

**Independence and the Irish Environmental Protection
Agency: a comparative assessment**

By Charles R. Shipan



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1. Introduction

In July 1993 the Irish Environmental Protection Agency (EPA) began its work as the primary environmental regulatory body in Ireland. The idea that the agency should be independent was in many ways the core motivation for its creation. Yet this desire for independence was not based on extensive prior experience with independent agencies. At the time it was created, the EPA was one of a handful of independent regulatory agencies in Ireland. In addition, although it was established during a wave of creation of independent agencies across Europe, at the time it was one of only a few independent regulatory agencies dedicated to the environment found anywhere in Europe. Still, the idea that the agency should be independent was perhaps the most central goal of those who supported its creation.

In this paper I will draw on a number of recent developments in political science and economics in order to assess the independence of the EPA. In order to provide some orientation for readers who are unfamiliar with the EPA, I begin by presenting some background information on environmental regulation in Ireland prior to the creation of the EPA along with a brief description of the responsibilities of the agency. I then turn to an examination of the political motivations behind the creation of the agency, with special attention to the role of independence. More specifically, I will examine why independence was seen as such an important feature of this agency.

With this background information and discussion of the importance of independence in hand, I turn next to an analysis of the EPA's level of independence. In these sections, I will draw on recent approaches in political science and economics to provide insight into the EPA's level of independence. First, I will look at the ways in which the agency's formal *structural features* affect its independence. As part of this section I will provide an in-depth look at the structural features contained in the act that created the EPA. Having provided this in-depth look, I then compare the EPA to other independent agencies in Ireland and to other environmental agencies across Europe and in the U.S. Second, I will investigate the agency's monitoring and enforcement activities over time, in order to see whether there is any evidence that the agency is subject to *contemporaneous influence* from the government.

In addition to this primary focus on independence, I will also consider the question of accountability. Although an examination of accountability is not the central concern of this paper, independence and accountability are inextricably linked, and as a result, the concept of accountability will arise at several points throughout the paper. Finally, in the concluding section of the paper I provide a road map for how future studies might study accountability.

Environmental Regulation in Ireland prior to the creation of the EPA

The history of environmental policy in Ireland and of the developments leading to the creation of the Environmental Protection Agency have been covered, and covered well, elsewhere (e.g., Scannell 1995; Taylor, 2001; Harney, 1991). Thus, in this section, I do not attempt to give a detailed historical account of environmental policy or the creation of the EPA, but instead attempt to reach three more modest goals. First, in order to set the stage for an analysis of the EPA, I provide some background information about the nature of environmental regulation in Ireland prior to the creation of the EPA. Second, I describe the primary responsibilities of the agency. Third, I examine the political motivations behind the creation of the agency, focusing in particular on the importance of independence, and examining how independence allowed politicians to benefit by shifting responsibility, making credible commitments, and providing for expertise.

Background

While environmental issues have always been around in Ireland, they rarely occupied a central place on the political agenda in the first forty or so years following the founding of the Irish state in 1922. To begin with, there was little pressure from the public to give a place of prominence to environmental policy, as public opinion surveys generally showed the citizens of Ireland to trail nearly all other EU countries in terms of their level of environmental concern (Coyle 1994, Whiteman 1990). In part, of course, this lack of interest in environmental issues was due to the high employment of the time. It was also true that there had not yet developed a sufficiently strong scientific consensus on the causes or consequences of environmental pollution. In any case, the lack of public pressure for action meant that politicians felt little pressure to pass laws that dealt with environmental issues. There were some exceptions, to be sure, with the occasional enactment of laws addressing environmental issues (see for example, Maguire, O'Reilly, and Roche 1999). Still, political action on the environment tended to be infrequent.

This lack of activity began to change during the 1960s, 1970s and 1980s. First, public awareness of environmental issues began to increase. In part this was due to increased activity by environmental groups (Coyle 1994). It was also due to environmental crises and disasters, including oil spills, severe smog in Dublin, increases in fish kills caused by water pollution, and other environmental problems (Harney 1991). Overall, as many observers at the time noted, there was a loss of confidence, on the part of the public, in the ability of the local authorities to police the growing power of industry. In *The Irish Times*, for example, environmental correspondent Frank McDonald noted that:

It was precisely because the public had lost confidence in the ability of local authorities to police increasingly complex areas of production, such as the pharmaceutical industry, that a commitment was made just over four years ago by the then Fianna Fáil-Progressive Democrat coalition to establish an environmental protection agency. (McDonald 1993, p. 2)

This statement echoed many that were issued during the Seanad debates about the creation of the EPA, such as the following comment made by Deputy O’Donovan:

...I think the setting up of this agency will certainly help to allay the fears of the public. The truth is that the general public had lost confidence in the local authorities, particularly in Cork County Council. (Seanad Éireann, Volume 127, 06 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed))¹

Second, and more importantly, Ireland was, in effect, forced to do more in the area of environmental policy, with the development of the European Commission’s actions and initiatives in the area of environmental regulation (Freestone and McLoughlin 1998, Doyle 2003).² In response to EC Directives, Ireland has passed a number of laws, including those that can be considered the cornerstones of environmental policy, such as the Local Government (Water Pollution) Act of 1977 and the Air Pollution Act of 1987. Overall, the trend toward more political activity on environmental issues can be seen by simply counting the number of acts and statutory instruments that mention the word “pollution” in the title – admittedly a very rough measure, but one that nonetheless captures well the increase in activity.

Table 1. Government Actions With “Pollution” in the Title

<i>Decade</i>	<i>Acts</i>	<i>Statutory Instruments</i>
1920s	0	0
1930s	0	0
1940s	0	0
1950s	1	9
1960s	1	17
1970s	2	12
1980s	2	23
1990s	5	55

Note: “Acts” are statutes that are voted into law by the Oireachtas; “Statutory Instruments” are regulations issued by the Government

Despite the increased attention to environmental matters and the corresponding increase in policymaking activity, however, Ireland’s basic structure for dealing with environmental issues remained the same. Two main sets of actors were predominant in this area. One of these was the Department of the Environment, which had the responsibility to set priorities and to make policy. In addition to the Department, Local Authorities across Ireland were responsible for implementation and enforcement.

¹ All Seanad debates referenced in this paper were found online at <http://www.oireachtas-debates.gov.ie/>

² The incentives to take a more active role toward the environment were similarly increased by Ireland’s decision to join the European Union in 1973 and by its promotion of the EU presidency in 1990 as the “green” presidency.

The involvement of the Local Authorities led to a number of problems (Scannell 1995, Taylor and Murphy 2002). To begin with, there were too many Local Authorities, which led to a situation where policies could vary dramatically from one area to another. In addition, the Local Authorities simply could not keep up with the flood of policies that now were coming from the European Commission, partly because they lacked the funding to implement with all of the new laws that were being adopted and partly because they lacked the expertise keep abreast of the latest policy developments. Finally, and in the eyes of many, most importantly, the Local Authorities had a serious conflict of interest. As Coyle described the situation,

The authority of local government in environmental control has been compromised by the fact that local authorities are, themselves, major polluters. This has led to a widespread disregard for pollution laws. Ultimately, there is a conflict of interest between the developmental role of local authorities and the control function assigned to them under environmental legislation. Local authorities act as both gamekeepers and poachers in respect of water quality and waste disposal since, under existing arrangements, they are responsible for the environmental impact and control of their own operations. (1994, p. 73; see also Taylor and Murphy, 2002)

These problems led to a situation that was, from several points of view, untenable. Local Authorities recognized that they were overwhelmed, and that their role as regulators was in conflict with their need to increase business. Industry and agriculture suffered from having to deal with unexpected and unpredictable variance from one region to another, and also had to deal with the Local Authorities' lack of expertise. Environmentalists were frustrated by the fact that the bodies with the primary ability to monitor and regulate on environmental issues were faced with a cross incentive *not* to do these things. In short, nearly everyone paying attention to this issue found some reason to be dissatisfied with the existing arrangement.

Given this swirl of dissatisfaction with the status quo, proposals for a new agency that would be dedicated completely to environmental issues met with wide-ranging approval. In the Seanad, for example, which had the first hearing of the bill, Mr. E. Ryan voiced his strong support for the creation of the EPA:

The Bill before the House tonight is perhaps one of the most significant and necessary pieces of legislation to appear in a very long time. The establishment of the Environmental Protection Agency is long overdue. In contemporary Ireland the preservation of the environment and the country's natural assets are assuming ever increasing importance....The establishment of the Environmental Protection Agency will play a meaningful role in acting as an independent objective invigilator in seeking to achieve managed and sustainable protection and conservation of our physical environment (Seanad Éireann, Volume 127, 27 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

Shortly thereafter, Mrs. Doyle expressed a similar view:

I welcome the Environmental Protection Agency Bill before us. It is limited in some respects but I think we are all delighted to see much promised legislation finally reach the Houses of Parliament (Seanad Éireann, Volume 127, 06 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

The Functions of the Environmental Protection Agency

Eventually, the Environmental Protection Agency Act 1992 was enacted on 23 April 1992, and the Agency itself was formally established on 26 July 1993. Sections 52 (1) and 52 (2) of the act clearly stated the agency's main responsibilities. The agency, for example, was to promote and coordinate environmental research; promote environmentally sound practices; provide advice to the central government as well as the local authorities on environmental issues; and serve as the liaison to the European Environment Agency. Most important, however, were first two provisions laid out in Section 52:

52.—(1) The functions of the Agency shall, subject to the provisions of this Act, include—

(a) the licensing, regulation and control of activities for the purposes of environmental protection,

(b) the monitoring of the quality of the environment, including the establishment and maintenance of data bases of information related to the environment and making arrangements for the dissemination of such information and for public access thereto.³

The first of these provisions, in Section 52 (1) (a), was a major step because it provided the basis for the new Integrated Pollution Control (IPC) system. Under this new system, all types of pollution emitted by a facility would be treated at once, rather than in a piecemeal fashion, as had been the case previously. Thus, with the power to issue licenses, the EPA could consider all the kinds of pollution that might result from the facility, removing the incentive for the firm to reduce one type of pollution that was being examined, only to increase a different type of pollution.

The second of these provisions gave the EPA the responsibility for monitoring the environment. In part, this meant keeping track of the amounts of different kinds of pollutants in the environment, and producing reports that made this information available to the public. Taken together with the previous provision, however, this set the stage for

³ The text of the act can be found online at http://www.irishstatutebook.ie/1992_7.html

the agency to monitor and enforce the terms of the licenses that it issued, a responsibility that I will return to later in this paper.

