refers to the members of the network from Germany and Italy, which are not national ombudsmen.

<sup>3</sup> Italy does not have an ombudsman at the national level.

national counterparts). The second role the role plays is educative. More specifically, national ombudsmen can inform each other about cases on which they have worked and which are related to the application of Community law. When their peers encounter similar situations, they can draw on their experience and deal with the problems more effectively and efficiently.

The network has a number of different means of communication at its disposal. First, each member organization has a designated liaison officer. These officers meet twice a year to discuss issues of common interest to their respective institutions. Second, every two years a member-state ombudsman collaborates with the EO to organize a seminar, in which all the members of the network participate and discuss issues of common concern. Third, an electronic network, which has been appropriately named “EUOMB-National,” has been created through which member institutions can communicate about cases and share other concerns related to the application of Community legislation on a daily bases. This network looks and works like an internet chat-room. It is therefore the more immediately available forum of communication among the members of the network. Fourth, there is an on-line newspaper, the “Ombudsman Daily News,” which is updated daily with news and information on the participants of the network and the cases they work on. Last, there is the “European Ombudsman-Newsletter,” which is published every April and October.

Hence, the EO has two main functions. One is investigative and it is based in the EU Treaties, while the other is coordinative and it is based on the EO Statute. Both these functions are the product of historical developments that contributed to its creation, as we will see in the next section. However, while the former is common to many of this institution’s counterparts around the world, the latter is unique to its supranational positioning. In his classic investigative capacity, the EO belongs to the family of parliamentary specialized ombudsmen which have

been created in the Danish mold. Hence, he is transparent but not unconditionally so, he receives complaints only after internal administrative means of redress have been exhausted, he does not challenge judicial decisions and the effectiveness of the office depends to a significant degree to the single occupant of the position. At the same time, however, the EO performs an additional coordinative function which is unique to him and can be attributed to his positioning in a system of supranational governance.

### **3.5 HOW THE EUROPEAN OMBUDSMAN WAS CREATED**

This section aims at answering two main questions. The first is how and why was the institution of the ombudsman created at the EU level? The second question is how and why did its two main functions develop, namely, investigating citizen complaints and cooperating with peer institutions? As I will demonstrate, the answers to both of these questions are related to the exercise of isomorphic pressures. The functions the EO is currently performing and the division of labor with partner institutions both at the national and the supranational level have been the outcome of the interests and the debates of the main actors that contributed the creation of this institution. These interests, which had been at work for almost twenty years, were to a large degree consolidated at a historically opportune moment, that is, when the Treaty on European Union was signed in 1991. It took three major attempts by various actors for the EO to be created.

When the idea of a European Community ombudsman was first introduced in 1974, the institution had already started to travel out of Scandinavia and it was becoming increasingly popular around the world. At around the same time, there was an increased debate about the

need for ombudsmen in the Council of Europe, which is a separate international organization from the European Communities/EU. After a meeting between national ombudsmen and members of the Legal Affairs Committee of the Council of Europe in April 1974, the Parliamentary Assembly of the Council of Europe voted for a Recommendation which urged its member states to proceed with the creation of ombudsmen as a guarantee for citizen rights. The ombudsman would function as a supplement to the already existing judicial mechanisms.

An important development in the European Communities themselves was that they had just enlarged to a membership of nine, with the addition of Denmark, Ireland and the United Kingdom.<sup>4</sup> Out of the original six members, only France had an ombudsman at the national level, the *Mediator of the Republic* (*Médiateur de la République*), which had been instituted only one year earlier, in 1973, while Italy had two regional ombudsmen in the regions of Liguria and Tuscany. With the accession of the new members, two countries with the experience of an ombudsman were added to the Communities. Denmark's national legislature, the *Folketing*, had appointed a *Parliamentary Commissioner* in 1954, and the British House of Commons had appointed a *Parliamentary Commissioner for Administration* in 1967. Moreover, a regional ombudsman had been active in Northern Ireland since 1969.

All three ombudsmen that existed at the national level in the Community at the time were independent in the sense they were not allowed to be influenced by other organizations in performing their duties. However, there were some significant differences among them. A common feature of the British and Danish *Parliamentary Commissioners* is that they were appointed and closely affiliated with the national legislature, as their name implies. In contrast, the French *Médiateur* was appointed by and enjoyed a close relationship with the executive

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<sup>4</sup> Until 1974, the Communities consisted of their six original members: Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

branch of government, and more specifically the Council of Ministers (*Conseil des ministres*). Moreover, whereas the Danish *Commissioner* was approached directly by citizens, the *Médiateur* and the British *Commissioner* accepted complaints only by deputies of the national legislature.

### **3.5.1 Early Moves**

The original impetus for the creation of an ombudsman in the European Communities came from the EP. In particular, the *European Conservative Group* (ECG) in the EP (i.e. the grouping that included Conservatives and Christian Democrats), took the lead in this issue. In September 1974, the ECG addressed the issue briefly for the first time in a policy document which was published under the title “The European Community: Our Common Cause.” Subsequently, the subject of creating a European Communities ombudsman came up on several occasions. Soon after the publication of the original policy document, Lord O’Hagan, a conservative Member of the European Parliament (MEP), raised the issue in connection with the accessibility to the citizen of the European Commission, the body with the ultimate responsibility for the implementation of Community policies. He submitted two written questions to the Commission in December 1974 (European Parliament 1974) and January 1975 (European Parliament 1975c). In its responses, however, the Commission stated that it considered its internal redress mechanisms and the EP petition procedure as adequate for dealing with citizen complaints, and dismissed the calls for additional measures, such as the creation of an ombudsman.

Yet, MEPs continued to raise the issue in the following years. In January 1977, center-left MEP Mrs. Winnie Ewing from the UK raised the issue with the Commission during Question Time (European Parliament 1977a). In the same month, Socialist MEP (from

Luxembourg Mr. Willy Dondelinger submitted written questions on the same issue to the Commission (European Parliament 1977b) and the Council (European Parliament 1977c). It is noteworthy that this set of questions presented the issue for the first time as one of protection for citizen rights. More specifically, the questions revealed doubts about the adequacy of the current system for protecting the rights of citizens while the decisions affecting their lives which were made by Community institutions increased. As we shall see later, a similar argument, presented in a different context and supported by different actors, played a critical role for the eventual creation of the EU. At this early phase however, the Council dismissed the need for an ombudsman, again judging that the rights of the citizens were adequately protected by the Community institutions. The Commission insisted on the adequacy of its own internal mechanisms for dealing with citizen grievances, but this time it cautiously left the door open for the possibility of appointing an ombudsman in the future.

It is important to note as well, that at this early stage the creation of an ombudsman of the European Communities was seen mainly as a parliamentary official with the responsibility to address concerns in relation to the activities of the European Commission, as the institution responsible for the implementation of Community legislation. Beyond this, there was no specific vision of what a potential ombudsman would look like. It was merely presented as an idea.

### **3.5.2 The Walker Smith Report**

By March 1978 enough momentum had been built in the EP for appointing an ombudsman of the European Communities. As a result, the *Bureau of the EP*, the highest body with responsibility on administrative matters in the EP, asked the *Legal Affairs Committee* to put together a report on appointing an ombudsman of the Communities. Sir Derek Walker-Smith, a conservative

MEP from the UK, was assigned with the task of drafting the report, which bears his name (European Parliament 1979a). It was submitted to the *Legal Affairs Committee* for discussion on March 22, 1979.

The report recommended the appointment of a “Parliamentary Commissioner,” who would advise citizens which body, either at the national or the supranational level, would be the most appropriate to address for problems that stem from the application of Community legislation. The drafters of the report refrained from recommending that the “Commissioner” be assigned any investigatory power, which typically constitutes the core of an ombudsman’s work, because they felt that such a move would disrupt the balance of power among Community institutions. In other words, the report only envisaged a coordinative and no investigative role for the ombudsman. The drafters indicated that an ombudsman with more extensive powers could only be the outcome of Treaty revision. Essentially, the “Commissioner” would be an arm of the EP and it would derive its authority from the EP power.

There are a number of points which are worth stressing in regard to the Walker-Smith Report, because they indicate some new trends which persist in the future debate on the creation of an ombudsman of the Communities. First, by contrast to the previous debates in the EP, which focused mostly on the accountability of the Commission, the report put the role of an ombudsman explicitly in the context of the entire policy implementation structure of the European Communities. The report clearly states that failures occur in the application of Community legislation by both supranational and national administrative units, which need to be addresses with extra-judicial mechanisms. The second point is related to the issue of jurisdiction. In particular, throughout the report the issue of division of competence between the national ombudsman-type institutions and a Community one often comes up. In fact, the

opinions of the ombudsmen of France, Denmark and the UK, the only ones that existed in the Communities at the national level at the time, were requested by the drafters of the report and attached to it for consideration by the *Legal Affairs Committee*. National jurisdiction is indeed a very sensitive issue all Community institutions have to deal with at different stages in their evolution, and it is actually quite expected that it should come up. Third, there is the issue of the nature of the powers of the new body, namely whether it will have the power to investigate or only to co-ordinate the activities of already existing national and supranational mechanisms of citizen redress.

The balance among these three concerns is fluid and will change over the following years leading to the eventual creation of the ombudsman in 1992. At this early stage, however, the report opted for the solution of a coordinating role for the ombudsman. Hence, they eschewed provoking disputes on the issue of jurisdiction which would likely follow at the recommendation of investigatory powers for the Commissioner. Yet, it is clearly stated in the report that the ideal solution would be the creation of an ombudsman with the power to investigate both national and supranational authorities in regard to the application of European Community legislation.

The *Legal Affairs Committee* voted overwhelmingly in favor of the report on March 22, 1979 after having received a positive opinion by the *Political Affairs Committee* in October 1978. Soon thereafter the report was submitted to the plenary of the EP as a resolution and it was approved (European Parliament 1979b). However, in spite of these very encouraging moves, the position of an ombudsman of the European Communities was not created at this point.

### 3.5.3 The Adonnino Reports

The normative foundations for the second attempt to create an ombudsman of the European Communities were laid during two of the first conferences of heads of state and government, which later would be known as the “European Council.” In December 1973, the Copenhagen summit adopted a *Declaration on Europe’s Identity*, which mainly aimed at identifying the principal tenets of the Communities’ approach toward the rest of the world. In outlining the Communities’ basis for a common foreign policy, the declaration also stressed some core internal elements of the European identity, which included respect for the individual and human rights, as well as the principles of representative democracy, social justice and the rule of law. The December of the following year, the Paris conference of heads of state and governments issued a *communiqué* which called for the possibility of creating “special rights” for the citizens of the member states as a result of their participation in the European Communities. These two texts reveal some early moves by the Communities to conceive themselves as more than a commercial bloc and provided the seeds of what over the next twelve years would develop into a European citizenship, which was legally grounded for the first time in the *Treaty on European Union* in 1991. Moreover, the resolve for the protection of human rights by community institutions in the pursuit of the Community objectives was re-affirmed in a common declaration by the EP, the Commission and the Council on April 5, 1977 (Commission of the European Communities, European Parliament, and Council of the European Communities 1977).

The second attempt for the creation of the EO echoed these concerns regarding the special rights of European citizens. In June 1984, the European Council at Fontainebleau, France recognized the need to make the EC more approachable to the citizens of the member states. In its conclusions, it recommended that an *ad hoc* committee be formed, which would be composed

of member state government representatives, and which would report to the Council. The reports would include concrete steps and measures with the aim of making the EC more relevant to the citizen's everyday experience. Hence, the *ad hoc* committee on "A People's Europe" was formed. It was headed by Pietro Adonnino, a former Italian MEP, and produced two reports, which were presented to the European Council of Brussels in March 1985 and to the European Council of Milan in June 1985 (Commission of the European Communities 1985).

The committee made a number of suggestions which concerned issues such as culture, youth, education and sport, but also the administration of policies and the creation of EC symbols. Among other suggestions, these reports first put forward the idea of creating a uniform EC passport, as well as an EC anthem and an EC flag. In the name of equal representation of all the citizens, the reports also recommended uniformity in the procedures for the election of the EP among member states. In addition, they urged closer cooperation among the diplomatic missions of member states in third countries.

The second report is of particular significance for the creation of the EO. The drafters of the report recommended that moves be made by the EP to establish an independent ombudsman at the European level, in addition to strengthening the right of petition by the citizens to the EP itself. In order to provide a normative foundation to these recommendations, the committee made direct references to the declarations by the European Councils in Copenhagen and Paris ten years earlier. Unlike the Walker-Smith Report, the second Adonnino Report made more assertive suggestions for the basic functions of the proposed institution. Hence, the EO would not only co-ordinate already existing mechanisms of citizen redress, but it would also investigate complaints regarding the implementation of Community legislation. It was also recommended that the EO submit regular reports to the EP "on his investigations, conclusions and

recommendations.” The issue of competence between the EO and its equivalents at the national level was not explicitly addressed in the second Adonnino Report. Yet, just like in the case of the Walker-Smith report, the EO would be a “complement” to the EP. The intention behind this suggestion was not to disrupt the existing balance among the major Community institutions by creating a completely new one. However, certain members of the Committee expressed reservations as to whether that was possible.<sup>5</sup> It was feared that an institution with investigatory powers was likely to increase the powers of the EP. Because such a development would alter the existing institutional balance, those members of the committee suggested that a new institution with investigative powers be created only after a Treaty revision by member state governments.

The member state governments approved the reports, and in fact they urged the Commission and the EP, as well as national authorities, to proceed with their implementation as soon as possible. Even if the recommendation for an EO were part of a larger package of measures, the approval of the conclusions by the *ad hoc* Adonnino Committee marks the first time that the issue of the creation of an EO gains the backing by an intergovernmental forum. Up until that point, the efforts for the creation of an EO were mainly concentrated in the EP. However, just like the case of the Walker-Smith report, the Adonnino Committee recommendations about the ombudsman never came to fruition. The actual implementation of the specific provisions regarding the ombudsman was abandoned, because it faced insurmountable legal problems. An EP resolution dated June 14, 1985 (European Parliament 1985), which makes reference to the Adonnino Reports, reveals that “the existing differences between national legal systems and the Community legal system make it impossibly purely and simply to transpose the institution of the ombudsman into the Community system.” As a more

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<sup>5</sup> These reservations were explicitly mentioned in the report itself.

feasible alternative, in the same resolution the EP committed to strengthening the citizens right of petition to the EP. The legal complications argument was the reason cited by a representative of the Commission, when the question of the ombudsman was posed to him two years later during question time by Irish MEP Mr. Thomas Maher, an Independent (European Parliament 1987). Moreover, in his response, as in previous Commission communications, the Commission representative insisted on the adequacy of its own redress mechanisms which are available to the citizens.

#### **3.5.4 The Treaty on European Union**

The Treaties of the European Communities (henceforth, the Treaties) have the status of a *de facto* constitution because they provide the basic rules by which the Communities operate. Just like other international treaties, they are the product of intergovernmental agreement among states; in this case the member states of the Communities. Revisions of the Treaties have been exclusively the outcome of intergovernmental conferences. During those conferences, member states decide how to adapt Community functions to current realities. More fundamentally, they may also decide to change the basic direction of the Communities and the vision guiding them. Unlike secondary legislation, which is the product of normal Community procedures and which is applied more or less directly in the member states, a revision of the Treaties requires member state ratification. Hence, Treaty revisions are extraordinary events which constitute milestones in the evolution of the Communities, because they can alter the rules of the game significantly.

