

Analytical Fiche Nr° 1

Definition and classification of "European Regulatory Agency"

1) State of play *de jure* and in practice

Definition

No commonly agreed definition of the term "European Regulatory Agency" exists to date. European regulatory agencies are also referred to as "decentralised agencies", "traditional agencies" or "satellite agencies"¹.

The 2002 Commission's Communication on the operating framework for the regulatory agencies² describes agencies as actively involved in the executive function by enacting instruments which help to regulate a specific sector.

In 2005 the Commission proposed a definition for regulatory agencies in the Draft Inter-institutional Agreement³, now withdrawn. According to the Draft IIA the term "European regulatory agency" should be ascribed to "any autonomous legal entity set up by the legislative authority, in order to help regulate a particular sector at European level and help implement a Community policy".

In the Trialogue of 7 March 2007, it was agreed that for the purpose of applying Point 47 of the IIA of 17 May 2006 the definition of an "agency" would be determined by whether the body in question was set up pursuant to Article 185⁴ of the Financial Regulation applicable to the general budget of the European Communities⁵. This definition would exclude all European agencies which do not benefit from a Community subsidy (e.g. OHIM).

Main characteristics

A comparative look at the constituent act of the existing regulatory agencies allows for the following conclusions:

- A European regulatory agency is a body governed by European law;

¹ European Parliament (2006) Study on Agencies' Discharge, Committee on Budgetary Control

² Communication from the Commission: The operating framework for the European Regulatory Agencies (COM 2002 718) of 11.12.2002

³ Draft Interinstitutional agreement on the operating framework for the European regulatory agencies COM(2005)59 final, 25.02.2005

⁴ Article 185

1. The Commission shall adopt a framework financial regulation for the bodies set up by the Communities and having legal personality which actually receive grants charged to the budget. The financial rules of these bodies may not depart from the framework regulation except where their specific operating needs so require and with the Commission's prior consent.

2. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1, shall be given by the European Parliament on the recommendation of the Council.

3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments.

4. The bodies referred to in paragraph 1 shall apply the accounting rules set out in Article 133 so that their accounts can be consolidated with the Commission's accounts.

⁵ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (Financial Regulation)

- It is set up by an act of secondary legislation (regulation/joint action/decision);
- It has its own legal personality;
- It sometimes takes legally binding individual decisions for third parties;
- It most often receives financial contribution from the Community budget;
- It is most often a permanent body which has its seat in one of the Member States of the European Union;
- It has financial and administrative autonomy and is independent in the execution of the assigned mission/tasks.

For the purpose of the work of the Inter-institutional working group on regulatory agencies, 33 entities across the first, second and third pillars are considered⁶, including the two recently proposed agencies in the JLS sector – EASO and the Agency for Operational Management of SIS II, VIS and EURODAC. The two latter are reviewed as per the respective Commission proposal. For an overview of all agencies see the Annex.

Classification

In its Communication "European Agencies: the way forward"⁷, the Commission suggested a classification of the existing agencies based on the primary mission they are entrusted with:

- Agencies adopting individual decisions which are legally binding on third parties: CPVO, OHIM, EMEA, EASA and ECHA;
- Agencies providing direct assistance to the Commission and, where necessary, to the Member States, in the form of technical or scientific advice and/or inspection reports: ECDC, EMSA, EFSA, ERA and EMEA;
- Agencies in charge of operational activities: EAR, GSA, CFCA, FRONTEX, EUROJUST, EUROPOL and CEPOL;
- Agencies responsible for gathering, analysing and forwarding objective, reliable and easy-to-understand information/networking: CEDEFOP, EUROFOUND, EEA, EFSA, ETF, EMCCDA, EU-OSHA, ENISA, ECDC, FRA and EIGE;
- Services to other agencies and institutions: CdT.

The ongoing evaluation of the system of EU decentralised agencies, suggests alternative criteria for an operational classification of agencies: by pillar; by policy area; by period of creation; by size; by the addressees of the agency's output; by origin of resources and funding; by the type of the management board.

⁶ Distribution across pillars: First pillar agencies: 25 (including European Agency for Reconstruction, whose mandate expired on 31.12.2008; Agency for the Cooperation of Energy Regulators to be established later in 2009, The Office of the Body of the European Regulators for Electronic Communications to be established later in 2009); Second pillar agencies: 3; Third pillar agencies: 3.

⁷ COM(2008)135 of 10 March 2008

- 2) **Critical analysis of the issue at hand**
- 3) **Possible solution(s) for addressing identified weaknesses**
- 4) **Possible ways for implementing the viable solution(s)**

ANNEX TO ANALYTICAL FICHE N°1

Acronym	Full name	Seat	Year of creation
1st pillar agencies			
ACER	Agency for the Cooperation of Energy Regulators	-	2009
Agency for Operational Management of SIS II, VIS and EURODAC	Agency for the operational management of SIS II, VIS, EURODAC and other large-scale IT systems in application of Title IV of the EC Treaty	-	Proposed in June 2009
BEREC Office	The Office for the Body of European Regulators for Electronic Communications	-	Possibly 2009
CdT	Translation Centre for the bodies of the EU	Luxembourg (LU)	1994, last modified in 2003
CEDEFOP	European Centre for the Development of Vocational Training	Thessaloniki (GR)	1975, last modified in 2004
CFCA	Community Fisheries Control Agency	Vigo (ES)	2005
CPVO	Community Plant Variety Office	Angers (FR)	1994, last modified in 2008
EAR	European Agency for Reconstruction	Thessaloniki (GR)	2000, last modified in 2006 ⁸
EASA	European Aviation Safety Agency	Köln (DE)	2003, last modified in 2008
EASO	European Asylum Support Office	-	Proposed in February 2009
ECDC	European Centre for Disease Prevention and Control	Stockholm (SE)	2004
ECHA	European Chemicals Agency	Helsinki (FI)	2006, last modified in 2008
EEA	European Environment Agency	Copenhagen (DK)	1990, last modified in 2009
EFSA	European Food Safety Agency	Parma (IT)	2002, last modified in 2008
EIGE	European Institute for Gender Equality	Vilnius (LT)	2006, last modified in 2007
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction	Lisbon (PT)	1993, Recast: 2006
EMA	European Medicines Agency	London (GB)	1993, last modified in 2008
EMSA	European Maritime Safety Agency	Lisbon (PT)	2002, last modified

⁸ The agency's mandate expired on 31 December 2008.

			in 2006
ENISA	European Network and Information Security Agency	Heraklion (GR)	2004, last modified in 2008
ERA	European Railway Agency	Lille-Valenciennes (FR)	2004
ETF	European Training Foundation	Turin (IT)	1990, Recast: 2008
EU-OSHA	European Agency for Safety and Health at Work	Bilbao (ES)	1994, last modified in 2005
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions	Dublin (IE)	1975, last modified in 2005
FRA	Fundamental Rights Agency (ex - European Monitoring Centre on Racism and Xenophobia)	Vienna (AT)	2007
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU	Warsaw (PL)	2004, last modified in 2007
GSA	European GNSS Supervisory Authority	Brussels	2004 In revision
OHIM	Office for Harmonization in the Internal Market	Alicante (ES)	1993, last modified in 2009
2nd pillar agencies			
EDA	European Defence Agency	Brussels (BE)	2004
EUSC	European Union Satellite Centre	Torrejon de Ardoz (ES)	2001
ISS	European Institute for Security Studies	Paris (FR)	2001
3rd pillar agencies			
CEPOL	European Police College	Bramshill (GB)	2005
EUROJUST	European Union's Judicial Cooperation Unit	The Hague (NL)	2002, last modified: 2009
EUROPOL	European Police Office	The Hague (NL)	1995, last modified: 2009

Analytical Fiche Nr° 2

Creation of agencies

1) State of play *de jure* and in practice

The first agencies were created in 1975 with a view to producing and disseminating information of European interest.¹ Agencies established later on in the 1990s, were predominantly meant as instruments for implementing EU policies such as the internal market.²

Most of the agencies created from 2000 onwards were vested with two key new tasks: providing independent scientific/technical advice/information, sometimes in response to serious safety crises,³ and fostering Member States cooperation in different areas⁴. However, there is often more than one incentive triggering the creation of an agency and the rationale of some agencies cuts across the different functions mentioned above, e.g. EFSA, EEA, EIGE, FRA, ECHA, FRONTEX.

Legal basis for creation of an agency

Twelve agencies⁵ have their legal basis under Article 308 EC⁶, whereas 21 agencies⁷ are created on the specific sector legal basis.

The constituent acts of ten agencies from the 1st pillar were adopted under co-decision procedure⁸. The two most recent proposals establishing EASO and the Agency for the Operational Management of SIS II, VIS and EURODAC are also subject to codecision.

The remaining fifteen agencies from the 1st pillar were created on the basis of a Council Regulation.⁹ However, Parliament subsequently gained co-decision in the revising acts of four of these agencies¹⁰.

The three 2nd pillar agencies, EUSC, EDA and ISS, were created with a Council Joint Action.

Two of the 3rd pillar agencies, EUROJUST and CEPOL, were created on the basis of a Council Decision. EUROPOL was created on the basis of the Council Act drawing up the

¹ CEDEFOP, EUROFOUND

² e.g. CPVO, EMEA, OHIM

³ e.g. EASA, ECDC, EFSA, EMSA, EU-OSHA, GSA

⁴ CFCA, EFSA, CEPOL, EUROJUST, EUROPOL

⁵ CdT, CEDEFOP, CPVO, EAR, EMCDDA, EMEA, ETF, EU-OSHA, EUROFOUND, FRA, GSA, OHIM

⁶ Article 308 EC: "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

⁷ ACER, BEREC Office, CFCA, EASA, ECHA, ECDC, EEA, EFSA, EIGE, EMSA, ENISA, ERA, FRONTEX, CEPOL, EUROJUST, EUROPOL, EDA, EUSC, ISS, EASO, Agency for Operational management of SIS II, VIS and EURODAC

⁸ ACER, BEREC Office, EASA, ECDC, ECHA, EFSA, EIGE, EMSA, ENISA, ERA

⁹ CdT, CEDEFOP, CFCA, CPVO, EAR, EEA, EMCDDA, EMEA, ETF, EU-OSHA, EUROFOUND, FRA, FRONTEX, GSA, OHIM

¹⁰ EEA, EMEA, ETF and EMCDDA

convention based on Article K.3 of the Treaty on European Union. However, on 1 January 2010 the new legal basis of EUROPOL will be applicable - a Council Decision.

Funding - legislative financial statement

Along with the proposal for the creation of an agency, the Commission provides information on the multi-annual budgetary and staffing consequences of the proposal in a so-called legislative financial statement for the initial years of operation. This legislative financial statement provides an estimate of the budgetary impact of each operation, including administrative, management and support expenses and changes in the number of posts. The legislative financial statement for the founding period also includes a statement referring to the compatibility of the proposal with the financial programming, and thus provides a link between the legislative and budgetary procedures.

Funding – point 47 IIA

Since the 2006 Inter-institutional Agreement (IIA) on budgetary discipline (point 47), Parliament can ensure that no agency is created before an agreement on its funding is reached.

The practical application of this point 47 in regard to agencies has functioned through the ad hoc addition of an agenda point to budgetary trilogues whenever an agency dossier is sufficiently mature for the two arms of the budgetary authority to seek agreement on the financing of the agency. In a trilogue held on 1 September 2009, the European Parliament and the Council asked the Commission to present as quickly as possible draft common guidelines to implement point 47 of the IIA.

Origin of agencies' tasks

According to a working document produced by the Budget Committee of the European Parliament¹¹, the main tasks entrusted to agencies are either "new"¹² or delegated from the Commission¹³. To a lesser extent they were previously carried out by the Member States¹⁴. Some agencies consider that their tasks cover several or all categories (e.g. EEA, EFSA, EMEA, EMSA and OHIM).

The tasks to be devolved to an agency are moreover to be defined on the basis of the Meroni case-law¹⁵. The Meroni judgment addresses the limits placed by the Treaties on the delegation of powers by the institutions to other bodies, in view of the balance of powers, a main feature of the Community institutional architecture.

¹¹ See Working document on the European Union and its agencies, European Parliament, Committee on Budgets, 2007

¹² CdT, CEDEFOP, CPVO, EMCDDA, ECHA, EIGE, EMEA, ENISA, ERA, EUROFOUND, EUROJUST, FRA, FRONTEX, EU-OSHA

¹³ EAR, EEA, ETF, CFCA, ECDC, EFSA, EMSA, GSA

¹⁴ CEPOL, OHIM, EUROPOL, EASA

¹⁵ Judgment of the Court of 13 June 1958, Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community, Case 9-56; "A delegating authority cannot confer upon the authority receiving the delegation powers different from those which it has itself received under the treaty [...] To delegate discretionary power to bodies other than those which the Treaty has established to effect and supervise the exercise of such power each within the limits of its own authority, would render less effective the guarantee resulting from the balance of powers established by art 3."

Impact assessment/ex-ante evaluation

Since 2004 there are nine agencies whose creation or revision of the founding regulation was preceded by an impact assessment/ex-ante evaluation.¹⁶

Reasons for creating an agency

According to the 2008 meta-study¹⁷, the reasons for creating agencies or for renewing their mandate are the same as the rationale for launching the respective EU policy within which the agency operates.

The 2003 meta-study¹⁸ listed six reasons why agencies had been set up:

- lack of objective, reliable, and comparable data at European level;
- lack of awareness/knowledge of, or research on, a particular issue;
- lack of communication and co-operation between the stakeholders throughout Europe (hindering the exchange of information and good practice);
- need to tackle complex socio-economic problems, the solution of which required the full involvement of concerned stakeholders;
- need to deal with new tasks of a technical and/or scientific nature, where decisions have to be taken on objective scientific criteria;
- need for efficient and flexible implementation of Community policies, in particular in areas requiring frequent decisions based on technical or scientific considerations.

The 2008 meta-study¹⁹ complements with other specific reasons:

- to ensure that legislation is implemented in a systematic, uniform and effective way across Member States;
- to develop a common European knowledge that national training institutes alone could not achieve or could not achieve with the same efficiency and effectiveness;
- to develop a Community regime of industrial property rights valid throughout the Community;
- to adopt common safety rules in the field of transport and ensure that products, persons and organisations in the Community comply with such rules;
- to deal with organised crime affecting two or more Member States.

¹⁶ ACER, BEREC Office, CFCA, EASA, EASO, ECHA, FRA, Agency for the Operational Management of SIS II, VIS and EURODAC, FRONTEX

¹⁷ Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings. Final Report, Eureval/Rambøll-Management, September 2008

¹⁸ Meta-evaluation on the Community Agency System. Final Report, European Commission, Budget Directorate General, 15 September 2003

¹⁹ Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings. Final Report, Evaluation for the European Commission, September 2008

According to the 2008 meta-study, the need for an agency is justified by one of the following reasons:

- stakeholder involvement - need to involve partners/stakeholders in the EU policy;
- provision of highly specific services - only available economic mean for providing the full range of requested services while maintaining the necessary standard and quality;
- independence - need to establish a body which is independent in relation to technical matters and has legal, administrative and financial autonomy;
- networking - need to develop cooperation between the Member States and/or the European Union in certain domain;
- high level of expertise needed.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

Analytical Fiche Nr° 3

Agencies' seat and role of the host country

1) State of play de jure and in practice

Decision on Agency's Seat

Agencies' seat is determined by common agreement between the representatives of the Member States meeting at Head of state or government level¹. In some cases the Decision states the city in which the agency will be located, whereas in others there is a mentioning of the country and the decision on the city is left to the national government².

At the European Council of December 2003³, the Member States agreed to give priority to newly acceding states in the distribution of the seats of Community offices or agencies to be set up in the future. According to the conclusions of this European Council, seats of future offices or agencies should be primarily located in the Member States that acceded to the Union in or after 2004. The European Council of June 2008 recalled the 2003 conclusions agreeing further that appropriate priority should be given to the Member States that do not already host an EU office or agency.

In some Commission proposals establishing a new agency, e.g. the proposal on ACER⁴, the Commission proposed that the agency's seat, once decided upon, is introduced in the constituent act.

At present there are no fixed criteria according to which the choice of seat is made.

Seat Agreement

Eighteen agencies⁵ concluded seat agreements or similar agreements with host countries.

Most of these seat agreements include provisions on the inviolability of the agency's headquarters⁶, its assets and archives, as well as on the privileges and immunities of the officials and other servants of the agencies in compliance with the Protocol on the privileges and immunities of the European Communities⁷. In the case of CPVO, the host country (France) was of the opinion that the Protocol on Privileges and Immunities should be the sole basis for hosting the new agency.

¹ Analogy with Article 289 of TEC stipulating that the seat of the institutions of the Community shall be determined by common accord of the governments of the Member States.

² E.g. OHIM, ECDC, ENISA

³ Presidency Conclusions, Conclusions of the Representatives of the Member States, meeting at Head of State and Government level in Brussels on 13 December 2003

⁴ COM(2007)530, Article 2: "The seat of the Agency shall be located in [place]. Until its premises are ready, it will be hosted on Commission premises."

⁵ CEDEFOP, CEPOL, CFCA, EAR, EASA, ECDC, ECHA, EEA, EFSA, EMCDDA, EMEA, EMSA, ENISA, ETF, EUROFOUND, FRA, EUROJUST, EUROPOL

⁶ Provisions on inviolability are not found in the seat agreements of EASA, EAR and EUROFOUND.

⁷ Treaty establishing the European Community - E. Protocol annexed to the Treaties establishing the European Community and the European Atomic Energy Community - Protocol (No 36) on the privileges and immunities of the European Communities (1965); OJ C 321 E of 29.12.2006, p. 318-324

OHIM does not have an official seat agreement but instead functions on the basis of an exchange of notes between the Commission and the Spanish government. This exchange of letters does not contain additional privileges that can be granted with a seat agreement. OHIM is the only agency among those hosted in Spain without a seat agreement.

All agencies, with or without a seat agreement, benefit from the provisions of the Protocol on Privileges and Immunities as it is applicable in all Member States. The seat agreements of ten agencies⁸ state explicitly that the agency is sole responsible for security and preservation of order within its buildings and premises. In nine of these cases⁹, agencies may designate security staff and bodyguards authorized to bear arms within agencies' buildings and premises in compliance with the national law of the host country.

Eleven agencies' seat agreements¹⁰ include a provision on the cooperation between the agency and the host country in security matters. In seven cases¹¹ the host country is obliged to ensure the agencies' communication facilities or shall at least exercise its powers as far as it is within its competence in this respect. In the case of EFSA the seat agreement foresees the obligation for the host country - Italy - to assist the agency in installing and using telecommunication systems.

Eight agencies' seat agreements¹² oblige the host country to ensure a general and/or logistic support to the agencies.

In six cases¹³ the host country issues the special identity card to the agency staff. CFCA, ECHA and EFSA seat agreements have provisions on access of staff's children to the national education system. In addition, ECHA's agreement grants access to the health daycare organized by municipalities.

In some cases, the seat agreements of agencies hosted by the same Member States differ significantly.

Obligations for the host country arising from agencies' constituent acts

No obligations for the host country occur from the existing agencies' constituent acts themselves. The two most recent proposals for agencies¹⁴ include some provisions concerning the host country.

The Commission proposal for establishing EASO requires the host state to ensure the proper functioning of the agency, including multilingual, European-oriented schooling and appropriate transport connections.

The Commission proposal for establishing the Agency for Operational Management of SIS II, VIS and EURODAC requires the host state to ensure the best possible conditions for the smooth operation of the Agency.