A Call for Independence

While there was a general consensus on the need for a new agency dedicated to environmental protection, there were some issues of contention, such as the relative weight that the agency should place on the potential costs of controlling pollution.⁴ In addition, as shown in Appendix A, debates over the creation of the bill could sometimes be heated, intense, and even personal. But one matter on which there was almost universal agreement was that the agency should be *independent*. Mary Harney, who at the time was the Minister of State for the Environment and who was, by most all accounts, the driving force behind the creation of the agency, put the matter succinctly:

With such a wide range of functions and powers it is essential that the Agency...possess a strong and *independent* management (Harney 1991, p. 31).⁵

Similar calls for independence were sprinkled regularly throughout the Dáil and Seanad hearings that addressed the creation of the agency. During an early hearing in the Dáil, for example, Mr. Quinn emphasized Labour's perspective on the importance of independence:

Labour believes that it is absolutely essential for the future that the management of the environment be entrusted to an *independent* agency, with adequate resources and powers. The Environmental Management Agency we propose would be statutorily established. It would have a representative council with an *independent* secretariat and executive staff (Dáil Éireann, Volume 394, 13 December, 1989; Private Members' Business: Environment Protection Agency Bill, 1989: Second Stage (Resumed)).

Mr. Fallon agreed on the need for independence:

I am impressed with the Minister's determination to ensure that from the outset the EPA will be *independent* of the Department of the Environment and of the Government...It is generally agreed that if the EPA are to be effective in restoring public confidence in the monitoring and control of pollution they must be *independent* (Seanad Éireann, Volume 127, 23 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

⁴ Much to the chagrin of many environmentalists (see Coyle 1994), Section 5 (1) of the Act specifically directed the Agency to adopt a standard of requiring facilities to use the "best available technology not entailing excessive costs." Environmentalists opposed this standard because it seemed both too weak and too vague.

⁵ In this and in all future quotations used in the paper, emphasis is added for effect and was not present in the original transcript of the remark.

Mrs. Doyle stated the matter quite directly:

Above all else, it must be *independent*. It must be *independent* in its decisions. It must be financially *independent* and not crying out that it cannot afford to do this or do that. It must be able to stand financially on its own two feet. Above all, the scientific integrity of the body must be beyond reproach. To me, if there is any question of lack of scientific integrity or lack of independence as a body, we may stop now and go home because we are wasting our time (Seanad Éireann, Volume 127, 07 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

During these hearings, Miss Harney sought to assure members that the newly created agency would indeed be independent:

If the new agency is to have the full confidence of the general public it must be tough, *independent* and fair in all its dealings and it must be seen to be so.

The independence of the agency is guaranteed by a number of important elements. First, the executive board is selected by an independent committee. The agency will also have an effective and expert staff and the freedom to act of its own volition. It will have sole and direct responsibility for licensing a wide range of activities and, lastly, it will be an offence under this Act to lobby any member of the board or employee of the agency with the intention of influencing improperly a matter to be decided by the agency (Seanad Éireann, Volume 127, 23 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

The requirement of independence continued to be seen as the most essential element of the agency even in the months after it began its work:

If there is any good to come out of the two fires at Ringaskiddy last week it will hopefully be that the authorities and politicians finally recognise the necessity of giving the Environmental Protection Agency sufficient powers to carry out its functions not just comprehensively but *independently* (*Irish Times*, 1993, p. 11).

Clearly there was widespread agreement on the need for independence. Indeed, independence was more or less taken as a given, asserted as a positive force, with few downsides, by nearly all who spoke on this issue.

Why Independence?

Why was independence seen as so important, so valuable, and so attractive to so many people? After all, Ireland had little prior experience with independent agencies in general, let alone in the growing area of environmental policy. In addition, there was already a ministry in place that had formal responsibility for this policy area and which

could have subsumed the powers given to the EPA. Thus, the creation of an independent agency to regulate environmental policymaking was a surprising, and in many ways bold, move for Ireland to make.

Ireland could, however, look toward other countries and other policy areas to gain information about independent agencies. In the United States, for example, regulation by independent agencies began at the state level in the mid-1800s and in 1887 at the national level with the creation of the first major national independent agency, the now-defunct Interstate Commerce Commission. Since that time, the U.S. has gained considerable experience with such agencies. Early in the 20th century, the U.S. created agencies such as the Federal Trade Commission and the Federal Radio Commission. The remainder of the 20th century saw two peaks in the creation of independent agencies. The first came in the 1930s. Some of the agencies created at this time, such as the Securities and Exchange Commission and the National Labor Relations Board, were direct responses to the Great Depression and the economic problems the U.S. faced in the 1930s. Others, such as the Federal Communications Commission, a sequel to the Federal Radio Commission, were not actually part of the New Deal approach, but benefited from the new acceptance of the view that government should play a more active role in regulating the economy. The second peak came in the 1960s and 1970s, with the creation of more socially-oriented agencies, such as the Consumer Product Safety Commission and, more relevant for this study, the U.S. Environmental Protection Agency. Thus, throughout much of the 20th century, regulation by independent commissions was an accepted and growing part of the American government.

In Europe, however, regulation by independent commissions was not nearly so common. Government ministries tended to maintain jurisdiction over policy areas, and there was little call for the creation of new and independent agencies. A change began to occur, however, in the 1980s. Heralded by Majone (1994, 1996) as the “rise of the regulatory state,” the last three decades have seen a dramatic increase in the number of independent regulatory agencies in countries across Europe and in the European Union. Some are economic agencies, designed to regulate areas such as telecommunications or electricity. Others focus more on social issues, such as food safety or the environment. The Irish EPA clearly belongs in this latter group.

Initial Justifications for Independence

Rather than being part of a ministry or executive department, these agencies exist, to varying degrees, on their own, outside of the sphere of existing legislative and executive institutions. The question this leads to, then, is: Why? What is it about independence that is so attractive that countries across Europe have adopted this new and fundamentally different approach to the economy and to regulation? And which of these explanations best fit the Irish EPA?

Arguments in favor of independence reach back a hundred years or so, drawing in particular on the “scientific management” school that developed in the U.S. and Europe. According to this line of thinking, which was especially prominent in the Progressive movement in the United States, politics and administration needed to be separated. Good administration, freed from the taint of politics, could be called on to solve public policy problems in an unbiased manner. Thus, what was necessary was a way to remove politics from administration, and what better way to do this than to create an administrative agency that existed outside of the traditional political institutions that were run by elected politicians who were likely to pander to political interests rather than seek the best policy. Over time, then, the idea that politics and administration needed to be separate became an orthodoxy (Seidman and Gilmour 1998), one that found its purest formation in the creation of regulatory agencies that were independent of the executive branch of government.

Thus, the basic explanation that scholars of public administration have used to explain the existence of independent agencies is that such independence removes agencies from politics, thereby allowing these agencies to make better (i.e., less political) policy decisions. This is, however, a purely normative argument, and as such represents an ideal more than an explanation. Over time, however, scholars have sought realized that independent commissions serve a number of other functions, and have provided more positive explanations for the creation of independent agencies.⁶ Most generally, regulation by independent commission is seen as a solution to a problem, or series of problems, and as such, it provides specific political benefits. More specifically, the creation of independent agencies can allow politicians to *shift responsibility* for difficult policy decisions; create *credible commitments* regarding future policy actions; and provide for the development of *expertise* in complex policy areas (e.g., Thatcher and Stone Sweet 2002). In the following sections, I discuss each of these functions, or solutions, both in abstract terms and in the concrete case of the EPA, with the purpose of seeing whether these explanations, which have been used to explain the creation of all sorts of independent agencies in a wide range of countries, can also provide insight into the creation of the Irish EPA.

Benefits of Independence: Shifting the Responsibility

Politicians want to take credit for good public policy and also for policies that please their constituents. At the same time, they want to avoid making bad policy decisions, and especially want to avoid those decisions that make their constituents and powerful interest groups unhappy. So what is a politician to do when faced with a difficult public policy problem, especially one on which there is a broad consensus that “something” needs to be done? One answer is that she can delegate this problem to an independent

⁶ In this section I am referring explicitly to explanations of why regulatory agencies should be independent. A separate, although related, question is why independent agencies should regulate the economy. While this is a rich topic and one with a long history of academic investigation, it is well beyond the scope of this study.

agency, one that is not under her direct control. Then, if the agency makes a “good” public policy decision, one that pleases the politician’s constituents, she can rightly point out that she was in part responsible for delegating policymaking authority to this agency, and thus deserves a part of the credit. On the other hand, if the agency makes a poor decision, she can empathize with her constituents, note that the agency is “out of control,” reproach the agency for making such a poor decision, and perhaps even intervene to alter the agency’s action.

This shift-the-responsibility model, which is developed most fully in the work of Fiorina (1977; see also Weaver 1986), has generated a fair amount of skepticism, in part because of its rather cynical take on politics (e.g., Kelman 1987). At the same time, however, there does seem to be something to this argument. Politicians regularly castigate independent agencies for the decisions that these agencies make – even though it is these politicians who delegated responsibility to the agency in the first place, who have various controls over the agency, and who can pass laws to alter what the agencies have done. Indeed, cases studies of agency policymaking are often replete with statements decrying the out-of-control nature of independent agencies (for example, Ferejohn and Shipan 1989a).

Does the EPA seem to be an instance in which politicians were motivated to shift responsibility? Obviously no politician is likely to go on record as saying “We created this agency so we could take credit when times are good and shift the blame when times are bad.” But while direct evidence along these lines is not likely to exist, it remains a plausible motive for the creation of the EPA, one that many observers have noted. Taylor (2001), for example, contends that the creation of the EPA has allowed the government to give the appearance of acting to improve the environment, while actually moving toward a system in which economic costs are weighed more heavily than environmental costs. In effect, according to Taylor’s view, the EPA allows the government to look like it is acting in a strongly pro-environmental fashion, but all the while placating industrial and agricultural interests. McGowan points out a related problem for politicians, one central to the notion of shifting the responsibility: that politicians may be caught between “consumers and environmental lobbies on one hand and commercial and agricultural lobbies on the other” (1999, p. 165). In such situations, as noted earlier, politicians can use independent agencies to avoid being caught in the crossfire between different sets of interest groups and constituents. This notion – that independent agencies can provide a shield for politicians – came up in a number of interviews I conducted with policymakers and observers of the EPA. Opposing parties in particular can find the existence of the agency frustrating, because the government can use the agency as a way to simply avoid having to deal with an issue, saying, for example, “I can’t comment, as this is a matter for the EPA.”