The third and successful attempt for establishing an ombudsman of the European Communities took place during one of those conferences. More specifically, in the years 1991 and 1992, intergovernmental deliberations took place for a new Treaty revision. The outcome of

those deliberations was the *Treaty on European Union*, also known as *Treaty of Maastricht*. This Treaty is more widely known for changing the name of the European Communities to the European Union and for setting up the procedure that led to the introduction of a common European currency, the Euro.

Unlike the first two, the third attempt has already been documented in the literature (Magnette 2003; Marias 1994a; 1994b), perhaps because it was the one which turned out to be successful. The current study, however, puts the events of this attempt in light of earlier developments and thus in a broader perspective. In addition, it links those events to a wider theoretical and analytical framework of institutional evolution.

The idea was introduced to the intergovernmental conference (IGC) with a letter by Felipe González, the Spanish Prime Minister. Spain had appointed its own national ombudsman almost ten years earlier, in 1981. The Spanish *El Defensor del Pueblo* (literally, Citizen's Advocate), as the ombudsman is known there, had proven to be quite an effective and popular institution (Retuerto Buades 1994). Therefore, the idea of creating an ombudsman at the Community level appeared particularly appealing to the Spanish government. In September 1990, four months after the original letter by González, the Spanish delegation submitted a formal proposal to the IGC, in which it was suggested that the *special rights*, which were afforded to the citizens of the member states by the Treaties, should be consolidated into a *European citizenship*.

The idea of *special rights* was not original. Already in 1973 and 1974, the official statements which had been produced by the European Councils of Copenhagen and Paris, respectively, recognized the special rights of the citizens of the member states. As we saw, these statements provided the normative basis for the Adonnino Reports and in that sense set the

normative framework for the second attempt for the creation of the ombudsman. In the early 1990s, those special rights related to the Single Market for the most part and they included, among other things, the right to move and reside freely in any member state, vote for representatives in the EP and local elections, buy and sell products and services across borders, etc.

However, the idea of consolidating these special rights into a comprehensive European citizenship was new. The citizens of the member states would also acquire a parallel citizenship of the new European Union. The Spanish proposal suggested that if the idea of European citizenship was adopted, extra guarantees would be necessary for the protection of the *special rights* of the *European citizen*, in addition to the judicial mechanisms and petitions procedure already available, mainly through the European Court of Justice and the EP Petitions Committee. An ombudsman who would accept complaints from citizens, it was argued, could function as this additional guarantee.

The Commission gave its endorsement to the Spanish proposal for a European citizenship in a paper published in October 1990 (Commission of the European Communities 1990). However, it did not make any reference to the need for an ombudsman at the Community level. This is not surprising in light of the Commission's reluctance to encourage the creation of the institution during the previous two efforts. However, during the same month, a Danish memorandum was submitted to the IGC, which endorsed the Spanish proposal and asked for an ombudsman to be created under the auspices of the EP.

In February and March 1991, Spain and Denmark submitted more detailed proposals to the IGC. These two proposals adopted quite different views on the position and the role of an EO. The Spanish proposal was quite ambitious. Not only did it contain a recommendation for

an EO, but the proposed institution would investigate complaints concerning the application of EC rules by both EU and national authorities. In addition, it recommended that all member states appoint an ombudsman or a body with equivalent functions. The EO would cooperate on its investigations with his national counterparts and it would coordinate their actions. As a result, the new institution would be in charge of a network of national authorities. Although it was not stated explicitly, a hierarchy was implied with the EO at the apex of the pyramid.

In comparison, the Danish proposal was much more attuned to the realities of the cohabitation of national and supranational institutions. It called for the creation of an EO as well, but restricted its investigative powers by limiting his jurisdiction only to the institutions of the EC. The proposal outlined the terms of the relationship with the EP, as well. The Danes, in line with their national experience, recommended an independent institution, which however would work closely with the EP. The Danish text contained no mention of relations with national ombudsmen.

A third proposal was submitted by the Commission in May 1991 (Commission of the European Communities 1991). This was the Commission's last attempt to avoid the creation of an ombudsman. The proposal made no reference to an EO. In contrast, the Commission, apparently still suspect of such a novelty, contained a recommendation for the creation of national ombudsmen, who would assist citizens defend the rights that derived from the Treaties.

The Luxembourg presidency had to draw a compromise among the different views (Marias 1994a). It appears, however, that the Danish proposal was the one that prevailed, because the text that was finally adopted by the IGC and made it into the final Treaty text on this issue closely resembles the text in the Danish proposal. The new institution would be an independent parliamentary ombudsman with authority to investigate complaints of

maladministration against Community institutions, excluding the courts, a main feature of the Danish ombudsman model.

### **3.6 ASSESSING THE DEVELOPMENTS**

There are three main issues around which the discussion on the institution of the EO centered in all three attempts for its creation. The first was the issue of functional jurisdiction at the supranational level. There was never a doubt that the EO would be concerned with complaints relating to the application of EC rules. However, such a mandate could create the problem of overlapping competences between the Committee of Petitions of the EP, which already accepted complaints for the same kind of issues. If a new institution was to be created that would accept complaints from European citizens, what would the division of labor between the new institution and the Petitions Committee be? A solution had to be concocted that would make each one of the two bodies fulfill a separate and meaningful role.

The second problem had to do with the geographical jurisdiction of the EO. Given the fact that many EC rules are applied by national authorities, the geographical jurisdiction had constantly been a significant point of contention. In particular, would the EO investigate national authorities or EC institutions only, especially the Commission, or national authorities as well? If national authorities would be included in the jurisdiction of the EO, a contentious issue in itself because it could be seen as compromising national sovereignty, what would the relations be between the EO and its national counterparts? In short, the first two questions had to do with who would receive complaints from citizens and about whom.

The third problem, the solution to which highly depended on the answers of the two earlier ones, had to do with the role of the EO as an investigator and coordinator. Would the EO simply advise citizens on the available means of redress at the national and EC level? Would he inform national ombudsmen and petitions committee on issues of EC law and coordinate their actions? Or would he make his own investigations as well? Would there be a combination between the advisory/coordinative and investigative roles?

The Treaty on European Union gave answers to most of these questions in Articles 194 and 195. In regard to the first question (functional jurisdiction), the Treaty contains a clear division of labor between the Parliament and the EO. Both the EP and the EO are expected to receive complaints for maladministration which related to the application of community legislation. However, on the one hand, the EP, and more specifically the Petitions Committee, was assigned to receive complaints about the EC law application by national authorities. In fact, the right to petition the parliament, which had been a custom until then, was enshrined in Article 194 for the first time. On the other hand, the EO would receive complaints that related to the behavior of the EC institutions only.

Concerning the question of geographical jurisdiction, the Treaty clearly constraints the mandate of the EO exclusively to institutions of the EC. Hence, the Treaty's answer to the third question is that the role of the EO is investigatory and those investigatory powers should be directed to supranational institutions only. Obviously, the Treaty reflects the concern of nation-states that a new supranational institution should not impinge upon their sovereignty. Hence, the coordinative function was left out of the final text. Yet, the issue of creating a coordinative role for the ombudsman had been recognized as a necessity, already since the Walker-Smith Report. Therefore, although no provision for such a function was made in the Treaty, an outlet was given

for its development in Article 5 the Statute of the EO, which is approved by the EP and the Council and therefore it is easier to revise because it does not require intergovernmental agreement. This solution allowed member states the feeling that they had relatively easy control over this function.

Practice showed that coordination of the EU and national ombudsmen was indeed necessary. Soon after the new institution came into existence, it started receiving a significant number of complaints, which involved the application of EC legislation but were not under the office's jurisdiction. However, these complaints could potentially be addressed by equivalent bodies at the national level. These complaints most typically involved claims from a citizen of a member state on the authorities of another, on the basis of benefits derived from the Treaties and secondary legislation, such as directives and regulations, which had been produced by the EU.

Although there was a legal provision in the Statute of the EO for coordination among the office of the EO and national peer institutions, there was no agreed operational framework. In order to remedy this discrepancy, Mr. Jacob Söderman, the first European ombudsman, invited the national ombudsmen and similar bodies which existed in the member states at the time to a seminar in Strasbourg in 1996. Representatives of EU institutions, including the Commission and the Committee on Petitions of the EP, were invited as well, to participate in the discussions. Besides the legal basis and the practical considerations, which were basic pre-conditions for such a move, the leadership demonstrated by the EO ombudsman was pivotal. This is hardly a surprise, since ombudsmen in general are very person-oriented institutions. The personality of the office-holder determines to a significant degree the style, rigor and direction of the action of the office.

In this case, the first person to hold the EO position played a significant role in shaping the coordinating role of the office. His previous experience as national ombudsman of Finland was important in this respect. Mr. Söderman had been exposed to ombudsman roundtables, which had been organized by the Council of Europe every two years since 1983. The roundtables included a host of different types of ombudsmen, including many local and specialized bodies from all over Europe. However, already in 1993, as the Finnish ombudsman he had invited the national ombudsmen of the member states of the Council of Europe for discussions on themes of particular concern to national-level bodies. It was this experience, which, as he revealed in an interview, he and his colleagues had found very useful, that he brought with him to the office of the ombudsman. The Strasbourg meeting decided the launch of cooperation among national ombudsmen, which eventually evolved into the coordinative role of the EO.

### **3.7 CONCLUSION**

What caused the creation of the EO? How can we explain this instance of organizational transfer? The theory of institutional isomorphism (DiMaggio and Powell 1983) can help us put the developments that led to the transfer of the EO to the EU in a broader analytical perspective. In this section I identify the three isomorphic pressures and the actors that exercised them. Moreover, for each type of pressure, I evaluate the effects of the three pressures in light of the historical information presented in the preceding section. Specifically, I assess which of those forces were necessary conditions for the observed outcome, that is, the founding of the EO. In order to assess necessity, not only do I identify whether the three isomorphic pressures were

present, but in addition I draw conclusions concerning their causal relationship with the observed outcome.

The institution of the ombudsman represents a set of practices that center around the concepts of impartiality and credibility. Therefore, it constitutes a cognitive script and more specifically a script for holding public officials accountable. Yet, its cognitive value did not immediately contribute to its transfer from the Swedish to other political systems. The reason was that originally the ombudsman did not possess any normative value beyond its native Sweden. To be sure, the ombudsman had been recognized as a successful model for governmental accountability in Sweden for a very long time, but this successful model was seen as inherently Swedish. As views about accountability changed in Europe and elsewhere in the industrialized world, by emphasizing more decentralized control mechanisms, the appeal of the ombudsman transcended the borders of its native land. Eventually, the institution was no longer perceived as a peculiarity of the Swedish system. The wave of its diffusion, which began in other Nordic countries in the early twentieth century and continued with increasing force during the subsequent decades, proves this point. In fact, the institution of the ombudsman came to be recognized as a model appropriate for democratic governance in political systems as diverse as the United States, which has a separation of powers system, the United Kingdom, which constitutes the classic parliamentary Westminster model and France, whose parliamentary model is characterized by a divided executive. As a result, these and other countries created their own ombudsmen (See Tables 1 and 2 in the Appendix).

At the time when the first discussions about the creation of the European Ombudsman took place, the process of diffusion of the ombudsman model had already begun and gained momentum. It was against this background that the three isomorphic pressures can be evaluated.

In fact, the type of pressure which was exercised temporally prior to any other was mimetic. As I discussed in the first chapter, this type of pressure is internal, because it is exercised by actors who are members of a system which accepts a new organizational form. The main agent of mimetic pressure in the EU was the EP, which as a supranational institution is an integral part of the Community institutional structure. Undeniably, the creation of a parliamentary ombudsman would increase the powers of the EP vis-à-vis the other European institutions. Although the EO was proposed to be an independent body from the beginning, it was also perceived as an arm of Parliament. Following the standard practice of parliamentary ombudsmen, the EO would report to the EP, thus providing it with information about other Community institutions; and leverage for scrutiny.

Moreover, the parliament initiated the discussion on the EO at a time when the democratic legitimacy of the Communities came to the fore, as the agenda of the Copenhagen and Paris Summits of 1973 and 1974, respectively, indicate. The EP was willing to capitalize on these concerns. Both in the original parliamentary questions and in the subsequent written reports, it was not unusual that references were made to the increasing popularity of the institution of the ombudsman around the world and the recognition that it contributed to democratic accountability. One gets the impression from this discourse that the backers of the ombudsman idea were eager for the European Communities to catch up with the rest of the democratic world.

Yet, the recognition of the value of the ombudsman institution by a supranational actor, such as the EP, and the pressure that this actor exercised to the system in which it belonged, namely, that of the Communities, was not enough by itself to produce the new institution. In this particular case, the enthusiasm demonstrated in the EP for the institution of the ombudsman was

checked by the Commission's reluctance to support any move for the creation of the EO. The failure of the EO to launch after the Walker-Smith and the Adonnino Reports, both of which were quite enthusiastic on the issue, are indicative of this fact. As the only initiator of Community legislation and in the absence of any input from the member states, the Commission's consent was critical if any measures for the creation of the new institution should be put on the table. However, this does not mean that the role of the EP was not critical. In fact, it was the Parliament that brought the issue of creating the ombudsman to the agenda. Therefore, mimetic pressures in this case were not only observed but eventually turned out to be necessary for the founding of the new institution.

The exercise of coercive pressure was also a necessary condition for the establishment of the EO. This type of pressure was applied by member-state governments, which are not part of the Community system, although they participate in it through its intergovernmental fora. It was when member state governments developed an interest in seeing the institution of the ombudsman in the European Communities and acted on it, that the EO became a reality. Therefore, the causal effect of coercive pressure is confirmed by the evidence. During the earlier years, the insistence and the enthusiasm demonstrated by the EP, an actor which is part of the supranational structure of the EU, did not suffice by itself to set mechanisms in motion that would craft the new institution. In contrast, the influence and insistence displayed by Spain and Denmark during the intergovernmental conference was the catalyst that made an idea, which had been introduced almost twenty years earlier in the EP, finally come to fruition.

The ombudsman is an institution which is found in democracies, and in the beginning the Communities were seen by the member states mainly as a regional trade block. It was when member states saw the Communities as a source of rights for the citizens of its members, that the

need for elements of democratic governance, such as the creation of the ombudsman gained significance and value. Before this paradigm shift occurred among member state governments, they had stayed uninvolved. The shift became obvious first in the deliberations concerning the Adonnino Report, but the new outlook did not produce any tangible results until the start of the intergovernmental conference for the Treaty on European Union.

Turning to the role of professional groups, we can conclude that it does not help explain the founding of the EO. In fact, no hard evidence of normative pressures was observed in the run up to the establishment of the new institution and consequently no causal effect could be observed either. National ombudsmen in Denmark, France, and the U.K. were consulted in the process, but they played more the role of spectators rather than active participants. Hence, normative pressure was not a necessary condition for the transfer of the institution of the ombudsman to the EU. Normative pressure can only explain the evolution of the institution itself during its early years and in particular the development of its coordinative role. Although there was significant pressure for the establishment of such a role of the ombudsman, in effect it was the professional experience of national ombudsmen that led to the creation of the EU network. The Council of Europe's ombudsmen roundtables had long prepared the ground for this development, by establishing norms, which were later applied in the context of EU governance.