⁸ CEDEFOP, CFCA, ECDC, ECHA, EEA, EMCDDA, EMEA, EMSA, FRA, CEPOL

⁹ CEDEFOP, CFCA, ECDC, ECHA, EEA, EMCDDA, EMEA, EMSA, FRA

¹⁰ CEDEFOP, CFCA, ECDC, EEA, EFSA, EMCDDA, EMEA, EMSA, FRA, CEPOL, EUROJUST

¹¹ CEPOL, CFCA, ECHA, EMCDDA, ENISA, FRA, EUROJUST

¹² CEPOL, CFCA, EEA, EFSA, EMCDDA, EMSA, ENISA, FRA

¹³ CEPOL, CFCA, EAR, ECHA, EFSA, EUROJUST

¹⁴ EASO, Agency for the Operational Management of SIS II, VIS and EURODAC

Donations of the host state

In some cases host countries made donations towards agencies. Some host countries give concessions, e.g. EASA was reimbursed by Germany on actual leasing cost of its buildings until 31 December 2005 and EFSA was offered for free the property of the soil on which the seat is being built. In the case of ENISA the Greek Government provides the premises for the agency free of rent in order to offset the geographically remote location. In other cases, e.g. ETF, the host country has created a fund to finance certain activities from the agency's work programme.

Some host countries provide support during a few years only, while others provide no support at all.

Role of the host state during the agency's set-up phase

The involvement of the host country during the set-up phase of an agency differs greatly from case to case. In some cases the host country agrees to run public procurement for various services (IT equipment; electricity, and other facilities).

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Analytical Fiche Nr° 4

Ending of agencies

1) State of play de jure and in practice

Regulatory agencies are most often created for an indefinite period of time and are thus defined as permanent bodies. Nevertheless, agencies can be dismantled at any time in the same way they have been created, i.e. by means of a legal act amending/repealing the agency's founding act.

Two agencies' founding regulations foresee an end date by which the agency's mandate would expire - EAR and ENISA. Both agencies' founding regulations foresee also a review clause allowing for an assessment as to whether the agency has fulfilled its mandate before it is disbanded.

There is one case when the mandate of an agency was terminated without having such a clause in the founding regulation - the European Monitoring Centre on Racism and Xenophobia (EUMC). The agency was legally succeeded by a newly created one with a broader mandate - FRA.

Extending the duration of ENISA

ENISA was established in 2004 for a period of five years. Before the end of its mandate the Commission prepared an evaluation report with the aim to determine whether the duration of the agency should be extended beyond the above mentioned period. The evaluation assessed the impact of the agency on achieving its objectives and tasks, as well as its working practices and envisaged a proposal to prolong the existence of the agency. The mandate of ENISA was thus extended for a period of another three years.¹

Extending the duration of EAR

The duration of EAR's mandate was stipulated in the agency's founding regulation. Its founding regulation from 2000 stated that the Commission should submit to the Council a proposal to wind up the agency once the Commission considers that the agency has fulfilled its mandate. It also foresaw an evaluation report prepared by the Commission together with a proposal on the status of the agency. An evaluation report was submitted in July 2004. Later the founding regulation was amended and the agency's duration was extended until December 2006². Another evaluation report was submitted to the Council and to EP for information, on 23 December 2005. On that basis, in April 2006 the Commission submitted a proposal to extend the mandate of the agency till 31 December 2008. The agency's existence was thus extended for final two years³. The agency is currently disbanded.

¹ Regulation (EC) No 1007/2008 of the European Parliament and of the Council of 24 September 2008 amending Regulation (EC) No 460/2004 establishing the European Network and Information Security Agency as regards its duration

² Council Regulation (EC) No 2068/2004 of 29 November 2004 amending Regulation (EC) No 2667/2000 on the European Agency for Reconstruction

³ Council Regulation (EC) No 1756/2006 of 28 November 2006 amending Regulation (EC) No 2667/2000 on the European Agency for Reconstruction

Succession: EUMC-FRA

In another case an agency's functions were overtaken by a new agency with an extended scope of mandate. This is the case with the European Monitoring Centre on Racism and Xenophobia (EUMC) and FRA. FRA, existing since 1 March 2007, was built upon EUMC. The latter was established in Vienna as an independent body of the European Union by a Council Regulation in 1997, amended in 2003⁴. The founding regulation of the EUMC did not foresee a fixed duration of the agency. The EUMC activities started in 1998 and ended on 28 February 2007.

At present there are no fixed criteria to measure whether an agency has fulfilled its mandate and can be disbanded.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

⁴ Council Regulation (EC) No 1652/2003 of 18 June 2003 amending Regulation (EC) No 1035/97 establishing a European Monitoring Centre on Racism and Xenophobia

Analytical Fiche Nr° 5

Composition and designation of the Management Board¹

1) State of play *de jure* and in practice

There is no one single model concerning the composition and designation of members of agencies' Management Boards, as these aspects are defined differently by individual constituent acts. In fact, Management Boards can include representatives from EU Member States, European Commission, European Parliament, EU candidate countries, non-EU countries, other agencies and/or institutions as well as individuals.

Representatives of Member States/Members appointed by the Council

Thirty agencies have representatives from all Member States in their Management Board. For twenty seven of these agencies it is the national authorities themselves which appoint their representatives. Instead, in three cases² the Management Board includes members representing all Member States who are formally appointed by the Council³.

The Management Board of three agencies⁴ includes members who, either do not represent the Member States or represent some of them on a rotating basis, and are appointed by the Council⁵:

- The Management Board of ACER has 5 members appointed by the Council. Members of the Management Board of ACER shall undertake to act independently and objectively in the public interest, without seeking or taking any political instructions.
- The Management Board of EFSA has 14 members appointed by the Council in consultation with the European Parliament from a list drawn up by the Commission. EFSA has an independent Management Board whose members are appointed to act in the public interest and do not represent any government, organisation or sector. Four of the members shall have their background in organisations representing consumers and other interests in the food chain, even though they act in their own capacity.
- The Management Board of EIGE has 18 representatives appointed by the Council for a three-year term of office. For each term of office, the members appointed by the Council shall represent eighteen Member States in the order of the rotating Presidencies, one member being nominated by each Member State concerned.

The Management Board of EMEA has two representatives of patients' organisations and one representative each of doctors' and veterinarians' organisations, appointed by the Council.

¹ This body, depending on the constituent acts, is also called Administrative Board, Governing Board, Administrative Council, Management Committee or the College.

² CEDEFOP, EU-OSHA, EUROFOUND

³ These three Management Boards also include representatives of employees' and employers' organisations, appointed by the Council.

⁴ ACER, EFSA, EIGE

⁵ However, these three agencies have other ruling bodies in which all Member States are represented: EFSA's Advisory Forum, EIGE's Expert's Forum and ACER's Board of Regulators.

The Management Board of ENISA has three members, without voting rights, representing information and communication technologies industry, consumer groups, and academic experts in network and information security, who are appointed by the Council following a proposal from the Commission.

Representatives of the Commission

All but the third pillar agencies have European Commission representatives as members of the Management Board. Their number varies from 1 to 6. In the case of four agencies⁶, the Commission's representatives are without voting rights.

In the case of 3rd pillar agencies - CEPOL, EUROJUST and EUROPOL - the Commission has representatives, who attend the meetings of the Management Board as observers⁷.

Representatives of the European Parliament/Experts appointed by the European Parliament

Twenty six agencies do not have any representative of the European Parliament in their Management Board. The Management Boards of seven agencies include two members appointed by the Parliament. In six of these agencies the members have voting rights⁸, while in the case of ETF there are three non-voting experts appointed by the Parliament.

Representatives of non-EU countries

Nine agencies⁹ have representatives, mostly without voting rights, from non-EU countries.

Other representatives

The Boards of the following individual agencies include particular types of members:

- CdT: 7 representatives of agencies as foreseen in the founding regulation (EEA, ETF, EMCDDA, EMEA, EU-OSHA, OHIM, EUROPOL), and 1 representative from each of the EU institutions and bodies as well as from regulatory agencies which concluded agreements with the Centre for collaboration on a voluntary basis¹⁰;
- CEDEFOP: 2 coordinators appointed as representatives of employees' and employers' organisations; they are representatives of their respective organisation at European level (ETUC for employees and Business Europe for employers) and attend the Management Board's meetings without voting rights;

⁶ 1st pillar agencies: CPVO, OHIM; 2nd pillar agencies: ISS, EUSC

⁷ According to the new Council Decision establishing the European Police Office, to be applicable as of 1 January 2010, the Commission will be represented in the Management Board by one full member.

⁸ ACER, ECHA, ECDC, EEA, EMCDDA, EMEA

⁹ EASA - 4 members without voting rights from: Iceland, Norway, Liechtenstein and Switzerland; ECDC - 3 representatives without voting rights from: Norway, Iceland and Liechtenstein; EEA - 5 members without voting rights from: Turkey, Iceland, Norway, Liechtenstein and Switzerland; EMCDDA - 1 representative without voting rights from Norway; EMEA - 3 observers: Iceland, Norway and Liechtenstein; EMSA - 2 members without voting rights from: Iceland and Norway; ERA - 2 representatives without voting rights from Norway, Iceland; ETF - 3 observers from partner countries: Croatia, FYROM and Turkey; FRONTEX - 1 member, with voting rights, of each country which is associated with implementation, application and development with the Schengen acquis; GSA - third country representatives where appropriate (arrangements specifying rules of this participation are to be agreed).

¹⁰ Council of the EU, Court of Justice, European Court of Auditors, Committee of Regions, EIB, ECB, European Ombudsman, EIT, Fusion for Energy, CEDEFOP, CEPOL, CFCA, CPVO, EASA, ECHA, EDA, EFSA, EMSA, ENISA, ERA, EUROFOUND, EUROJUST, EUCS, FRA, FRONTEX, GSA.

- ECHA: 3 individuals from interested parties without voting rights, appointed by the Commission;
- EMSA: 4 representatives from the industry field without voting rights, appointed by the Commission;
- ERA: 6 members and their alternates representing at European level railway undertakings, infrastructure managers, railway industry, worker unions, passengers and freight customers, without voting rights, appointed by the Commission from a shortlist of 4 names submitted by their respective European organizations;
- FRA: 1 independent person appointed by the Council of Europe;
- EDA: the Chairman of the EU Military Committee and the National Armament Director of the EU Presidency, or their representative, without voting rights;
- CEPOL: representatives of the General Secretariat of the EU Council and EUROPOL without voting rights.

Alternate members

In 15 cases¹¹, agencies' founding regulations foresee the appointment of alternate members. In five cases¹² where the appointment is not mandatory, alternate members were nominated.

Observers

Thirteen agencies¹³ have observers in their Management Board.

In twenty-four agencies¹⁴ the Director participates in the Management Board's meetings without voting rights.

The Management Boards of EASA and EFSA can invite, on case by case basis, any person whose opinion may be of interest to attend their meetings as an observer.

The Director-General of the Military Staff and the Chairman of the Military Committee may attend Management Board's meetings of two agencies¹⁵.

¹¹ ACER, CdT, CFCA, CPVO, EASA, ECDC, EIGE, EMEA, EMSA, ERA, EU-OSHA, EUROFOUND, FRA, FRONTX, OHIM

¹² EAR, EEA, EMCDDA, ETF, EUROJUST

¹³ CEDEFOP - 1 observer from Iceland and 3 observers from Norway; CFCA - 1 observer from the Advisory Board, which is composed of representatives of the Regional Advisory Councils; EAR - 1 observer from EIB; EASA - 7 observers from: Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Serbia, UN Mission in Kosovo, and 4 observers from EASA's Advisory Council; ECHA - 2 observers from: Norway and Iceland; EMCDDA - 6 observers from: Scientific Committee, UNODC, Council of Europe, WHO, Turkey and Reitox National Focal Points (spokesperson); EMEA - 3 observers from: Norway, Iceland and Liechtenstein; EU-OSHA - 2 observers from EUROFOUND; EUROFOUND - 3 observers from EFTA representing interests of "Government", "Employers" and "Employees" respectively; ETF - 1 observer each from Croatia, FYROM and Turkey; GSA - 2 observers from: Secretary-General/High Representative and European Space Agency (ESA); OHIM - 1 observer from the Benelux Office for Intellectual Property (OBPI), 1 observer from the World Intellectual Property Organization (WIPO), 5 observers representing users' organizations (Marques, International Trademark Association - INTA, European Communities Trade Mark Association - ECTA, European Brands Association - AIM and BusinessEurope), 1 observer from EU-OSHA and 1 observer representing EFTA countries; CEPOL - 3 observers from: European Commission, General Secretariat of the Council and EUROPOL.

¹⁴ ACER, BEREC Office, CEDEFOP, CFCA, CPVO, EASA, ECHA, ECDC, EEA, EFSA, EIGE, EMCDDA, EMSA, ENISA, ERA, EUROFOUND, FRA, FRONTX, GSA, OHIM, ISS, EUSC, EDA, CEPOL

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

¹⁵ ISS, EUSC

ANNEX TO ANALYTICAL *FICHE* N°5

Agencies (1st pillar)	EC Representatives	EP Representatives	MS Representatives	Other Representatives	Observers
ACER	2 representatives	2 members appointed by EP	-	5 members appointed by the Council; Director without voting rights	-
Agency for Operational Management of SIS II, VIS and EURODAC	2 representatives	-	27 representatives	1 member from each country which is associated with implementation, application and development with Schengen acquis and EURODAC related measures; Director without voting rights	-
BEREC Office	1 representative	-	27 representatives	-	-
CdT	2 representatives	-	27 representatives	7 representative of agencies and offices: EEA, EMCDDA, EMEA, EU-OSHA, ETF, OHIM, EUROPOL; 1 representative each from the institutions, bodies and regulatory agencies which have their own translation services but have concluded agreements with CdT for collaboration on a voluntary basis	-

CEDEFOP	3 representatives	-	27 representatives appointed by the Council	27 representatives of both employees and employers organisations appointed by the Council; Director without voting rights	2 coordinators; 1 observer from Iceland; 3 observers from Norway
CFCA	6 representatives	-	27 representatives	Director without voting rights	1 observer from the Advisory Board
CPVO	1 representative	-	27 representatives	Director without voting rights	-
EAR	2 representatives	-	27 representatives	-	1 observer from EIB
EASA	1 representative	-	27 representatives	4 members without voting rights from: Iceland, Norway, Liechtenstein and Switzerland; Director without voting rights	7 observers from: Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Serbia and UN Mission in Kosovo
EASO	2 representatives	-	27 representatives	1 non-voting member from UNHCR; Director without voting rights	-
ECDC	3 representatives	2 members designated by EP	27 representatives	Director without voting rights	3 observers from: Iceland, Norway and Liechtenstein
ECHA	3 representatives	2 independent persons appointed by EP	27 representatives	3 individuals from interested parties, without voting rights, appointed by EC; Director without voting rights	2 observers from: Norway and Iceland
EEA	2 representatives	2 scientific personalities designated by EP	27 representatives	5 members without voting rights from: Turkey and EFTA countries Director without voting rights Other participants according to Article 6 of the Rules of	-

				procedure)	
EFSA	1 representative	-	-	14 members appointed by the Council to act in the public interest and do not represent any government, organisation and sector; Director without voting rights	-
EIGE	1 representative	-	-18 representatives appointed by the Council		-
EMCDDA	2 representatives	2 independent experts designated by EP	27 representatives	1 representative without voting rights from Norway; Director without voting rights	6 observers from: Scientific Committee, UNODC, Council of Europe, WHO, Turkey and REITOX
EMEA	2 representatives	2 members appointed by EP	27 representatives	2 representatives of patients' organisations; 1 representative of doctors' organisations; 1 representative of veterinarians' organisations. All appointed by the Council	3 observers from: Norway, Iceland and Liechtenstein
EMSA	4 representatives	-	27 representatives	4 professionals from the industry field, nominated by EC, without the right to vote; Director without voting rights	2 observers from: Iceland and Norway
ENISA	3 representatives	-	27 representatives	3 representatives, appointed by the Council, representing following groups: 1) information and communication technologies industry, 2) consumer groups,	-

				3) academic experts in network and information security; Director without voting rights	
ERA	4 representatives	-	27 representatives	6 members, appointed by EC, representing: 1) railway undertakings, 2) infrastructure managers, 3) railway industry, 4) worker unions, 5) passengers, 6) freight customers; 2 representatives without voting rights from: Norway and Iceland; Director without voting rights	-
EU-OSHA	3 representatives	-	27 representatives appointed by the Council	27 representatives of both employees and employers organisations appointed by the Council	2 observers from EUROFOUND
EUROFOUND	3 representatives	-	27 representatives appointed by the Council	27 representatives of both employees and employers organisations appointed by the Council; Director without voting rights	2 coordinators; 3 observers from ETFA countries representing interests of government, employees and employers
FRA	2 representatives	-	27 independent persons appointed by each MS	1 independent person appointed by the Council of Europe; Director without voting rights	-
ETF	3 representatives	3 non-voting experts appointed by EP	27 representatives	-	3 observers from: Croatia, FYROM and Turkey
FRONTEX	2 representatives	-	27 representatives	1 member from each country which is associated with	-

				implementation, application and development with Schengen acquis; Director without voting rights	
GSA	1 representative	-	27 representatives	Third countries representatives when appropriate; Director without voting rights	1 observer from the SG/HR; 1 observer from European Space Agency (ESA)
OHIM	1 representative	-	27 representatives	Director without voting rights	1 observer from Benelux Office for Intellectual Property; 1 observer from the World Intellectual Property Organization; 5 observers representing user organizations; 1 observer from EU-OSHA; 1 observer representing EFTA countries

Agencies (2nd pillar)	Commission Representatives	European Parliament Representatives	Member States Representatives	Other Representatives	Observers
EDA	1 representative	-	27 representatives	Chairman of the EUMC, the National Armament Director of the EU Presidency, and Director without voting rights	-
EUSC	1 representative	-	27 representatives	Director without voting rights	-
ISS	1 representative	-	27 representatives	Director without voting rights	-

Agencies (3rd pillar)	Commission Representatives	European Parliament Representatives	Member States Representatives	Other Representatives	Observers
CEPOL	-	-	27 representatives	Director without voting rights	Representative of the Commission; Representatives of the General Secretariat of the Council of the EU; Representatives of EUROPOL
EUROJUST	-	-	27 representatives	-	Representative of the Commission
EUROPOL	-	-	27 representatives	-	Representative of the Commission

Analytical Fiche Nr° 6

Role and functioning of the Management Board

1) State of play *de jure* and in practice

Tasks of the Management Board

The majority of agencies' Management Boards share the following administrative and budgetary tasks:

- Elect a chairperson and a deputy chairperson(s) from among its members;
- Appoint/dismiss the Director or, where not the appointing authority, prepare the list of candidates for the post of Director;
- Appoint a chairperson and vice-chairpersons of the boards of appeal or, where not the appointing authority, prepare the list of candidates for these functions;
- Appoint members of the board of appeal;
- Adopt an annual and, where applicable, a multiannual work programme;
- Adopt an annual report on the activities of the agency;
- Adopt the rules of procedure;
- Adopt financial rules applicable to the agency;
- Produce an estimate of revenue and expenditure for the following financial year;
- Adopt the budget¹;
- Deliver an opinion on the agency's final accounts;
- Adopt the Implementing Rules for the Staff Regulation;
- Adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

In addition, the following may also be among the tasks of the Management board, depending on the agency's specifics and internal structure:

- Establish an executive board;
- Establish agency's internal bodies, such as scientific committees and working parties, and appoint their members;

¹ In the case of OHIM, the tasks related to budget and financial control are carried out by the OHIM Budget Committee.