None of this, of course, should be taken as proof that politicians created the EPA simply in order to avoid responsibility. Politicians generally are not angels who seek only to further the public good, regardless of whether doing so benefits them politically. But nor are most politicians sole-minded in pursuing selfish political benefits at the expense of the public good. Clearly the agency was not created primarily in order to allow

politicians to shift responsibility for difficult decisions. But equally clearly, such an explanation is at least a plausible, if incomplete, part of the story.

Benefits of Independence: Credible Commitment

The credible commitment argument, developed in studies by both economists and political scientists, holds that politicians will delegate to independent agencies in order to demonstrate their credibility on a policy issue (Majone 1997). If these politicians were to maintain control over policy themselves, they might not be able to credibly commit to a specific policy course, since politicians are subject to the vicissitudes of public opinion. In effect, a government might *say*, at some point in time, what sort of policies or approaches will exist in the future; but there is often no mechanism that forces the same government to *commit* to such a future course of action. Furthermore, the government might be replaced by a different government, which might take a completely different approach to the policy in question. In effect, then, it is not credible for a politician to claim, “Here is the policy that I am going to take, and I will continue to follow this policy over time,” because political circumstances may change, leading to a new policy.

The only way to commit to a certain course is to hand policymaking responsibility over to an independent agent. The policy area in which this notion of credible commitment has been developed most fully and explicitly is in the development of central banks to control monetary policy (e.g., Bernhardt 1998, 2002; Kydland and Prescott 1977; Elgie 1998; but see McNamara 2000 for a dissenting view). In particular, if politicians do *not* delegate responsibility over monetary policy to an independent central bank, then they will have the incentive and ability to manipulate the economy in ways that will provide short term benefits, producing votes and increasing their chances of re-election, but that do so at the expense of the longer term health of the economy.

More broadly, the credible commitment approach also can be used to explain delegation to independent regulatory agencies other than central banks. One problem that can occur in regulation is when there is a mismatch between the capabilities of the agency that is supposed to carry out regulatory functions and the number and complexity of tasks that they are required to carry out (Majone 2000). When such a gap is large, the system suffers from a problem of credibility. And regulation – specifically by an independent agency – should lead to more predictability and hence more credibility.

Clearly, producing a more consistent and predictable arrangement was one of the primary goals behind the creation of the EPA. As mentioned earlier, there were too many Local Authorities involved, they had too few resources, and they were dealing with too many new policies and demands. By one count, the number of directives coming from Europe increased dramatically during the 1970s and 1980s, from one in 1969 to 10 in 1975, 13 in 1980, 20 in 1982, 23 in 1984, 24 in 1985, and 17 in the first few months after the Single

European Act in 1987 (Majone 1994).⁷ Local Authorities, through no fault of their own, were not equipped to keep up with this level of growth. There simply were too many laws and issues for the 33 major Local Authorities to handle (Harney 1991).

This situation led to one that threatened stability for businesses in Ireland. Faced with the threat of businesses potentially locating elsewhere because of the vicissitudes caused by such a decentralized, inconsistent policymaking arrangement, political leaders clearly saw a potential benefit in creating a single agency that could put forward a more consistent and predictable policy. Business leaders saw the advantages of such a system with equal clarity. In 1992, for example, Mr. Winifred Pedersen, the project director for a major pharmaceutical plant being constructed in Cork at the time, agreed that the establishment of the EPA would greatly improve the situation for companies that were considering locating in Ireland. For companies planning to locate in Ireland, the uncertainties created by having to abide by different standards set down in different counties, along with the lack of clear standards and procedures, was a serious roadblock. The situation would change for the better, he contended, “when the new EPA is up and running, and I think it’s arrival will be welcomed by industry” (Hogan, 1992).

In general, then, the establishment of the EPA would help to solve the credibility problem – the problem that government policies were neither predictable nor consistent – in a number of ways. It would allow for consistent enforcement. It would create a set of clear and predictable standards. It would ensure that adequate resources would be provided to address environmental issues. In short, it would be a more credible way to deal with the environment.

Benefits of Independence: Expertise

Elected legislators are expected to deal with a vast array of policy issues, ranging from telecommunications to health policy to transportation. Some of these issues are more complex than others, but all require some level of expertise. One way that legislatures have attempted to deal with the ever-increasing complexity of the world is to delegate internally, to committees that then develop expertise (Krehbiel 1991). Another way is to delegate to agencies that are staffed with people who are experts in the specific policy area. Thus, an agency like ComReg is staffed with people who have expertise in telecommunications, the EPA is staffed by people who have expertise in various facets of environmental policy, and the Central Bank of Ireland is staffed by experts in monetary policy.

⁷ This was true not just in Ireland, of course. As Majone has written, “The growth of administrative regulation in Europe owes much to these newly articulated perception of a mismatch between existing institutional capacities and the growing complexity of policy problems [like] reducing environmental pollution” (1994, p. 85). Still, this problem was exacerbated in Ireland because the large numbers of Local Authorities involved meant that their institutional capacities were especially stretched and taxed by the changes in policy.

Expertise obviously plays a role in credible commitment, because part of what makes delegation credible is the notion that policymaking responsibility has been passed along to a knowledgeable group of experts. Similarly, it can play a role in shifting the responsibility, since an agency filled with experts is likely to make good decisions, allowing the politician to claim credit for having delegated to the agency in the first place. But even in the absence of credibility and shifting the responsibility, complexity is a central problem for politicians, one that delegation to an independent agency can help solve. Simply put, while politicians in government are generalists, dealing with all sorts of policy issues, staff members at independent agencies are specialists who focus on a specific policy area. Their very independence allows them to utilize their expertise, to act in ways that can produce a good outcome. They will, for example, be much more informed about the likely outcomes associated with any regulatory actions, or with the complexities of issues attached to a policy decision. Politicians in turn benefit from this arrangement, not only because it gives them a warehouse of expertise they can draw on, but because it means their policies will be implemented more accurately.

There is no question that expertise was front and center during the creation of the EPA. Mary Harney, for example, noted at the time that not only was there a need for the setting and consistent application of standards, but “[t]here was need also for a high level of expertise...for monitoring modern developments, to ensure compliance with these standards” (1991, p. 28). Other members of the Oireachtas chimed in with similar appeals to the need for a high level of expertise, as the following quotes from the Seanad hearings demonstrate:

Wexford County Council welcome the provisions of the new Bill, particularly the Environmental Protection Agency's role in providing advice and assistance with a high level of expertise to deal with the complex environmental issues of today and the future. (Mrs. Doyle; Seanad Éireann, Volume 127, 07 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed))

The 33 major local authorities in Ireland are charged with the implementation of this legislation and, by and large, they have performed this task well. Recently, however, difficulties have begun to arise. Environmental protection in the area of licensing of new and existing development has become increasingly complex and specialised. It has become more and more difficult for each local authority to provide the expertise necessary to carry out their licensing functions. Problems of public confidence and the need for a more uniform decision-making process have made it clear that these functions should now be carried out by one expert body. The idea of an Environmental Protection Agency has been born out of the need for such a body. (Miss Harney; Seanad Éireann, Volume 127, 23 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed))

The agency to be established must, above all, command respect. They must command respect for their powers, their scientific expertise and their political or, if you like, non-political credibility. That respect will be the essence of the agency. (Professor Murphy; Seanad Éireann, Volume 127, 23 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed))

Independent Regulatory Agencies as Solutions to Problems

As the preceding section demonstrates, regulation by independent commission provides a number of political benefits. Viewed somewhat differently, independent commissions can be seen as solutions to a number of political problems. One problem that politicians often face is the need to act on issues that may prove controversial, where some action needs to be taken but there is a strong likelihood that any decision will anger some influential groups or constituents. In such cases, independence provides a solution because it allows politicians to shift responsibility. Another problem is that existing policies might be inconsistent, or unpredictable. In such cases, independence provides a solution by allowing politicians to commit to a specific approach. Furthermore, because the agency is independent, the politicians will not have the opportunity to meddle and manipulate outcomes. In effect, the solution is one of credible commitment. A final problem is that politicians simply may not have enough knowledge to fully understand a policy area. In such cases, independence represents a solution because it creates an environment in which expertise can flourish, allowing for better responses to problems that emerge.

All three of these incentives clearly were present during the creation of the EPA, and all help to provide a general theoretical portrait that explains why it was created as an independent agency. There are undoubtedly other theoretical and substantive explanations that also apply. Many scholars (for example, Derthick and Quirk 1985, Thatcher 2002) have written of the importance of *political entrepreneurs*, a label that unmistakably fits Mary Harney. In addition, some scholars argue that politicians use independence to place agencies out of reach of their opponents (e.g., Moe 1989); and Harney, who had just left Fianna Fáil to create the Progressive Democrats, would have had an incentive to keep the new agency beyond the reach of Fianna Fáil. Still, the primary theoretical explanations for the creation of independence have been that such agencies allow politicians to shift responsibility, commit credibly to a course of action, and develop expertise. The creation of the EPA clearly provides evidence of each of these political motivations.

Costs of Independence?

At the heart of democratic theory is the idea that there should be a link between the citizens of a country and the policies in that country. When citizens elect representatives to make policy, there is still a strong link between citizens and policy, due to the nature of elections – if politicians create policies that citizens like, they can be kept in office, but if they create policies that citizens do not like, they can be voted out of office. Thus, although the link is indirect, flowing through the intermediary of elected politicians, there still exists a recognizable and continuous chain moving from citizens to policies. Due to the existence of this link, policy ultimately is *accountable* to citizens (Pollack, 2002).

If, however, politicians hand over all authority to an agency, this link may be severed. In such a case, if the agency is taking actions that are not in accord with the preferences of the polity, and if the politicians have limited controls over the actions of this agency, then the link between citizens and outcomes is broken. Notably, this is true even if an agency is staffed by experts who are making a policy that is, according to some objective criteria, the “best” policy.

Hence, the fundamental conundrum of delegation to expert, independent agencies is that the very actions that allow for independence strike a blow to accountability, and more broadly, to democratic theory, while the actions that would best guarantee accountability act to subvert independence and expertise. What is the best way to allow an agency to draw on its expertise? Clearly, to make it independent, removed from political pressures, and able to draw on its expertise when making decisions. This, however, leads to actions and outcomes that may be only coincidentally in agreement with the wishes of the public, and thus cannot co-exist with the notion that policymaking should be fundamentally accountable. What is the best way to ensure accountability? It would be to ensure that policymaking is completely controlled by elected politicians, who are the agents of the public. However, when this takes place, experts are not independent, and cannot draw on their expertise when making policy.

The key point here is that any decision about delegation necessarily will involve some tradeoffs. At one extreme, policymaking might be uninformed, if knowledgeable experts are not given discretion. At the other extreme, policymaking might be unaccountable, if experts are allowed to act without being subject to political controls. Politicians thus have incentives to give agencies independence; but there is a potential cost to doing so.