Having analyzed the three major attempts for the creation of the EO, we come to the conclusion that among the three isomorphic pressures, two of them constitute necessary conditions for the observed outcome: mimetic and coercive pressures. Both were observed and both are causally related with the final outcome of organizational transfer. Specifically, mimetic pressures provided the impetus for change by setting the agenda for the transfer of a new

organizational form to the Community system, while the eagerness of member state governments to consent to the transfer eventually made the new organization possible. Hence, both pressures were necessary, but the one could not have produced the observed outcome without the other. It was when the normative expectations for democratic accountability converged both in the Parliament and the member states that the new institution became a real possibility.

Yet, the exercise of isomorphic pressures by itself cannot explain the observed outcome. The role of existing institutional arrangements was equally important, both in blocking and encouraging change. First, the principle of institutional balance among the institutions of the Communities prevented any change in the power equilibrium among them without reform of the Treaties. This was especially obvious in the case of the Adonnino Reports, when the views of member states and the EP were beginning to converge, but the legal impediment of institutional balance actually prevented any substantive move for change. Second, in the absence of a strong commitment by member states to the ombudsman during the earlier attempts, the Commission utilized its position as initiator of new legislation, including the proposal of institutional reform, in order to block the attempts by the Parliament. This is understandable, since new institution would subject the Commission to increased scrutiny and would elevate the status and competence of the Parliament more generally. Finally, it the process of Treaty revision allowed the new consensus between member states and Parliament on the need and importance of the ombudsman institution the opportunity to consolidate a new institutional balance, by revising the role of Parliament and creating the new role of the ombudsman.

#### **4.0 THE EUROPEAN COURT OF AUDITORS**

The European Court of Auditors (ECA) describes itself as the “financial conscience” of the European Union (EU), and it certainly is. Just like conscience in human beings, the ECA creates awareness among Community institutions and national governments as to whether the money of the Union is spent wisely or not. In fact, this analogy illustrates the role all public audit organizations, an institutional family to which the ECA belongs, play in their respective environments. However, the original European Communities, the precursors of the EU, were not endowed with a “financial conscience” from the very beginning. The Treaties that launched the three Communities provided for the establishment of an auditing body, but this organization fell short of established standards in public accounting. In the end, it was replaced by the ECA, which was designed to conform precisely to those standards. I argue that this development was a case of transfer of organizational forms to the EU from the regular public accounting practice in its member states. Moreover, I contend that the theory of organizational isomorphism (DiMaggio and Powell 1983) provides the theoretical template that allows us to understand why and how this transfer occurred.

I begin the chapter with a discussion of the type of institutions to which the ECA belongs, as well as a classification of these institutions, and their functions. I proceed to a presentation of the ECA, by placing it within the context of such classifications. This chapter concludes with a presentation and analysis of the events that led to the ECA’s establishment in light of the theory

of institutional isomorphism. As in the case of the European Ombudsman, I assess which, if any, of the three isomorphic pressures were necessary conditions for the observed outcome of organizational transfer by verifying whether they were present and, if so, whether they had a causal effect on the final outcome.

#### **4.1 SUPREME AUDIT INSTITUTIONS**

The ECA belongs to the family of Supreme Audit Institutions (SAIs). These are governmental organizations, which have constitutional or statutory responsibility to perform external control on the financial accounts of a country's central government. The typical mandate of a SAI can be summed up as monitoring whether the budget is properly implemented. SAI audit is external in the sense that it is performed by an entity which is independent of the authorities and organizations that implement the budget, and therefore it is not subject to bias and unsolicited influence.<sup>6</sup> Therefore, the credibility of a SAI relies heavily on its independence. An independent SAI contributes to accountability by providing reliable information about public revenues and expenditures to those governmental institutions which are responsible for safeguarding the implementation of the budget. Usually, those are the legislature and its relevant committees. Because, by definition, an independent SAI depends on its own resources to collect and dispense information on the activities of other governmental entities, it constitutes a "police patrol" mechanism of accountability (McCubbins and Schwartz 1984).

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<sup>6</sup> By contrast, internal audit is performed on their own accounts by government entities responsible to handle public funds.

I shall proceed with a discussion of the functions a SAI performs, before I examine its main variations. I consider this discussion of SAI types and functions to be necessary, since generally SAIs are very little studied outside the relatively narrow public finance and public audit literature, and therefore they are relatively unknown to most political scientists. Besides providing the reader with background information, the following analysis also places the institution of the ECA in the wider context of its institutional family.

#### **4.1.1 Approaches to Audit**

The main function of a SAI is to perform public audit. Although SAIs differ significantly in terms of their structural characteristics, as we shall see soon, what makes them members of the same group of institutions is the main function they perform. SAIs accomplish this function by using a number of common approaches, which differ significantly from the ones used in the private sector (commercial audit). Therefore, before we discuss the structural differences between types of SAIs, it would be useful to go through their core functional similarities. More specifically, in this section, I shall look at the two main approaches to public audit, namely the more traditional approach of verifying the *legality and regularity* of public accounts on the one hand and the *performance* or *value-for-money audit* approach, which is relatively new, on the other.

##### **4.1.1.1 Financial and Compliance Audit**

The traditional approach to public audit consists mainly of two tasks: a check of the regularity and a check of the legality of the accounts. The control of *regularity*, which is called *financial audit*, is an assessment of the accuracy and fairness of the accounts. Auditors assess if,

and to what extent, government accounts constitute an accurate representation of government spending and expenditure. Given the sheer amount of transactions in which public funds are involved, it is impossible for a SAI to monitor every single one of them. Instead, SAIs typically rely on a *systems approach*. They trace the flow of money from taxpayer to government coffers and from there to final beneficiaries and seek to detect any irregularities and anomalies in the flow of funds.

The system check is often supplemented by inspections on the spot. As part of these investigations, auditors may request the retrieval of transaction records from the authorities involved in different parts of the system, as well as face-to-face interviews with individuals employed by those authorities. Although the use of on-the-spot checks has become a common feature of financial audit everywhere, different countries resort to them to varying degrees, no doubt a reflection of divergent administrative traditions and cultures.

The second task included in the traditional approach to the control of public accounts is *compliance audit*. The term refers to a check of the *legality* of government accounts. It aims at determining whether the financial transactions of the government have been conducted according to the relevant laws and regulations. The discovery of fraudulent and corrupt transactions is one of the main goals of this type of audit. Hence, while financial audit seeks the discovery accounting errors and irregularities, compliance audit determines which of the above are the outcome of accounting error, which can be remedied with accounting measures, and which are the result of purposeful illegal activities that must invoke legal action. Thus, financial and compliance audit complement and re-enforce each other.

#### **4.1.1.2 Performance Audit**

Together with the traditional approach to public audit as a check of regularity and legality, the second half of the twentieth century saw the gradual emergence of an additional type of control on the management of public money, namely *performance audit* or *sound financial management audit*. As its name implies, this approach involves a check of the performance of the authorities that implement the budget. More specifically, it assesses the cost-effectiveness and operational efficiency the government achieves from managing public funds. Because, in effect, it measures the value of the money contributed to the government by the taxpayers, this approach to public audit is often dubbed as the *value-for-money audit*.

Performance audit practices as they are understood today made their first appearance in the 1960s, but they did not consolidate into a distinctive approach to auditing until the late 1970s (Pollitt and Summa 1999). The new approach was not the first, but definitely it was the most dramatic departure from traditional audit, which had been used in various forms since at least the eighteenth century. The introduction of performance audit was causally related to large scale public sector reforms in the countries of the Commonwealth and Western Europe, known under the label of New Public Management (NPM) (Pollitt and Summa 1999). Just like NPM, which sees civil servants as public managers and emphasizes evaluation of performance over hierarchical control among other things (Hood 1991), value-for-money audit aims at assessing the performance of the government over its management of public funds.

This approach, however, is often met with suspicion by strong proponents of traditional audit. Berzelay (1997), for example, is one of the most vocal opponents of value-for-money. He does not consider performance assessment as a type of audit, because it involves making judgments, whereas traditional audit focuses more on verification of facts against rules. Those

dissenting voices notwithstanding, performance audit is generally accepted as the “third pillar” of public audit, next to compliance and financial audits (Summa 1999), and has been used more extensively by an increasing number of SAIs (Lonsdale 2000). In fact, the International Organization of Supreme Audit Institutions (INTOSAI), the international body responsible for SAI affairs, has included the principles of performance audit in its main document that defines SAI functions internationally (INTOSAI 1977). Hence, today most SAIs perform both traditional and performance oriented audit of public accounts.

#### **4.1.2 Types of Supreme Audit Institutions**

Although the three facets of the audit function is the common denominator among SAIs, one can argue that structurally there are as many types of SAIs as there are countries. Just like other institutions, the diversity of administrative traditions and political arrangements across nations results into a variety of institutional forms for the achievement of the same goal. Yet, despite any national particularities, different SAIs can be grouped into three main categories (National Audit Office 2005). There are two “pure” types of SAI, namely, the Court of Auditors model and the Audit Office model. There is also a third type, a hybrid of the first two, such as the ECA. In the next few pages, I discuss the two main types of SAI, allowing the reader to have a better understanding of the hybrid.

#### **4.1.3 The Court of Auditors Model**

The institution of the Court of Auditors is a product of the French administrative tradition. Because of Napoleon Bonaparte’s influence on its current form, it is often considered to

represent the Napoleonic tradition in SAIs. Despite the similarity in the name, the ECA does not belong in this category of SAIs.

The roots of the French Court of Auditors can be traced as far back as the fourteenth century (Descheemaeker 2005). Before the Revolution, the Paris Chamber of Accounts (*chambre des comptes*) was among many Chambers of Accounts in France, each one of which was a court of law with regional jurisdiction. However, the Paris Chamber was of particular significance because it had the responsibility to monitor the execution of the royal budget. *Mutatis mutandis*, it performed the equivalent of the legality and regularity audit. What is more, as a court of law, it had the power to impose sanctions on royal accountants when it deemed that they had misappropriated or otherwise mishandled royal funds. Verdicts were reached collectively by panels of judges at the conclusions of judicial hearings. The Chamber was abolished during the Revolution; under the First Republic its functions were transferred to a committee of the National Assembly, which had the responsibility to collect and appropriate public funds.

Yet, in 1807, soon after the establishment of the First Empire, Napoleon resurrected the *Chambre des Comptes* in the form of the Court of Auditors (*la Cour des Comptes*, literally the Court of Accounts). The Court of Auditors inherited the main features of the Paris Chamber of Accounts, particularly its collective judicial nature. Unlike its predecessor, however, it did not have the power to impose sanctions on individual accountants. It could only order the recovery of missing or misappropriated funds. Therefore, in this sense, the power of the new institution was more limited (Descheemaeker 2005). At the same time, however, the lessening of its competence to impose sanctions set the foundation of its current role as a “watchdog” institution for the central government.

The Court of Auditors as a model has inherited the main features of the French Cour des Comptes. Outside of France, institutions representative of the model are currently encountered in Belgium, Italy, Spain, Portugal and Greece, as well as in many countries of Latin America and former French colonies (See Table 4 in Appendix). Despite different national variations, modern Courts of Auditors continue to constitute a part of the judicial branch of government. This guarantees the Court's independence from the other two branches, especially from the executive, which is rather responsible for the implementation of the budget. In fact, Courts of Auditors occupy the position of the highest appellate court for cases that pertain to the financial affairs of the State.

The main bulk of a Court of Auditors' work consists of scrutinizing the financial transactions of the government, with the ultimate goal of finding whether or not these transactions have been conducted properly from an accounting and a legal point of view. In other words, a Court of Auditors performs primarily legality and regularity audit. Any instances of corruption or mismanagement are presented in front of a panel of judges, who then reach a verdict collectively. Although a Court of Auditors cannot impose any criminal sanctions, it may order administrative remedies, that is, request that sums of money be recovered or moved to the correct accounts. Hence, just like other courts of law, a Court of Auditors seeks to apply the law, but unlike them it does not rely exclusively on litigation in order to spot instances of defective application of the law. Instead, as any "police patrol" mechanism of accountability (McCubbins and Schwartz 1984), it depends on its own investigations and hence, its own human and material resources.

Since the establishment of the Court of Auditors under the conditions of monarchic rule, in order to survive this institution has been able to adapt to the needs of modern democratic

governance. Because a Court of Auditors itself has neither direct democratic legitimacy nor the power to impose sanctions, routines have been developed to fill this gap. Such processes allow close cooperation primarily between the Court of Auditors and a directly elected legislative assembly, in some cases also the executive government. More specifically, the routines consist of the publication and submission of reports on public accounts, which aim at providing independent and reliable information to the legislature and the executive. As we shall see in the next section, these reporting duties are a defining feature of the second major type of SAI, the Audit Office, which was conceived in the context of the British republican tradition. The borrowing of these routines from the Audit Office tradition has resulted into a transformation of many Courts of Auditors into hybrid SAIs.

Collaboration with legislative and executive organs does not compromise the independence of Courts for two reasons. First, as I have already pointed out, there are institutional guarantees in place in the form of judicial independence. Second, the Court is insulated by being vested with a significant degree of prestige. Indeed, positions in a Court of Auditors are highly coveted, and their members are characterized by an exceptional *esprit de corps* (Pollitt and Summa 1997). This sense of collegial pride and solidarity constitutes an internal accountability mechanism that leads members to adhere to high professional standards.

In addition to their partnership with the other two branches of government, a more recent change in the role of Courts of Auditors is the expansion of their mandate to include performance audit. Though not among the first or warmest supporters of this approach to audit, all of the

current judicial SAIs in the EU carry out performance audit to some degree, with the exception of the Greek *Elegktiko Synedrio*, which performs exclusively control of legality and regularity.<sup>7</sup>

#### **4.1.4 The Audit Office Model**

The Audit Office model claims its origins in the United Kingdom, often referred to as the Westminster model. The British tradition of public audit goes as far back in time as the Court of Auditors in France. However, the different historical and organizational conditions in the UK led to the creation of a different institution from the Court of Auditors, although they both perform the same function.

Some of the basic features that constitute the Audit Office model today were first consolidated in the position of the Comptroller and Auditor General (CAG), created in 1866 at the initiative of the Chancellor of the Exchequer, William Gladstone. Gladstone transformed the previously existing institution of the Auditor of the Exchequer, which had limited power and guarantees for independence, into the position of the CAG. The new institution's independence from the executive branch was guaranteed by its close association with Parliament. Now the CAG would check the accounts of the state for legality and regularity. The results of this audit would be reported to a specialized committee in the House of Commons. It was then left to the Parliament, the body ultimately responsible for the management of public funds, to decide whether or not any specific measure should be taken for cases of mismanagement. Over the

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<sup>7</sup> Among the European SAIs, the *Elegktiko Synedrio* appears to demonstrate a particularly strong resistance to the adoption of the value-for-money approach. In an interview for this research, members of its staff explained that the financial and compliance audits are in themselves an instance of performance audit. Though an outlier, this view is indicative of the divergence in existing culture among different SAIs. Given the resistance to value-for-money audit by the *Elegktiko Synedrio*, in Greece this type of audit on EU funds is performed by a Directorate General at the Ministry of Finance. This practice, however, hardly constitutes external audit.

years, as the scope of state activity expanded, so did the mandate of the CAG. Moreover, its independence from both the executive and the legislature was strengthened. The institution was reformed and expanded into the UK National Audit Office (NAO) in 1983. The CAG is still the head of the NAO. Just like the French Court of Auditors has been the inspiration for the Court model, so has the UK NAO been the inspiration for the Audit Office model. Outside of the UK, Audit Offices are currently in place in the countries of the Commonwealth, Scandinavia as well as the newly democratized countries of Central and Eastern Europe (See Table 4 in Appendix).