- Determine strategic aims and priorities of the agency;
- Decide on whether to accept any legacies, donations or grants from other Community sources or any voluntary contribution from the Member States or from their regulatory authorities;
- Develop contacts and adopt working arrangements concluded with third parties;
- Deliver opinion concerning the agency's activities;
- Define fees and charges regulations, unless decided by comitology;
- Determine rules governing the languages used by the agency;
- Approve technical assistance the agency is providing to third parties;
- Establish procedures for decision-making by the Director;
- Establish the organisational structure of the agency;
- Decide on the participation of partners in the activities of the agency;
- Advise on matters for which the agency is responsible;
- Deliver opinions and requests for information.

Finally, each agency's Management Board has additional specific tasks concerning the scope of the activities of the agency.

Chairmanship

The constituent acts of twenty three 1st pillar agencies² and of EUROJUST stipulate that the Management Board appoints its chairperson and, when appropriate, vice-chairperson(s), from among its members.

The Management Board of four 1st pillar agencies³ is chaired by a representative of the Commission.

The 2nd pillar agencies' - EDA, EUSC and ISS - Management Boards are chaired by the Secretary-General/High Representative (SG/HR).

The founding regulations of EUROPOL and CEPOL foresee that the Management Board is chaired by the Member State holding the Presidency of the Council of the EU.

Voting Rules

The Management Board of eight agencies⁴ vote in most cases by simple majority, while four agencies' Management Boards vote by absolute majority as a rule.⁵

² ACER, Agency for Operational Management for SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, CEDEFOP, CPVO, EASA, EASO (as per Commission proposal), ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMEA, EMSA, ENISA, ERA, EU-OSHA, EUROFOUND, FRA, FRONTEX, GSA, OHIM

³ CdT, CFCA, EAR, ETF

⁴ CEDEFOP, CPVO, ECDC, EFSA, EIGE, ENISA, FRA, OHIM

⁵ CFCA, EU-OSHA, EUROFOUND, FRONTEX

The Management Boards of twenty-seven agencies vote by qualified majority of two-thirds. Among them eighteen agencies⁶ use two-thirds qualified majority vote as a rule, whereas nine vote by qualified majority of two-thirds only in special cases⁷.

In a number of specific cases, the Boards of seven agencies vote by qualified majority of three-fourths, while in the case of EMSA the Board votes by qualified majority of four-fifths⁸.

At present, six agencies' founding regulations⁹ foresee unanimity concerning the rules governing the language regime of the agency, taking into account the need to ensure access to and participation in the work of the agency by all interested parties. According to the new Council Decision establishing the European Police Office, to be applicable as of 1 January 2010, also the Management Board of EUROPOL will decide by unanimity on its language regime.

Fifteen agencies¹⁰ have different voting rules depending on the subject of the decision to be taken.

The constituent act of EUROJUST does not establish general voting rules. Nevertheless, it stipulates that the College decides by a two-thirds majority concerning the following tasks:

- 1) To adopt the rules of procedure;
- 2) To appoint the Director;
- 3) To undertake an investigation or prosecution of specific acts;
- 4) To accept that one of the competent authorities of the Member States may be in a better position to undertake an investigation or to prosecute specific acts;
- 5) To coordinate between the competent authorities of the Member States concerned;
- 6) To set up a joint investigation team in keeping with the relevant cooperation instruments;

⁶ ACER, BEREC Office, CdT, EAR, EASA, ECHA, EEA, EMCDDA, EMEA, EMSA, ERA, ETF, GSA, CEPOL, EUROPOL, EDA, EUSC, ISS

⁷ Appointment and/or dismissal of director: CFCA, CPVO, ECDC, EIGE, ENISA, FRA FRONTEx, EUROJUST; adoption of work programme: ECDC, EIGE, FRA; adoption of budget: CPVO, ECDC, EIGE, ENISA, FRA; adoption of rules of procedure and internal rules of operation: ECDC, ENISA, FRA; adoption of annual report: EIGE, FRA; appointment and removal of members of the Scientific Committee: FRA; establishing that member or alternate member of the management board no longer meets the criteria of independence: EFSA, FRA; election of a chairperson and vice-chairpersons of the Management Board: EFSA, FRA; election of two "special" members of the Executive Board: FRA; exercise of powers conferred by the Staff Regulations and of disciplinary authority over a director: FRA.

⁸ Appointment and dismissal of director: EASA, GSA, OHIM; adoption of work programme: EMCDDA, EMSA, FRONTEx; - in the case of EMSA, if the Commission disagrees with the adoption of the annual work programme by the Board, the Board has to re-examine the programme and adopt it either by a two-thirds majority including the Commission or by unanimity of Member States' representatives - adoption of working arrangements concluded with international organisations and other governmental and nongovernmental bodies competent in the sector of drugs when Commission expresses its disagreement: EMCDDA; compulsory licence, advises or general guidelines: CPVO; examining President's management report and monitoring Office's activities: CPVO; establishing rules on working methods: CPVO; opinion of the Administrative Council concerning candidates for the Board of Appeal: CPVO; defining liaison officers' rights and obligations towards Europol as well as deciding on number of liaison officers from Member States send to Europol and on details concerning the design of the index system: EUROPOL.

⁹ EAR, EASA, ERA, ECDC, ETF, FRA

¹⁰ CFCA, ERA, EASA, ECDC, EIGE, EMCDDA, ENISA, ERA, ETF, FRA, FRONTEx, GSA, OHIM, EUROJUST, EUROPOL

7) To provide it with any information that is necessary for it to carry out its tasks.

The EUROJUST College votes by unanimity the adoption of the financial regulation. The voting rules for taking other decisions are defined in the rules of procedure, which foresee as a general rule the adoption by simple majority, unless stipulated otherwise.

In the case of the BEREC Office, the rules of procedure may set out in detail the arrangements governing voting rules.

Executive Board

Seven agencies' founding regulations¹¹ foresee the establishment of the executive board, bureau or committee. The executive board is established by the Management Board and made up of limited number of the Management Board's members - chairperson, vice-chairperson or vice-chairpersons and regular members.

Depending on the founding regulations, this body may monitor the implementation of the Management Board's decisions, take the necessary measures to manage the agency between the Management Board's meetings, prepare decisions, programmes and activities to be adopted by the Management Board, as well as assist and advise the Director.

In five cases¹² the executive board decides by consensus, while FRA's executive board votes by simple majority, and FRONTEX founding regulation does not specify the voting method.

Advisory bodies

The Management Board of EASA establishes an advisory body of interested parties, which the Management Board consults prior to making decisions in the following fields: work programme, procedures for making decision by Director, functions relating to the agency's budget and opinions on the fees and charges regulation. The Management Board may also decide to consult the advisory body on other issues related with agencies tasks. The Management Board is not bound by the opinion of the advisory body.

Internal rules of the Management Board

Internal rules of procedure are prepared and approved by the Management Board. The Management Board's rules of procedure may regulate various matters, such as some aspects concerning the composition and chairmanship of the Management Board, convening and attendance of meetings, admission of observers, written procedures, voting arrangements, some aspects of the decision-making process, appointment and removal of Director, language regime, transmission of documents and minutes, reimbursement of expenses, Executive Board and confidentiality.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

¹¹ CEDEFOP, EEA, EMCDDA, EU-OSHA, EUROFOUND, FRA, FRONTEX

¹² CEDEFOP, EEA, EMCDDA, EU-OSHA, EUROFOUND

Analytical Fiche Nr° 7

Appointment and dismissal of the Director

1) State of play *de jure* and in practice

Appointment

Provisions concerning the appointment of the agency's Director are defined in the constituent act of each agency. The Director is appointed either by the Management Board¹ or by the Council of Ministers or by the Commission.

The table below summarizes the existing procedures for the appointment of the agency's Director:

	Agencies	Appointment procedure
1st pillar	Most of the agencies under the 1 st pillar	Appointment by the Management Board on the basis of the Commission's proposal.
	CPVO	Appointment of the President of the Office by the Council on the basis of the Commission's proposal.
	CEDEFOP and EUROFOUND	Appointment by the Commission on the basis of the Management Board's proposal.
	OHIM	Appointment of the president of the Office by the Council on the basis of the Management Board's proposal.
2nd pillar	EDA	Designation by the Steering Board on the basis of a Head of Agency's proposal (the Secretary General of the Council/High Representative for the Common Foreign and Security Policy)
	ISS	Appointed by the Board from candidates proposed by the Members States to the Secretary General of the Council/HR for CFSP
	EUSC	Appointed by the Board from candidates proposed by the Members States to the Secretary General of the Council/HR for CFSP
3rd pillar	EUROJUST	Appointed by the College of National Members by two-thirds majority on the basis of a list of candidates established by a selection board set up by the College
	CEPOL	Appointed by the Governing Board on the basis of a list of candidates presented by a selection committee

¹ "Management Board" stands for the Director's Appointing Authority irrespective to the term used in individual agency's founding regulation.

	EUROPOL	Director and Deputy Directors are appointed by the Council after an opinion of the Management Board
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Detailed provisions concerning individual agencies can be found in Annex.

Process

As indicated above, the Commission is involved in the appointment procedure of Directors of all agencies under the 1st pillar, except for OHIM. In most cases, the Commission is entrusted with selection of candidates who are appointed by the Management Board (for details see the Annex). In order to define its role at different stages of the selection process, in January 2009 the Commission issued guidelines² aiming at ensuring that a minimum core of rules applying to selection and appointment of Directors of agencies is respected.

When the Commission prepares the short-list of candidates, the above Guidelines foresee the following stages for the appointment procedure:

- elaboration and publication of the vacancy notice including the eligibility and selection criteria;
- pre-selection by a pre-selection Committee,;
- assessment by the Consultative Committee on Appointments and assessment centre;
- interview with a member of the College of Commissioners;
- adoption of the short list of candidates by the Commission;
- interviews before the appointing authority;
- possible hearings before the relevant committees of the European Parliament;
- appointment by the appointing authority as a temporary agent on the basis of Article 2a of the Conditions of employment of other servants of the European Communities.

Grading

The abovementioned Guidelines stipulate that the agency's Director is equal to the function of Director foreseen in the Staff Regulations under Annex 1a. It is therefore corresponding to the entry grade for this function at AD14³.

Renewal/extension of term of office

The constituent acts define the length of the Directors' term of office as well as a possibility of the latter's renewal or extension. In general terms, the Directors have a term of office from

² Guidelines related to selection and appointment of Directors of the regulatory and executive agencies as well as of the joint undertakings, SEC(2009/27) of 13.01.2009

³ Guidelines are related to selection of new Directors. Directors who are currently in office may occupy different grades, in accordance with the authorised establishment plans of the agencies.

three to five years (indeed most of them have has a five-year term of office), which may be renewed or extended⁴.

The term "renewal" implies carrying out a new external selection procedure, which is not required in respect to the "extension" of the Director's mandate. In contrast, the extension is based on an evaluation report of the Director's first mandate and has to be justified by the duties and requirements of the Agency.

In order to clarify any ambiguity resulting from the use of the terms "renewed" and "extended", and with a view to harmonising this issue across agencies, the Commission proposed in 2005 an amendment to basic regulations of 18 regulatory agencies⁵. This modification foresaw that the Director's term of office is extendable once after an evaluation. So far the legislator has not been able to reach an agreement on this dossier.

Whatever the word used in the founding regulation ("renewed" or "extended"), the current practice is to extend the Director's terms of offices after a prior and positive evaluation composed of two elements: the Director's appraisal during the first mandate and duties and requirements of the agency.

Moreover, a special provision on the extension of the mandate has been included in the text of founding regulations that were adopted, codified or proposed recently⁶. The extension procedure does not affect the role of the European Parliament. The founding regulations foresee that prior to the extension of the term of office of the Director, he/she may be invited to make a statement before the competent committee(s) of the Parliament and answer questions from its/their members.

Dismissal

Provisions concerning dismissal of the agency's Director are defined in the agencies' constituent acts, which foresee that the Director may be dismissed by the Appointing Authority exercising the disciplinary powers over the Director. There are no guidelines establishing a framework concerning the process of dismissal of agencies' Directors prepared by the Commission. Further details concerning provisions on dismissal in founding regulations are provided in Annex.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified problems**
- 4) Possible ways for implementing the viable solution(s)**

⁴ 16 basic regulations used the word "renewable" or "renewed". 11 basic regulations used the word "extended", "extendable" or "extend".

⁵ COM(2005)190 final of 13.05.2005

⁶ ETF (Article 10 of Regulation 1339/2008), FRA (Article 15(3) of Regulation 168/2007), EASO (Article 28 of Commission proposal, COM (2009) 66 final), Agency for Operational Management of SIS II, VIS and EURODAC (Article 15 of Commission proposal, COM (2009) 293 final)

ANNEX TO ANALYTICAL FICHE N°7

1. Agencies under the 1st pillar whose Director is appointed by the Management Board or the Council on the basis of the Commission proposal.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
EEA European Environment Agency	Executive Director Article 9 of Regulation 401/2009	Appointed by the Management Board on a proposal from the Commission. 5-year term of office, renewable.	No specific provisions.
ETF European Training Foundation	Director Article 10 of Regulation 1339/2008 (recast)	Appointed by the Governing Board from a list of at least 3 candidates submitted by the Commission. Hearing before the competent committee(s) of the European Parliament. 5-year period extendable for a maximum 3-year period on a proposal from the Commission and after an evaluation.	Dismissed by the Governing Board on a proposal from the Commission.
EMCDDA European Monitoring Centre for Drugs and Drug Addictions	Director Article 11 of Regulation 1920/2006 (recast)	Appointed by the Management Board on a proposal from the Commission. Hearing before the European Parliament. 5-year term of office, renewable.	No specific provisions.
EU-OSHA European Agency for Safety and Health at Work	Director Article 11 of Regulation 2062/94	Appointed by the Governing Board on a proposal from the Commission. 5-year term of office, renewable.	No specific provisions.
CPVO Community Plant Variety Office	President Article 43 of Regulation 2100/94	Appointed by the Council from a list of candidates proposed by the Commission after obtaining the opinion of the Administrative Council. Maximum 5-year term of office, renewable.	Dismissed by the Council on a proposal from the Commission and after obtaining the opinion of the Administrative Council.

CdT Translation Centre for the Bodies of the European Union	Director Article 9 of Regulation 2965/94	Appointed by the Management Board on a proposal from the Commission. 5-years term of office, renewable.	No specific provisions.
EFSA European Food Safety Authority	Executive Director Article 26 of Regulation 178/2002	Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition Hearing before the European Parliament before appointment. 5-years term of office, renewable.	Dismissed by a majority of the Management Board.
EMSA European Maritime Safety Agency	Executive Director Article 16 of Regulation 1406/2002	Appointed by the Administrative Board. The Commission may propose one or more candidates. Decision taken by a 4/5 majority. 5-years term of office, renewable.	Dismissed by the Administrative Board according to the same procedure (as appointment).
EASA European Aviation Safety Agency	Executive Director Article 39 of Regulation 216/2008	Appointed by the Management Board on a proposal from the Commission. Decision taken by a 3/4 majority. Possible hearing before the competent committee(s) of the European Parliament. 5-years term of office, renewable once.	Dismissed by the Management Board on a proposal from a Commission.
ENISA European Network and Information Security Agency	Executive Director Article 7 of Regulation 460/2004	Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition. Hearing before the European Parliament. Term of office: up to 5 years.	Dismissed by the Management Board.
ECDC European Centre for Disease Prevention and Control	Director Article 17 of Regulation 851/2004	Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition. Hearing before the European Parliament. 5-years term of office, extendable once for a period of up to 5 years.	Dismissed by the Management Board in accordance with the same provision (as appointment).

ERA European Railway Agency	Executive Director Article 31 of Regulation 881/2004	Appointed by the Administrative Board. The Commission may propose a candidate or candidates. Decision taken by a 4/5 majority. 5-years term of office, renewable once.	Dismissed by the Administrative Board according to the same procedure (as appointment).
EMEA European Medicines Agency	Executive Director Article 64 of Regulation 726/2004	Appointed by the Management Board from a list of candidates proposed by the Commission after a call for expression of interest. Statement to the European Parliament: "Before appointment, the candidate nominated by the Management Board shall be invited forthwith to make a statement to the European Parliament and to answer any questions put by its Members." 5-year term of office, renewable once.	Dismissed by the Management Board on a proposal from the Commission.
GSA European GNSS Supervising Authority	Executive Director Article 7 of Regulation 1321/2004	Appointed by the Administrative Board from a list of at least 3 candidates proposed by the Commission. Decision taken by a ¾ majority. The European Parliament or the Council may call upon the Executive Director to submit a report on the performance of his duties. 5-year term of office, renewable once.	Dismissed by the Administrative Board according to the same procedure (as appointment).
FRONTEX European Agency for the Management of Operational Co-operation at the External Borders	Executive Director Article 26 of Regulation 2007/2004	Appointed by the Management Board from a list of candidates proposed by the Commission after a publication of the post. Decision taken by a 2/3 majority. 5-year term of office, extendable once for up to 5 years.	Dismissed by the Management Board according to the same procedure (as appointment).
CFCA Community Fisheries Control Agency	Executive Director Article 30 of Regulation 768/2005	Appointed by the Administrative Board from a list of at least 2 candidates proposed by the Commission after a selection procedure. 5-year term of office, extendable once.	Dismissed by the Administrative Board at the request of the Commission or 1/3 of AB members.

<p>ECHA</p> <p>European Chemicals Agency</p>	<p>Executive Director</p> <p>Article 84 of Regulation 1907/2006</p>	<p>Appointed by the Management Board from a list of candidates proposed by the Commission after an open call for expression of interest.</p> <p>Decision taken by a 2/3 majority.</p> <p>Statement before the European Parliament: "Before being appointed, the candidate selected by the Management Board shall be invited as soon as possible to make a statement before the European Parliament and to answer questions from Members of Parliament."</p> <p>5-year term of office, extendable once for a period of up to 5 years.</p>	<p>Dismissed by the Management Board according to the same procedure (as appointment).</p>
<p>EIGE</p> <p>European Institute for Gender Equality</p>	<p>Director</p> <p>Article 12 of Regulation 1922/2006</p>	<p>Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition.</p> <p>Declaration before the Parliamentary Committee: "Before being appointed, the candidate selected by the Management Board shall be asked to make a declaration before the competent committee(s) of the European Parliament and answer questions from its/their members."</p> <p>5-year term of office, extendable once on a proposal from the Commission and after an evaluation.</p>	<p>Dismissed by the Management Board according to the same procedure (as appointment).</p>
<p>FRA</p> <p>Fundamental Rights Agency</p>	<p>Director</p> <p>Article 15 of Regulation 168/2007</p>	<p>Appointed by the Management Board in accordance with a co-operation procedure on the basis of a list of candidates drawn up by the Commission.</p> <p>Statement to the Council and the European Parliament: "Before being appointed, the candidate selected by the Management Board shall be invited as soon as possible to make a statement before the European Parliament and to answer questions from Members of Parliament."</p> <p>5-year term of office, extendable once for a period of no more than 3 years after an evaluation.</p>	<p>Dismissed by the Management Board on the basis of a proposal of a 1/3 of its member or of the Commission.</p>

2. Agencies under the 1st pillar whose Director is appointed by the Commission on the basis of a proposal from the Management Board.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
CEDEFOP European Centre for the Development of Vocational Training	Director Article 6 of Regulation 337/75	Appointed by the Commission from a list of candidates submitted by the Governing Board. 5-years term of office, renewable.	No specific provisions.
EUROFOUND European Foundation for the Improvement of Living and Working Conditions	Director Article 8 of Regulation 1365/75	Appointed by the Commission from a list of candidates submitted by the Administration Board. 5-year term of office, renewable.	No specific provisions.

3. Agencies under the 1st pillar whose Director is appointed without intervention from the Commission.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
OHIM Office for Harmonisation in the Internal Market	President Article 125 of Regulation 207/2009	Appointed by the Council from a list of at most 3 candidates prepared by the Administrative Board. Maximum 5-year term of office, renewable.	Dismissed by the Council on proposal of the Administrative Board.