Addressing how politicians deal with the issues of independence and control has become something of a cottage industry in political science over the past two decades. In a nutshell, political scientists have identified a number of approaches that politicians can use to attempt to have the best of both worlds – that is, to both delegate to experts and to maintain control over policymaking. Politicians can begin by creating independent agencies. However, then they affect the level of independence by the specific *structural features* that they give to the agency. They can also influence outcomes by attempting to exert *contemporaneous influence* over an agency, thereby influencing the agency’s actions on an ongoing basis. Through these mechanisms, politicians can delegate to experts, shift responsibility, and credibly commit to a course of action, but they can also maintain some degree of control over what the agencies are doing.

In the following sections I examine the EPA’s level of independence. Determining whether an agency is independent or not is a difficult task – how would we know it if we see it? Yet by examining structural features and contemporaneous influence, we can get a better feel for this issue.

The EPA and structural independence

All agencies have a certain formal structure that is spelled out in the legislation or regulation that creates the agency. These formal structures are not determinative, of course; by themselves they do not lead directly to specific policy outcomes. But at the same time, these structures have political and policy implications, as they can cause agencies to lean in one direction rather than another, to place weight on specific factors rather than others, and to favor certain groups and choices over others. Evidence of the importance of these structures can be seen in the debates and political fights over the location of agencies. In the U.S., for example, the institutional locations of the Interstate Commerce Commission (ICC), the Federal Radio Commission (FRC), and the Occupational Safety and Health Administration (OSHA), among others, were topics of serious debates. In two of those cases – the ICC and the FRC – proponents of independence won out, and the agencies eventually were located outside of the executive branch, in part to prevent the president from having too much control over the agency. In the case of OSHA, however, organized labor preferred to have the agency located in an executive agency, but within a specific agency that was seen as favorable to their goals, and in the end it was placed in such an agency, the Department of Labor.

Most studies of the formal, structural independence of agencies have consisted of case studies of specific agencies, such as the ones mentioned above, as well as dozens of others across the world. We can do a similar analysis of the EPA. Clearly, it is an independent agency, given its location outside of the Department of the Environment and Local Government. That provides a starting point. Given this starting point, how else does its formal structure affect its actual independence?

Gaining any sort of context for such a question would have been, until recently, almost impossible. Not only were most studies of independent agencies case studies of single agencies, rather than comparative studies, across either countries or policy areas. Fortunately, in a recent series of impressive papers, Fabrizio Gilardi (2002a, 2002b, 2003a, 2003b) has taken a major first step toward addressing this gap. As part of a broad and ambitious overall project to examine regulatory agencies across Europe and to assess arguments such as the credibility hypothesis (which has been general accepted but rarely rigorously tested), Gilardi created the first cross-national database of independent agencies. In a paper published in the *Journal of European Public Policy*, Gilardi (2002a) focused on independent regulators in five policy areas – electricity, telecommunications, financial markets, food safety, and pharmaceuticals – across seven countries (Belgium, France, Germany, Italy, Netherlands, Sweden, and the UK).⁸ Importantly, as a part of this paper and his broader project, Gilardi developed a way to operationalize the concept of agency independence. That is, he developed an index, based on a series of questions, that can be used to come up with a specific “independence score” for each agency. This score, which ranges from 0 (no independence) to 1 (complete independence), focuses on five areas of the agency’s formal structure:

⁸ In updates of this study, Gilardi (2003a, 2003b) expands his analysis to seven sectors and seventeen countries, as detailed below.

- *Agency head status* – for example, what is the term of office for the agency head, who appoints the head, under what conditions can he or she be dismissed, etc.
- *Management board members' status* – for example, what is the term of office for board members, who appoints them, under what conditions can they be dismissed, etc.
- *Relationship with government and parliament* – for example, is the independence of the agency formally stated, what are the formal obligations of the agency to the government and the parliament, etc.
- *Financial and organizational autonomy* – for example, what is the source of the agency's funding, who controls the budget, who controls personnel decisions, etc.
- *Regulatory competencies* – for example, does the agency share regulatory duties with other agencies

Fortunately, since Gilardi published the exact set of questions that he uses, as well as the scores he assigns to each answer, it is possible to replicate his work and also to compare scores across agencies. Of course, his questions, as well as his scale are open to question – for example, he assumes equal weighting for all five categories, and equal weighting for each question within each category. But he is refreshingly candid about these choices, noting that others might choose to weight things differently but that in the absence of any sort of theoretical guidance on this issue, he has decided to proceed with the simplest approach. Moreover, he rightly points out that because no previous scores have ever been computed – indeed, even lists of independent agencies were hard to come by before his work – this should be seen not as a final word, but as a starting point for measuring independence, one that is malleable and can be adapted for the specific goals of other researchers.⁹

In the following sections, I adopt Gilardi's scoring approach in order to compare the EPA to other independent regulatory agencies within Ireland, other independent regulatory agencies across Europe, and to the U.S. EPA. First, however, it is useful to present a detailed discussion of the 1992 Environmental Protection Agency Act, which spells out the agency's structure. In doing so, I proceed by looking at each of the five separate categories denoted above.

The 1992 Act makes explicit provision for the selection of the Director General (DG) as well as the four other directors, including the Deputy Director General.¹⁰ The Government is responsible for choosing the DG and the other directors. It makes its choice from recommendations put forward by a committee that consists of the Secretary to the Government, the Secretary of the Department of the Environment, the Chairperson

⁹ Gilardi also acknowledges that his design of the questionnaire is indebted to similar work developed by Cukierman, Webb, and Neyapti (1992) to explain the independence of central banks.

¹⁰ The 1992 Environmental Protection Agency Act can be found on line at http://www.bailii.org/ie/legis/num_act/epaa1992344/s1.html.

of the Council of An Taisce—the National Trust for Ireland, the Managing Director of the Industrial Development Authority, the General Secretary of the Irish Congress of Trade Unions, and the Chief Executive of the Council for the Status of Women. Once selected, the DG remains in office for seven years, and the other directors for five. All of the directors, including the DG, can be reappointed. And all can be dismissed. The section of the law that addresses dismissal reads as follows:

Section 21 (16). The Director General may be removed from office by the Government if, in their opinion, he has become incapable through ill-health of effectively performing his duties, or for stated misbehaviour, or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions and, in case the Director General is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

Two interpretations of this section are possible. One, which would emphasize the “ill-health” and “misbehavior” clauses of this section, would imply that the government’s removal powers are somewhat limited and are relegated to events unrelated to policy decisions. The next clause, however, makes dismissal appear easier, which would increase the government’s power over the DG and other directors.¹¹

Although the Act does not contain the word “independent” (or variations on that word), it clearly intends that the EPA will be independent. In part, it does this by omission – it does not locate the agency within any other government department. More actively, the Act seeks to set the agency off from other parts of government. Sections 35 and 36, for example, state that if a director (or other agency employee) accepts a position in another political institution, such as the Government, or the Seanad, or the European Parliament, or a local authority, he or she must give up his or her position at the agency. In addition, Section 40 stipulates that it is illegal for others to attempt to initiate communication “for the purpose of influencing improperly...consideration of any matter which falls to be considered or decided by the Agency, committee or consultative group. Furthermore, if a member of the agency is so contacted, it is “his duty not to entertain the communication further” and he must report this communication, in writing, to the Agency. Thus, the act attempts to secure independence by making it illegal to attempt to influence agency actions.

Finally, the Act requires the agency to make an annual report to the Government, and specifies some of the items that need to be covered in this report, such as which consultants it has used (Section 42), its account and audits (Section 51), any suggestions it has for dealing with environmental issues (Section 55), and its monitoring activities (Section 58). More generally, the agency is required to report to the Oireachtas and the Government, as spelled out in Section 51.

¹¹ It is worth noting that Gilardi adopts the former interpretation, while I would lean toward the latter. The result is the Gilardi assigns a somewhat higher independence score than I would.

- (1) As soon as may be after the end of each financial year, but not later than six months thereafter, the Agency shall cause a report on the performance of its functions during that year to be laid before each House of the Oireachtas.
- (2) The Agency shall supply the Minister with such information relating to the performance of its functions, as he shall from time to time request.

In addition, the Government may, at its discretion, require the Agency to issue other reports on environmental issues.

The fourth and fifth items in Gilardi's scale concern the financial and organizational autonomy of the agency and its regulatory competency. On the latter point, the EPA clearly does have to share jurisdiction over environmental policy with the Department of the Environment and Local Government. At the same time, however, its powers are fairly well delineated in the legislation, in particular in the area of licensing, which is by many accounts its most important power, and where it acts alone. While the local authorities are also involved in some of these policy areas, the agency clearly has primary responsibility for the allocation of licenses.¹² On the former point, the EPA, like all agencies, must receive funding in order to operate. In the case of the EPA, about 40% of the agency's funding comes from fees and charges for services it provides, while the rest comes in the form of an Oireachtas grant determined by the Department of the Environment and Local Government. In addition, if the EPA wants to hire additional staff members, it must get permission to do so from the Minister of the Environment.

Overall, then, the record is mixed as to the EPA's independence from the government. In some respects, the agency clearly has formal, structural independence. It is not housed within a government department; it receives part of its funding from sources outside of the national government; it has primary, and perhaps even sole, authority to regulate in many of its areas; and it has limited responsibilities to report to the Oireachtas. Furthermore, the Director General and the other directors are chosen from a list of potential appointees that is created by a committee from outside the government, they serve long terms that may outlast the government, they cannot be members of the Government or the Oireachtas, and they generally cannot be dismissed without cause. These features of the agency begin to paint a picture of an agency that has a strong measure of independence from the government.

On the other hand, other aspects of the agency's formal structure point away from independence and toward an agency that, while formally independent, actually exhibits a fair measure of dependence on the government. Two features in particular stand out. First, as discussed above, it appears that the EPA Act presents the government with the option of dismissing any of the directors. Second, the agency is dependent for staff and money on the Minister of the Environment, who must approve any staff increases and

¹² More generally, as the EPA states on its website, "[t]he Local Authorities are still the main bodies with responsibility for environmental protection in their own areas [while the] EPA is charged with ensuring that Local Authorities carry out their environmental protection functions....In the event that the Local Authority fails to act without adequate cause the EPA can do the work itself and recover the costs from the Local Authority." This information is set out in Section 63 of the 1992 EPA Act.

who is responsible for a large part of the EPA's budget. The potential problems associated with this arrangement were raised numerous times during the hearings on the Act. Mrs. Doyle, for example, argued that

The Minister deals in the Bill with funding, grants, approved borrowing, fees and charges. I am a little worried about the charges and I will come back to them again on Committee Stage. I make this plea, the funding should be such that the Environmental Protection Agency are never reduced to the begging bowl for any of the actions or practices they will have to carry out or that they can never use lack of money for not doing something that has to be done...They must never be compromised either through lack of funds or lack of manpower to do what we now will be charging them to do and the extra charges they will get in the future. I urge that that be put on the record of the House and that the Minister would ensure that that situation will never arise.