Both the Audit Office and the Court of Auditors perform independent external control. They differ, however, in the way they are situated in, and related to, the political system as well as in their internal structure. The independence of the Court of Auditors is guaranteed constitutionally by its inclusion in the judicial branch of government. Hence, traditional judicial impartiality is expected to ensure independence in the control of public finances by the Court. In the case of the Audit Office, autonomy from the executive branch is guarded by either a constitutional or very often a statutory requirement that the Office be an independent institution which reports to the legislature. Close links between the Audit Office and the legislature warrant that the implementation of the budget by the executive is subject to rigorous external audit.

At the same time, the Audit Office is not merely a branch of Parliament, but rather it constitutes a governmental body with its own unique interests, on which the Parliament is not allowed to exercise any political pressure. Just like an independent central bank is most effective when it is not influenced by political considerations in the exercise of monetary policy, so an Audit Office, appropriately insulated from external political pressures, fulfills its role most successfully when it provides impartial assessments of governmental financial inflows and

outflows. Objectivity becomes a source of credibility, which in turn leads to the most efficient fulfillment of an Audit Office's role.

Another difference between the Court and the Audit Office models can be found in the following: while the former was designed to perform exclusively retrospective control, the latter generally has more extensive investigative powers. By retrospective control, I mean that the audit takes place after the end of the execution of the budget. Its purpose is to indicate to the responsible supervisory authorities any mistakes that have already been made or illegal activity that has already taken place. This function is consistent with the judicial nature of the Court model. On the contrary, an Audit Office is constantly attentive to the execution of the budget. Depending on its specific mandate, an Audit Office can investigate any aspects of the budget that may appear suspicious, either on its own initiative or on the urge of the legislature. Besides keeping on constant alert the authorities that implement the budget, the purpose of this type of audit is to prevent mistakes or irregularities from taking place or to stop them if they already are taking place.

As far as their approach to audit is concerned, Audit Offices have been the first champions of performance audit. This is the outcome of the NPM reforms that first took place in countries such as the Commonwealth and Scandinavia, where these institutions are encountered. Although performance audit is currently conducted even by SAIs that do not belong to the Audit Office category, Audit Offices are still largely seen as the institutions more eagerly committed to performance audit, while Courts of Auditors are seen as stalwart defenders of the traditional compliance and financial audit.

Lastly, as far as internal structure is concerned, while a Court of Auditors is a collective decision-making body, an Audit Office is not. In the case of the former, decisions to adopt

general or specialized reports, as well as to request remedies for the mishandling of public money, are taken by panels of judges. By contrast, the Audit Office model requires that final decisions on these matters be taken by the head of the Office, who is usually called either President or Auditor General. In other words, while the Court model has a collective executive leadership, the Office model has an individual executive.

#### **4.1.5 Hybrid Supreme Audit Institutions**

Variations to the models of the Court of Auditors and the Audit Office abound. However, there is one version of SAI which cannot be considered a variant of either one of the two, but rather a hybrid of both, precisely because it combines two of their most basic elements. The ECA belongs to this category of SAI. Other examples of this type include the Dutch and the German Courts of Audit (See Table 4 in Appendix for more). The names of some of these hybrid institutions may cause confusion because they employ the term “Court” in their title. Despite their name, however, and some structural similarities with the judicial court model, these hybrid institutions are also different from it, particularly in their relations with other governmental institutions.

The main feature these hybrid institutions share with the Napoleonic model is its collective nature. The term “Court” in the names of some of them refers specifically to this property of collectivity. The decisions of these bodies are taken by a collegiate executive organ, located at the apex of their internal hierarchy. For example, any reports published by the institution must have been agreed upon by the members of that executive organ. However, unlike the Napoleonic model, these collective bodies do not possess any judicial powers. They have no authority to impose sanctions or order any other remedies for instances of improper

application of the budget or corruption; they can simply report such problems. Moreover, they are not part of the judicial branch of government, which means that their independence is not insulated by their judicial character. And yet, they are shielded either constitutionally or by statute through their status as independent agents of the legislature. This is their main similarity with the Audit Office model. Moreover, just as in the case of an Audit Office, their power relies on their ability to provide credible information to the legislature concerning the activities of the executive, for matters that relate to the execution of the government budget.

Hence, the hybrid model behaves like an audit office with regard to its external relations, while internally it significantly resembles the Court model, lacking the latter's judicial function. In general, even SAIs with judicial functions are increasingly becoming similar to Audit Offices concerning their relations to the legislature. In fact, most SAIs see themselves more as independent "watchdog" organizations rather than judicial bodies.

## **4.2 PROFILE OF THE EUROPEAN COURT OF AUDITORS**

The ECA has its seat in the city of Luxembourg and is perhaps one of the least known institutions of the EU, even to those who study European integration. Its rank in the institutional order of the Union is equal to that of other more well-known bodies, such as the European Commission and the European Parliament, and its role is as important as the roles fulfilled by those other bodies. However, the technical nature of its work and the indirect impact on the lives of citizens has kept it largely out of the public eye. The one incident that put the ECA in the spotlight was its role in the 1999 resignation of the European Commission and the ensuing crisis

(Craig 2000; Judge and Earnshaw 2002).<sup>8</sup> This event highlighted the political implications the actions of this otherwise technocratic and apolitical organization can have. The significance of these implications has not been forgotten by member states, particularly those which are net contributors to the EU budget and therefore demand greater accountability of those implementing it.

The ECA is an unusual case of SAI, because unlike its counterparts, it is not part of a national but rather a supranational system of governance. Although its unique institutional environment makes the ECA stand out among its peers, it does perform the same function as any of them, that is, it audits public accounts. Specifically, it audits the implementation of the EU budget. Moreover, the main structural features and external relations of the ECA place it in the hybrid category of SAIs. Furthermore, the ECA is a full member of the International Organization of Supreme Audit Institutions (INTOSAI).

The ECA in its current form is the product of an evolutionary process which has been characterized by gradual increase of its prestige and incremental expansion of its competences. It was established by the *Treaty Amending Certain Financial Provisions or Treaty of Brussels* of 1975, but did not become functional until 1977. As we shall see in more detail in the section on the story of the creation of the ECA, it came out of a need for greater and more centralized control of the expanding financial accounts of the European Communities. In spite of these good intentions however, originally the ECA had an unclear and rather weak position in the institutional structure of the Communities (Kok 1989; Laffan 1999; Wilmott 1984). Moreover, the multitude of national public audit traditions, which are represented by its individual members, made its internal functioning extremely difficult (Kok 1989; Levy 1996; Wilmott

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<sup>8</sup> The European Parliament failed to give discharge to the European Commission for the implementation of the EU budget, largely on the basis of reports issued by the ECA. As a result, the Commission resigned.

1984). Yet, the Court was largely able to overcome these difficulties and establish itself as an important partner to the other European institutions. By making the most out of alliances and historical opportunities, it was able to carve out its place in the institutional edifice of the Communities (Inghelram 2000; Laffan 1999). The two most important milestones in this respect were the elevation of its status from “other body” to “institution of the Union” by the Treaty of Maastricht, which also increased significantly its role in the budget discharge procedure, and the expansion of its competence to include audit of the financial accounts related the Common Foreign and Security Policy and the Justice and Home Affairs domain by the Treaty of Amsterdam in 1997. In addition, in spite of some significant challenges that still remain (Groenendijk 2004), the Court was able to not only blend the different national auditing traditions into its own way of performing audit, but also it actively shaped an accountability culture in the EU with its actions (Laffan 2003; Levy 1996).

#### **4.2.1 The Hybrid Features of the European Court of Auditors**

The hybrid nature of the ECA is established in the EU Treaties, the constitutional documents of the Union. More specifically, the European Community Treaty (henceforth, EC Treaty) sets the mandate of the ECA and outlines its main structural features, its approach to audit, as well as its relationships to other EU institutions in Articles 246-248. The role of the ECA is further elaborated in the section of the Treaty on the budget of the Union (*Financial Provisions*, Articles 268-280) and in the *Financial Regulation* (Council of the European Union 2002), which is a piece of secondary legislation that regulates the administration of the EU budget in more detail.

The EC Treaty defines the ECA explicitly as an independent organization, which is looking exclusively after the interest of the Union, without being subject to influence by any national government or other EU body (Article 247, §4). The independence of the ECA is further re-enforced by the provisions of the Treaty on its self-governance (Articles 247, §3 and 248, §4) and on the dismissal of its members (Article 247, §6,7). Nowhere in the Treaty is the ECA provided any judicial powers. Although its members enjoy “all the privileges and immunities of the European Communities applicable to the Judges of the [European] Court of Justice” (Article 247, §9), clearly the ECA is not a court of law. Yet, it is also clear that the ECA is a collective institution. The number of its members is equal to the numbers of the member states of the EU (Article 247, §1) and they make decisions by simple majority (Article 248, §4). Hence, although the ECA has no judicial powers, it shares the collective nature of its French-inspired counterpart.

The role of the ECA is to provide information to the European Parliament (EP) and the Council of the EU in fulfilling their budget oversight obligation (A248, §4). The EP and the Council are the two bodies with the Treaty-based obligation to monitor the implementation of the EU budget by the European Commission. The Commission is held accountable primarily through the Budget Discharge Procedure, according to which every year the EP decides whether to give discharge to the Commission for the implementation of the budget during the previous financial year, after having consulted a recommendation by the Council (EC Treaty, Article 276).

The ECA provides information primarily through the publication of reports. In fact, almost all of the Court’s activities are geared toward producing reports. The ECA produces a significant number of *ad hoc* reports on a number of specialized topics which can be published at any time at the request of the Parliament or the Council. However, its two regular yearly reports

are the most substantial sources of information. First, the *Annual Report* analyzes revenue and spending of EU funds and makes comments and recommendations to the Commission or other EU bodies that manage EU funds on the basis of its findings. Second, the *Statement of Assurance* is an assessment by the ECA of the extent to which the budget has been implemented legally and without financial irregularities (EC Treaty, Article 276). This task demands a significant part of ECA resources because it requires that the ECA traces expenditure down to the final beneficiaries. Although the ECA performs a systems audit, an important number of checks on the spot need to be performed, which require significant human and material capital. Remarkably, the ECA has declined to issue a positive statement of assurance since the budget of the financial year 1993.<sup>9</sup>

The EC Treaty requires of the ECA to perform all three types of audit. However, the main bulk of the Court's output involves traditional *financial* and *compliance audit*. Performance audit is used mostly in its specialized reports and less in its Annual Report (Levy 1996).

The EP works very closely with the ECA. Specifically, the ECA cooperates with EP's *Committee on Budget Control*. The *Statement of Assurance* is the main document on which the EP bases its decision of whether to discharge or not the European Commission for the implementation of the budget, along with the Annual Report and the Commission's own reports. In spite of the fact that the Commission is the main subject of the ECA audit, the two bodies have been able to work together in areas of common interest, such as the fight against fraud and corruption (Skiadas 2000). In fact, this cooperation provides the ECA additional leverage, since

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<sup>9</sup> Despite the negative ECA reports, the EP has discharged the Commission with the exception of the budget for the year 1999.

the Commission can initiate an infringement procedure against member states and EU bodies that misuse Community funds, while the ECA does not (Inghelram 2000).

The ECA is a hybrid SAI because it combines elements of an Audit Office and a Napoleonic Court of Auditors. From the Court of Auditors model it has inherited the collective nature of its top organ and its decision-making, but not its judicial independence. Instead, independence is guaranteed by other legal means, just like in the case of an Audit Office. In addition, just like an Audit Office, the primary role of the ECA is to provide information to the institutions responsible for holding to account those who manage public funds, in this case the Council but especially the EP.

#### **4.2.1.1 Structure of the European Court of Auditors**

The ECA is organized along strictly hierarchical lines. At the top of the pyramid lies the college of 25 members, one per each member-state. Each member has a small cabinet. All the decisions of the Court, including the ones for the adoption of the Annual Report and specialized reports, as well as the Statement of Assurance, are taken by a majority vote of its members. The members are appointed by the Council in consultation with the European Parliament, making the Court the only Community institution which is appointed by another. The president of the Court is elected from among its members for three years. The ECA has been characterized as a “top-heavy” body because of the disproportionately big executive organ in relation to the relatively miniscule size of the entire organization (Skiadas 2000).

The audit work of the Court is divided among five main departments which are called Audit Groups. Each one of them is entrusted with the responsibility to audit a specific part of the EU budget. There is also a sixth group, which is responsible exclusively for the coordination of the Court’s resources that are used for producing the Statement of Assurance. Each Audit group

is further divided into divisions with a more focused area of responsibility. Each one of these divisions is headed by one member of the Court and the members of the court in each division elect someone to head that division for two years. Then each division is further broken down into units and staff, which are ranked, are divided among those units.

### **4.3 HOW THE EUROPEAN COURT OF AUDITORS WAS CREATED**

The ECA was created by the second *Treaty Amending Certain Financial Provisions* of 1975, which is also known as the second Budget Treaty. Its signing marked the end of a five-year period, which began with the completion of the first *Treaty Amending Certain Financial Provisions* or first Budget Treaty. During that period, there was intense debate in the European Communities about an increase in the budgetary powers of the EP. The idea of establishing the ECA evolved and came to fruition within the context of this debate. In fact, the main role of the new institution was to assist the EP in exercising its enhanced powers of supervision over the implementation of the budget of the Communities. This section narrates the main events between the two treaties that led to the establishment of the ECA.

#### **4.3.1 The Status Quo Ante**

The ECA replaced two previously existing bodies which had been responsible for external audit in the three Communities since their inception. The Treaty of Paris of 1951 gave life to the European Coal and Steel Community (ECSC) and also created the position of the Auditor to examine the finances of the ECSC. Six years later, the Treaty of Rome established the European

Economic Community (EEC) as well as the European Atomic Energy Community (Euratom) and put in place the Audit Board to control their financial accounts (Laffan 2002). The performance of external audit by two different bodies reflected the fact that the Communities had separate budgets at the time, and it was consistent with institutional division among the Communities during their early years.

From the beginning, the competences of the Board were more extensive than those of the Auditor. Over time, however, institutional and fiscal consolidation made this difference even sharper. By the time the two bodies were replaced by the ECA, the Audit Board was responsible for auditing almost all of the financial records of the Communities. The only accounts excluded from its control were those of the European Investment Bank, which was audited by a separate body, and the operational budget of the ECSC, which included the only accounts monitored by the Auditor.

However, the existence of the Audit Board did not necessarily guarantee that independent and reliable external audit was performed. In its formal structure, the Board resembled a hybrid SAI. It was a non-judicial and collective body, the decisions of which had to be approved by a majority of its members. Yet, the Board was widely perceived as lacking independence and as conducting token audit that was not part of a rigorous accountability mechanism. In that sense, it did not constitute a SAI, as it is conventionally understood.