4. Agencies under the 2nd pillar.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
EUSC European Union Satellite Centre	Director Article 8 of Council Joint Action of 20 July 2001	Appointed by the Board from candidates proposed by Member States to the SG/HR. 3-year term of office, extendable for a period of 2 years.	No specific provisions.
ISS European Union Institute for Security Studies	Director Article 6 of Council Joint Action of 20 July 2001	Appointed by the Board from candidates proposed by the Member States to the SG/HR. 3-year term of office, extendable for a period of 2 years.	No specific provisions.
EDA European Defence Agency	Chief Executive Article 10 of Council Joint Action	Designated by the Steering Board on a proposal of the SG/HR. Chief Executive operates under authority of the Head of Agency.	No specific provisions

	2004/551/CFSP of 12 July 2004	3-year term of office extendable for a period of 2 years.	
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5. Agencies under the 3rd pillar.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
Eurojust The European Union's Judicial Co-operation Unit	Administrative Director Article 29 of Council Decision 187/2002	Appointed unanimously by the College. The latter sets up a selection board that establishes a list of candidates following a call for applications. 5-year term of office, renewable.	Dismissed by the College by a 2/3 majority.
Cepol European Police College	Director Article 11 of Council Decision 2005/681	Appointed by the Governing Board from a list of at least 3 candidates presented by a selection committee. 4-year term of office, extendable once.	Dismissed by the Governing Board.
Europol European Police Office	Director Article 29 of the Europol Convention (currently applicable) Article 38 Council decision 2009/371/JHA (applicable from 2010 onwards)	Appointed by a unanimous decision of the Council after an opinion of the Management Board on the basis of procedure foreseen under Title VI of the TEU. Europol shall be headed by a Director appointed by the Council, acting by qualified majority, from a list of at least three candidates presented by the Management Board, for a four-year period. 4-year term of office, renewable once.	Dismissed by the Council by a 2/3 majority according to the same procedure (as appointment).

Analytical Fiche Nr° 8

Tasks, duties and responsibilities of the Director

1) State of play *de jure* and in practice

The Director of an agency is a key actor in the agency's organisational structure. This function is named differently, depending on the agencies' founding regulations: Director in 15 cases¹, Executive Director in 13 cases², President in two cases³, Administrative Director⁴, Administrative Manager⁵ or Chief Executive⁶ in one case each.

With the exception of the Administrative Director of EUROJUST⁷, the Director is the legal representative of the agency and he/she is independent in the performance of his/her duties⁸. He/she is accountable to the Management Board for his/her activities.

Tasks of the Director

In general, he/she is responsible for:

- The day-to-day administration of the agency;
- Taking all the necessary actions to ensure the agency's operation;
- Managing all staff related matters;
- Providing the secretariat for the Management Board;
- Preparing the draft version of the following documents: annual work programme (when appropriate), multiannual work programme (when appropriate), budget, financial rules applicable to the agency, rules of procedure or other internal rules, statement of revenue and expenditure, annual activity report;
- Preparing and implementing the decisions, strategies, programmes and activities adopted by the Management Board, its implementing rules and any other applicable provisions;
- Preparing the work of the Management Board and Executive Board, when appropriate, as well as participating in their meetings, without voting rights;

¹ ACER, CdT, CEDEFOP, EAR, ECDC, EIGE, EMCDDA, ETF, EU-OSHA, EUROFOUND, FRA, EUSC, ISS, CEPOL, EUROPOL

² Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO (as per Commission proposal), ECHA, EEA, EFSA, EMEA, EMSA, ENISA, ERA, FRONTEX, GSA

³ CPVO, OHIM

⁴ EUROJUST

⁵ BEREC Office

⁶ EDA

⁷ The Administrative Director is the authorizing officer and the Appointing Authority of EUROJUST and is responsible, under the supervision of the President, for the day-to-day administration of EUROJUST and for staff management, but not for EUROJUST's core tasks, which are carried out by the College, with the President of the College as legal representative of EUROJUST.

- Implementation of work programme (when appropriate), budget and decisions taken by the Management Board;
- Drawing up the final accounts of the agency under his/her own responsibility and submitting it to EU institutions;
- Keeping contacts with the EU institutions, in particular by informing them of the agency's activities;
- Cooperating with the discharge authority in order to be granted discharge.

There are also other tasks and duties related to the Director's function which are common to some agencies:

- Decisions on sending deployment teams to Member States^{9 10};
- Decisions on organising visits in Member States¹¹;
- Putting in place an effective monitoring system to enable regular evaluations and to compare the agency's achievements with its operational objectives;¹²
- Preparation or coordination of the work of different internal bodies;¹³
- Ensuring the cooperation with different institutions and stakeholders.¹⁴

In addition, there are specific Director's tasks and duties related to the activities of individual agencies.

Assistance to the Director

Directors are usually assisted by different internal agencies' bodies or staff.

In thirteen agencies¹⁵ the Director is assisted by one or more Vice-Directors, called also Vice-Presidents, Deputy Directors or Heads of Unit.

⁹ In the case of FRONTEX: groups (Rapid Border Intervention Teams) providing rapid operational assistance for a limited period to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally. In the case of EASO (as per Commission proposal): groups (Asylum Support Teams) providing the necessary technical and operational assistance to Member States subject to particular pressure, for a limited time.

¹⁰ EASO (as per Commission proposal), ECDC, FRONTEX

¹¹ ERA, EMSA

¹² Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EIGE, EMSA, ERA,ETF, FRA, EUROJUST

¹³ BEREC Office, ETF, CEDEFOP, EMSA, EMEA, EIGE, FRA

¹⁴ EFSA: EU Member States National Competent Authorities, European Parliament and stakeholders; ENISA: European Parliament, business community and consumers organisations; ECHA: European Parliament; FRA: National Liaison Officers and civil society; EDA: Council preparatory bodies - Political and Security Committee and European Union Military Committee; EUSC: Community, national and international space-related services and institutions; ISS: Community, national and international institutions in related fields; CEPOL: relevant services in the Member States; CFCA: Regional Advisory Councils; EEA: European Parliament; EASA: Safety Standards Consultative Committee, Advisory Group of National Authorities, EASA/NAA's Certification Transition Working Group; EIGE: various stakeholders through the agency's Expert's Forum

¹⁵ CPVO, EASA, EASO (as per Commission proposal), EMSA, EUROFOUND, FRONTEX, OHIM, EDA, EUSC, EUROPOL, CEDEFOP, EUROJUST, EMEA

Five agencies' founding regulations¹⁶ foresee an advisory body which should support the Director. In this case, the advisory body is always chaired by the Director.

CFCA's founding regulation establishes the Advisory Board composed of one representative designated by each Regional Advisory Council¹⁷. The role of the Advisory Board is to advise the Executive Director in the performance of his/her duties and to ensure close cooperation with stakeholders.

The Director of EASO (as per Commission proposal) is assisted by the Executive Committee composed of representatives of the Member States with the task of advising the Office's Executive Director and giving opinions to the Management Board.

In the performance of his/her duties, the Director of ECDC is assisted by the Advisory Forum, composed of representatives of competent bodies in the Member States and representatives of interested parties at European level, such as non-governmental organisations, professional bodies or academia. The Advisory Forum constitutes a mechanism for an exchange of information on potential risks and the pooling of knowledge and for monitoring the scientific excellence and independence of the agency's work.

The Advisory Forum of EFSA is composed of representatives from competent bodies in the Member States. Its role is to advise the Executive Director in the performance of his/her duties, notably to constitute a mechanism of exchange of information, and to ensure close cooperation in particular with regard to the network of organisations operating in the field of food safety.

The founding regulation of EIGE establishes the Experts' Forum, composed of members from competent bodies specialised in gender equality issues. It consists of one representative per Member State, as well as of two members representing other relevant organisations specialised in gender equality issues designated by the European Parliament, and three members designated by the Commission and representing interested parties at European level. The Forum is responsible for supporting the Director in ensuring the excellence and independence of activities of the Institute and constituting a mechanism for an exchange of information in relation to gender equality issues and the pooling of knowledge. It also ensures close cooperation between the Institute and competent bodies in the Member States.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

¹⁶ CFCA, EASO (as per Commission proposal), ECDC, EFSA, EIGE

¹⁷ Regional Advisory Councils are primarily composed of fishermen and other representatives of interests affected by the Common Fisheries Policy. They were established with the aim to contribute to the achievement of the objectives of Common Fisheries Policy and to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones.

Analytical Fiche Nr° 9

Scientific Committees

1) State of play *de jure* and in practice

Five agencies¹ have one Scientific Committee each, while ECHA has two Scientific Committees², and EMEA has six Scientific Committees³. In addition to that, EFSA has ten Scientific Panels⁴, while ECDC has set up seven scientific panels⁵ and four technical advisory bodies⁶. All of the abovementioned agencies provide technical and scientific advice to the Commission and, when appropriate, to the Member States.

Tasks of the Scientific Committees

The main task of the Scientific Committees is to assist the Management Board and the Director in providing technical and scientific advice and delivering professional opinions on any scientific matter in the areas of work undertaken by the agency. All the opinions delivered by the Scientific Committees should be published.

In the case of EFSA, both the Scientific Committee and the Scientific Panels provide for scientific opinions, each within their own sphere of competence. In particular, the Scientific Committee is responsible for the general coordination necessary to ensure the consistency of the scientific opinion procedure and for providing opinions on multi-sector issues falling within the competence of more than one Scientific Panel and on issues which do not fall within the competence of any of the Scientific Panels.

Composition and designation of the Scientific Committees

The number and origin of the Scientific Committees' members differ between agencies.

¹ EEA, EFSA, EMCDDA, FRA, GSA

² Committee for Risk Assessment and Committee for Socio-economic Analysis

³ Committee for Medicinal Products for Human Use (CHMP), Committee for Medicinal Products for Veterinary Use (CVMP), Committee on Orphan Medicinal Products, Committee on Herbal Medicinal Products, Committee for Advanced Therapies and Paediatric Committee

⁴ Panel on food additives and nutrient sources added to food, Panel on additives and products or substances used in animal feed, Panel on plant protection products and their residues, Panel on genetically modified organisms, Panel on dietetic products, nutrition and allergies, Panel on biological hazards, Panel on contaminants in the food chain, Panel on animal health and welfare, Panel on plant health, Panel on food contact materials, enzymes, flavourings, and processing aids.

⁵ Scientific panel on Influenza in reply to eight questions concerning avian influenza, Scientific panel on Vaccines and Immunisation, Expert advisory groups on human influenza H5N1 vaccines, Scientific panel on Human Papillomavirus Vaccination, Scientific panel on Childhood Immunization Schedule, Scientific panel on Rotavirus Vaccination, Scientific panel on Childhood Pneumococcal Vaccination.

⁶ Advisory group on producing guidance for prevention and control of Methicillin-resistant *Staphylococcus aureus*, Working Group for the project: "The bacterial challenge - time to react, A call to narrow the gap between multidrug-resistant bacteria in the EU and the development of new antibacterial agents", Expert group to help with definitions for multidrug-resistant (MDR), extensively drug-resistant (XDR) and pandrug-resistant (PDR) bacteria (other than Tuberculosis), Expert group on guidance on healthcare-associated infection (HAI) prevention and control.

In the case of six agencies⁷, members of the Scientific Committees are appointed by the Management Board. Instead, the EMEA Scientific Committees' members are nominated by the Member States in consultation with the Management Board. The members of the Scientific Committees shall be independent.

The ECHA's Scientific Committees are composed of at least one member but not more than two from the nominees of each Member State and up to five members chosen by the Committee on the basis of their specific competence. At the moment, the Committee for Risk Assessment consists of 39 members while the Committee for Socio-economic Analysis consists of 34 members.

The Scientific Committee of the EEA is composed of up to 20 scientists from the Members States, appointed through an open selection process.

The EFSA's Scientific Committee is composed of the Chairs of the abovementioned Scientific Panels and six independent scientific experts. The EFSA's Scientific Panels are composed of independent scientific experts.

The Scientific Committee of the EMCDDA consists of up to 15 well-known scientists appointed in view of their scientific excellence and their independence by the Management Board.

The EMEA's main Scientific Committees - CMHP and CVMP - consist of one member and an alternate from 27 EU Member States, one member and an alternate from Iceland and Norway, and up to 5 co-opted members, chosen among experts to gain additional expertise in a particular scientific area. The other EMEA's Scientific Committees have also other members⁸.

The Scientific Committee of GSA consists of members appointed by the Management Board from among acknowledged experts from Member States and the Commission.

The Scientific Committee of FRA is composed of eleven independent persons, highly qualified in the field of fundamental rights, appointed by the Management Board.

The chairperson and, where appropriate, vice-chairperson of agencies' Scientific Committees are elected from amongst the Scientific Committee's members.

The term of office of the Scientific Committees' members varies between agencies from 3 up to 5 years.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

⁷ ECHA, EEA, EFSA, EMCDDA, GSA, FRA

⁸ These Committees appoint experts to integrate Assessment Teams, who actually perform the assessment work on specific medicinal products.

Boards of appeal

1) State of play *de jure* and in practice

1st pillar agencies

The founding regulations of five 1st pillar agencies¹ foresee one or more Boards of Appeal. All of these agencies adopt individual decisions, which could give rise to complaints from third parties. The role of the Board of Appeal is to check that the agency has applied the implementing rules correctly, within the scope of the tasks devolved on it and the responsibilities assigned to it.

In practice CPVO, EASA and ECHA have one Board of Appeal each, whereas OHIM has five Boards of Appeal: four dedicated to the trade mark matters and one board working only on design.

The number of members of the Boards of Appeal varies between the agencies. The Board of Appeal of three agencies - CPVO², EASA and ECHA - have 3 members: the Chairman and two other members and their alternates. The Board of Appeal of ACER is composed of 6 members and 6 alternates.

The number of members of the Boards of Appeal of OHIM is not defined in the founding regulation. In practice, there are eleven ordinary members in total, and five chairpersons, one for each Board of Appeal. One of the abovementioned chairpersons is also the President of the Board of Appeal; he has got managerial and organisational powers. In general, decisions are taken by three members, but in certain specific cases decisions can be taken by an enlarged Board³ chaired by the President or by a single member⁴.

The members of the Boards of Appeal are appointed by the Management Board for the term of office of five years, renewable. The Commission prepares a list of qualified candidates for members of the Board of Appeal of three agencies - ACER, EASA and ECHA. In the case of CPVO, the members and their respective alternates are selected by the Chairman of the Board of Appeal from a list of qualified members established by the Management Board on a proposal from the agency.

The members of the Boards of Appeal are independent. They may not perform any other duties in the agency. They may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.

¹ ACER, CPVO, EASA, ECHA, OHIM

² In the case of CPVO, where the Board of Appeal considers that the nature of appeal so requires, it may call up two further members.

³ The enlarged Board of Appeal consists of 9 members: the President, chairpersons of all the Boards and ordinary members. The enlarged Board takes the decision when the case is legally difficult or important, or when special circumstances justify it.

⁴ To determine which specific cases fall under the authority of a single member, account should be taken of the lack of difficulty of the legal or factual matters raised, the limited importance of the individual case or the absence of other specific circumstances.

The founding regulation of ACER foresees a voting system, whereas in other cases voting conditions are determined in the implementing rules or by the Commission.

3rd pillar agencies

In two 3rd pillar agencies - EUROJUST and EUROPOL - operates the Joint Supervisory Body, responsible in certain cases for appeals in relation to access to or correction of personal data processed by the two agencies. However, serving as board of appeal is not the only activity of the Joint Supervisory Bodies. In fact, they also monitor collectively the activities of the two 3rd pillar agencies, in order to ensure that the processing of personal data is carried out in accordance with the respective founding regulations

Details on the composition and functions of the two Joint Supervisory Bodies are provided below.

The Joint Supervisory Body of EUROJUST consists of 3 permanent members and ad hoc judges. Each member State, acting in accordance with its legal system, appoints a judge who is not member of EUROJUST or, if the constitutional or national system so requires, a person holding an office giving him sufficient independence, for inclusion on the list of judges who may sit on the Joint Supervisory Body as members or ad hoc judges. The appointment should be for no less than 3 years. The Joint Supervisory Body examines appeals submitted to it and monitor collectively the EUROJUST activities in order to ensure that the processing of personal data is carried out in accordance with the Decision establishing EUROJUST.

The Joint Supervisory Body of EUROPOL is composed of not more than two members or representatives of each of the national supervisory bodies guaranteed to be independent and having the necessary abilities. The task of the Joint Supervisory Body is to review the activities of EUROPOL in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by EUROPOL, and to monitor the permissibility of the transmission of data originating from EUROPOL. The Joint Supervisory Body is also responsible for upholding the rights that the individuals have in relation to their personal information. This includes examining the appeals of individuals who have requested access to their information but who are not satisfied with Europol's response. In practice, individual appeals are treated by the Appeals Committee, set up under the Europol Convention, which is independent.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Agencies' internal bodies coordinating relations with national authorities

1) State of play *de jure* and in practice

Sixteen agencies' constituent acts¹ establish networks comprising various actors from participating Member States.

The founding regulation of CFCA includes a provision on the establishment of the information network consisting of the Commission, the agency and the competent authorities of the Member States, in order to exchange relevant information available regarding joint control and inspection activities within Community and international waters.

CPVO may entrust national agencies of Member States with the exercise of specific administrative functions of the agency, or establish its own sub-offices for that purpose in the Member States, subject to their consent.

EASA's founding regulation foresees that the Commission, the agency, and the national aviation authorities shall exchange any information available to them in the context of the application of the founding regulation and its implementing rules. Entities entrusted with the investigation of civil aviation accidents and incidents, or with the analysis of occurrences, are entitled to access to that information.

EASO national contact points (as per Commission proposal) are responsible for communication with the agency on all matters pertaining to the asylum support teams.

The founding regulation of ECDC tasks the agency to coordinate the European networking of bodies operating in the fields falling within the agency's mission, including networks arising from public health activities supported by the Commission and operating the dedicated surveillance networks.

Within ECHA operates a Forum for Exchange of Information on Enforcement which is tasked to coordinate a network of Member States authorities responsible for enforcement of the agency's founding regulation.

The European environment information and observation network (Eionet) is a partnership network of the EEA and its member and cooperating countries involving approximately 900 experts and more than 300 national institutions. The network supports the collection and organisation of data and the development and dissemination of information concerning Europe's environment.

The founding regulation of EFSA foresees an Advisory Forum, which advises the agency's Executive Director on drawing up a proposal for the agency's work programme, on the prioritisation of requests for scientific opinions, on a mechanism of exchange of information, and on a networking system and avoidance of duplication of work programmes. The founding regulation also tasks the agency to coordinate the European networking of bodies operating in the fields within the agency's mission.

¹ CFCA, CPVO, EASA, EASO (as per Commission proposal), ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, ERA EU-OSHA, FRA, FRONTEX, CEPOL, EUROJUST

The Experts' Forum of EIGE supports the Director in ensuring the excellence and independence of activities of the Institute. The Experts' Forum constitutes a mechanism for an exchange of information in relation to gender equality issues and the pooling of knowledge. It ensures close cooperation between the Institute and competent bodies in the Member States.

The founding regulation of the EMCDDA establishes the European Information Network on Drugs and Drug Addiction (Reitox), consisting of focal points in the Member States and in each country which has concluded an agreement with EMCDDA, and a focal point for the Commission. They contribute, *inter alia*, to the establishment of key indicators and data, including guidelines for their implementation with a view to obtaining reliable and comparable information at European Union level. Bringing together experiences from different sectors, in cooperation with experts and national organisations active in the field of drugs policy, they collect and analyse all relevant information on drugs and drug addiction, as well as on policies and solutions applied.