Comparing the EPA to other Irish independent agencies

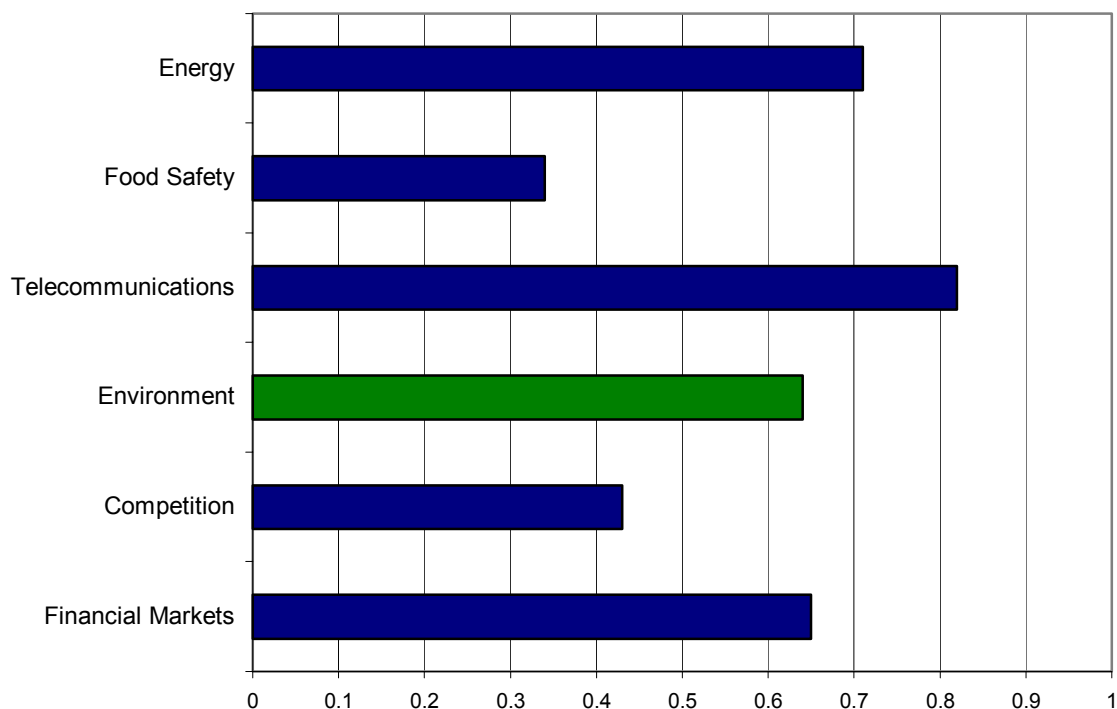
Of course, although an in-depth look at the agency's structure, like the one conducted above, is useful, in order to gain perspective on the agency's independence, it is useful to provide a comparative context. As mentioned earlier, regulation by independent commission is an important new feature of the political landscape in Europe. What this means is that we can look to see how the EPA's level of independence compares to other agencies, both those that regulate other sectors of the economy in Ireland, and those that regulate the environment in other countries.

How does the EPA compare to other independent agencies in Ireland? Ireland has independent agencies in seven sectors: electricity, telecommunications, financial markets, food safety, pharmaceuticals, competition, and the environment. Table 2 presents some basic information about these agencies.

Table 2: Irish Independent Agencies		
<i>Sector</i>	<i>Agency</i>	<i>Year Created*</i>
Competition	The Competition Authority	1991
Electricity	Commission for Energy Regulation (CER) (originally the Commission for Electricity Regulation)	1999
Environment	Environmental Protection Agency (EPA)	1992
Financial Markets	Central Bank and Financial Services Authority of Ireland	1942
Food Safety	The Food Safety Authority of Ireland	1998
Pharmaceuticals	Irish Medicines Board	1995
Telecommunications	Commission for Communications Regulation (ComReg) (originally Office of the Director of Telecommunications Regulation, ODTR)	1996

By drawing on Gilardi's work, we can compare the level of independence for these agencies. Figure 1, shown below, depicts each agency's level of independence on a scale of 0 to 1, where 0 represents complete dependence and 1 represents complete independence.

**Figure 1:
Formal Independence Scores for Irish Regulatory Agencies**



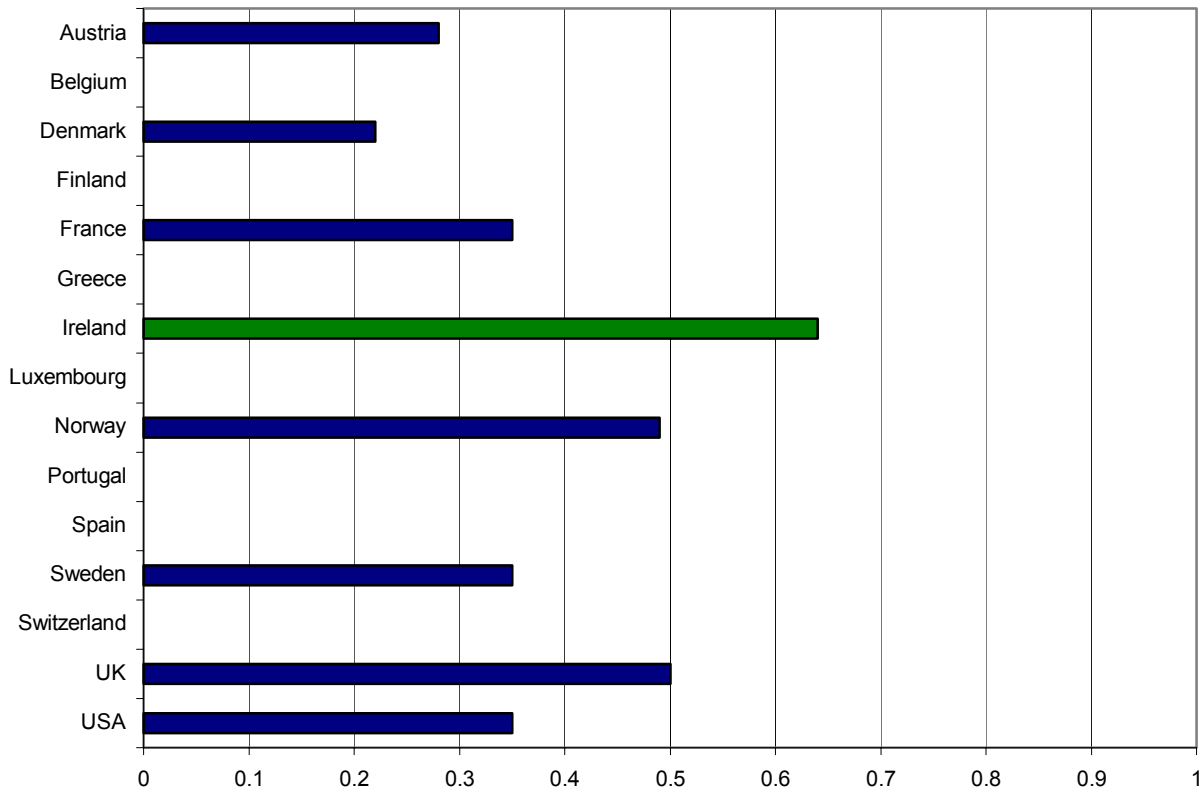
Three pieces of information stand out from Table 2 and Figure 1. First, Ireland has a fairly active program of regulation by independent commission. Most other countries do not have independent agencies acting as regulators in each of these sectors. Second, the EPA, with its creation at the start of the 1990s, was clearly in the early part of the wave of regulation by independent commission that Majone (1994) and others have noted. Third, the EPA falls right into the middle of the scale in terms of formal independence. Its independence score is very similar to that of the Central Bank, while being well above the Food Safety Authority and the Competition Authority and slightly below the CER and ComReg.¹³ Interestingly, however, this is somewhat unusual, in cross-national perspective. In most other countries that use independent agencies to regulate the environment, the independence score for the environmental agency usually is lower than that of most, if not all, other independent agencies in that country. Only in Norway and the UK do environmental agencies fall in the middle of the pack, while in Austria, Denmark, France, and Sweden these agencies have less formal independence than any of the other independent agencies.

Another way to gain comparative perspective on the EPA is to compare it not to other agencies within Ireland, but rather to independent environment agencies in other

¹³ The relevant data was not available for the Irish Medicines Board.

countries. In Figure 3 I present independence scores for all independent environmental regulatory agencies in Europe, including Ireland. In addition, to gain additional comparative perspective, I also include the U.S. EPA.¹⁴

**Figure 2:
Independence Scores of Environmental Agencies**



One item that immediately jumps out from this table is that relatively few European countries even have independent agencies that deal with environmental issues.¹⁵ Thus, at a minimum, environmental regulation in Ireland is more independent than regulation in other countries, in part because independent environmental agencies do not even exist in most other countries.

The second, and more striking, piece of information that comes from this table is that the Irish EPA has far more formal, structural independence than any of its European counterparts, or than the U.S. EPA. Indeed, none of the other agencies are particularly close to the Irish EPA; the UK, with a score of 0.50, is a distant second to the Irish EPA's score of 0.64. Now it is possible, of course, that the large difference between the Irish

¹⁴ I would like to thank Fabrizio Gilardi for graciously sharing his data on European countries with me. To create the independence score for the U.S. EPA, I contacted a number of EPA experts in the U.S. and asked them to fill out Gilardi's coding sheet.

¹⁵ Data were missing for agencies in three countries that have agencies that are at least partially independent: Germany, the Netherlands, and Italy.

EPA and the agencies in other countries is an artifact of Gilardi's coding scheme. In particular, he weights each of the five major categories – Agency Head Status, Management Board Members' Status, Relationship with Government and Parliament, Financial and Organizational Autonomy, and Regulatory Competencies – equally. Perhaps if these were weighted differently, the Irish EPA would not be notable for having so much more independence than the other agencies. This, however, is not the case. In three of the categories, the independence score for the Irish EPA is far higher than that assigned to any other country. In a fourth (Regulatory Competencies) the Irish EPA ties with several other countries for the highest score. In the remaining category, the Agency Head Status, the Irish EPA receives a score that it only marginally behind its British counterpart, and that is well ahead of any other country's agency.