The lack of independence stemmed from the Treaties. Although the relevant articles described the Board as an independent body, they did not include any specific provisions as to how this independence would be maintained in practice. As a result, member-state governments, which selected the members of the Board, were allowed to craft their own definitions of independence, which sometimes were quite loose. In the late 1960's, for example, some

governments started nominating officials from their respective ministries of finance to assume positions as members of the Board. The practice must have been rather common, because it prompted the vice chair of the Committee on Finance and Budget of the EP to observe that “the Communities’ Audit Board will gradually come to resemble the committees of the Council of Ministers” (European Parliament 1973a, p.19). Furthermore, the Treaties mandated that the Council of Ministers should select the president of the Board, thus providing member states with an additional avenue to interfering in the latter’s self-governance. The concern behind these Treaty shortcomings was that the Board’s audit conclusions would cease to be an objective assessment of the budget by independent experts. Rather, it was feared, eventually it would evolve into the political outcome of interstate bargaining. This was definitely not the role envisaged in the Treaties for the Board.

One more inadequacy of the Treaties, which further compromised the independence of the Board, was that the conditions of appointment of its members were not clearly stipulated. Therefore, some auditors were allowed to serve on the Board on a part-time basis. This practice could potentially lead to conflicts of interest, as these auditors could engage in other activities, which would be incompatible with their task of safeguarding the legality, regularity and sound financial management of the Community budget.

Perhaps the Board’s most important shortcoming, however, was that the control it performed was exclusively retrospective, which meant that the Board could audit the budget only after it had been executed. This problem had its roots in the Treaties as well. The Treaties gave the Board the mandate to submit an audit report to the Council and the EP, the competent budget authorities, only after the end of the fiscal year. Moreover, the Treaties gave the Commission the sole responsibility of budget implementation, which included monitoring the progress of its

execution. In other words, while it was being executed, the budget was not subject to external control. It was only controlled by the Commission *internally*, namely, it was controlled by the same body that executed it. In practical terms, this meant that the Council, as the main supervisory body, and the Parliament, in its advising role, could not request reports and opinions from the Board, in order to assess how the execution of the budget was progressing. The fact that the control performed by the Board was exclusively retrospective did not merely mean that the Board itself lacked teeth, but it also undermined the authority of the Council and the Parliament as budgetary authorities. Therefore, the entire system of external control mechanism of the Communities was in serious deficit.

#### **4.3.2 The First Budget Treaty**

The earliest call for a revision of the Communities deficient external audit regime and the need to create the ECA occurred during a period of intense institutional consolidation in the Communities. In 1965 the so-called “Merger Treaty” combined the High Authority of the ECSC and the Commissions of the EEC into one single Commission and the three Councils of Ministers of the three Communities into one single Council. The Treaty also created a single operating budget for the two new institutions. During the debate concerning the powers and the budget of the new Commission and Council, the EP issued a resolution in which it expressed the opinion that the institutional fusion in the Communities created new powerful players, which needed to be checked more rigorously than the current system allowed (European Parliament 1964). Part of the proposal to introduce rigor was the suggestion of creating a new external audit body, a European Court of Auditors, which would rid the Audit Board’s problems. However, the proposal remained merely a declaration and did not lead to any significant moves. The issue

kept coming back during parliamentary debates on the accounts of the Communities from 1967 to 1969 without any practical results (European Parliament 1973a, p. 68, 69).

Eventually, the event that triggered the revision of the external audit regime created by the Treaties of Paris and Rome was the signature of the first *Treaty Amending Certain Financial Provisions*, which was signed in Brussels in 1970 with the purpose of amending the budgetary provisions of those Treaties. The first Budget Treaty, as it is also known, created one unified budget for all three Communities. It also marked a milestone for their financial independence, because it endowed them with their *own resources* for the first time. Until then, inputs to the budgets of the Communities were composed exclusively of national contributions, a practice followed in many international governmental organizations. Moreover, the Council of Ministers had been given the main decision-making authority for the budget, while the EP was consulted but did not have any major role (Laffan 1997). Since the Council is an intergovernmental body, member states governments yielded significant influence on budget matters. This was considered appropriate while member states transferred the funds that constituted the budget directly from their own national budgets.

With the first Budget Treaty, the Communities acquired the right to collect their own resources in the form of agriculture levies, customs duties and the proceedings of value added tax. Henceforth, member states would collect revenues and dispense funds related to common policies on behalf of the Communities. This meant that the streams of revenue and expenditure became “automatic” in the sense that they were not subject to constant approval by the member states. In terms of institutional dynamics, the Treaty designated not only the Council but also the EP as the institutions responsible for adopting the unified budget. It also made both institutions responsible for supervising and discharging the Commission for the implementation of the

budget. Hence, the Treaty increased the powers of the EP, which became equal to the Council in budgetary matters that were associated with the Communities' own resources.

Yet, although the Treaty of 1970 changed the EP's role in the external control of the budget, it did not alter the way in which the external control itself was conducted: it continued to be entirely retrospective. Hence, the Council and the EP could only review the implementation of the budget only after it was completed, while the Commission maintained the privilege of exclusive responsibility for its execution. This was the case, despite the EP's enhanced authority. In other words, the Treaty shifted the balance of supervisory power in the EP's favor, but left that power itself in the same weak state as before. Neither did it address the issue of the Audit Board's independence. Moreover, there was a strong feeling shared by many in the EP and in national legislatures that the shift of power to the Parliament's side, both in deciding and supervising the budget, did not go far enough. Those voices advocated that in matters related to the Communities' own resources, the ultimate budgetary authority, the so-called "power of the purse," should rest with the EP alone, since this was the case in all Western democracies.

Such were the shortcomings of the first Budget Treaty. Because the Treaty envisaged a gradual replacement of national contributions with the Communities' own resources by 1975, that year became a commonly accepted deadline for any changes to be decided and implemented on budgetary issues. The perceived omissions of the first Budget Treaty in combination with the imminent assumption of full budgetary responsibilities by the Communities, created a special sense of urgency for a revision of the EP's budgetary powers at a time when a broader discussion on the role of the EP in the Communities was taking place. For example, it was around that time, in October 1972, that the Paris Summit of Heads of State and Government considered the election of the EP directly by the citizens of the member states by universal suffrage as a remedy

for concerns about the democratic credentials of the Communities.<sup>10</sup> In addition, the argument for providing more powers to the EP on economic matters was further re-enforced by the discussion of creating an economic and monetary union, which had begun in earnest during the Summit of Heads of State and Government at The Hague in December of 1969.

### **4.3.3 Anticipating the Draft Treaty**

Almost from the day the first Budget Treaty was signed in April 1970, its shortcomings and the need for a new treaty were recognized. Immediately, the European Commission was given two years from the signing of the Treaty to present amendments to the Council and the Parliament, as the Treaty revision procedure required. In 1972, however, the Commission requested an extension of the two year deadline. The reason cited for this request was the imminent enlargement of the Communities. The Commission deemed it appropriate to include in its ranks officials from the new member states, namely Denmark, Ireland and the UK, before submitting the report. The extension was indeed granted (Commission of the European Communities 1974).

In the meantime, the Commission did not remain idle. As part of the more general debate on increases in the EP's authority, it set up an *ad hoc* Working Party of academic experts from all the current and prospective member states, chaired by Georges Vedel, a French Professor of Law and Economics. The Working Party submitted its conclusions, known as the Vedel Report, to the Council on March 25, 1972 (Commission of the European Communities 1972). The report was used as the basis of discussion at the Paris Summit of Heads of State and Government in October 1972. It contained some significant innovations for the role of the EP in the

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<sup>10</sup> During the period this discussion was taking place, the deputies of the EP were appointed by the national parliaments of the member states. They started getting elected directly by the citizens of the member states in 1979.

Communities, such as the co-decision procedure and its direct election. Yet, in regard to budgetary supervision, the Vedel Report merely re-iterated the *status quo* created by the Budget Treaty of 1970, which had made Parliament and Council equal partners in discharging the Commission for the implementation of the budget. The need to replace the Audit Board with a new body was not even mentioned.

However, during the same period, the deficiencies in monitoring the budget implementation came up on several occasions in EP debates. These discussions were not related to the process of Treaty revision, but nevertheless reveal the momentum for change in the budget monitoring regime, which was building up in the Parliament. Hence, during annual discussions on the budget, there were sporadic complaints from Members of the Parliament, concerning the absence of continuous communication between the Parliament and the Audit Board as well as the obstacles the Board faced in obtaining the information to which it was entitled by the Treaties (European Parliament 1971; 1972a; 1972b).

Yet, perhaps the most insightful glimpse into the views not only of parliamentarians but also of the Commission is provided by the debate on the proposal for new financial regulations, which took place on February 13 and 14, 1973. During these sessions, two members of the Committee on Budgets advocated an amendment that would allow the assembly to request reports on the progress of the budget before the expiration of the fiscal year. In response, Commission representative Jean-François Deniau expressed the Commission's commitment to the status quo, which limited the role of the Audit Board to the performance of retrospective control. What is particularly interesting about his response is that he supported the Commission position not only in legal terms, by evoking the relevant Treaty provisions, but also in normative terms, by defending the appropriateness of the existing division of labor in budget supervision

between the Commission and the Board (European Parliament 1973a, p. 122-124). This reaction is not surprising, given that increasing collaboration between the Parliament and the Board would take a significant degree of leverage for the monitoring of the budget away from the Commission. In the end, what this discussion made clear was that any changes to the supervisory role of the Commission and the EP on the budget could not occur on the basis of revising secondary legislation, such as the financial regulations, but rather through a constitutional revision of the Treaties.

#### **4.3.4 Inter-institutional Negotiation of the Draft Treaty**

The draft Treaty amending the budgetary powers of the EP (Commission of the European Communities 1973b) was presented by the Commission to the Council on June 8, 1973, six months after the accession of Denmark, Ireland and the UK. The main bulk of the draft concerned proposals on increasing the involvement of the EP in deciding the budget. Nevertheless, the issue of budget supervision occupied a prominent place in it as well. In fact, the draft broke new ground by recommending that the task of discharging the Commission for the implementation of the budget should rest with the Parliament alone. A proposal to replace the Audit Board with an ECA was included in the draft, and it was tied to the new budget discharge duties of the assembly.

The ECA outlined in the Commission proposal was a major departure from the Audit Board because it had many of the regular features of a SAI. Moreover, it was designed as a hybrid SAI. Just like the Audit Board, the proposed body would be a collective but non-judicial institution, the decisions of which would be taken by its members on the basis of the majority rule. In contrast to its maligned predecessor, however, the independent status of the new

supervisory body would be subject to strong guarantees. The draft included specific language on the conditions of appointment of the members of the ECA, as well as the procedures for their election and dismissal. In addition, the Commission proposed measures which guaranteed the body's autonomous self-governance. Thus, the potential for external influence, political or otherwise, and conflicts of interest would be constitutionally eliminated.

Yet, the Commission draft failed to address the second major shortfall in the Communities' external audit regime. In regard to the question of who would supervise of the budget and how, the Commission again merely reiterated the *status quo*. As the Treaties of Rome and the first Budget Treaty before it, the draft saw the role of the new auditing body as conducting exclusively retrospective control, while preserving for its author the sole responsibility of controlling the execution of the budget. Specifically, the ECA would submit a report to the parliament only after the completion of the budget. Hence, despite its bold proposals for enhanced parliamentary control and independent audit through the discharge procedure, the Commission's self-interest prevented it from making equally bold recommendations for making the discharge itself the outcome of more rigorous external control.

The EP debated the Commission draft on two occasions. On July 4 and 5, 1973 it was discussed on the basis of interim reports by Georges Spénale (French, Socialist Group), the Chairman of the Committee on Budgets and Sir Peter Kirk (U.K., Conservative Group), chairman of the Political Committee. On October 4 and 5 of the same year, Messrs. Spénale and Kirk submitted their final reports on the draft, which were the basis of further debate. Predictably, both the reports and the discussion in the EP concentrated primarily on the new decision-making powers the assembly would acquire under the revised Treaty. The proposal of creating a Court of Auditors of the Communities appeared on the EP's agenda in connection with

the revision of its supervisory powers, although it did not consume a significant part of the debate. In fact, it was largely overshadowed by the contentious proposals for decision-making competences.

Details of the EP meetings (Commission of the European Communities 1973c; 1973d) reveal that representatives of all the main political groups and the Commission agreed in principle on the creation of an independent SAI. Rigorous and effective monitoring was seen as a mechanism that would supplement decision-making, by providing constant feedback on how the budget is implemented. In order to justify their preference, several speakers made reference to the fact that legislative oversight of the budget was a regular activity in the member states and appeared to recognize not only its value in general but also the lack of it at the Community level.

Yet, the issue of drastically revising the external audit regime of the Communities was not put decisively on the table until Mr. Heinrich Aigner, a German Christian Democrat Member of the Parliament, vice-chair of the Committee on Budgets and chair of the Subcommittee on Control and Implementation published a key document on this matter. In September 1973, during the period between the two parliamentary sessions on the Commission draft, he published an extensive report titled *The Case for a European Audit Office*. Although the Commission draft had talked about a “Court of Auditors,” the use of the term “Audit Office” in the title of the report alluded to the strong connections between legislator and public auditor the latter type of SAI represents. This document included a comprehensive presentation and analysis of the existing external and internal audit regime in the Communities, which included an extensive discussion of the problems posed by the current state affairs in this area. The main conclusion of this discussion and the principal argument advanced in the study was that the tasks of the new auditing body should be extended beyond retrospective control, just like in the case of any Audit

Office. The new institution, it was argued, should be provided with the authority to conduct reports on the progress of the budget at any time, and not only at the request of the budgetary authorities, but also on its own initiative. Moreover, the case was made that such an extension of the new auditing body's competence would not compromise but rather supplement the Commission's efforts to oversee the implementation of the budget of the Communities.

At the conclusion of the second parliamentary debate on the draft Treaty, in October 1973, the EP issued a Resolution (European Parliament 1973b) which echoed this demand. Although the resolution generally endorsed the Commission's proposal on the Court of Auditors, one of the main points of difference was that "the Court must report to Parliament and be ready *at all times* to assist and advise it in the exercise of its auditing rights" (emphasis mine). Yet, in the amended version of the draft Treaty, which was submitted to the Council on October 10, 1973 (Commission of the European Communities 1973a), the Commission left the relevant provision unchanged from its earlier draft. It did not heed the EP's request for constant control during the process of implementation of the budget.

At the next stage, according to the Treaty revision procedure, the draft was forwarded to the Council of Ministers. While it was examining the draft, the Council was in constant interaction with the EP. Between June and October 1974 there was a series of meetings which included officials from the two bodies, as well as number of written exchanges, the purpose of which was to discuss amendments to the draft. As before, throughout this process of negotiation between the Parliament and the Council, the main point of contention was the role of the EP in deciding the budget, and more specifically whether the Assembly would have the final say and if so in what types of budget items. However, again the problem of ongoing budgetary control was raised in relation to the EP's enhanced supervisory powers.

In February 1975, the President of the Council officially presented a new draft to the EP and requested its final opinion. Unlike the earlier text proposed by the Commission, the Council draft not only made the ECA responsible for compiling an annual report at the end of the fiscal year, but in addition it stipulated that “the Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of the one of the institutions of the Community.” In other words, the new draft extended the ECA’s mandate beyond retrospective control to audit of the execution of the budget. In so doing, the new text did not only enhance the Court’s role but also provided extended powers of supervision over the budget to the EP and the Council, which would be the final recipient’s of the ECA’s reports on the execution of the budget. The final report by the Parliament (European Parliament 1975a) on July 9 confirms the EP’s satisfaction with the new draft. On the recommendation of the Committee on Budgets, the plenary the plenary adopted the new Treaty text on 11 July 1975 (European Parliament 1975b), while recommending a number of changes in regard to some minor outstanding issues.