The ERA's founding regulation stipulates that the agency shall establish a network with the national authorities responsible for safety and with the national authorities responsible for the accident and incident investigations. These networks facilitate the cooperation between these national authorities and allow active exchanges of experience for the purpose of harmonizing national authorities' decision making criteria across the Community. The ERA's founding regulation also stipulates that representatives of national safety authorities shall be appointed within ERA's working parties established to support ERA's developments.

The founding regulation of the EU-OSHA sets up a network comprising: (1) the main component elements of the national information networks, including the national social partners' organisations, according to national legislation and/or practice, (2) the national focal points as well as (3) any future topic centres². Member States regularly inform the agency of the main components of their national health and safety at work information networks, including any institution which in their judgement could contribute to the work of the agency, taking into account the need to ensure the fullest possible coverage of their territory. The competent national authorities or a national institution designated by them as a national focal point shall coordinate and/or transmit the information to be supplied at national level to the agency, in the framework of an agreement between each focal point and the agency on the basis of the work programme adopted by the agency.

The founding regulation of FRA provides that, in order to ensure the provision of objective, reliable and comparable information, the agency, taking account of the need to involve national authorities in the collection of data, sets up and coordinate information networks and use existing networks. The Racism and Xenophobia European Network (Raxen Network) is integrated by national focal points collecting data on racism, xenophobia and related intolerance issues. An additional network, Fundamental Rights Agency Legal Experts (Fralex), provides for information by country on legal issues concerning fundamental rights. These two networks are established by FRA. In addition, each Member State shall nominate a government official as a National Liaison Officer, who shall be the main contact point for FRA in the Member State.

FRONTEX national contact points are responsible for communication with the agency on all matters pertaining to the teams.

² Topic Centres are consortia of national safety and health institutions under contract to collect and analyse existing national data to support key areas of EU-OSHA work.

CEPOL national contact points ensure effective cooperation between CEPOL and the training institutes.

According to the new EUROJUST Decision amending the founding legal act, every Member State has to set up a "EUROJUST national coordination system" which facilitates, within the Member State, the carrying out of the tasks of EUROJUST, in particular by ensuring that the Case Management System of EUROJUST receives information related to the Member State in an efficient and reliable manner and by assisting in determining whether a case should be dealt with the assistance of EUROJUST or of the European Judicial Network.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Analytical *Fiche* Nr° 12

Agencies' administrative autonomy

1) State of play *de jure* and in practice

Although an agency becomes a legal entity upon the entry into force of its constituent act, several steps have yet to be taken before a new agency is able to put its administrative autonomy fully in practice. These steps include: 1) the setting up of a Management Board, 2) the engagement of a Director, 3) the engagement of core administrative staff, 4) the adoption of a budget, 5) the appointment of an accounting officer, 6) the adoption of the financial regulation, and 7) the signing of service level agreements. Those steps are outlined below.

In accordance with the principles of good governance, the administrative autonomy of agencies leads to requirements in terms of reporting and accountability for the use of resources stemming from the EU budget (see *Fiche* 25 on agencies' "reporting requirements and processes").

Constitution of agency's bodies

In general, the constitution of two agency's bodies is essential for establishing the agency's autonomy. These are the Management Board¹ and the agency's most senior manager, hereinafter: the Director².

- Management Board

The Management Board is the agency's main governing body. Its tasks and duties are defined in the constituent act establishing each agency. For detailed information on the role and functioning of the Management Board please refer to *Fiche* 5 and 6.

- Director

The Director is the agency's most senior manager and, in most agencies, its legal representative. In relation to staff, the Director exercises the power of the appointing/contracting authority. The Director is also responsible for the execution of the budget.

While the agency comes into existence on the day of entry into force of its constituent act, the selection and engagement of the Director occurs later and is linked to the availability of a budget and an establishment plan. For more details on appointment, dismissal and tasks of the Director please refer respectively to *Fiches* 7 and 8.

As regards the transition period between the establishment of the agency and the appointment of the Director, the basic regulation normally foresees that a Commission official may be appointed as an interim director to facilitate the start up of an agency. The interim director is empowered to take decisions including signing contracts of employment, as well as take financial commitments subject to co-agreement by an authorising officer of the parent

¹ Title may differ per founding regulation: Management Board, Governing Board, College, etc.

² Title may differ per founding regulation: Director, Executive Director, Administrative Director, etc.

Directorate General. The interim director executes these tasks until the Director is properly appointed by the Appointing Authority (in most cases - the Management Board). As long as an agency has an interim director in charge, administrative autonomy is not accomplished.

Engagement of the core administrative staff

Apart from the Director, the agency must engage a minimum number of agents who guarantee the independent functioning of the agency. These are an HR officer, an IT officer, a legal officer and an accounting officer. The latter is indispensable for the agency's financial autonomy.

Before the adoption of the founding regulation by the legislator, certain elements of the selection of the core administrative staff may be initiated by the parent Directorate General of the Commission, provided that there is sufficient certainty concerning the establishment of the agency and its timetable. However, actual engagement of staff is conditional on the appointment of the Director (or an interim one, if foreseen in the regulation) as well as on the availability of financial resources and an establishment plan of the agency adopted by the budgetary authority.

Financial autonomy

Financial autonomy is a part of the agency's administrative autonomy. Before an agency can fully exercise its financial autonomy, it is crucial that the budgetary authority adopts the agency's budget including the establishment plan. The latter constitutes a ceiling for number and level of posts to be filled. The financial Framework Regulation for agencies requires that each year each agency prepares a multi-annual Staff Policy Plan in the framework of the budgetary procedure. This Plan defines the agency's staff policy, including justification of the number and level of posts in its establishment plan. For details, see Fiche 23.

Once the budget and the establishment plan are authorized, the agency's financial autonomy is determined by three elements:

- Appointment of the Director

The Director shall be the agency's authorising officer. His/Her powers as authorising officer may be delegated to staff of the agency in accordance with the financial rules adopted by the Management Board.

- Appointment of an accounting officer

The Management Board appoints the accounting officer whose duties must be segregated from those of the authorising officer, in view of the fact that these two functions are incompatible. The accounting officer is responsible for the proper implementation of payments, collection of revenue and recoveries and also for the drawing up of the accounts of the Agency.

- Adoption of the financial regulation

Each Agency shall, with prior consent of the Commission, adopt its Financial Regulation. It may also adopt, with the Commission's prior consent, detailed rules for implementing its Financial Regulation on a proposal from its Director.

Operational autonomy

- Signing of service level agreements

To benefit from certain services provided by the Commission departments, the agency may sign a Service Level Agreement with each service provider. In light of the requirements stemming from the Staff Regulations (SR) and the implementing rules to the SR, the agency usually signs an agreement with the following entities: the Office for administration and payment of individual entitlements (PMO), EPSO and the Medical Service of the Commission. In most cases agencies also sign agreements with DG DIGIT, DG BUDG and the training unit of DG ADMIN.

- Seat agreement

The seat agreement regulates the relations between the agency and the host country. However, not all agencies have signed one, and there is no obligation to do so. The seat agreement is not indispensable for the agency's administrative autonomy. For detailed information on seat agreements, please refer to Fiche 3.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified problems**
- 4) Possible ways for implementing the viable solution(s)**

Annual work programme

1) State of play *de jure* and in practice

The constituent acts of 30 agencies¹ foresee the establishment of an annual work programme. CPVO and OHIM prepare an annual work programme even if it is not provided for in the founding regulation. EUROJUST establishes each year a work programme and an annual management plan, although its constituent act does not foresee it. In most cases, the Director prepares the draft annual work programme, which is then approved by the Management Board.

In nine agencies² the Commission is consulted³ on the draft annual work programme.

In 11 cases⁴ the annual work programme is adopted after receiving the Commission's opinion⁵.

The Commission's agreement⁶ is necessary before the annual work programme of CEDEFOP and EUROFOUND can be approved. Furthermore, in the case of EUROFOUND the annual work programme shall explicitly take account of the opinion of the European Economic and Social Committee.

Eleven agencies' founding regulations⁷ do not specify the role of the Commission concerning the adoption of the annual work programme. In this case there are often informal consultations between the agency and the parent DG.

ETF and CEDEFOP have a joint annual work programme annexed to the annual work programme of each of the two agencies.

Among the agencies for which the founding regulation requires the Commission's opinion for adoption of an annual work programme, five agencies⁸ are also required to adopt a multiannual work programme. Among the agencies whose legal basis does not require the Commission's opinion, five agencies⁹ are also required to adopt a multiannual work programme.

¹ The exceptions are: CPVO, OHIM, EUROJUST.

² ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), EAR, EASO (as per Commission proposal), EFSA, EIGE, ETF, EU-OSHA, CEPOL

³ When the work programme is adopted in consultation with the Commission, in general, a letter is sent by the Director General of the parent DG to the agency, expressing its position.

⁴ CFCA, EASA, EEA, EMCDDA, EMSA, ENISA, ERA, FRA, FRONTEX, GSA, EUROPOL

⁵ The Commission's opinion is a non-binding act of the Commission adopted by the College or by a Commissioner empowered by the College.

⁶ The provision "in agreement with the Commission" in most cases refers to taking into account the views expressed by the Commission representative at the meeting of the Management Board during the preparation of work programme.

⁷ BEREC Office, CdT, CPVO, ECDC, ECHA, EMEA, OHIM, EDA, EUSC, ISS, EUROJUST

⁸ EEA, EFSA, EMCDDA, EUROFOUND, FRA

⁹ EAR, EFSA, ETF, EU-OSHA, EIGE

The annual work programme links to the wider Activity Based Management (ABM) approach. ABM provides a conceptual framework allowing a coherent integration of the planning, budgeting, management, and reporting processes. Therefore, defining objectives, setting priorities, allocating resources, planning work as well as monitoring and reporting on results achieved are processes within one framework with a common denominator.

The Activity Based Budgeting (ABB) is the budgetary component of ABM, the purpose of which is to ensure that the resources allocation process is consistent with the political priorities and managed consistently with the pre-defined objectives. Furthermore, ABB is a tool to systematically assess the real costs of each policy and put them in relation to the results achieved and to the benefits to society. For further information on ABB, please refer to Fiche 21.

Even if the agencies' founding regulations do not specify the management model to be followed, the Commission has advised the agencies' Management Boards to follow the Commission's management approach (ABM/ABB) and to adopt the same rules for establishing their management instruments.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Analytical Fiche Nr° 14

Multiannual Programming

1) State of play *de jure* and in practice

The Framework Financial Regulation applicable to agencies foresees an obligation concerning multiannual programming only for staff. The agency's multiannual staff policy plan shall be sent to the Commission before 31 March each year (Article 27 (4) (b)).

As far as operational multiannual programming is concerned, the situation differs greatly among agencies.

At present the founding regulations of six agencies¹ require the adoption by the agency of a multi-annual work programme. In five cases² a multi-annual work programme is adopted by the Management Board, whereas in the case of FRA, the Council adopts the Multiannual Framework on a proposal from the Commission and after consulting the European Parliament.

The constituent acts of five agencies³ require them to undertake a rolling planning⁴ covering between three and five years, depending on the case. In case of ECDC the founding regulation does not determine the period of time. In practice ECDC's multi-annual programming is aligned to the EU financial framework thus covering 7 years.

A recent report of the Court of Auditors⁵ showed that agencies carried out multiannual planning if this was explicitly required by their basic act. Six agencies – FRONTEX, EMEA, EASA, ENISA, EMSA, CEDEFOP, carry out multi-annual planning on their own initiative without having a requirement in their basic legal act. EMSA is preparing a multiannual strategy following the recommendation from its external evaluation. Since two years now, EASA adopts a Multiannual Business Plan. ENISA prepares a multi-annual programming on its own initiative since 2008. Lately CEDEFOP adopted Medium-term priorities 2009-2011.

Among the agencies which have opted for a multiannual approach, several have considered it necessary to adopt a specific strategy that dovetails with the Community's sector strategy. In its Special Report "European Union's Agencies: getting results"⁶, the Court of Auditors recommends that agencies produce a document converting their strategy into a multiannual work programme that has clear objectives and performance indicators.

In the case of EUROPOL, while there is no multi-annual operational planning in place, the agency's Management Board adopts a five-year financing plan – an obligation stipulated in

¹ CEDEFOP, ECHA, EEA, EIGE, EMCDDA, FRA

² CEDEFOP, ECHA, EEA, EIGE, EMCDDA

³ EU-OSHA, EUROFOUND, EFSA, ECDC, ETF

⁴ Rolling planning is multiannual planning done annually including one additional year after the current one has elapsed, while the multi-annual work programme is a static programme for a fixed period of time.

⁵ Special Report No 5/2008 of the Court of Auditors "The European Union's Agencies: getting results", June 2008

⁶ Special Report No 5/2008 of the Court of Auditors "The European Union's Agencies: getting results", June 2008

EUROPOL Convention⁷. However, as of January 2010 when EUROPOL will be operating on a new legal basis – a Council Decision⁸, and will be financed by the Community budget, the multi-annual financial planning will be abolished as it is not foreseen in the new Decision.

An attempt to combine a multi-annual work programme with a rolling multi-annual financial framework is currently being made by the European Defence Agency (EDA). Contrary to the constituent acts of first and third pillar agencies, the Joint Action establishing EDA⁹ foresees multi-annual financial framework but no multi-annual programming. The agency seeks an amendment in the Joint Action to make the financial framework a rolling one.

No multi-annual programming or budgeting is foreseen for the other two 2nd pillar agencies¹⁰.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

⁷ Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), OJ C 316, 27.11.1995, p. 0002-0032

⁸ Council Decision of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.05.2009, p. 37

⁹ Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency

¹⁰ ISS and EUSC

Human resources policy

1) State of play *de jure* and in practice

Origin

The reform of the Staff Regulations¹ (SR) in 2004 brought about significant changes in relation to its application to Community bodies. When foreseen in the founding regulation², the provisions of the Staff Regulations and of the Conditions of Employment of other servants of the European Communities (CEOS) apply to them as if they were institutions. Thus, they need to adopt implementing provisions giving effect to these Staff Regulations in order to set up their staff policy. They are also represented in the “Staff Regulations Committee” where they can express their specificities and accordingly propose statutory amendments.

While recommending that each agency establish a staff policy based on its own tasks and requirements, the Commission has favoured a consistent application of the Staff Regulations and the CEOS across all decentralised agencies. Furthermore, this staff policy should incorporate elements that will make it consistent both among agencies themselves and between the agencies and the Commission.

In this respect, the Commission adopted in December 2005 specific Guidelines³ in order to provide orientations for establishing a coherent staff policy in all European regulatory agencies that apply the Staff Regulations of Officials (SR) and the CEOS. The Guidelines thus provide a horizontal approach ensuring compliance with a minimum core of principles and rules with a view to equal treatment of all agents who are subject to the SR and the CEOS.

Design of the agencies' Human resources Policy

The above-mentioned Guidelines recommend that agencies make use of two instruments enabling to achieve coherence in their staff policy:

- a) the multi-annual Staff Policy Plan, which describes in details the agency's staff policy and justifies its establishment plan (for details see Fiche 23);
- b) the implementing provisions, which must be adopted by agencies pursuant to Article 110(1) SR⁴ in agreement with the Commission.

As regards the implementing rules on working conditions and rights (remuneration, pension, leave etc.), for which equivalent treatment is required in all Community bodies, this agreement is given to implementing rules that are in conformity with the Commission rules.

¹ Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968

² As decided by the legislator at the time of creation of 3 agencies operating in the field of the CFSP: EDA, EUSC and ISS do not apply the Staff Regulations. On the contrary, Europol that currently applies its own Staff Regulations will apply the Community Staff Regulations as from 1 January 2010.

³ C(2005)5304 of 9 December 2005: Guidelines on Staff Policy in the European Regulatory Agencies.

⁴ Article 110 (1) of the Staff Regulations, second sentence: *"Agencies shall adopt the appropriate implementing rules for giving effect to these Staff Regulations, after consultation of the relevant Staff Committee and in agreement in the Commission."*

As regards other implementing provisions, the Commission produced in co-operation with agencies standard models for implementing rules that aim to take into account agencies' specific features. The latter concern, for example, the career of temporary agents and contract staff, who represent the vast majority of agencies staff.

Implementation of the human resources policy

Regulatory agencies are independent legal entities and have individual appointing authority taking autonomous decisions. They are fully liable for execution of implementing rules agreed to by the Commission pursuant Article 110 SR. Accordingly the Commission services are not associated to the implementation of the human resources policy, except for the areas where the agencies have decided to delegate their appointing authority power to a Commission service (e.g. to PMO for the remuneration of staff).

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified problems**
- 4) Possible ways for implementing the viable solution(s)**

Analytical Fiche Nr° 16

Common administrative support for agencies

1) State of play *de jure* and in practice

Any organisation performs a variety of so-called administrative tasks necessary to run and maintain an organisation, usually including, among others, building maintenance, running IT systems, human resource management.

Administrative tasks of agencies typically comprise (non-regulated) administrative support tasks and so called "administrative burden" which consists in the administrative tasks aimed at complying with specific regulations. EU agencies' administrative burden is mainly caused by the EU framework Financial Regulation (No 2343/2002), EU Staff Regulation (No 31 (EEC)), and EU Financial Regulation (No 1605/2002) as well as the general Implementing rules thereto (No 2342/2002).

Administrative support tasks cover any other non-regulated, non-operative tasks performed by EU agencies, typically¹ covering costs for facilities, premises and logistics, IT services, security and costs for library, archives and documentation. Overall, some 30% of EU agencies' staff deal with administrative tasks².

There exist a substantial number of services available to EU agencies, some of which are provided on a legally binding basis (e.g. internal audit by the IAS, certain services provided by the Paymaster Office - PMO), but there is also a large number of "optional" services available to decentralised agencies. Some of the optional services are delivered against a fee, other for free. Most of these services are provided directly by the EU Commission DGs (e.g. DG ADMIN) or its internal services, such as the European Personnel Selection Office (EPSO) or the Paymaster Office. The current state of play of existing Common Support Services at EU level is presented in Annex, together with the existence and characteristics of existing Service Level Agreements (SLAs).

In total, nine service providers for decentralised EU agencies within the European Commission can be identified (see the table below and the Annex). At present, the Translation Centre for the Bodies of the European Union (CdT) and the Publications Office (OPOCE) are the only centralised service providers to decentralised agencies other than the Commission. There are also some examples for decentralised shared service delivery via horizontal cooperation among EU agencies themselves, such as opening internal training courses to other agencies.

According to a recent study commissioned by the European Parliament, large and medium-sized agencies tend to use fewer services than small agencies. In practice, several services are used by a larger number of agencies than others.

¹ According to EU agencies' annual accounts.

² According to the Court of Auditors' annual specific reports.

In its special report "Agencies of the Union: getting results" from June 2008, the Court of Auditors notes that the agencies are not fully aware of the services provided to them by the Commission.