It bears repeating that formal structure is not deterministic, that looking at an agency's formal structure gives only a partial picture of its independence. At the same time, formal structure is a very important part of that picture. Countless political battles have been fought over structural details, indicating their importance to politicians and interest groups. And as Gilardi demonstrates, a measure of formal independence can be extremely useful in analyzing other important political topics, such as the credibility hypothesis. While we cannot say that the EPA is a completely independent agency, we can say that it is similar to other independent agencies in Ireland, in terms of its formal independence, and that it has far more formal independence than nearly any other environmental regulator, at least within its spheres of influence.

Contemporaneous influence

Structural features can affect an agency's level of independence, and can set the agency along one regulatory course rather than another. All of this is done through legislation, and through legislation that is often written before the agency has taken a single action or made a single decision. Because of their timing, structural means of control are often referred to as *ex ante* controls. But legislatures and governments also have other tools that they can use to influence agencies contemporaneously, as the agency is going about its course of business.

In the case of the EPA, as noted earlier, those outside of the agency are expressly forbidden to attempt to influence the agency as it is making decisions. Even the government – or perhaps, *especially* the government – cannot intervene behind the scenes, for example, and attempt to sway the agency in a licensing decision. Yet the legislature and the government have other tools that they can use to attempt to influence agency outcomes. Some of these tools, such as the writing of reports or holding hearings, can be fairly subtle. Others, such as making strategic appointments and setting the budget, are stronger and blunter.

The general idea behind this approach to agency policymaking is that the legislature and government – the agency's principals, in the language of principal-agent analysis – can

use these tools in order to send a signal to the agency. The agency picks up on this signal and, since it doesn't want to face the repercussions that it might suffer if it ignores the signal, adjusts its activities and actions so they are in accord with the preferences of the legislature and government. The agency could, of course, ignore the signals that its principals are sending. But if they do, they might suffer consequences – their budget might be cut, reorganizations or the creation of new agencies might take away some of their power, the legislature might pass new laws that limit the agency's discretion or the government might not approve requests for additional staff. Fear of these repercussions causes the agency to anticipate the legislature and government's preferences, and to adjust their actions accordingly.

Most of the empirical analyses along these lines have taken place on U.S. agencies, with some focusing on executive branch agencies (e.g., Carpenter 1996, Shipan forthcoming), others focusing on independent agencies (e.g., Weingast and Moran 1983, Moe 1982, Ferejohn and Shipan 1989a, 1989b, Shipan 1998), and others focusing on independent agencies that are located within the executive branch, which is how the U.S. EPA is described (Wood 1988). Generally these studies proceed by identifying two important variables. First, they identify some measure of the principal's preferences, something that the agency can pick up as a signal of what the principal wants the agency to do. Second, they identify some measure of agency activities, which is designed to act as a surrogate for the agency's overall level of activism. In Wood's (1988) pioneering analysis of the U.S. EPA, for example, he looks at the agency's monitoring and enforcement activities over time, arguing that these are good measures of the agency's activism and attitude toward environmental regulation. The expectation is that if the agency is responding to these signals, however subtle they might be, then as the preferences of the principals' shift, so should the actions of the agency.

What sorts of surrogates can we use to measure the agency's level of activism? To explain these, a bit of background is necessary. As mentioned earlier, the primary function for the EPA, spelled out in the 1992 Act, is its responsibility for the Integrated Pollution Control (IPC) licensing of firms and other activities that have the potential to release large amounts of pollution into the environment. The first responsibility of the agency is to determine whether a license should be issued. The agency's responsibility, however, does not end there. Instead, at that point the agency's responsibility shifts to one of enforcement of the terms of the license and it engages in several activities related to enforcement.

To begin with, the agency visits IPC facilities in order to *monitor*, or measure, air, water, and noise emissions. During these visits, the inspectors can also take samples, which are returned to the agency's headquarters and analyzed. These actions allow the agency to determine whether the facilities are keeping the level of emissions within the limits set by the terms of their licenses. The agency also conducts *inspections*, during which they review the operations of the facility, again to determine whether it is acting within the terms set out in the license. Finally, the agency conducts *audits*, which considers in much more detail whether the licensee is acting in accord with the conditions of the license.

In addition to these monitoring activities, the agency also has enforcement powers. One of these is a *notice of non-compliance*, which occurs when the agency, through its monitoring activities, determines that a facility is violating some terms of its license. In response, the first action taken by the agency is usually to issue a notice that informs the facility of the violation, a notice that requires the facility to design an appropriate corrective action. If, after receiving this notice, the facility still is not in compliance, the agency has other powers it can use, the most forceful of which are the use of *prosecutions* to force compliance and to issue fines.

For this part of my project, I obtained the number of each of these monitoring and enforcement activities during the years in which the agency has issued licenses.¹⁶ To the extent that the agency is taking a more activist view of its role as an environmental regulator, we would expect to see more of all of these activities. Unfortunately, one problem is that the agency has only engaged in these activities for the past seven or eight years, so the data are not sufficient for a proper statistical analysis. Still, we can examine these data to see whether they show evidence of any trends.

A second problem that surfaces concerns the measurement of preferences. If the EPA is sensitive to the preferences of its principals, then we might expect that as membership in the government shifts, so should the actions of the agency. However, there have been limited changes in the government during the period in which the EPA has conducted its monitoring and enforcement activities. In addition, unlike in the U.S., where the differences between the two major parties on environmental issues are large and growing larger (Shipan and Lowry 2000), the differences between the major parties in Irish government coalitions over the past ten years – Fianna Fáil and Fine Gael – are not very large (Benoit and Laver 2003). As an alternative to general measures of preferences, however, we can rely on what is potentially the clearest signal that the government can send: the budget (Carpenter 1996). As discussed earlier, control over the agency's budget is the strongest formal structural control that the Government has over the agency. Thus, if the agency, despite its formal independence, is responding to the Government's signals, then we would expect that when the budget increases, the agency should become more active in the areas of monitoring and enforcement.

Before presenting the data, it is worth reiterating and stressing the limitations of the data. First, we have only rough measures of the locations of the main parties, and have the added problem that each government has been a coalition government. Thus, instead of relying on a general measure of preferences, the analysis uses a more specific measure – the budget – that we can examine over time in order to see whether the government is giving tacit support to the agency. Second, because we have fewer than ten years of data for each of the measures of agency activities, rigorous statistical analysis is not an option. We can, however, examine whether the trends that we observe so far are broadly consistent with the argument that the agency is sensitive to the preferences of the government.

¹⁶ The data for these activities were culled from the EPA's "Report on IPC Licensing and Control," which is issued annually.

Figure 3, which can be found at the end of this paper, shows how the agency's level of monitoring and enforcement has changed over time. As the agency can only monitor and enforce licenses that have already been issued, in each case I control for the total number of licenses. To do this, I simply divided the measure of agency activity – monitoring visits, inspections, audits, notices of non-compliance, and prosecutions – by the cumulative number of licenses that had been issued by the end of that year.

With the exception of audits, which started low, increased, and then flattened out over time, the other monitoring and enforcement activities show roughly the same trend over time. In each case, there has been a slight, but fairly consistent, downward trend over time. Of course, in the first year or two of monitoring and inspections, there were fewer facilities to inspect. In addition, it would be expected that these initial actions might be more frequent, in order to set an example. Still, even over the last several years, we see evidence of a small, but steady, drop in monitoring and enforcement activities, once the number of licenses is controlled for.

What we need, in order to assess whether the agency has acted independently of the government, and of the signals it receives from the government, is a comparison between these activities and the budget, which the government can use to send a signal. In Figure 4, I present a comparison of the trends in the budget over time with the trends in two prominent agency activities, monitoring and inspections. Each of the graphs in this figure presents a different adjustment for the budget. In Figure 4a, the budget is translated into constant 2002 dollars. In Figure 4b, the budget is taken as a percentage of GNP. And in Figure 4c, the adjusted budget is divided by the total number of licenses, in order to give a picture of how much money the agency has received per facility that it needs to monitor.

Figures 4a and 4b show similar pictures, with the budget trending steadily upward. Interestingly, these trends contrast with the monitoring and inspection trends, which slope downward over time. Thus, these figures give credence to the idea that the agency is acting independently, since the budget is moving in the opposite direction from the monitoring and enforcement activities.

Figure 4c, however, presents a different picture. In this figure, the adjusted budget is divided by the number of licenses. In effect, then, this curve shows the amount of money, in constant dollars, that the agency had at its disposal each year. Strikingly, the curve matches well with those for monitoring and inspections. Clearly, then, unlike the previous two figures, this figure seems compatible with the idea that the agency was responding to the budgetary signals sent by the government. That is, the government was giving the agency less money, on a per license basis; and the agency was, in return, engaging in fewer monitoring visits and inspections, on a per license basis. This does *not* mean that the government was telling the agency, either explicitly or implicitly, to engage in fewer monitoring and enforcement activities. Rather, the government can use the budget to place a constraint on the agency, if it wishes the agency to do less; and in this case the agency has done less, in parallel with the reductions, on a per license basis, in the budget.

Such behavior is consistent with the argument made earlier that the government's control over the budget could be an impediment to the agency's independence. However, such a conclusion should be tentative. First, whether the agency's behavior mirrors the trends in the budget depends on which measure of the budget seems most appropriate. While a strong argument can be made for the adjustments made in Figure 4c, that looking at the amount of money the agency receives on a per license basis makes the most sense, cases can be made for the appropriateness of using the budget adjustments depicted in Figures 4a and 4b. Such cases might be weak; but they would be plausible. To the extent that one believes that these adjustments made in Figures 4a and 4b are the appropriate ones to make, the data shore up the case that the agency is independent.

Second, it is worth repeating the point that the money the agency receives from the Oireachtas grant represents only a portion of the money that comes into the agency. Additional funds – nearly half, in some years – come from fees and charges that the agency receives from its activities (e.g., licensing). Thus, the budget amounts shown in these figures are only partial. At the same time, the minister sets the amount of money that the agency receives from these fees, so this amount is not exactly independent of the government. In addition, the existence of such additional monies does not undercut the idea that the government can use the budget to send an implicit signal to the agency.

Third, the money that the agency receives from the government is not earmarked for specific purposes. Thus, the agency would be free to spend more money each year on monitoring and enforcement, even if was receiving less money from the government, and could do so by simply spending a higher proportion of its budget on these activities. To the extent that it does so, such actions would confirm the agency's independence. However, the data in Figure 4 do not show evidence of such actions.