The *Treaty Amending Certain Financial Provisions* was signed in Brussels on July 22, 1975 by representatives of the member states, which convened an intergovernmental conference on that day. Besides creating a truly independent SAI with regular reporting authority, the Treaty also gave the EP the final say on a significant number of budget items, the right to reject the budget in its entirety and the right to discharge the Commission for its implementation of the budget (Laffan 1997). In line with practice in all member states, the ECA was construed as a body that would assist the EP with its new discharge function.

#### **4.3.5 The Role of the National Supreme Audit Institutions and the Contact Committee**

A very important issue in the debate on the extension of the budgetary powers of the EP was the role national SAIs would play in the scrutiny of the Community budget, if any at all. This matter posed an important dilemma. In legal terms, the funds in the budget belonged to the Communities and were managed by the Commission. This was the basis of their financial independence, which could be preserved best only if the scrutiny of the budget was performed by a truly Community body, such as the proposed ECA. Involvement by member-state SAIs or any other national entities could compromise this independence. In practice, however, the member states and their respective administrative machineries collected and dispensed Community funds. Consequently, the control of how Community funds are managed inside member states was very important. However, this control fell under the jurisdiction of member-state SAIs. A Community institution, such as the ECA, could not interfere in the member states affairs. This dilemma would presented itself in cases when the ECA needed receipts from member states while it performed a systems check of Community finances, but it would be particularly pronounced in cases when ECA officials would need to perform checks on the spot. Hence, a solution had to be found that would satisfy the need of the Communities to audit their “own resources” inside the member states, and thus preserve their financial independence on the one hand, while respecting the national sovereignties of the member states on the other.

Because the matter was very delicate, the SAIs of the member states were consulted for the revision of the first Budget Treaty on several occasions. Before we get into the details of SAI involvement in the consultations for the drafting on the Treaty, we need to take a step back and follow a very interesting development of cooperation among SAIs themselves because it constitute the framework of consensus-building among SAIs in regard to their role in the new

Treaty. The 1950s' had already seen an increase in the degree of bilateral co-operation among SAIs both in Europe and elsewhere. In fact, co-operation was getting institutionalized in the form of concrete structures at the international and regional level. One of the most prominent events in this respect was that the International Organization of Supreme Auditing Institutions (INTOSAI) convened its first congress in Havana, Cuba in November of 1953. INTOSAI was meant to be a forum for the co-ordination and harmonization of international public auditing standards. It continues to play this role until today. Its membership has expanded from 34 SAIs originally to over 148 today, which are divided into regional chapters (usually by continent), and its guidelines are esteemed and followed by its members. One of the most important achievement of INTOSAI is the adoption of the *Lima Declaration* in 1977, which set the standards for public audit among its members, and consequently around the world. The *Declaration* is still in effect today.

In this spirit of bilateral co-operation, the head of the Netherland Court of Audit invited his counterparts from the SAIs of the other 5 members of the European Communities to form the Contact Committee (CC) in 1965. It is important to note at this point that in spite of the congruence of membership between the Communities and the CC, at this initial stage, the CC existed independent of the European Communities. It was not part of the structure of the Communities. Moreover, national governments had not been involved in its establishment, and there was no provision for it in the founding Treaties. As a matter of fact, the first time the CC is mentioned in an EU Treaty was in a special declaration attached to the 2000 Treaty of Nice. In other words, the initiative rested exclusively at the SAI level. Its original members were the presidents of the SAIs of the six original members of the Communities<sup>11</sup>, while the Irish, Danish,

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<sup>11</sup> France, Germany, Luxembourg, the Netherlands, and Belgium

and British SAIs were invited to join the group immediately upon the accession of their respective countries to the Communities in 1973. The members of the Committee met regularly, at least once a year. The purpose of the CC meetings was to serve as a forum for the discussion of themes of common interest and come up with answer to common problems. More specifically, the discussions revolved around the problems of auditing EC-related funds in their respective jurisdictions, many of which officially became entries in the national budgets, particularly in the spending phase. They also discussed common strategies and approaches to these common problems. The Committee exists still today and continues to be a major forum for the discussion of common problems and harmonization of audit practices.

The consultations with the EP and the SAIs inputs for the new Treaty took place within the framework of the CC. When the Commission submitted its first draft Treaty in 1973, besides insulating the ECA from external influence, it also gave the new body a significant new task. Under the proposed rules, the ECA had the right to perform its own on-the-spot investigations inside the member states. This was a major overhaul of the previous regime for national SAIs. Until then, member-state SAIs were responsible for auditing Community funds once they entered their respective territories. The Audit Board could request that it participates in checks on the spot of Community funding, which were performed by national SAIs. However, those were the checks of national SAIs not the Board's, and it was up to their discretion to allow its participation. The language on the right of the ECA to investigations in the member states contained in the Commission draft was rather vague. The SAIs right was stated in principle but no details were provided. It nevertheless set the foundations for further discussion, not only on the competence the ECA could have inside the member states but also for its relations with national SAIs.

The presidents of national SAIs or their representatives met with the Sub-committee on Control and Implementation of the Committee on Budgets on June 18, 1973, right after the submission of the first draft of the Treaty by the Commission to the Council, and on December 4, 1973 and January 8, 1974, that is, before extensive consultation between the EP and the Council began. These meetings were instrumental in setting the conditions of cooperation between member-state SAIs and other national authorities with budgetary oversight responsibility. Their input played a significant role in shaping the segments of the EP resolutions on the ECA which involved co-operation between national and supranational institutions. In fact, Mr. Aigner, who chaired the Subcommittee and was the Parliament's representative to those meetings, praised the member-state SAIs in his final report on the ECA (European Parliament 1975a).

Judging by the change in language between the original Commission proposal and the final Treaty text, the difference is significant. Although the original draft by the Commission merely mentions that the audit shall be performed “at the premises of the Institutions of the Communities and the Member States” (p.11), the final Treaty spells out the in a lot more detail conditions of cooperation between the ECA and national authorities by stipulating that “In the Member States the audit shall be carried out in liaison with the national audit bodies, or if these do not have the necessary powers, with the competent national departments. These bodies or departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.” The phrase *in liaison* is key in this formulation. Although the audit is performed in member states by the ECA, it must have the assent of the member-state competent authority. In practice, what this means is that when documents are retrieved and checks on the spot are performed in a member-state by ECA officials, a representative of the

national SAI must be present. Although the assent of national SAIs is necessary, in reality they never deny permission to the ECA.

#### **4.4 CONCLUSION**

Can the theory of isomorphism help us understand the events that led to the founding of the ECA? In this section, I argue that indeed it can. As I did in the chapter on the European Ombudsman, I examine whether the three isomorphic pressures were observed and if so, whether they are causally related to the creation of the ECA. I seek thus to determine which of the three pressures, if any, constitute a necessary condition for the observed outcome, namely, organizational transfer. For this purpose, I point out the preferences and motivations of the main actors involved in the events that led to the establishment of the ECA. In addition, I examine how these preferences led to the adoption by the EU of the specific organizational model that the ECA represents.

The establishment of the ECA may appear to the reader to be a less straightforward case of organizational transfer than the founding of the European Ombudsman: while the Ombudsman was an entirely new addition to the system of the Communities, the ECA replaced an already existing institution with a similar function. We need to keep in mind however that according to isomorphic theory, the three types of pressure are mechanisms through which organizational models are transferred from one system to the other primarily because these models are perceived as successful. It is the absence of a legitimate solution to a problem that motivates the transfer, not the absence of an organization. Thus, I contend, an organizational transfer does not presuppose a structural void. In fact, a legitimate organization may be transferred to a system

precisely in order to replace an existing one which is perceived as illegitimate. As we saw, one of the reasons of the acceleration of the establishment of the ECA was that its preceding organization, the Audit Board, was widely viewed as inadequate.

Hence, the legitimacy of an organization is critical for its transfer. A SAI is an organization which consolidates a set of practices for public audit. In this sense, a SAI constitutes a cognitive script. The practices include financial, compliance and performance audit. Supported by constitutional or statutory guarantees of independence, public audit procedures produce an impartial and reliable assessment of the state of public financial accounts. In the end, SAIs aim at ensuring the accountability of the public officials who are responsible for collecting and dispensing public funds. This function is perceived not only as legitimate by also as highly desirable. The centuries-long tradition of SAIs in Europe – and almost everywhere in the industrialized world - only affirms the commitment of the European elites and publics to the independent and impartial financial control. In fact, the main difference between the cases of the European Ombudsman and the ECA is that while the institution of the ombudsman had established itself as a desirable mechanism of public accountability outside Sweden just before its transfer to the Communities, SAIs had a long established reputation. In other words, while in the case of the ombudsman the Communities were “catching a wave,” in the case of the ECA they were restoring long established codified practices.

Having addressed the desirability of a SAI as a cognitive script, we can now proceed with the discussion of the role isomorphic pressures played in the establishment of the ECA. We already defined mimetic pressures as forces that originate in the institutions of the Communities and push for the adoption of solutions that originate in the environment of the Communities, which in this case it includes the polities of the member states. Then, the EP, as a supranational

institution, is the main actor that exercised such pressures. Members of the EP were the first individuals to identify the inadequacy of the Audit Board to perform reliable external audit. They were also the first to point out that external audit in the Communities was “out of synch” with practices in the member states. As we saw in the previous section, already since the Merger Treaty of 1965 there were voices in the Parliament which called for the replacement of the Audit Board by a more independent and powerful audit body. These voices grew stronger after the signing of the first Budget Treaty, when a real opportunity presented itself for the EP to acquire new powers in the form of supervisory competence over the Communities own resources. The ECA was viewed as a major component of this effort. The views expressed in parliamentary debates and reports indicate that rationale behind the calls for the ECA was that SAIs constitute the main mechanism of external audit in the member states.

As in the case of the European Ombudsman, the EP’s ambitions were checked by the European Commission. Although the Commission adopted a rhetoric that resembled that of the Parliament, by emphasizing the importance of the external control of the budget, in practice it sabotaged any moves for more rigorous control. In fact, the Commission used its position as the producer of the original draft in the Treaty revision process in order to prevent the expansion of the Parliament’s powers in budget control through the establishment of the new institution. As the main supervisor of the implementation of the budget, the Commission had the most to lose from a strengthening of the EP’s budgetary control powers. Not only would the Commission’s own control powers be restricted, but it would also become itself subject to outside control. Hence, although the Commission draft made provisions for the replacement of the Audit Board with a more independent body, it nevertheless provided the new body with a mandate that was similar to that of the Board and very different from the mandates of national SAIs. The

Commission's resistance only further strengthened the resolve of influential Members of the Parliament to see the establishment of a SAI equivalent both in its position and its function to national SAIs, as the publication of *The Case for a European Audit Office* demonstrates. Nevertheless, interinstitutional rivalry was an impediment in the transfer of the SAI model to the Communities. Hence, although they did not lead directly to the final outcome, mimetic pressures were a necessary condition for the founding of the ECA, because not only were they observed but they also causally related to the establishment of the ECA. Had it not been for the Parliament's insistence, the ECA would not have been placed on the agenda or advanced as an idea during the deliberations for Treaty reform.

Coercive pressures, that is, the pressure exercised by the member state governments, were also important. In fact, it was only after this type of influence was exercised that the possibility of an ECA which would be equivalent to a SAI became real. The evidence I presented in the previous section does not include information on the role of individual national governments. However, the evidence suggests that through their participation in the Council, member states were in favor not only of creating a SAI but also by endowing it with a rigorous external audit function. Specifically, member state governments exercised coercive pressure by amending drastically the provisions of the Commission draft in regard to this issue. It was the Council draft that gave the ECA one of its most defining features, the power of producing reports on the execution of the budget. This element was pivotal for the institutional adjustment that occurred through the creation of the new body. The influence of the Parliament during negotiations was also important, but it was the assent of the Council that made the revision possible. It is for this reason that coercive forces are a necessary condition for the creation of a

body in the Communities that constituted a SAI equivalent to those in the member states themselves.

Finally, normative pressures, namely, pressures which are exercised by members of elite professional groups, were observed in the process of negotiations for the second Budget Treaty that created the ECA. Member state SAIs were consulted intensively by the EP for the formulation of provisions which concerned relations between them and the ECA. Undoubtedly, this consultation affected any Treaty provisions relevant to this issue, but the relatively marginal role SAIs played in the negotiations makes them valuable but not absolutely necessary players in the creation of the ECA.

Hence, we come to a conclusion similar to that we reached in the case of the European Ombudsman. Both mimetic and coercive forces were necessary conditions in their own right. Not only were they both observed, but they were also causally related to the final outcome. However, it was the institutional environment in the Communities that determined what their effect would be. On the one hand, the Parliament was restricted to an agenda-setting role because of its consultative role in the Treaty revision process and its rivalry with the European Commission. On the other hand, the same process of Treaty revision allowed member state governments a privileged position because it gave them the last word in signing the final Treaty. In this end, because of the requirements of the institutional environment, a combination of coercive and mimetic pressures was required in order to produce the observed outcome, namely the establishment of the ECA.

## 5.0 CONCLUSIONS AND IMPLICATIONS

This study provides a normative historical institutionalist explanation of organizational transfer (March and Olsen 1996). The analysis has relied on a conception of organizations as cognitive scripts and suggests that normative evaluations of those scripts by actors are important as motivations for their transfer. At the same time, the analysis has indicated that previously existing institutional arrangements matter not only by molding actor preferences in relation to an upcoming transfer, but also by restricting their options and behavior in relation to it. In order to understand the specific mechanisms that make the transfer possible, this study relied on the concepts of isomorphic pressures (DiMaggio and Powell 1983), which are exercised by actors with an interest in institutional transfer. For an empirical testing of the explanatory power of isomorphism and historical institutionalism, in the previous two chapters I presented evidence on the processes that led to the addition of the European Ombudsman (EO) and of the European Court of Auditors (ECA) to the institutional edifice of the European Union (EU). I argued that the founding of each of these two organizations was an instance of institutional transfer and the result of mimetic and coercive pressures, which were exercised by actors inside and outside the EU. Those actors were motivated by their preferences to increase the accountability of supranational institutions that already existed in the EU. Furthermore, I demonstrated that in order to achieve the transfer, those actors had to navigate established institutional practices, primarily, but not exclusively, the ones associated with Treaty revision.

## 5.1 MAIN FINDINGS

As I discussed in the first chapter, the theory of isomorphism (DiMaggio and Powell 1983) allows us to hypothesize organizational transfer by studying how mimetic, coercive and normative pressures result to the transfer of an organizational model from one institutional context to another. In this study, the term context is defined as a system of governance, either at the supranational or at the national level. The theory presupposes the existence of an organizational model which is a suitable candidate for transfer. An organizational model is a cognitive script because it constitutes a set of institutionalized norms, rules and procedures. Moreover, the theory posits, such a cognitive script is suitable for transfer when it satisfies certain normative requirements: namely it must be perceived as successful and desirable by the actors who will push for its adoption in a new system of governance.