Table: overview of support services offered to EU agencies

By Commission's services	
Paymaster Office (PMO)	<ul style="list-style-type: none"> • calculation of salaries • medical costs reimbursements within the framework of sickness insurance and occupational disease insurance • calculation and payment of pensions • calculation and payment of various allowances • preparation of validation for various expenses (e.g. mission expenses) • call for tenders for various insurances • various advice services (e.g. helpdesk, information sessions with PMO staff within the agencies)
European Personnel Selection Office (EPSO)	<ul style="list-style-type: none"> • staff selection (officials, temporary agents, contract agents), also ad-hoc • access to laureate and candidate lists (electronic data bases) • test administration • third language testing • validation of diplomas • advice on staff selection procedures • use of EPSO framework contracts
Directorate-General for Personnel and Administration (DG ADMIN)	<ul style="list-style-type: none"> • training courses • assistance with developing Staff Policy • assistance with the implementing rules for the Staff Regulation
Directorate-General for Budget (DG BUDGET)	<ul style="list-style-type: none"> • advice and coordination of the implementation of the new accounting system ABAC • helpdesk (IT, Financial Regulations) • advice in establishing internal audits
Directorate-General for Personnel and Administration – Security Directorate (ADMIN DS)	<ul style="list-style-type: none"> • advice on IT Security • providing access badges to agencies in and outside Brussels
Directorate-General for Information Technology (DIGIT)	<ul style="list-style-type: none"> • TESTA2 connection, • CITRIX terminal servers • hosting of information systems • ICT training • participation in framework contracts
Directorate General for Interpretation (DG INTERPRETATION)	<ul style="list-style-type: none"> • interpretation services
European Administrative School (EAS)	<ul style="list-style-type: none"> • training courses/staff development

Internal Audit Service (IAS)	<ul style="list-style-type: none"> • advice on setting up internal audit functions • internal auditing
Office for Infrastructure and Logistics in Brussels (OIB) Office for Infrastructure and Logistics in Luxembourg (OIL)	<ul style="list-style-type: none"> • advice on facilities and logistics
European Commission Medical Service	<ul style="list-style-type: none"> • pre-employment medical exams • yearly medical exams
By other entities	
Office for Official Publications of the European Communities (Publications Office, OPOCE)	<ul style="list-style-type: none"> • printing and layout services • dissemination of publications
Translation Centre for the Bodies of the European Union (CdT)	<ul style="list-style-type: none"> • translation services
European Medicines Agency (EMA)	<ul style="list-style-type: none"> • some internal trainings open to staff of other agencies

- 2) **Critical analysis of the issue at hand**
- 3) **Possible solution(s) for addressing identified weaknesses**
- 4) **Possible ways for implementing the viable solution(s)**

ANNEX TO ANALYTICAL FICHE N°16

Paymaster Office (PMO)

PMO provides various services to decentralised agencies. The relations between the agencies and PMO are laid down in an SLA between PMO and individual agencies. In the SLAs which PMO has concluded with agencies, a differentiation is made between "basic services" and "optional services".

"Basic services" are the calculation of agency staff salaries, medical costs reimbursements within the framework of sickness/accident/occupational disease insurance, as well as the calculation and payment of pensions.

"Optional services" include the determination calculation and payment of various allowances provided for in Annex VII of the Staff Regulations (Family Allowances, Expatriation Allowance, Reimbursement of expenses such as Installation Allowance and Mission expenses), the preparation of the validation of mission expenses and of expenses for inviting experts and successful candidates, the validation of expenses for seconded national experts, and organizing calls for tender for various insurances.

The charges for the services are laid down in the SLAs and depend on the type of service provided. Whereas most charges are calculated on an annual basis per member of staff (including all obligatory services), the validation of mission expenses and expenses for invited experts are calculated on a case-by-case basis (per service provided). In addition to those services provided against payment, other services are delivered without charging the agencies, including access to the PMO helpdesk, agency participation in tender procedures launched by PMO, annual visits of PMO staff for information sessions, direct access to contact persons, and access of agencies' desk officers to a guide for agencies.

A revision of the SLA between the Agencies and PMO is currently underway.

The European Personnel Selection Office (EPSO)

EPSO organises open competitions for officials, selections of temporary agents and contract agents with the overall aim to select highly qualified staff for recruitment to all EU institutions.

EPSO has signed a SLA with most of the decentralised agencies which entered into force in May 2007, thereby operationalising key provisions regarding recruitment procedures in the Staff Regulations and the Conditions of Employment, as well as in the Guidelines on Staff Policy in the European regulatory agencies.

The SLA gives the agencies access to some of the services provided by EPSO, thereby assisting the agencies regarding the criteria of transparency and standardisation of their staff selection procedures (for officials, temporary agents and contract agents). Among others, the scope of the SLA includes the publication of the agencies' vacancy notices on EPSO's website, giving the agencies access to reserve lists of open competitions and selection procedures, as well as the database for contract agents (CARL).

In exceptional circumstances, EPSO may organise selection procedures on behalf of a decentralised agency. Also, EPSO may assist agencies (by providing facilities, tests) in the selection procedures carried out by the agencies. In addition to providing services to agencies

with regards to staff recruitment, EPSO may also give advice to the agencies in matters related to staff recruitment (technical assistance, IT support). Furthermore, EPSO has at times organised trainings for agency staff.

The payments for the services are result-oriented with regards to the recruitment of individual staff (payment per successfully recruited staff member). Payments for other services shall be made on a case-by-case basis (e.g. per selection procedures carried out by EPSO on behalf of agencies), whereas advisory services are free of charge for agencies. With regards to inter-organisational coordination, each agency as well as EPSO have contact persons within the respective organisations.

Publications Office

Agencies have the possibility to have their publications published and disseminated via the Publications Office. In total, seven agencies have concluded a SLA (thereof six for which the office serves as publisher) for publishing documents.

Directorate-General for Personnel and Administration (DG ADMIN)

Within its responsibility for career development, DG ADMIN organises various training courses for Commission staff. In October 2006, an SLA between DG ADMIN and 19 agencies regarding the access to training courses organised by DG ADMIN and other training courses in Brussels and Luxembourg (e.g. Learning Resource Centres) entered into force.

Among others, this SLA includes provisions about financial issues, whereby all involved agencies pay a lump sum in order to finance the equivalent of two full time contractual agents, as well as the costs per training day for each participating agent. Also, according to the SLA, DG ADMIN shall provide the agencies with due and regular information on offered courses. *This SLA was expected to be updated in 2007.*

In terms of coordination between DG ADMIN and the agencies, the SLA includes a provision on the appointment of contact persons both within DG ADMIN and within the agencies.

Directorate-General for Budget (DG BUDG)

Some Agencies use the ABAC system which is the computerised, central financial and accounting system that has been developed for the Commission in order to replace the former cash-based accounting system. Although decentralised agencies are not obliged to implement the ABAC system, having a common system for all agencies was considered very helpful by DG BUDGET and the accounting officer of the Commission. Most agencies have been, are or will be joining in the system, with the exception of those not being subject to discharge by the European Parliament.

Also, the advantage of having the system provided by the Commission is that the agencies do not have to look after the system, as all updates are being done by the DG BUDGET according to changes in the regulations. This supports the agencies in complying with the Financial Regulations' relevant provisions.

The implementing process of ABAC is laid down in an SLA which is concluded with every agency. Among others, this SLA includes provisions for communications and coordination (contact persons, meetings), the fees for the initial implementation of ABAC (depending on the staff number and the number of actual ABAC users) and the ongoing maintenance of the

system (depending on staff numbers), as well as a mechanism of dispute resolution based on "amicable settlement", but including precise deadlines and responsibilities.

Thus, the main bulk of services are provided during the initial phase before the system is fully operational within the agencies. After this, DG BUDGET has the function of providing (often very technical) advice and keeping the system in line with the Financial Regulations, but also to further develop the system (e.g. by creating new modules) in cooperation with the agencies.

In addition, some agencies use the Central Financial Services (CFS) and/or the Help Desk of DG BUDGET.

Directorate General for Interpretation (DG INTERPRETATION)

DG INTERPRETATION (formerly known as SCIC) is the interpreting service and conference organiser of the European Commission. Some Agencies use the interpretation services provided by DG INTERPRETATION (e.g. for management board meetings). Some of these have concluded an SLA with the service provider.

European Administrative School (EAS)

EAS provides trainings to staff working within EU institutions. Some agencies' staff participated in trainings organised by EAS. An SLA with EAS has been concluded by several agencies.

Internal Audit Service (IAS)

The IAS assumes the role of the internal audit function, assessing the suitability and effectiveness of the management and control systems, as provided for by Article 185(3) of the General Financial Regulation and Article 72 of the Framework financial regulation. Agencies are being audited by IAS but none has an SLA with the IAS, which performs its function as a legally binding service.

Office for Infrastructure and Logistics (Brussels/Luxembourg)

The OIB/OIL is responsible for the Commission's buildings, logistics, and various social infrastructures. OIB/OIL has an advisory function vis-à-vis decentralised agencies, for instance in the case a newly created agency is looking for an office building. Among others, this involves an assessment of how much office space is needed, how large a conference room for a certain number of people should be, etc. Still, some Agencies have concluded an SLA with OIB/OIL.

Medical Service

All agencies have access to the medical services of the European Commission for medical examinations related to recruitment and annual medical examinations. Some agencies have concluded an SLA with Commission's Medical service.

Translation Centre for the Bodies of the European Union (CdT)

CdT has been established in 1994 with the aim to provide translation services to decentralised EU agencies. It is a single-purpose centralised service provider outside the EU Commission's services. According to its founding regulation³, it has the function of translation service

³ See Article 2(1) of Council Regulation (EC) No 2965/94 of 28 November 1994.

provider for several decentralised agencies (EEA, ETF, EMCDDA, EMEA, EU-OSHA, OHIM) and the EUROPOL. It also stipulates that "bodies set up by the Council other than those referred to in paragraph 1 may have access to the services of the Centre on the basis of arrangements to be agreed with the Centre" (Article 2(2)). In practice, virtually all decentralised agencies are listed on the CdT's website as partners with an agreement on the use of translation services.

Analytical Fiche N° 17

Exchange of EU classified information

1) State of play *de jure* and in practice

On the basis of an inter-institutional agreement concluded in 2003, Council and Commission have equivalent security rules with regard to the protection of EU classified information (EUCI).

Five agencies' constituent acts¹ have provisions on the applicable rules for the exchange of EU classified information.

The case of GSA

In the case of GSA, its founding regulation is explicit that it should apply the principles of the Commission Decision on rules on exchange of EUCI, i.e. the same basic principles and minimum common standards as the Commission².

The case of FRONTEX

In the case of FRONTEX, although there is no provision in the agency's founding regulation on the rules to be applied, its security regulations take into account the principles and limits of Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulation. FRONTEX has thus rules providing protection on the same level as the rules of the Commission and the Council.

With regard to protecting classified information when the originator is outside FRONTEX the original classification is retained. Classified information is treated as classified information of the equivalent level under the FRONTEX Security Manual.

The case of EUROJUST

The constituent act of EUROJUST as last amended by Council Decision 2009/426/JHA, foresees that EUROJUST shall apply the security principles and minimum standards set out in Council Decision 2001/264/EC adopting the Council's security regulations in the management of EUCI. In 2008, the College of EUROJUST adopted the relevant security rules.

The data EUROJUST receives from prosecutorial authorities of Member States and from EUROPOL for its operational work is treated according to the EUROJUST security rules. The data generated by EUROJUST as a result of processing case-related information is not formally marked or classified since prosecutorial authorities of Member States need to use such information in judicial proceedings. To ensure data security as defined in Article 22 of Eurojust Decision, EUROJUST however protects such information at least at the restricted level. The new Council Decision on the security rules for protecting EUCI to be adopted by

¹ GSA, EDA, EUSC, EUROPOL, EUROJUST (as last amended by Council Decision 2009/426/JHA of 16 December 2008, OJ L 138, 04.06.2009, p. 14)

² Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure

the Council on the basis of Article 207(3) of the Treaty establishing the European Community will not be legally binding on EUROJUST as a body set up pursuant to Articles 31 and 34(2)(c) of the Treaty on European Union. EUROJUST considers however applying the security principles and minimum standards set out in the new Council Decision on the security rules for protecting EUCI and accordingly amend EUROJUST Security rules.

The case of EUROPOL

The founding act of EUROPOL has a general provision on EUCI - Article 31 of the Europol Convention and respectively Articles 40/46 of the new Council Decision of 6 April 2009. The Rules on confidentiality applied by EUROPOL are based on a Council Act of 3 November 1998³. The rules currently in place provide the same level of protection as the rules of the Commission and the Council. The new Council Decision, which will apply as of 1 January 2010, determines that the Council shall adopt appropriate rules on confidentiality prepared by the Management Board. Article 46 of the new Council Decision stipulates that for what concerns EU classified information EUROPOL shall apply the security principles and minimum standards set out in Council Decision 2001/264/EC of 19 March 2001.

The legal framework described above establishes appropriate rules on the confidentiality of information which is obtained by or exchanged with EUROPOL on the basis of the Europol Convention and respectively the new Council Decision - and requires that Member States ensure that, within their territory, EUROPOL information receive a level of protection which is equivalent to the level of protection offered by the security measures established by these rules.

All information processed by or through EUROPOL, except information which is expressly marked or is clearly recognisable as being public information, is subject to a basic protection level within EUROPOL, as well as in the Member States and marked as "EUROPOL Unclassified not for public dissemination". Information requiring additional security measures is subject to a EUROPOL classification level, which is indicated by a specific marking. Information shall be assigned such a classification level only where strictly necessary and for the time necessary. The EUROPOL classification levels are as follows:

- "EUROPOL Restricted": information and material which unauthorised disclosure could be disadvantageous to the interests of EUROPOL or of one or more Member States;
- "EUROPOL Confidential": information and material which unauthorised disclosure could harm the essential interests of EUROPOL or of one or more Member States;
- "EUROPOL Secret": information and material which unauthorised disclosure could seriously harm the essential interests of EUROPOL or of one or more Member States;
- "EUROPOL Top Secret": information and material which unauthorised disclosure could cause exceptionally grave prejudice to the essential interests of EUROPOL or of one or more Member States.

Each EUROPOL classification level relates to a specific security package. The security packages offer different levels of protection, depending on the content of the information, and

³ Council Act of 5 June 2003 amending the Council Act of 3 November 1998 adopting rules on confidentiality of EUROPOL information, OJ C 152, 28.06.2003, p. 1

taking account of the detrimental effect, which unauthorised access, dissemination or use of the information, might have on the interests of EUROPOL or the Member States.

Access to and possession of information is restricted within EUROPOL to those persons who, by reason of their duties or obligations, need to have access to such information and handle it. Furthermore only those persons who had special training and undergone security screening may be entrusted.

The Rules on confidentiality of EUROPOL information foresee the adoption of a Security Manual, by the Management Board, containing detailed rules on the security measures to be applied within EUROPOL and associated with the different EUROPOL classification levels and corresponding security packages. For all the computer systems employed at EUROPOL to process protectively marked information, the adoption of the System Specific Security Requirement (SSSR) is also required by these Rules.

Second pillar agencies

The founding regulations of two 2nd pillar agencies - EDA and EUSC - have provisions on security which stipulate that the agency applies the Council's security regulations set out in Decision 2001/264/EC⁴, defining rules concerning exchange of the classified information, and that the agency ensures appropriate security and speed in its external communications.

Declaration of the Council and the Commission on the protection and handling of EU classified information (EUCI) by EU and EC agencies, bodies or offices

In the course of the revision of the Council's security rules on exchange of EUCI which is under way, the Council Security Committee (CSC) recommended that EU or EC agencies, bodies or offices established pursuant to the Treaties should apply the security rules of the Council or the Commission, as appropriate, for creating and handling EUCI. As a result, the Council and the Commission consider signing a Declaration on the protection and handling of EU classified information (EUCI) by EU and EC agencies, bodies or offices committing themselves, where appropriate, to take initiatives to the effect that:

- classified information created by such entities is marked as EUCI. It may also bear an additional marking indicating the agency, body or office originating the information;
- the exchange of EUCI originating in the Council or the Commission with any such entity, or between such entities, is contingent on the satisfactory outcome of an inspection visit led by either the GSC Security Office or the Commission Security Directorate, as appropriate, aimed at ascertaining the effectiveness of measures implemented for protecting EUCI.⁵

In the two recent proposals for regulation establishing respectively the Agency for the Operational Management of SIS II, VIS and EURODAC and EASO the following text on the security rules on the protection of classified information and non-classified sensitive information was used:

⁴ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations, OJ L 101, 11.04.2001, p. 1

⁵ This draft declaration will be further discussed within CSC and wording is subject to modifications.

- The Agency shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.
- The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission.

Administrative arrangements between agencies and the Commission on the exchange of EUCI

At present the Commission has an administrative arrangement for the exchange of EUCI with EUROPOL. A similar agreement with GSA has been negotiated successfully and will be formally concluded soon. Negotiations on such an agreement with FRONTEX are currently being conducted.

Exchange and handling of sensitive non-classified information

Some agencies (e.g. EMEA, ECHA, OHIM) also handle sensitive non-classified information, i.e. information requiring specific levels of protection against unauthorised disclosure, without being formally classified (e.g. personal and medical data, business and commercial secrets, etc.). Currently, there is no harmonisation of the various set of rules.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

International relations

1) State of play *de jure* and in practice

The constituent acts of 21 1st pillar agencies¹ foresee the participation of third countries in agencies' activities or the cooperation² between the agency and a third country. Fifteen of these agencies³ are open to cooperation with international organisations as well.

In most cases, the respective founding regulations contain the following standard provision: “agency shall be open to the participation of third countries which have concluded agreements with the European Community which provide for the adoption and application by these countries of Community law in the area covered by the basic act. Under these agreements, arrangements shall be made specifying, in particular, the nature and the manner in which these countries will participate in the agency’s work, including provisions on participation in certain internal bodies, financial contributions and employment of staff”.

At present third countries participate in or cooperate with 12⁴ of the 1st pillar agencies, either as a result of concluded agreements or following a decision by the EEA Joint Committee concerning cooperation with Norway and Iceland.

From among the 2nd pillar agencies, EDA can maintain relations with third countries and international organisations.

With regard to the three 3rd pillar agencies, the constituent acts of two of them – EUROJUST and EUROPOL, foresee cooperation with third countries, international organisations and EU bodies (third partners). Both EUROJUST and EUROPOL have administrative arrangements/cooperation agreements with administrations in several third countries. The policy followed by the two agencies concerning establishing cooperation with third partners is governed by the Council. In the case of CEPOL, the constituent act stipulates that the agency can cooperate with national training institutes of non-member States of the EU, in particular with those of the candidate countries, as well as with those of Iceland, Norway and Switzerland.

Financing of agencies' cooperation with third countries

There is an increasing demand from third countries to cooperate with the European agencies, which raises, among others, the question of financing. The situation in that respect differs for

¹ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO (as per Commission proposal), ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMEA, EMSA, ENISA, ERA, ETF, EU-OSHA, EUROFOUND, FRA, FRONTEX, GSA

² *Cooperation* between an agency and a third country implies financing agency's activities from the Community budget. *Participation* of a third country implies pre-financing from the Community budget of the ultimate contribution of the third country to the agency's budget. The participation of EFTA countries in agencies' activities is governed by Article 82 of the Agreement on the European Economic Area (EEA).

³ CFCA, EASA, EASO (as per Commission proposal), ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMEA, ENISA, ETF, EUROFOUND, FRA, FRONTEX

⁴ CEDEFOP (Cooperation agreements with EFTA countries based on protocol 31 of the EEA Agreement), CPVO (technical Memoranda of Understanding), EASA, ECDC, EEA, EFSA, EMEA, EMSA, ETF, EUROFOUND, FRONTEX, EMCDDA

the countries from the European Neighbourhood Policy (ENP), the candidate countries and other third countries.

ENP countries

Cooperation between the regulatory agencies and the ENP countries can be financed through the Technical Assistance Information Exchange (TAIEX) Facility⁵ until 2011, provided that the given activity falls within the latter's scope: information seminars, workshops, study visits and technical assessments. However, the TAIEX Facility cannot finance long-term cooperation activities. For the period 2011-2013, funding to facilitate the participation of ENP countries in the work of the agencies will be proposed under the European Neighbourhood Partnership Instrument (ENPI)⁶. In line with Council conclusions of 5 March 2007, support will be provided in cases where:

- there is mutual agreement to proceed between the relevant regulatory agency and the interested ENP country;
- there is substantial progress made by the ENP country as evidenced by the implementation of sector reforms and convergence with EC technical requirements and standards. Progress on sector dialogue as reported in the Annual Report on implementation of ENP Action Plans and the technical assessment of the regulatory agency will be critical in this regard.