Finally, while it does appear, from Figure 4c, that the agency is being slightly less active in response to the budgetary signals it receives from the government, perhaps there are external factors driving the agency's decreased activity. Figure 5 presents evidence of such a possibility. This figure once again presents the monitoring and inspections activities of the agency over time. In addition, it includes the number of complaints the agency has received in each year, on a per license basis. As in Figure 4c, there is a striking correspondence between the curves. Thus, while Figure 4c presents evidence suggesting that there is a connection between the budget and the agency's activities, Figure 5 presents an alternative explanation, one that holds that the agency is engaged in fewer activities because firms are already complying with the terms of their licenses. At the current time there is no way to sort out these competing explanations; more data, over more time, may help. For now, it is safest to say that the evidence is suggestive, but not nearly conclusive, that the government is able to use the budget to influence the agency's activities, and thus limit its independence; and that other factors may also be at work.

Discussion and conclusions

The distinguishing feature of the EPA, prominent at its creation ten years ago and still prominent today, is its independence. In this paper I have examined independence from three distinct, albeit related, angles. First, I explored the political motivations behind independence, the reasons why an independent agency was seen as an attractive option. Second, I investigated the structural features of independence, both by focusing specifically on the statute that created the EPA and also by comparing the EPA's level of independence with that of other independent agencies in Ireland and environmental agencies in other countries. Third, I analyzed the extent to which the EPA has been subject to contemporaneous control by the government. The goal has been to provide an objective assessment of whether the agency is independent. It should be stressed, however, that such an assessment is not normative. That is, it is not automatically "better" that an agency functions independently. Such an assessment would depend on several other factors, including whether the agency is accountable, a point to which I return shortly, or whether the agency's decisions are transparent (e.g., Lodge 2003). Thus, I examine only whether the agency is independent and not whether its level of independence is appropriate or favorable.

While the study has focused on significant ways in which to assess independence, there clearly are other factors that affect independence. Legislatures can, for example, write specific procedures into statutes, procedures that will cause the agency to act in certain ways and not others and that will therefore increase the likelihood of some actions and not others. Some of these may be specific procedures that the agency itself must follow (e.g., McCubbins, Noll, and Weingast, 1987, 1989; Moe, 1989). Others may be procedural provisions that relate to the ways in which the courts will hear appeals of agency actions (e.g., Shipan 1997, 2000). An appraisal of the procedural provisions in statutes relevant to the EPA, and of how these affect the actions of the agency, is obviously beyond the scope of this study. A quick look at these statutes, however, clearly reveals that they are full of such procedures; what remains is for an analysis to determine their effects and implications.¹⁷ At the same time, environmental legislation here contains very little in the way of procedural instructions relating to the courts. In the U.S., for example, Congress has often written provisions into law that make it easier for a citizen to challenge the U.S. EPA in court (Smith 2003). In Ireland, however, no such provisions exist. The lack of such provisions, however, is consistent with the general relationship between courts and agencies in Ireland, where courts defer to the expertise of agencies.

Legislatures and governments can also rely on statutes and statutory instruments (SIs) in order to constrain agencies and thereby limit their independence. This is a double-edged sword for legislatures and governments, since when they write more detailed laws and regulations it means the agency – which was established partly in order to develop expertise – might be constrained from drawing on its expertise. But recent comparative research has demonstrated that legislatures often write detailed laws that restrict agency

¹⁷ Taylor (2001) and especially Taylor and Murphy (2002) provide some arguments consistent with the idea that these procedures bias the agency in a pro-industry, rather than pro-environment, direction.

actions, and has furthermore demonstrated that a useful and valid, if rough, measure of constraint can be gained by counting the number of words in legislation, since more words denote more detail, which acts to constrain an agency (Huber and Shipan 2002). This same research also shows that some features of Ireland's political landscape, such as the common occurrence of coalition governments, increase the likelihood that an agency will be limited by detailed statutes, while other features, such as the lack of a federal or strongly corporatist system, act in a contrary manner. Again, a detailed analysis of statutory constraints on the EPA will need to wait for another analysis. Some initial evidence, however, does suggest that the Irish government has fairly frequently given specific instructions to the agency, instructions that have usually come in the form of SIs. Since 1993, the government has issued over 100 SIs that focus on environmental issues. Of course, many of these SIs were mandated by EU directives, so a simple count does not tell us much. More revealing is the fact that these SIs contained a combined total over 170,000 words of legislation.¹⁸ While much work would need to be done to put these numbers in context, they do provide some face validity to the idea that the government has acted to place statutory constraints on the actions of the EPA.

Finally, the focus on this paper has been on independence, but as mentioned earlier, accountability is an unavoidable concern whenever an agency is independent. This is not the place for a full-scale discussion of accountability, but it *is* the proper place to at least consider what such a discussion would look like. As a starting point, in order to conduct an analysis, we need to consider two specific dimensions along which we could assess the notion of accountability.

Along the first dimension, the question that needs to be asked is: accountable *to whom?* If we think about the nature of democratic theory, which holds that policy making be accountable to citizens, then clearly one answer to this question is that the agency needs to be accountable to citizens. But government naturally involves a string of delegation, from citizens to the legislatures, from the legislature to the government, and from the government to the agency (Pollack 2002). Thus, accountability can be considered not only in terms of citizens, but in terms of the other links in this chain – the legislature and the government. Finally, courts can be used to hold agencies accountable. Thus, the question of “to whom?” has four potential answers: citizens, the legislature, the government, and the courts.¹⁹

¹⁸ Four comments are relevant at this point. First, I focused on SIs rather than statutes because Ireland has had so few of the latter. Second, to identify these regulations I searched for all SIs that contained “waste,” “pollution,” or “environmental protection agency” in the titles. I then read enough of each SI to make sure that it was about an issue related to the EPA, and dropped those that were not. The bias here would be downward; that is, if anything, the numbers shown in the text reveal an undercount, rather than an overcount, of both SIs and their length. Third, although these SIs might have been prompted by EU directives, each country has considerable leeway in how to transpose such directives into national law. Thus, countries can write long or short SIs based on these directives. For a helpful and interesting general analysis of SIs, see Page (2001). Fourth, this finding runs counter to the argument proffered by Moe and Caldwell (1994), which holds that governments in Westminster systems are likely to adopt vague and general legislation, rather than specific laws that constrain agencies.

¹⁹ For a similar treatment, see Westrup (2002), who addresses the “to whom” question by looking separately at politicians and citizens and by separating oversight into *ex ante* and *ex post* categories.

Along the second dimension, the relevant question is: accountability *for what*? On one hand, this seems fairly obvious. Agencies should be accountable for policy outcomes. In the case of an environmental agency like the EPA, for example, we might want to assess whether the actions of the EPA have resulted in a cleaner environment. And clearly, there is something to this notion, as we want to make sure that agencies that are constituted in order to undertake a specific task are actually doing that task well. But at the same time, this is, at best, only a partial answer to the “for what” question. The other part of the answer is concerned more with process than with outcomes. After all, agencies are created by political leaders, and are given specific tasks and instructions to carry out. Suppose these tasks are carried out well – that is, the agency does exactly what the government and legislature tells it to do – but the outcome is not favorable. As an example, suppose the EPA does exactly what it is told to do, but the quality of the environment worsens. In such a case, it is the politicians, not the agency, who made the poor decisions that led to an inferior outcome, and it is the politicians, rather than the agency, who should be blamed, and who can, through the mechanism of elections, be held accountable and sanctioned. In this view, the agency itself, as a creature of politicians, should be held accountable only for doing what it is told to do. More generally, this example demonstrates that the question of “for what” has two different, and plausible, answers: for *actions* and for *outcomes*.

A discussion of the accountability, then, would need to consider whether the agency is accountable to citizens, the legislature, the government, and the courts; and whether the agency is accountable for its decisions and its actions. In essence, then, there would be a two-by-four matrix, with eight separate cells. And it is very likely that the answer to the question of whether the government is accountable would vary dramatically depending on which cell we focused on. The agency seems very accountable to the courts, for example, in terms of its actions; but not at all in terms of outcomes. Similarly, citizens have the right to participate in agency actions; but have little recourse for appeal if the agency’s decision runs counter to their preferences, a feature of the agency that has led to many complaints over the years (e.g., McDonald 1993, Coyle 1994, Taylor 2001, Taylor and Murphy 2002).²⁰ Others view the agency as too remote from the public (McGowan 1999).

The highest level of accountability appears to be to the Government, since the Government requires the agency to report on its actions, and since it can change the agency’s structure, or its jurisdiction, or its budget, or its staff, or its procedures, if it does not like the agency’s actions or the repercussions of these actions. At the other end, however, there appears to be little evidence that the agency is accountable to the Dáil. In part, this is as much a function of the structure of the Dáil, and of parliamentary government more generally, than of anything else. In most strong legislatures in the world, oversight of agencies take place primarily through strong committees; and while the Dáil does have a Committee on the Environment, the committee’s role is more reactive than active. Furthermore, as Gallagher (1999) has pointed out, and as Westrup (2002) has shown in his fine study of financial services regulation in Ireland, it is unlikely

²⁰ See also the comments made by Mrs. Jackman during the Seanad hearings, including references to the Confederation of Irish Industry and various environmental groups.

that the government will give strong oversight power to committees, since doing so would strengthen the hand of the parties in the minority.

All of this gives us some sense of how to proceed in approaching the question – or more accurately, questions – about accountability. But accountability is important precisely because the agency is independent, and to conclude this paper it is worth returning to the primary focus of this paper – an examination of the agency’s independence. Ireland’s creation of an independent EPA was, in many ways, a bold move. At the same time, it was also a political response to political problems. The creation of an independent environmental regulator allowed the government to create a repository of expertise, while at the same time providing evidence of credible commitment and also potentially allowing the government to shift responsibility when needed. While the agency does have limits on its independence – in particular, in terms of the ability of the government to set the agency’s budget – there are other provisions that work to ensure the agency’s independence, and as a result, the agency achieves a high level of independence, especially relative to other similar agencies.

Appendix A

Mr. Quinn: I address my remarks to the Minister of State for smog and dirt, Deputy Harney. I have the decency not even to refer to the stillborn child in the EPA and the dead corpse of An Foras Forbartha, the executioner of which is in the House. That body could have responded to some of these problems.

An Ceann Comhairle: Ministers should be referred to by their appropriate titles. Derogatory remarks should not be made about them. That is a Standing Order of this House.