Another condition for isomorphic pressures to take effect is that the systems among which the transfer takes place must be connected with established relationships. The systems on which this study has concentrated are the national polities of the member states and the web of supranational institutions in the EU. Each one includes its own institutional rules, organizations, and culture. However, they are all connected by a set of rules, which are outlined in the Treaties of the European Communities originally and currently of the EU. Those rules determine the terms of interaction between national and supranational actors for the purpose of making, revising and implementing policy. Hence, the Treaties determine not only what the division of labor between the supranational and the national systems is in regard to policy making and policy implementation, but also the specific role of each actor at the national and supranational level. For example, the Treaties include detailed decision making procedures, such as co-decision (European Community Treaty, Article 251), principles on the decision and

implementation of policy, such as that of subsidiarity (European Community Treaty, Article 5) and even rules on future alterations of the Treaties themselves. In other words, not only are national and supranational systems closely connected, but there is even a very clear and detailed framework of continuous interaction between actors at the national and the supranational levels.

This view of the EU as a set of autonomous but interconnected entities is definitely not new (Puchala 1972). However, it is more consistent with the Multi-Level Governance (MLG) (Hooghe and Marks 2001; Kohler-Koch and Rittberger 2006; Marks, Hooghe, and Blank 1996) approach to the EU than the Liberal Intergovernmentalist approach (Moravcsik 1993; 1998). Although both approaches recognize the connections among different systems that the EU entails, the intergovernmental approach tends to define the EU more on the basis of relationships among nation states and thus discounts the autonomous role of supranational bodies. By contrast, MLG treats both nation states and EU institutions as equally influential participants in the process of interaction between the national and supranational levels (Rosamond 2000).

Having taken the previous two caveats into consideration, we saw that the events leading to the establishment of the EO and the ECA followed a similar pattern. First, the European Parliament (EP) identified an organizational model as desirable for transfer. Both in the case of the EO and the ECA, Members of the EP presented those two institutions as solutions to accountability problems faced by the Communities. In the case of the Ombudsman, the justification for transfer was the protection of citizen rights. The new institution would hold other Community institutions accountable by increasing the transparency of their activities and by requiring that they address directly any complaints by citizens of the member states of the Communities. In the case of the ECA, the need for more accountability of those who collected, dispensed or otherwise managed Community funds was tied to the newly acquired own resources

of the Communities. Because Community institutions would begin handling funds that were previously managed by national governments, so the argument went, the deficient external audit regime was no longer acceptable. Instead, it should conform to the standards of public audit in the member states.

Second, the Parliament began the process of transfer by applying pressures for the adoption of the new institution. I labeled those pressures as mimetic, because they originate in an actor, the EP, which is part of the supranational structure of the EU. In the beginning, the pressures were weak. The first indication of a move for the adoption of a new organization was usually an isolated declaration. However, in time, those pressures increased as the issue gained momentum. Hence, for example, in the case of the Ombudsman, the EP actively solicited the Walker Smith Reports. Despite the Treaty-based principle of institutional balance, which does not permit the increase of the power of a European institution without a Treaty revision, the EP went so far as to propose the creation of the EO even outside of the framework of this process. Similarly, in the case of the ECA, during the process of revision of the Budget Treaty, the EP exerted continuous pressure on the Commission and the Council to alter their Treaty drafts.

Despite the professed desirability of the two organizations, the Parliament also had an ulterior motive: the increase of its own power vis-à-vis other supranational institutions, particularly the Commission. Thus, the addition of the new bodies would enhance the position of the EP in the supranational order of the Communities. Indeed, the choice of the two bodies does not appear to be a coincidence. At first glance, those two organizations may appear to be dissimilar. Each one specializes in a very different area: financial control and citizen rights. Furthermore, while the ECA has a very hierarchical structure and is characterized by strong reflexes for secrecy, the EO is almost its polar opposite, being a flexible and unusually

transparent body. Yet, both organizations share a very important feature: in many countries their functions are traditionally associated with supporting the actions of the legislature. In fact, the common function of those two otherwise different types of organization is that they furnish information to the legislature on the behavior of the executive branch. By doing so, they contribute to increasing the executive's accountability to the legislature.

Third, inevitably there was backlash from the executive, which counterweighed the mimetic pressures exerted by the EP. Although the Commission is not a conventional executive, it nevertheless performs a function which is traditionally associated with the executive branch of government: it is responsible for the implementation of EU policies and programs (Peterson 2002). The two organizations under examination in this study were expected to control specific aspects of this function. In the case of the EO, the Commission, having the main responsibility for the implementation of Community policies, would be one of the primary subjects of the EO investigations of citizens' rights violations. Moreover, the ECA would not only share its supervisory power over the execution of the budget, but it would also make the Commission the main subject of its audit. The reason was that even though member state authorities are involved in the administration of budget, it is the Commission which has the ultimate legal responsibility for its implementation by the Treaties.

It follows then that because the prospect of establishing the ECA and the EO had the potential of deteriorating the position of the Commission in relation to the EP, it was perceived as a threat by Commission officials. Hence, it is not surprising that the Commission reacted negatively to the pressure of the Parliament to transfer the EO and the ECA to the Communities. More importantly, the Treaty revision process gave the Commission the opportunity to exert influence on this matter, by giving it the mandate to produce Treaty drafts that reflected its

preferences. In the case of the EO, Commission officials constantly rejected parliamentary requests for an initiative that would explore the possibility of a parliamentary ombudsman, within or without the Treaty revision process. Similarly, in the case of the ECA the Commission only partially heeded the EP's request for a SAI fully equivalent to those in its member states. In each proposal, the Commission recommended that the ECA have strong guarantees for independence, but it did not provide the ECA with the role of monitoring the execution of the budget.

The fourth and last piece of the puzzle in each case was the role of member state governments. As entities external to the supranational infrastructure of the EU, member states exerted coercive pressure on the EU. They used their privileged position as the official signatories to any Treaty that outlines the main rules and structures of the EU. Yet, a necessary condition for this occurrence was that they also shared the EP's view on the desirability of the new institutions. It also appears that, as the competences of the Communities expanded, member state governments had an interest in enhancing the accountability mechanisms that checked the behavior of supranational institutions. This convergence of preferences between the Parliament and member states was quite evident in the case of the EO, as it was member state officials who drafted the Adonnino Reports, which affirmed the need for an ombudsman at the intergovernmental level. Furthermore two member states, Spain and Denmark, influenced developments directly. During the extensive negotiations for the Treaty of Maastricht, the Spanish and Danish delegations made sustained efforts to make the EO an institution of the Communities. Given the strong resistance of the Commission to include any reference to the ombudsman in its drafts, it was only member states that could introduce the institution in their own drafts. The evidence is less clear in the case of the ECA as member state willingness to

heed the Parliament's request for a rigorous audit regime can only be inferred, mainly by the fact that member state officials included the clause that allowed the ECA to perform audits throughout the process of the execution of the budget for the first time.

Hence, we can conclude that the collusion of mimetic and coercive isomorphic pressures were necessary but not sufficient conditions for the transfer of the EO and the ECA to the EU. In other words, the two institutions would not have been created, had it not been for the initiative taken by the EP and the assent of the member states. Yet, at the same time, the exercise of isomorphic pressures alone would not have produced the observed outcome of organizational transfer. The reason is that the actors who exercised those pressures operated in an institutional environment which determined their options for action. Specifically, in the two cases presented in this study, the Treaty revision process affected the final outcome by assigning specific roles to the each set of actors. Hence, it assigned a consultative role to the Parliament, the role of drafting the original proposals for reform to the Commission and the role of drafting reports and making the final decisions to the member states. Each one of these actors used its institutional position to encourage or discourage organizational transfer. Moreover, the preferences of those actors were endogenous. On the one hand, whether supranational institutions were against or pro reform depended on considerations about whether the reform would ameliorate or deteriorate their position in their institutional environment. On the other hand, the preferences of national governments were formed in response to an issue that was originally raised by supranational institutions. Thus, a historical institutionalist interpretation of actor preferences, behavior and path dependency is supported by the evidence.

In addition, the evidence presented in this study proves that some of the basic assumptions of sociological institutionalism, which inform isomorphic theory, have merit. The

findings suggest that the EP and the member states, that is, the actors that applied isomorphic pressures, were not preoccupied with increasing the efficiency of the EU when they were contemplating institutional reform. By contrast, the evidence suggests that the main concern of the actors who were in favor of reform were pushing for the transfer to the supranational level of organizations that were legitimate, namely, they were perceived as successful, at the national level. Not only were those practices by themselves legitimate but their inclusion would indirectly enhance the legitimacy of the EU itself. This was more obvious in the case of the EO, the establishment of which was tied specifically to the issue of the democratic legitimacy of the EU. However, the same rationale is evident in the case of the ECA as well. One of the main points the EP made in promoting the idea of an ECA was that it would made the management of the Communities newly acquired own resources by supranational institutions more credible.

## **5.2 THEORETICAL IMPLICATIONS**

Besides explaining the specific developments that led to the creation of the ECA and the EO, how does this study expand our understanding of the EU more generally? As I noted in the first chapter, the literature on EU-related institutional transfer heretofore has focused mostly on the effect the EU has had on its member states, rather than the opposite. Most of this literature revolves around the concept of “Europeanization” of national structures as the result of participation in the EU (Featherstone and Radaelli 2003; Knill 2005). The theory of isomorphism has been applied in that context, but only to a limited degree (Lodge 2000; Radaelli 2000a). The findings of this study suggest that as far as organizational transfer is concerned, the influence between member states and EU institutions goes both ways: the EU evolves

institutionally as a result of its interaction with its member states as well. Not only do member states provide cognitive scripts that can be adopted at the supranational level, but, along with supranational actors, they also participate actively in the process of transfer.

In addition to providing an understanding for past developments, the preceding explanation also allows us to predict to some degree how the EU will evolve in the future in terms of its organizational configuration. Let me clarify that when I say “predict” I do not mean that we can have a precise snapshot of what supranational organizations will exist in the EU in ten years from now. However, it does allow us to anticipate the profiles of organizations we can expect to see at the supranational level in the future. Specifically, future organizations will be the outcome of transfers of similar organizations that already exist in member states. Moreover, among those already existing organizations, the ones that have a well-established reputation for success, both among national governments and supranational institutions, for satisfying current needs of governance in the EU have the potential to be selected. Given the need for legitimacy in the EU, instead of innovating, that is, instead of creating entirely new organizations, both supranational and national actors will favor the copying of organizational forms that enjoy a reputation of success at the national level and can lend more legitimacy to the EU.

Moreover, the preceding analysis suggests that there is an institutionalized dynamic of change in the relationship between the EU and its member states. To put it differently, organizational transfers between member states and the EU are not haphazard occurrences, the results of extraordinary events. To be sure, the founding of new organizations as a result of organizational transfer is not an everyday occurrence in the EU. Yet, the actual decisions for the founding of those organizations are only the results of continuous and systematic interaction among supranational and national actors. There is a web of established relations among national

and supranational entities which allow them to interact on a regular basis. Besides Treaty revision meetings, which were the main focus of the current explanation, the evidence has indicated that formal questioning sessions in the European Parliament, the publication of official reports and regular summit conferences provide opportunities to actors to exercise isomorphic pressures or express dissent and consequently to instigate or prevent reform. Hence, the creation of a new organization is the culmination of this type of systematic interaction.

What are the implications of the findings of this study for phenomena that are not related to the EU? Before I can answer this question, I need to clarify that the main puzzle triggering this research project is based on an observation about the EU, namely that organizational similarities exist between the EU and its member states. Since the main research puzzle determines not only what answers we seek but also what answers we receive, this research project has provided an explanation that is specific to the EU. In order to reach this explanation, I relied on a set of theoretical tools, namely the theory isomorphism and historical intuitionism, the appeal of which reaches well beyond the study of the EU. In short, the main pursuit behind this study has been the testing of general theoretical propositions on a specific set of cases, namely independent organizations of public accountability in the EU.

It is extremely difficult to generalize on the basis of two case studies. Because, by definition, each case study has a narrow explanatory scope, generalization through case study research can be achieved through the accumulation of a large number of case studies, which test the same theory (George and Bennett 2005; Peters 1998). In fact, the larger the number and the variety of cases are, the more the degree of generalization that can be achieved. For example, additional empirical research may be able to reveal if the theoretical template tested in this study, which combines isomorphism and historical institutionalism, can explain the transfer of other

types of organizations to the EU or even the transfer of other types of institutional arrangements. There is some indication that the theoretical explanation provided by this research project is congruent with existing explanations for the transfer of policies (Héritier 1996). The same theoretical explanation may also be able to have insightful applications to other cases of regional integration, which include the creation of supranational organizations. The regional groupings of Mercosur and ASEAN come immediately to mind. Even if the explanation presented here appears to be intuitively applicable to those cases, only further empirical testing may reveal its actual limits.

Still, besides satisfying the practical need to explain particular events, theory testing inevitably has theoretical implications as well. Specifically, testing a theory on particular cases does not only allow us to assess its validity under a particular set of circumstances, but also to draw conclusions about the validity of alternative or rival theoretical explanations and perspectives on the same set of cases and about their explanatory potential more generally. Since I placed this study in the context of the theoretical debates on the EU and institutional transfer, I would like to turn now to a discussion of the implications of the findings of the current study for those debates.

The first implication is that the intergovernmental approach to the EU (Moravcsik 1993; 1998) can explain the processes that contributed to the transfer of the EO and the ECA only partially. As I discussed in the first chapter, the theoretical paradigm of Liberal Intergovernmentalism, which has been used extensively for explaining the EU, focuses on the role of member states, and in particular on how national governments aggregate the preferences of their constituencies, and how they represent those preferences in the intergovernmental bargaining fora of the EU. It follows from this approach that institutional change in the EU is

the result of interaction among member states, and that this type of change occurs according to their preferences. Hence, in the case studies included in this project, the intergovernmental approach may be in a position to provide insights on the role and preferences of the member states.

However, member state preferences and the exercise of coercive pressures were only one part of the explanation for the founding of the ECA and the EO. In line with the Multi-Level Governance approach (Hooghe and Marks 2001; Kohler-Koch and Rittberger 2006; Marks, Hooghe, and Blank 1996), the results of this study indicate that if our purpose is to explain organizational transfer as an instance institutional change, focusing on member state preferences and behavior alone does not suffice. For a full explanation, we need to turn our attention to the roles of supranational bodies as well. Supranational institutions have both the opportunities and the discretion to set the agenda of institutional reform. Moreover, just like member states, they act on their preferences for reform, which are determined not only by normative evaluations but also by their perceived need to advance or maintain their position in relation to other supranational institutions. In short, both coercive pressures by member states and mimetic pressures from supranational actors are necessary for the transfer of organizations.

The second debate which informs this study theoretically is the one on institutional transfer more generally. As I discussed in the introduction, in order to explain the success or failure of an institutional transfer, research that concentrates on this type of institutional change tends to be divided into two categories. On the one hand, there are studies which follow the “actors pulling in” approach and tend to emphasize the role played by societal and political actors in the host and donor countries as the main way to understand why a transfer succeeds or not. On the other hand, the “goodness of fit” approach concentrates more on the importance of

cultural and structural similarities between host and donor as the main predictors of transfer success.

The findings of the current project are more consistent with the actor-oriented approach. Indeed, if actors both at the supranational and the national levels had not exercised isomorphic pressures and navigated successfully the Treaty revision process, the EO and the ECA would not have been established. However, the findings also indicate that a minimum degree of similarity must exist between the systems that are involved in the transfer. Common historical and institutional backgrounds are important to the extent that they are the source of commonly accepted normative templates and cognitive scripts. In the cases of the EO and the ECA, if both supranational and national actors did not value public accountability and legislative control of the executive equally, these two organizations would not have been established. Hence, it is actors primarily that make transfer possible, but the normative environment in which they operate matters as well. Despite encompassing elements of both the “actors pulling” and the “goodness of fit” approaches, this position is not contradictory, because these two approaches do not represent conflicting ontologies, as for example the two theoretical approaches to the nature of the EU do. Rather, they constitute two different analytical lenses through which we can understand transfer. Therefore, insights from both can be combined to produce analytically richer explanations for the success or failure of institutional transfer than each approach would produce alone.