Candidate and potential candidate countries

Participation in Community agencies is part of the Enlargement Strategy⁷ and the Thessaloniki Agenda⁸. In the Communication from the Commission to the Council and the Parliament "Enlargement Strategy and Main Challenges 2008-2009" (the Enlargement Strategy Paper) of 5 November 2008⁹, the Commission stated that as regards Community agencies it will seek to offer further participation possibilities, including observer status for all enlargement countries in the meeting of the Management Boards or expert groups. Against this background, the Instrument for Pre-Accession Assistance (IPA)¹⁰, provides financial support to the Community Agencies to prepare the candidate and potential candidate countries for participation in specific agencies.

Once the Commission and an agency have established that a country is ready to participate in the agency, a memorandum of understanding between the Community and the country will be concluded to allow for this participation¹¹. The costs for participation in an agency can be co-financed by IPA up to 90% of the country contribution to a agency in the first year of participation, gradually decreasing in the following years, in percentage or in real amounts.

⁵ Council Decision 2006/62/EC of 23 January 2006 enabling countries covered by the European Neighbourhood Policy, as well as Russia, to benefit from the Technical Assistance and Information Exchange (TAIEX) Programme, OJ L 032, 04.02.2006

⁶ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, OJ L 310, 09.11.2006

⁷ See also COM (1999) 710 final of 20.12.1999

⁸ See also COM(2003) 748 final of 03.12.2003

⁹ COM (2008)674 final of 05.11.2008

¹⁰ Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), OJ L 210, 31.07.2006

¹¹ In the case of the FRA the Association Council decides whether a candidate country may join the FRA. In the case of potential candidate countries, an invitation from the Council of the EU is needed first.

Participation in international forums

The European Commission represents the Community in several international organisations. In this framework, the agencies have to work in close cooperation with their parent and/or partner DG in the Commission on initiatives planned at international level.

The Commission can invite a representative of an agency to participate in intergovernmental meetings as a member of the Community delegation. He/she can also take the floor as a member of the Community/Commission delegation. When an agency is specifically invited by an international organisation, in which the Community is represented, to give an *ad hoc* presentation, the agency informs the Commission in order to ensure appropriate coordination.

Cases where experts of an agency are invited to contribute in their personal capacity would fall outside the scope of the international representation of Community. Nevertheless, an expert, prior to taking the floor, should make clear that he/she is acting and speaking in his/her personal capacity. Agencies' experts are free to participate in international meetings which are not of an intergovernmental nature, such as international conferences, symposiums etc.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Communication strategy

1) State of play *de jure* and in practice

Each agency has its own communication strategy. There is no general communication policy applicable to all agencies.

Provisions in agencies' constituent acts on communication

The provisions on communication in agencies' constituent acts can be found:

- 1) as a stand-alone article¹;
- 2) along with the provisions on transparency² ;
- 3) among the agencies' tasks³ ;
- 4) as part of agencies' mission⁴ .

According to their founding regulation, agencies enumerated in point 1) and 2) communicate on their own initiative in the fields within their mission. They ensure in particular that the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to their work.

Those agencies which have communication and raising awareness among their tasks (grouped in point 3) have the following specific provisions on communication:

- EIGE and FRA raise EU citizens' awareness of gender equality and fundamental rights respectively, organise conferences, campaigns and meetings at European level, and present their findings and conclusions. Both also develop a communication strategy and promote dialogue with civil society, in order to raise public awareness of respectively fundamental and gender rights and actively disseminate information about their work.
- One of the tasks of EMEA is assisting the Member States with the rapid communication of information concerning pharmacovigilance to health-care professionals, as well as distributing appropriate pharmacovigilance information to the general public.
- ECHA provides guidance on communication regarding the risks and safe use of chemical substances, in preparations or in articles, with a view to coordinating Member States' activities. ECHA also supports the competent authorities of the Member States in informing the general public about the risks arising from substances where this is considered necessary for the protection of human health or the environment. ECHA also has to make information on all registered chemicals publicly available, free of charge, over the internet.

¹ ECDC, EFSA

² Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EMSA, FRONTEX

³ CEDEFOP, ECHA, EIGE, EMEA, FRA

⁴ ECDC and EFSA

The founding regulations of agencies grouped in point 4), the mission of which is to communicate on risks or threats, comprises the following provisions:

- EFSA and ECDC shall communicate on their own initiative in the fields within their mission without prejudice to the Commission's competence to communicate its risk management decisions.
- EFSA shall ensure that the public and any interested parties are rapidly given objective, reliable and easily accessible information, in particular with regard to the results of its work. In order to achieve these objectives, EFSA develops and disseminates information material for the public. In addition, a communication strategy related to a general plan for crisis management in the field of the safety of food and feed is prepared by the Commission in close cooperation with EFSA and the Member States.
- Both, EFSA and ECDC, shall act in close collaboration with the Commission and the Member States to promote the necessary coherence in the risk communication process.
- ECDC shall prepare a communication strategy in the field of health threats.

Two 2nd pillar agencies - EDA and EUSC - are tasked by their constituent act to ensure appropriate security and speed in their communication.

Heads of Communication and Information Network (HCIN)

There is a certain level of coordination of communication strategies within the network of agencies' Heads of Communication and Information.

The Network aims at increasing the visibility and strengthening communication and information about agencies' activities and results through joint activities and by knowledge-sharing and exchanges of good practice. Common initiatives do not replace the individual communication strategies and activities, but complement them.

The meetings of HCIN are organised by an agency coordinator, which for this network can be different from the coordinating agency within the network of Heads of Agencies⁵. The current, previous and subsequent coordinating agencies form the so called Troika. The chairperson of the HCIN (often the Head of Communications of the coordinating agency) is elected for the term of office of one year by simple majority. The secretariat is provided by the agency of the chairperson. When taking the internal decisions the chairperson should seek to reach a consensus. If consensus is not possible, the decisions are adopted by qualified majority of two-thirds.

The HCIN holds one annual meeting, during which an annual work programme is adopted. It establishes the priority areas and need for specific seminars and workshops, discusses topics of common interest on communication and provides for sharing examples of good communication practices.

The HCIN may set up working groups dealing with specific communication issues and/or covering and reporting on news in the area of communication.

⁵ The Heads of Agencies network meets normally 3 times per year, twice in Brussels and once in the premises of the agency-coordinator. Under its hat there are five other networks: Network of the Heads of Administration; Heads of Communication and Information Network, including the network of webmasters; Inter-Agency Legal Network, including procurement issues; Information and Communication Technology Interagency Network; Inter-agency Network of Accountancy Officers.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Funding and budget revenues of agencies

1) State of play *de jure* and in practice

Agencies' financing structure

Most decentralised agencies are funded entirely by contributions from the Community budget¹. Some agencies, however, depend fully or partially on revenue received from industry (fees):

- Partially self-financed agencies: EMEA, ECHA² and EASA;
- Fully self-financed agencies: OHIM, CPVO and CdT³.

The three second pillar agencies (EDA, ISS and EUSC) are funded on an intergovernmental basis. This is currently also the case for EUROPOL (third pillar), which will become fully Community financed from 2010 onwards.

Role of the budgetary authority

The budgetary authority (European Parliament and Council) authorises only the contributions from the Community budget, not the other revenues; all revenue sources, including the Community contribution (if applicable), are part of the agencies' budgets, to be adopted by the agencies' Management Boards. See, in this regard, also Fiche 22 (role of the three Institutions - Commission, Parliament and Council).

Community "balancing" subsidy

The Community contribution to the agencies for a given financial year is meant to balance agency revenue and expenditure for that given year ("balancing subsidy"). In turn, an agency surplus for a given financial year has to be repaid to the Community budget (in the following year), up to the level of the total Community subsidy paid. The reasoning behind this provision is that a surplus means that the Community subsidy paid to the agency in order to balance agency revenue and expenditure turned out to be too high, and should therefore be recovered by the Commission as an amount "wrongly paid".

Recovery of agencies' surpluses - assigned revenue

In accordance with Article 18(1f) (repayment of amounts "wrongly paid") of the Financial Regulation⁴, amounts recovered from agencies' surpluses are entered as assigned revenue on

¹ Without prejudice to other revenue, such as revenue stemming from (voluntary) contributions from Member States and third countries, administrative operations or services rendered against payments. Such other revenue tends to be of minor importance to agencies' budgets.

² ECHA is expected to become fully self-financed as from 2010, on a temporary basis.

³ This issue is contested by CdT in the case T-456/07 (previous C-269/06, OJ C 190, 12.08.2006, p. 13) pending before the Court of First Instance.

⁴ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities.

the Commission's budget line for the agency concerned. As requested by the budgetary authority in order to increase transparency, and starting with the 2009 PDB, the Commission has deducted assigned revenues stemming from the recovery of previous years agencies' surpluses (N-1) from the agencies' Community subsidy for the following year (N+1), in order to arrive at the level of fresh appropriations in the PDB for year N+1^{5 6}.

This policy to deduct assigned revenue for year N from fresh appropriations for year N+1 is a practical application of the rule that these assigned revenues, recovered in year N, may be carried over only once, and must be used first, in year N+1. As such, this means that in any year N two annual tranches of assigned revenues exist in parallel:

- Assigned revenues recovered in year N, to be carried over to year N+1, as they in principle have been taken into account when calculating the Community contribution for year N+1;
- Assigned revenues carried over from year N-1, to be used in year N, together with fresh appropriations in the budget for year N.

Predictability of agencies' revenue

The financing structure as set out above introduces an element of unpredictability, especially for agencies which are partially dependent on fees from industry: whereas the expenditure side of the agencies' budget (e.g. salaries and rent) will be relatively stable and predictable, the level of revenue actually received from industry may vary more significantly, depending for instance on the economic situation.

A higher (or lower) level of revenue actually received from industry may therefore lead to a surplus (or deficit) on the agency side, which may in turn lead to the need for a lower (or higher) Community balancing subsidy during the financial year⁷, and/or to a surplus (or deficit) on the agency side at year-end.

Agencies' cash management

Typically, the actual payment of the Community balancing subsidy to the agency is made in a number of instalments throughout the year, depending on the actual cash requirements of the agency in question.

At the occasion of the latest revision of the Framework Financial Regulation (Article 15(5)⁸), a new provision was introduced requiring each agency to "implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests (for the Community balancing subsidy) it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue". This provision makes it

⁵ See, for more details, COM (2009) 300, PDB 2010 Working Document III ("agencies"), p. 25.

⁶ Given the timing of the preparation of the PDB year N+1 (Spring year N), the Commission deducts the provisional agency surplus for year N-1 from the Community subsidy for year N+1; the final amount of the agency surplus for year N-1 will only become available by July year N, as part of the final agency accounts.

⁷ Increasing the Community balancing subsidy during the financial year requires a transfer and/or an Amending Budget, to be adopted by the budgetary authority.

⁸ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008

even more important for agencies to make accurate forecasts on their revenue and expenditure.

Accurate forecasts of agency cash requirements allow for fine-tuning of the actual (final instalments of the) balancing payments to the agency, so as to avoid year-end surpluses on the side of the agency. This, in turn, avoids the need for the Commission to recover agency surpluses as assigned revenue in the following year.

However, if the budgeted Community subsidy to the agency during the financial year itself proves higher than the actual year-end cash requirements of the agency, on which basis the Commission decides not to make the full subsidy available to the agency, this will lead to a cancellation of (payment) appropriations on the Commission side, which will become part of the surplus of the Community budget.

Self-financed agencies

The Framework Financial Regulation only applies to Community bodies in the sense of Article 185 of the Financial Regulation, i.e. which have legal personality, which are created by the Communities and which actually receive a contribution from the Community budget, i.e. to the fully and partially Community funded agencies. Two of the fully self-financed agencies (OHIM and CPVO) have their own Financial Regulations, adopted in accordance with their founding Regulation, although OHIM has so far chosen to align its Financial Regulation as much as possible on the Framework Financial Regulation; the Framework Financial Regulation applies to CdT, even though this agency is fully self-financed.

No general rules apply to agency surpluses (when revenue for a given year overshoots expenditure); tailor-made rules are laid down in provisions of applicable acts. Depending on the financial rules applicable, agency surpluses can be attributed to a special fund, and/or budgeted by the agency in the following financial year as additional revenue for that year. In practice, the current state of play is as follows:

- OHIM: OHIM has created a reserve fund, which will be kept at its end-2008 level of some € 200 million; as from 2009, future annual budgetary results will be incorporated in the following year's budgets;
- CPVO: in 2002, CPVO set a minimum level of surplus of €5 million, or 50% of annual revenues. This amount corresponds to the amount of credits needed to pay for one year of administrative expenditure in the case that no fees would be received at all. In 2008, this minimum level of surplus was reached; as from 2010, CPVO will present a balanced budget;
- CdT: on the one hand, CdT uses a pre-financing fund, amounting to 4/12th of credits of the annual budget. On the other hand, CdT reimburses annual surpluses to its clients.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

Activity Based Budgeting (ABB)

1) State of play *de jure* and in practice

Framework Financial Regulation¹

Article 30 of the Framework Financial Regulation lays down that agencies' expenditure budgets must be set out on the basis of a nomenclature with a classification by purpose ("activity-based"), in so far as this is justified by the agencies' activities.

ABB principles

Activity Based Budgeting (ABB) is a key element of Activity Based Management, that is to say that budget, management and reporting are treated as components of one single conceptual framework, based on common performance information².

Guiding principles of ABB are:

- Coherence in the translation of political priorities into budgetary resources: the creation of a policy-guided budget procedure and structure ensures that priorities are reflected in resource allocation and that planning of work is consistent with policy objectives and available resources.
- Transparency in the allocation of resources and in the global cost of activities: ABB provides information about the full cost of running activities. By attributing all types of resources to activities, the allocation of resources is done in coherence with priorities, thus rendering resource allocation a more rational and transparent process.
- Accountability of managers for objectives pursued and results achieved: managers will be responsible for achieving and reporting on results. Improved information on the full cost of running activities and on their benefits will promote efficient use of those resources and will help future decision-making on resource allocation.
- The full potential of ABB can only be realised when programming of work, management of information systems, performance information (as objectives and indicators) and evaluation of results are linked to activities. This can only be achieved through a gradual development process over several years, involving major changes in administrative culture and management information systems.

¹ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008.

² The issue of activity-based budgeting links to the agencies' annual work programmes, see also Fiche 13.

ABB in agencies - state of play

In its Special Report of June 2008³, the Court of Auditors notes that some agencies prepare activity-based budgets⁴, for internal management needs. However, none of the agencies included in the audit of the Court had introduced ABB to its full extent.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

³ Special Report No 5/2008 of the Court of Auditors, "The European Union's Agencies: getting results", June 2008

⁴ EU-OSHA, EFSA, EMEA

Budgetary procedure – Role of the three Institutions

1) State of play *de jure* and in practice

Timetable

The budgetary procedure for the adoption of agencies' budgets (Community subsidy and establishment plan)¹ for year N fits into the budgetary procedure for the adoption of the general budget for year N as follows:²

- Agency provisional draft estimate of revenue and expenditure (including establishment plan), to be sent to the Commission: 10 February year N-1;
- Commission Preliminary Draft Budget (PDB): end-April year N-1;
- Council first reading: July year N-1;
- Parliament first reading: October year N-1;
- Council second reading: November year N-1
- Parliament second reading: December year N-1;
- Definitive agency's budget and establishment plan: after final adoption of the general budget (normally December year N-1).

Role of the three Institutions - Commission

Article 27 of the Framework Financial Regulation requires the Commission, as part of the procedure for adoption of the general budget, to "send the Community body's statement of estimates to the budgetary authority and propose the amount of the subsidy for the Community body and the number of staff it considers that the body needs".

This gives the Commission a key role in assessing the needs of the agency, in terms of both Community subsidy and staffing levels. As regards the timetable as set out above, the Commission has some two months for its analysis of agency needs, between February and April year N-1.

In addition, and in accordance with Article 33 of the Financial Regulation and as requested by the budgetary authority³, the Commission provides key budgetary information on agencies in a dedicated working document to the PDB for year N, in May year N-1⁴.

¹ This concerns only agencies which actually receive a Community subsidy.

² This timetable follows, on the one hand, the agency budget procedure foreseen in Article 27 of the Framework Financial Regulation as revised in July 2008 and, on the other hand, the so-called "pragmatic calendar" for the adoption of the general budget.

³ Joint statements, ECOFIN (Budget) Council of 13 July 2007, doc. DS 605/1/07 REV 1

⁴ See, for more details, PDB 2010 Working Document III ("agencies"), COM (2009) 3000.

It should be noted that the subsidies to decentralised agencies are included in Section III (Commission) of the general budget, under the operational lines of the policy area concerned. They do not enter under heading 5 of the multi-annual financial framework (Administration).

The contribution to each decentralised agency is divided into two different budget items: the subsidy under Title I and II (staff and infrastructure expenditure) and the subsidy under Title III (operational expenditure).

Role of the three Institutions - Parliament and Council

Parliament and Council, in their roles as the two arms of the budgetary authority, decide upon the Community subsidy and staffing levels of the agencies, on the basis of the timetable set out above.

As the Community contribution to agencies is classified as so-called "non-compulsory expenditure", the Parliament under the current Treaty has the last word in this regard.

Within Council, the Budget Committee makes an analysis of the Commission's PDB proposals for all agencies, in the run-up to the first reading of the Council. The compromise reached at Budget Committee level goes through COREPER II to the ECOFIN/Budget Council, which adopts the draft budget.

Within Parliament, each specialised Committee makes an analysis of the Commission's PDB proposals for the agencies for which it is responsible, with due consideration to the agencies' own estimates. At the following stage, the opinions of the specialised committees on the draft budget of the Council are considered by the Committee on Budgets, guided by its standing-rapporteur on agencies, after close contacts with agencies' representatives (every year the Committee on Budgets organises a meeting with the decentralised agencies to discuss, inter alia, their estimates for next year's budget). The amendments tabled by the Committee on Budgets (and possibly those from other Committees not taken on board by the Committee on Budgets, or from political groups) are then submitted to the Plenary, as is the case for the overall EU budget.

The role of the Parliament and the Council as budgetary authority also links to their roles as legislative authority (see Fiche 2 on the creation of agencies) and discharge authority (see Fiche 28 on discharge).

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Staff Policy Plan

1) State of play *de jure* and in practice

Origin

The increasing number of European regulatory agencies and their staff raised the budgetary authority's interest for the personnel policy in these bodies. In the framework of the budget discharge procedure, the European Parliament requested that the Commission should provide agencies with instructions and advice related to the staff policy.

In response to the European Parliament's request, the Commission adopted in December 2005 specific Guidelines¹ in order to provide orientations for establishing a coherent staff policy in all European regulatory agencies that apply the Staff Regulations of Officials and the Conditions of Employment of other servants of the European Communities (see in this regard also Fiche 15 on human resources policy). The Guidelines recommend, in particular, that each agency shall adopt a multi-annual Staff Policy Plan (SPP).

Moreover, in 2008 the revised framework Financial Regulation for agencies² reinforced the status of the Staff Policy Plan. The Regulation now stipulates that the updated Staff Policy Plans must be sent by 31 March each year by each agency in the framework of the budgetary procedure.

Following a recommendation in the abovementioned Guidelines, the SPPs were prepared by agencies for the first time in 2007 in the framework of the PDB 2008. In 2009, they were prepared for the third time and concerned the period 2010-2012.