Mr. Quinn: I will observe it. The Minister of State with responsibility for environmental protection is totally negligent in the execution of her duties. I have reason to say that she has been politically spangled by the senior Minister in that Department, who belongs to another party and whose attitude to the forced marriage in the summer was not exactly unknown. I am asking them to put behind them the clear political and personal differences that are getting in the way of the delivery of an effective emergency programme for the citizens of Dublin. I want the following to be initiated tonight by the two Ministers. There is nothing stopping them but their own political timidity.

(Later...)

Minister of State at the Department of the Environment (Miss Harney): The present smog problem is very serious and I have never sought to minimise how vital an issue it is. It is important that Members should be honest and realistic in appraising the problem and proposing solutions. The smog problem has been around for a decade....That was a period during which we had a Coalition Government of Labour and Fine Gael. They were in office for four-and-a-half years. What did they do about the smoke problem? They extended grants for open fireplaces and chimneys. Those grants were not abolished until the present Minister took office. They did not even get the Air Pollution Act successfully through the Oireachtas. The first air pollution legislation was put through when the present Minister took office.

Mr. Quinn: It did not take the Minister long to settle into the Fianna Fáil mode. Back to the womb.

Miss Harney: It is important when dealing with this issue that people should be fair, honest and realistic. It is a bit much for Deputy Quinn and his colleague, Deputy Rabbitte, who still burns coal in his house in Clondalkin——

(Interruptions.)

An Ceann Comhairle: The Minister of State has merely five minutes to reply. Deputy Quinn was allowed to speak devoid of interruptions. I must insist that the Minister be heard without any interruption whatever.

Miss Harney: It is a bit much for members of the Opposition to make glib name-calling remarks at me in an effort to get empty headlines in tomorrow's newspapers. I thought Deputy Quinn was going to make some suggestions which I could put into practice but he did not. He asked us to declare a smog emergency; we can certainly do that. He asked us to order CDL to bring down the price of coalite. It was because of the huge increase in the price of coalite during the past year by

up to 27 per cent that I asked the Minister for Industry and Commerce to investigate the price increase. He has asked the Director of Consumer Affairs and the Fair Trade Commission to do that. Perhaps it will be possible following that investigation to make an order to reduce the price of coalite. Deputy Quinn asked us to ban the burning of bituminous coal in Dublin for the rest of this winter. That certainly would be a very simple solution. We could announce in the morning a ban on the burning of coal. If the Government did not really care about the householders of Dublin and simply wanted to be perceived to be doing the right thing we could certainly do that, but what would be the consequences? In the Dublin area 177,000 householders rely on solid fuel as their main source of heating and 160,000 of these can burn coal only.

Mr. Quinn: Or briquettes.

Miss Harney: Yes, or briquettes.

An Ceann Comhairle: Will Deputy Quinn please desist?

Miss Harney: I would encourage householders to switch to briquettes and to the low smoke fuels, many of them can afford to do so. If we were to give those householders a grant, on the basis of the grants we have been giving already, to convert to gas or whatever, it would cost up to £110 million.

Mr. Quinn: Rubbish.

Miss Harney: It is fact based on an average of £700 a house for 160,000 houses.

Mr. Quinn: It is not being requested.

Miss Harney: Even if this money was available, how long would the conversion take? I do not think the building industry and the energy utilities could respond. For example, Dublin Gas at present can convert only up to 14,000 houses per year....The Government have recently established a working group who will consider and report within three months on policy options for fuels in the Dublin area. This committee, consisting of representatives of Dublin Gas, the ESB, Eolas and several Government Departments, is being chaired by the Department of the Environment. It is currently examining such questions as the feasibility of extending the gas mainlines throughout the city, the steps that need to be taken to maximise the domestic use of natural gas and also the greater use of electricity, LPG, peat and other smokeless and low smoke fuels. This committee, which was established about a month ago, will, as I have said, report within three months.

Mr. Quinn: Brilliant, a committee.

Miss Harney: I am sorry, Deputy, but if your Government had done much of this work when you were in office we might not have to do it now.

Mr. Quinn: You are long enough in business not to be throwing that stuff.

An Ceann Comhairle: Let us hear the Minister without interruption.

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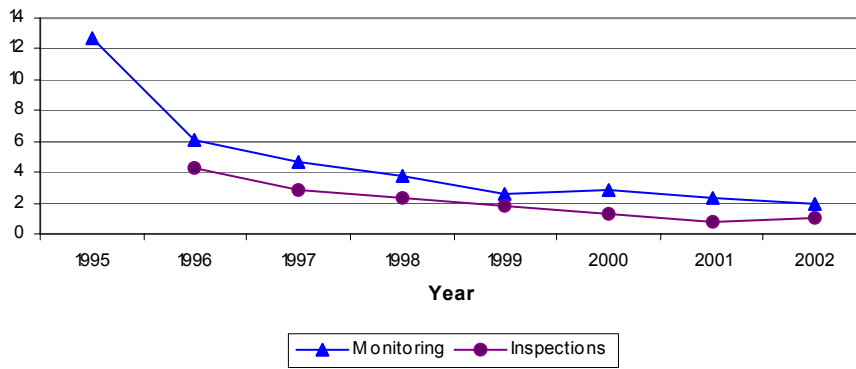
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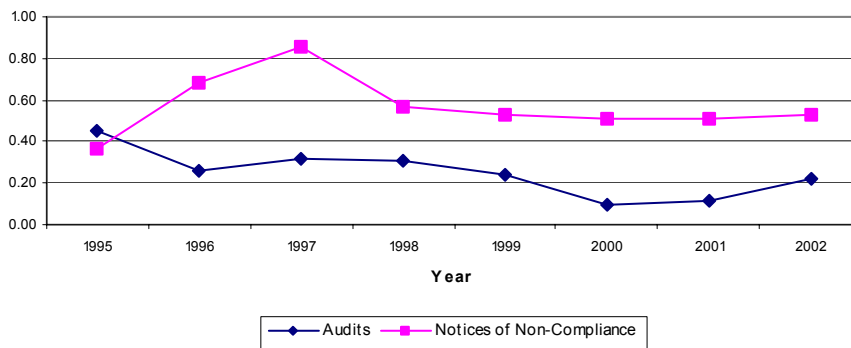
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Figure 3: Agency Activities Over Time

3a: Monitoring Visits and Inspections, Per License



3b: Audits and Notices of Non-Compliance, Per License



3c: Prosecutions, Per License

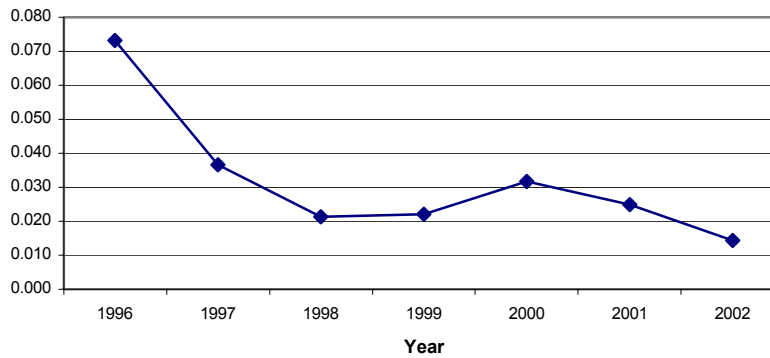
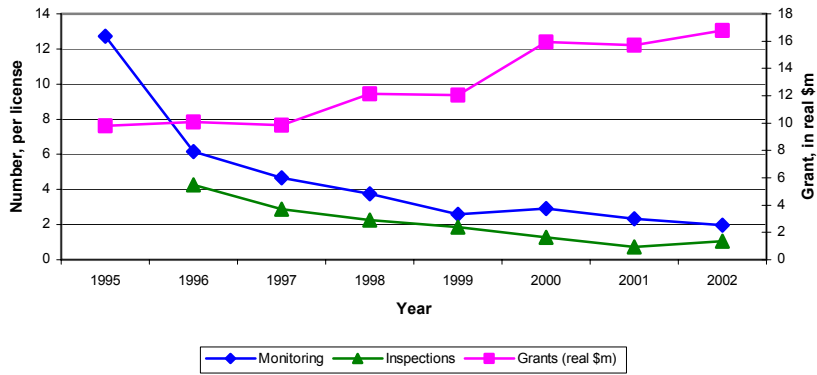
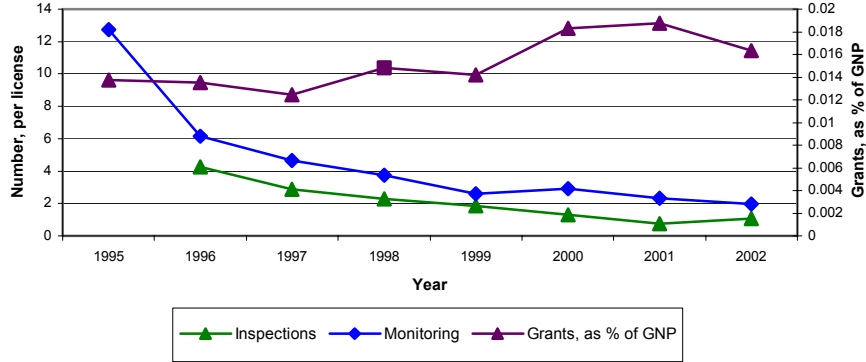


Figure 4: Comparing Monitoring and Inspections with Oireachtas Grants

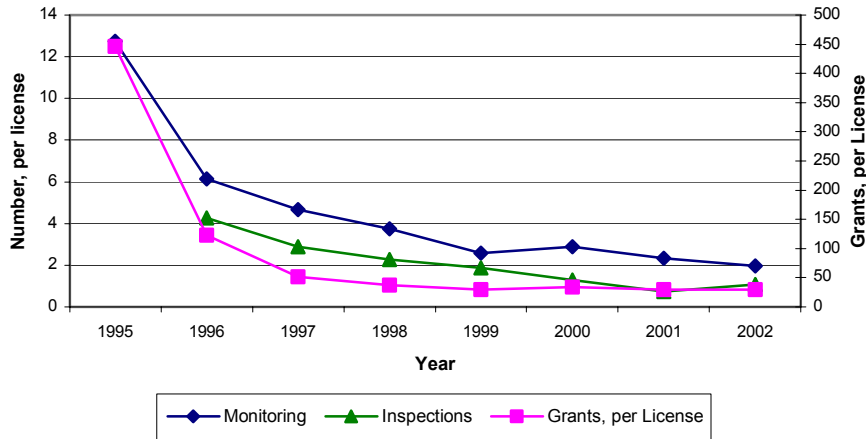
4a: Grants in Adjusted Dollars



4b: Grants as a % of GNP



4c: Grants per License



**Figure 5:
Comparing Monitoring and Inspections with Complaints**