I contend that while focusing on the reasons that contribute to the success of institutional transfer itself, both of these approaches pay insufficient attention to the conditions which favor transfer over other types of institutional change, such as the evolution of indigenous institutions (For an overview of this literature, see Streeck and Thelen 2005; Thelen 2004). This study

indicates that certain environments are particularly conducive to institutional change through transfer. These environments are characterized by a significant number of regular and established relations among political systems. When those relations are in place, they provide regular opportunities for actors to exercise mimetic and coercive pressures to the political systems which are tied by those relations and therefore they make institutional transfers more frequent. I would like to point out that this explanation does not dismiss the possibility that transfer can occur between systems that do not have regular interaction. However, when this happens, it may be the result of extraordinary and rather haphazard events or circumstances, such as foreign occupation, cataclysmic events such as the collapse of communism (Jacoby 2000; Offe 1996) or overzealous domestic elites (Westney 1987), with little theoretical and analytical value beyond the particular cases in which transfer is observed. Nor does this explanation preclude institutional evolution as the outcome of processes other than transfer in an environment rich with institutionalized relations. What I want to argue instead is that the existence of regular and established relationships increases the likelihood that the systems involved in this interaction evolve by means of institutions “traveling” and resemble each other rather than through their own internal dynamic and look more different.

Granted, the EU is quite exceptional as a case of an elaborate web of relationships among separate systems. However, precisely because the EU is so extraordinary in this respect and the relationships it involves are obvious to trace, it can be used as a laboratory where these relationships are studied. Then, insights based on the EU experience can be used to explain the (low or high) frequency of institutional transfer in other contexts, where these relationships are less developed or less obvious. For example, it would be interesting to examine the potential effects of institutional transfer on countries developing ties at the regional or sub-regional level

in North and Latin America as well as in Southeast Asia. It would also be interesting to study in this light the effect the shrinking of the global environment through the so-called process of globalization has by increasing the regularity and quantity of ties between previously rather unrelated parts of the world. An intriguing new study examines, for example, how the European Court of Justice has been used as a model for the Andean Court of Justice, under pressures by elites both in Europe and in the Andean countries (Alter 2006). Yet, only further research can establish if the increase of such institutionalized relations correlates with the increase of institutional or organizational transfers.

The aim of this study is a lot more modest. As I stated before, its main goal has been to explain organizational similarity between the EU and its member states. Producing a parsimonious explanation that can apply to diverse contexts is beyond the scope of the current research. Institutional evolution generally and organizational transfer specifically are extremely complex phenomena. In trying to capture this complexity, many studies that examine institutional transfer tend to provide explanations that rely on factors so particular to the cases under scrutiny that make aggregation and generalization even more difficult. To be sure, particular problems require particular explanations. However, at the same time, the results of research that explores local variations of the same phenomenon needs to be aggregated through references to common language and comparable hypotheses. Hence, one of the more ambitious goals of this study is to point out a way in which this apparently disparate research can be unified under commonly accepted terms that can be combined to produce comparable hypotheses, which in turn can be tested on different cases. Isomorphic theory, if applied consistently across diverse contexts has the potential to fulfill this role.

## APPENDIX

**Table 1: National/federal level ombudsmen around the world (by continent or geographical region)\***

Country	Name	Founding Year **
<b>AFRICA</b>		
1 Botswana	Office of the Public Protector	1997
2 Burkina Faso	Mediateur du Faso	1996
3 Djibouti	Mediateur de la Republique	2000
4 Ethiopia	Ombudsman	2004
5 Ethiopia	Human Rights Commissioner	2004
6 Gabon	Mediateur de la Republique	
7 Ghana	Commissioner for Human Rights and Administrative Justice	1969
8 Lesotho	Office of the Ombudsman	1995
9 Madagascar	Mediateur de la Republique/ Defenseur du Peuple	1992
10 Malawi	Office of the Ombudsman	1994
11 Mali	Mediateur de la Republique	
12 Mauritania	Mediateur de la Republique	
13 Mauritius	Office of the Ombudsman	1970
14 Morocco	Diwan El Madhalim	2001
15 Namibia	Office of the National Ombudsman	1990
16 Nigeria	Public Complaints Commission	1975
17 Senegal	Mediateur de la Republique	1991
18 South Africa	Office of the Public Protector	1996
19 Sudan	Public Grievances and Correction Board	1995
20 Tanzania	Permanent Commission of Enquiry	1966
21 Togo	Commissioner for Public Relations	
22 Tunisia	Mediateur Administratif	1992
23 Uganda	Inspector General of Government/ Ombudsman	1986
24 Zambia	Commissioner for Investigations	1973
25 Zimbabwe	Ombudsman	1982
<b>ASIA</b>		
26 Indonesia	National Ombudsman Commission	

27	Kazakhstan	Commission for Human Rights	2002
28	Macao	Commission Against Corruption	
29	Pakistan	Wafaqi Mohtasib (Ombudsman)	1983
30	Seychelles	Ombudsman	1991
31	South Korea	Office of the Ombudsman	1994
32	Sri Lanka	Parliamentary Commissioner for Administration	1981
33	Thailand	Office of the Ombudsman	1999
34	Uzbekistan	Oliy Majlis, Ombudsman	1997
<b>AUSTRALASIA AND PACIFIC</b>			
35	Cook Islands	Office of the National Ombudsman	1990
36	Fiji	Office of the Ombudsman	1972
37	Hong Kong	Office of the Ombudsman	1989
38	New Zealand	Office of the Ombudsmen	1962
39	Papua New Guinea	Office of the Ombudsman	1975
40	Philippines	National Ombudsman	1979
41	Solomon Islands	Office of the Ombudsman	1980
42	Taiwan	Office of the Control Yuan	1992
43	Vanuatu	Office of the Ombudsman	1990
44	Western Samoa	Komesina o Sulufaiga	1989
<b>CARRIBEAN</b>			
45	Antigua and Barbuda	Office of the Ombudsman	1994
46	Barbados	Office of the National Ombudsman	1987
47	Cayman Islands	Office of the Complaints Commissioner	
48	Puerto Rico	Commonwealth Ombudsman	1978
49	Saint Lucia	Parliamentary Commissioner	
50	Trinidad and Tobago	Office of the Ombudsman	1976
<b>EUROPE</b>			
51	Albania	People's Advocate	2000
52	Armenia	Human Rights Defender	2003
53	Austria	Volksanwaltschaft	1976
54	Belgium	Office of the Federal Ombudsmen	1995
55	Bosnia-Herzegovina	Institution of the Ombudsman, Federal	1995
56	Bulgaria	Ombudsman	
57	Croatia	National Ombudsman (Pučki pravobranitelj)	1993
58	Cyprus	The Office of the Commissioner for Administration	1991
59	Czech Republic	Public Defender of Rights	2001
60	Denmark	Folketingets Ombudsman	1955
61	Estonia	Chancellor of Justice	1992
62	F.Y.R.O.M.	Public Attorney	1998

63	Finland	Office of the Parliamentary Ombudsman	1919
64	Finland	Office of the Chancellor of Justice	1918
65	France	Mediateur de la Republique	1973
66	Georgia	Public Defender	
67	Germany	Petitions Committee of the Bundestag	
68	Greece	Office of the Ombudsman	1998
69	Hungary	Parliamentary Commissioner for Human Rights	1993
70	Iceland	Parliamentary Ombudsman	1987
71	Ireland	National Ombudsman	1981
72	Israel	State Comptroller and Commissioner for Complaints	1971
73	Latvia	National Human Rights Office	1996
74	Lithuania	Seimas Ombudsmen	1994
75	Luxembourg	Le Médiateur	2004
76	Malta	Parliamentary Ombudsman	1995
77	Moldova	Centre for Human Rights	
78	Netherlands	De Nationale Ombudsman	1981
79	Norway	Parliamentary Ombudsman	1962
80	Poland	Civil Rights Protector	1987
81	Portugal	Provedor de Justica	1976
82	Romania	Avocatul Poporului	1997
83	Russian Federation	High Commissioner for Human Rights	1996
84	Serbia and Montenegro	Federal Ombudsman	
85	Slovenia	Human Rights Ombudsman (Varuh človekovih pravic)	1995
86	Spain	Defensor del Pueblo	1981
87	Sweden	Riksdagens Ombudsman	1809
88	Turkey	Office of the Ombudsman	
89	Ukraine	Commissioner for Human Rights	
90	United Kingdom	Parliamentary and Health Service Ombudsman	1967
<b>LATIN AMERICA</b>			
91	Argentina	Defensor del Pueblo de la Republica	1993
92	Bolivia	Defensor del Pueblo	
93	Colombia	Defensor del Pueblo de la República	1991
94	Costa Rica	Defensoria de los Habitantes de la Republica	1992
95	Ecuador	Defensor del Pueblo	
96	El Salvador	Procurador para la Defensa de los Derechos Humanos	
97	Guatemala	Procuraduría Nacional de los Derechos Humanos	
90	Guyana	National Ombudsman	1966

99	Honduras	Comisionado Nacional de Proteccion de los Derechos Humanos	1995
100	Mexico	Comision Nacional de Derechos Humanos	
101	Nicaragua	Procuraduría para la Defensa de los Derechos Humanos	
102	Panama	Defensor del Pueblo	
103	Paraguay	Defensor del Pueblo	2001
104	Peru	Defensor del Pueblo	1995
105	Venezuela	Defensor del Pueblo	

Source : International Ombudsman Institute, Federacion Iberoamericana del Ombudsman, (Weeks 1978), (Kempf and Mille 1999), (Roy and Giddings 2000), as well as websites of individual ombudsmen.

\* The list is not exhaustive.

\*\* Only when available by the sources.

**Table 2: Countries with regional ombudsmen only\***

<b>Country and institution name</b>	<b>Founding Year**</b>
<b>Canada</b>	
Office of the Ombudsman, Alberta	1967
Office of the Ombudsman, New Brunswick	1967
Le Protecteur du Citoyen, Quebec	1969
Office of the Ombudsman, Manitoba	1970
Office of the Ombudsman, Nova Scotia	1971
Office of the Ombudsman, Saskatchewan	1973
Office of the Citizens' Representative, Newfoundland and Labrador	1975
Office of the Ombudsman, Ontario	1975
Office of the Ombudsman, British Columbia	1979
Office of the Ombudsman, Yukon	1996
Commissioner of Official Languages	
Canada Post Ombudsman, Canada	
Federal Correctional Investigator	
Privacy Commissioner	
R.C.M.P. Public Complaints Commission	
<b>India</b>	
Lok Ayukta of Maharashtra	1972
Lok Ayukta of Bihar	1973
Lok Ayukta of Rajasthan	1973
Lok Ayukta of Uttar Pradesh	1976
Lok Ayukta of Andhra Pradesh	1983
Lok Ayukta of Assam	1985
Lok Ayukta of Karnataka	1985

Lok Ayukta of Gujarat	1986
Lokpal, Punjab	1995
Upa-Lokayukta	
Lok Ayukta of Himachal Pradesh & Chairman, State Law Commission	
<b>Italy</b>	
Il Difensore Civico della Regione Toscana	1975
Il Difensore Civico della Regione Liguria	1976
Il Difensore Civico della Valle d'Aosta	
Il Difensore Civico della Provincia Aut. Trento	
Il Difensore Civico della Regione Umbria	
Il Difensore Civico della Regione Sardegna	
Il Difensore Civico della Regione Piemonte	
Il Difensore Civico della Regione Marche	
Il Difensore Civico della Regione Lombardia	
Il Difensore Civico della Regione Lazio	
Il Difensore della Regione Friuli Venezia Giulia	
Il Difensore Civico della Regione Emilia Romagna	
Il Difensore Civico della Regione Campania	
Il Difensore Civico della Provincia di Bolzano	
Il Difensore Civico della Regione Basilicata	
<b>U.S.A (examples)</b>	
Citizens' Advocate Office, Lexington/Fayette County Kentucky	1974
Municipal Ombudsman, Anchorage	1974
Municipal Ombudsman, Flint, Michigan	
Public Counsel, Nebraska	1971
King County Office of Citizens' Complaints, Seattle, Washington	1971
City of Detroit Ombudsman, Michigan	1974
Portland Office of the Ombudsman, Oregon	
Office of the Ombudsman, Hawaii	1969
Joint Office of Citizens Complaints, Dayton, Montgomery County, Ohio	1971
Office of the Citizens' Aide/ Ombudsman, Iowa	1972
Office of the Ombudsman, Alaska	1975
Citizen's Aide Ombudsman, Arizona	1996
Office of Information, Outreach and Ombudsman Services, Illinois	
Children's Ombudsman, Michigan	
Children's Service Group Home Ombudsman, California	
Cincinnati Public Schools, Ohio	
Citizens of Cuyahoga County Ombudsman, Ohio	
Federal Student Aid Ombudsman, Washington, DC	
Los Angeles County Department of Ombudsman, California	

National Ombudsman Fair Enforcement of Federal Regulations, Washington, DC  
Ombudsman Office, Department of Health and Human Services, New Hampshire  
Office of the Child Advocate, Oregon  
Office of the Child Protection Ombudsman, Utah  
Office of the Community Ombudsman, Idaho  
Ombudsman, Board of Education, Maryland  
Ombudsman for Children and Families, Tennessee  
Ombudsman for Injured Workers, Oregon  
Ombudsman for Mental Health & Mental Retardation, Minnesota  
Ombudsman, Franklin County Children's Service, Ohio  
Ombudsman, Department of Transportation, Washington  
SRP Consumer Ombudsman, Arizona  
St. Paul Schools Ombudsperson, Minnesota  
Office of the Family & Children's Ombudsman, Washington  
Ombudsman Unit, Student Loans, Massachusetts

Source: International Ombudsman Institute, (Weeks 1978), (Roy and Giddings 2000), as well as websites of individual ombudsmen.

\* The list is not exhaustive.

\*\* Only when available by the sources.

**Table 3: Complaints to the European Ombudsman**

Year	Total Complaints Received	Complaints Transferred or Advised to Redirect	Admissible Complaints
2005	3,920	2,226	858*
2004	3,726	2,165	490
2003	2,436	1,327	338**
2002	2,211	1,299	331
2001	1,874	938	313
2000	1,732	808	297
1999	1,557	787	243
1998	1,372	617	212
1997	1,881	507	230
1996	842	248	254
1995	298	25	29

Source: European Ombudsman Annual Reports for years 1995-2005.

\* Of which, 389 complaints concerned the same issue

\*\* Author's estimate

**Table 4: Types of Supreme Audit Institutions (by country)**

Court Model (judicial function)	Hybrid Model	Audit Office Model
France Brazil Colombia Greece Italy Portugal Spain Turkey	Argentina Czech Republic <b>European Court of Auditors</b> Germany Indonesia Luxembourg The Netherlands Poland Russian Federation Slovakia South Korea Uruguay	Australia Austria Bulgaria Chile Cyprus Denmark Estonia Finland Hungary Ireland Latvia Lithuania Malta New Zealand Romania Slovenia Sweden United Kingdom United States

Source: UK National Audit Office; INTOSAI. Author's classification

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