Content

The purpose of the Staff Policy Plan that covers a three-year period is to lay down in a transparent way career profiles for each type of posts and to justify the agency's establishment plan. The SPP thus specifies the agency's staff policy taking into account the following elements:

- definition of types of employment;
- selection procedure;
- career development;
- gender and geographical balance;
- schooling facilities for staff's children;

¹ C(2005)5304 of 9 December 2005: Guidelines on Staff Policy in the European Regulatory Agencies

² Commission Regulation No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008

- state of play concerning adoption of implementing rules to the Staff Regulations.

It should equally provide justification for the number and level of posts, particularly for new posts, requested in the agency's establishment plan.

Conversely, agencies being independent and autonomous bodies are responsible for implementation of the personnel policy laid down in their Staff Policy Plan. As Staff Policy Plans are programming documents, they contain limited information on the implementation of the Staff policy.

Process

The Commission services defined, in co-operation with agencies, a procedure related to the adoption of the Staff Policy Plan:

- the agency transmits a draft SPP to the Commission services (parent DG, DG ADMIN, DG BUDG) for opinion;
- the parent DG consolidates the Commission services opinion including its own remarks as well as DG BUDG and DG ADMIN contributions;
- the Commission services opinion is submitted to the agency;
- the latter amends if necessary the draft SPP and has it adopted by the Management Board;
- the final SPP is sent to the Commission and the budgetary authority.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified problems

4) Possible ways for implementing the viable solution(s)

ANNEX TO ANALYTICAL FICHE NR° 23

Data concerning the establishment plans of Agencies (permanent and temporary posts)

Agency Name	2007 Establishment plan	2008 Establishment plan	2009 Establishment plan	Evolution 2007-2009	Posts filled 31/12/2008	Vacancy rate 31/12/2008
European Medicines Agency	441	481	530	20,18%	468	2,70%
European Chemicals Agency	101	220	324	220,79%	210	4,55%
European Institute for Gender Equality	15	20	20	33,33%	0	NA
European Foundation for the Improvement of Living and Working Conditions	94	101	101	7,45%	78	22,77%
European Agency for Health and Safety at Work	42	44	44	4,76%	41	6,82%
European Aviation Safety Agency	467	452	506	8,35%	403	10,84%
European Maritime Safety Agency	153	181	192	25,49%	149	17,68%
European Railway Agency	110	116	124	12,73%	106	8,62%
European GNSS Supervisory Authority	46	50	23	-50,00%	49	2,00%
European Environment Agency	116	123	133	14,66%	116	5,69%
European Network and Information Security Agency	44	44	44	0,00%	39	11,36%
Community Fisheries Control Agency	38	49	55	44,74%	40	18,37%
Office for Harmonisation in the Internal Market	647	643	643	-0,62%	593	7,78%
European Centre for the Development of Vocational Training	97	99	101	4,12%	97	2,02%
European Training Foundation	105	96	96	-8,57%	86	10,42%
European Centre for Disease Prevention and Control	90	130	130	44,44%	101	22,31%
European Food Safety Authority	300	335	355	18,33%	318	5,07%
Community Plant Variety Office	42	43	44	4,76%	43	0,00%
European Agency for the Management of Operational Cooperation at the External Borders	49	94	117	138,78%	75	20,21%
European Union Agency for Fundamental Rights	46	49	61	32,61%	35	28,57%
European Police College	22,5	22,5	26	15,56%	13	42,22%
Eurojust	147	175	185	25,85%	130	25,71%
European Monitoring Centre for Drugs and Drug Addiction	82	82	82	0,00%	78	4,88%
European Agency for Reconstruction	108	91	0	-100,00%	0	NA
Translation Centre for the Bodies of the European Union	200	233	233	16,50%	189	18,88%
Total Staff figures	3602,5	3973,5	4169	15,73%	3457	13,00%

Implementation of the Financial Regulation by agencies

1) State of play de jure and in practice

A Financial Regulation sets out all the financial principles and rules which govern the preparation and adoption of the budget of an agency, as well as the implementation, control and discharge of this budget.

Each agency adopts its own Financial Regulation, which must not depart from the Framework Financial Regulation (FFR)¹ applicable to Community bodies in the sense of Article 185² of the general Financial Regulation (FR)³, unless the Commission has consented to specific derogation(s). It should be noted that specific provisions foreseen in an agency founding Regulation, which may foresee financial rules departing from the FFR, are not considered as formal derogations in the sense of Article 185 FR because they have been adopted by the legislative authority and therefore do not require Commission endorsement. Moreover, agencies which do not fulfil all the criteria of Article 185, in particular agencies which do not receive any contribution from the EU budget, are not obliged to respect the FFR. This is the case of CPVO and OHIM for 1st pillar agencies (although OHIM voluntarily aligns its Financial Regulation to the FFR)⁴, as well as all intergovernmental agencies financed directly by Member States (EDA, EUSC and ISS). Finally, agencies which are partially financed from fees and charges also need to respect the FFR and their respective fees and charges regulation.

In practice, the Commission adopts the FFR, and each agency then sends its draft Financial Regulation to DG Budget for consent. If no formal derogation is requested, DG Budget simply acknowledges that the draft Financial Regulation can be formally adopted by the Agency (usually the Management Board, the Budget Committee in the case of OHIM). If a formal derogation is requested, a Commission Decision granting the respective derogation is necessary before the agency can adopt its Financial Regulation. Until now, no regulatory agency has any formal derogation from the FFR⁵. Agencies implement their budget in accordance with their own Financial Regulation, and resort to Commission support services

¹ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, modified by Commission regulation EC, EURATOM No 652/2008, on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

² In accordance with Article 185 of the general Financial Regulation, agencies or Community bodies which must respect the Framework Financial Regulation are those:

- set up by the Communities;
- having legal personality;
- and which receive contributions from the EU budget.

³ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (Financial Regulation)

⁴ While OHIM in March 2009 asked the Commission for consent to its revised Financial Regulation, CPVO, according to its founding act, has no obligation to consult the Commission on its Financial Regulation which must, as far as possible, correspond to the provisions of the general Financial Regulation and depart from them only when the specific requirements of the individual operation of the Office so dictate.

⁵ Europol has asked for two derogations on public procurements and operational, strategic and classified information. The Commission is expected to take a decision on Europol's requests by the end of 2009.

whenever they need clarification or interpretation of some provisions of the FFR or their own Financial Regulation, as Commission services do.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified problems**
- 4) Possible ways for implementing the viable solution(s)**

Reporting requirements and processes

1) State of play de jure and in practice

Annual Activity Report¹

In accordance with Article 40 of the Framework Financial Regulation (FFR)², the authorising officer (AO) of each agency reports on his performance to the Management Board in the form of an annual activity report (AAR). The AO commits its responsibility by confirming in an accompanying note that the report presents a true and fair view of the agency's activities. On this occasion he/she may make any reservation concerning specific revenue or expenditure. The AAR is also sent to the Commission Internal Auditor who exercises the same powers with respect of agencies as with respect to Commission departments (Article 71 FFR).

Before 15 June, the Board sends the Budgetary Authority and the Court of Auditors its analysis and assessment of the AO's annual activity report on the previous financial year.

Some other reporting requirements, such as those related to the discharge procedure, are described in Fiches 28 "Discharge" and 32 "Parliament role".

In the case of OHIM, the authorising officer reports to the OHIM Budget Committee in the form of an annual activity report (Article 40 of OHIM FR). The report is also sent to the European Court of Auditors and the OHIM Internal Auditor.

Financial statements and report on budgetary and financial management (Articles 76, 77 and 82 FFR)

Financial statements and report on the budgetary and financial management are part of the documents required for the discharge procedure of an agency. They are thus instrumental in presenting a true and fair view of revenue and expenditure operations, in particular the rate of implementation of budget appropriations and information on transfers and carry-overs of appropriations.

They are usually prepared under the responsibility of the authorising officer and sent by the accounting officer of the agency to the Commission's accounting officer by 1 March of the following year. By 31 March, the report is also sent to the European Parliament and Council.

¹ Some agencies have to provide one annual report in addition to the Annual Activity Report, e.g. EEA, EU-OSHA, ECHA, CEDEFOP.

² Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, modified by Commission regulation EC, EURATOM No 652/2008, on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

Other reporting mechanisms:

- The directors of five agencies³ submit a report on carrying out their duties upon the request of the Council or the European Parliament.
- The founding regulations of five agencies⁴ foresee that the European Parliament or the Council may ask at any time for a hearing with the Director on any subject related to the agency's activities.
- ERA: The Director presents a quarterly activity report to the European Parliament.
- CEPOL: A five-year report is submitted to the Commission, the European Parliament and the Council.
- EUROJUST: The Joint Supervisory Body submits an annual report to the Council. The President shall also submit any report or any other information on the operation of Eurojust which may be required of him by the Council.
- EUROPOL: The Council Presidency shall each year forward a special report to the European Parliament on the work of Europol.
- ACER: The European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by members of that committee. The EP (competent committee) may also invite the Director of ACER to answer questions put by its members, within one month before the extension of his term of office.
- EMCDDA: The European Parliament may ask for a hearing with the Chairperson of the Management Board on any subject related to the Centre's activities.
- In the case of the two self-financed agencies, CPVO and OHIM, the President of the Office submits each year a management report. CPVO's President submits the report to the Commission and the Administrative Council, whereas OHIM's President submits it to the Commission, the European Parliament and the Administrative Board.

As far as second pillar agencies are concerned:

- in the case of EUSC and ISS, the Secretary-General/High Representative shall report to the Council on the work of the Board; furthermore, in the case of EUSC the Secretary-General/High Representative shall report on the execution of his tasks as appropriate and at least once every six months to the Council's Political and Security Committee;
- in the case of EDA the Chief Executive shall report to the Head of the Agency on the implementation of the Steering Board's decisions.

³ ACER, EASA, FRONTEX, GSA, CEPOL

⁴ EIGE, EMCDDA, ENISA, ERA, FRA

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified problems**
- 4) Possible ways for implementing the viable solution(s)**

Analytical Fiche Nr° 26

Internal audit

1) State of play de jure and in practice

State of play *de jure*

The Financial Regulation (FR) establishes the Internal Auditor of the Commission as the Internal Auditor of the "bodies set up by the Communities and having legal personality which actually receive contributions charged to the budget" (Article 185).

According to the Implementing Rules of the General Financial Regulation (IR), these are bodies that actually receive a grant from the Community budget and included in a list attached to the preliminary draft budget (Article 270).

The FR provides certain requirements for the appointment of the Internal auditor (Articles 85-86): segregation from roles of authorising and accounting officer; work involving opinion on quality of management and control systems and recommendations for improving operations and sound financial management; compliance of work with international standards; unlimited access to information; obligation to produce an annual report.

The IR provide further details as to the need to provide a charter, to establish a work programme, and to produce annual reports (Articles 110, 111, 112).

The principles of independence and responsibility of the Internal auditors are established in Article 87 of FR, and further developed in Articles 113, 114 and 115 of IR.

Framework Financial Regulation (FFR)

The Authorising officer of the Community Body shall "establish within his/her departments an expertise and advice function designed to help him/her control the risks involved in his/her activities" (Article 38.4). In addition, Article 71 refers to an internal auditing function that should work in compliance with international standards and confirms the Internal Auditor of the Commission as internal auditor, in line with Article 185 of FR

Article 72 details the content of work of the internal auditor, in line with the corresponding provisions of FR (Articles 85-86) and IR (Articles 112-115).

Article 73 refers to Article 87 FR as regards responsibility of the internal auditor.

Agencies' constituent acts

The constituent acts of most agencies do not mention the internal auditor, except for the case of ENISA, where reference is made to the Commission's internal auditor.

In the case of EUROJUST, the founding decision states that the College shall appoint an internal auditor, and that the College may ask the internal auditor of the Commission to carry that function.

The founding regulations of the self-financing agencies not subject to Article 185 FR (OHIM and CPVO) contain provisions concerning the setting up of an internal audit function within the Office, by appointment of the President of the Office.

Individual Financial Regulations

According to Articles 1, 99 and 100 of the FFR, each Community body (in the sense of Article 185 of the FR) is required to adopt an individual Financial Regulation and its corresponding Implementing Rules, which should follow the provisions of the FFR and FR. These regulations have to be transmitted to the Commission for consultation before adoption by the relevant Board. In what refers to provisions concerning the Internal Auditor, there are no major deviations with respect to the provisions of the FFR, but it is worth noting that:

- The constituent act of OHIM provides specifically that "the Office shall establish an internal auditing function".
- The article describing tasks of the internal auditor in the constituent act of EUROJUST specifies in its last paragraph that "this article shall not apply to case-related work and documents".

State of play *de facto*

The Internal Audit Service of the Commission (IAS) started audit work on Community bodies in 2004.

The mandate of IAS covers the following Community bodies as of today:

Agency	In mandate	Audited	Comments
Community Agencies (1 st pillar)			
EUROFOUND	Yes	Yes	
CEDEFOP	Yes	Yes	
CdT	Yes	Yes	
EEA	Yes	Yes	
EMEA	Yes	Yes	Self-financing (part)
EU-OSHA	Yes	Yes	
EAR	Yes	Yes	Ended December 2008
ETF	Yes	Yes	
EMCDDA	Yes	Yes	
FRA	Yes	Yes	
EASA	Yes	Yes	Self-financing (part)
EMSA	Yes	Yes	
EFSA	Yes	Yes	
ECDC	Yes	Yes	
ENISA	Yes	Yes	
ERA	Yes	Yes	
FRONTEX	Yes	Yes	
GSA	Yes	Yes	
CFCA	Yes	Yes	
ECHA	Yes	Yes	Self-financing (future)
EIGE	Yes	No	Start-up phase
OHIM	No	N/A	Self-financing
CPVO	No	N/A	Self-financing

ACER	Not yet	No	Legislative proposal
BEREC Office	Not yet	No	Legislative proposal
EASO	Not yet	No	Legislative proposal
Police & Judicial Cooperation Agencies (3 rd pillar)			
EUROJUST	Yes	Yes	
CEPOL	Yes	Yes	
EUROPOL	Not yet	No	In 2010

Audit work means that a new audit engagement is carried out at the agency every year. Follow-up engagements are also planned regularly.

The IAS obtained certification through an external evaluator in 2008. Methodology and procedures used by IAS on agencies do naturally follow those used for audit work on the Commission; however, they will only be the subject of a specific external assessment in 2010.

As of today, the regulatory agencies have not yet adopted a Charter for the internal audit function with the IAS. The charter should describe the mission, tasks, duties and obligations of the internal auditor, as required by Article 110 IR, and also in conformity with international standards of internal auditing. The IAS proposed in January 2009 to use *mutatis mutandis* the charter adopted for the Commission. A revised proposal was presented in March 2009 and is presently under examination of the agencies.

Whereas the IAS reports to the Audit Progress Committee (APC) as regards work carried out for Commission departments, this is not the case for the work carried out for Regulatory agencies, as these are bodies legally independent from the Commission. The IAS disseminates its audit and follow-up reports both to the agency Director and the chair of the Board. The 1 agency's (parent DG) and the cabinets both of the parent DG and the IAS receive copies of final reports on agencies. Final reports of IAS are also copied to the European Court of Auditors (ECA).

The IAS performs an annual risk assessment of each agency and updates a rolling 3-year Audit Strategy, which is sent to the Director and to the Management Board of the agency for endorsement.

In order to reply to the requirement of Article 40 of the FFR, the IAS collects Annual Activity Reports (AAR) from agencies in order to make comments to the agencies in case relevant pieces of information are found missing.

The IAS sends each year an Annual Report of the Internal Auditor to the Director and the chair of the Management Board of each agency. This report describes the work done for the agency during the year, including recommendations made and actions taken, as required by Articles 86.3 FR and 72.4 FFR. For year 2008, the IAS has also added information on old recommendations still open.

The IAS is not a formal actor in the discharge procedure, but attends as observer the hearings organised by COCOBU to this end.

The IAS exchanges information with ECA on planning of audit engagements in order not to overlap visits. The Risk Assessment and Strategic Audit Plans for agencies are prepared considering the objective not to overlap, wherever possible, with the subjects audited by ECA.

Based on Article 38.4 of FFR, some agencies have set up an expertise and advice function called Internal Audit Capabilities (IACs) with varying scope and content of tasks. Nearly all these IACs have agreed a charter with their agency.

Some agencies have also set up Audit Committees, also with varying remits and composition. The table below provides further details:

Agency	IAC	Audit Committee	
			Comments
EMEA	Yes	Yes	Advisory to the Director. Includes external members. Includes Director. Does not include Board members.
EFSA	Yes	Yes	Includes the Director. Includes members of the Board. Does not include members external to the Board, but members of the Board are independent.
ECDC	Yes	Yes	Includes Board members. and a representative of the line DG
FRONTEX	Yes	No	
EASA	Yes	No	
CdT	Yes	No	
CEDEFOP	Yes	No	
ECHA	Yes	No	
EMSA	Yes	No	
CFCA	Yes	No	
ERA	Yes	No	
EEA	Yes	No	

So far, coordination of work is agreed informally with IACs, but, most of the audit charters require the IAC to coordinate its activities with the IAS in order to avoid duplication of audit work. There is no formal means in place for communication of IAC reports to IAS.

In order to coordinate work with IACs, and exchange experience on audit approach, methodology and best practise, the IAS chairs a network that meets between 2 and 3 times per year (Auditnet for agencies).

So far, the IAS in his capacity of Internal Auditor of the agencies provides audit assurance. The focus of the IACs audit work is not uniform and differs from agency to agency and is dependent on many factors (maturity, audit environment, audit needs identified by management, Management Board and/or presence of an Audit Committee, etc.).

It should be noted that the IAS resources dedicated to the internal audit of agencies are taken from the IAS (Commission) budget (i.e. no cost for agencies). Each IAC is part of the budget of its agency.

Even though the IAS did carry out a quality assessment of IACs in the Commission, the possibility of performing the same exercise on IACs in the agencies has not been considered so far by the IAS.

The report from the European Parliament on "Opportunity and Feasibility of establishing Common Support Services for EU agencies" contains a section where they inform about the IAS, notably through views expressed by agencies in a questionnaire prepared for the study in question. Whereas most agencies responding to the questionnaire report being satisfied with the IAS and find the auditors as being professional, some agencies raise the issue of fit of the audit work with the special characteristics of agencies (i.e. knowledge of the specific nature of work of the agency). Reference is also made by agencies about the control burden required by audits (both internal and external).

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

External audit

1) State of play *de jure* and in practice

EC Treaty

Article 248 of the EC Treaty lays down that the Court of Auditors, as external auditor, shall examine the accounts of all revenue and expenditure of the Community, as well as the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent instrument does not preclude such examination¹.

In accordance with Article 248, the tasks of the Court of Auditors include, *inter alia*:

- to provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions;
- to examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, the Court shall report in particular on any cases of irregularity;
- to carry out audits based on records, and if necessary, on the spot;
- to draw up an annual report after the close of every financial year, to be published together with the replies of the institution concerned; and
- to submit observations, particularly in the form of special reports, on specific questions and to deliver opinions at the request of one of the other institutions of the Community.

Financial Regulation

Articles 139 to 144 of the Financial Regulation² specify in more detail the audit role of the Court as laid down in Article 248 of the Treaty, its cooperation with the institutions and (national) bodies to be audited, and access to information and timetables applicable.

Framework Financial Regulation

Article 91 of the Framework Financial Regulation³ lays down that the Court of Auditors shall scrutinise the accounts of each Community body submitted to the FFR, in accordance with

¹ The Joint Actions establishing ISS, EUSC and EDA (which are financed on an intergovernmental basis) lay down budgetary control and discharge procedures which exclude the Court of Auditors. The Europol Convention (financed on an intergovernmental basis, Court of Auditors excluded) will be replaced as from 2010 by a Council Decision (financed from the Community budget, Court of Auditors as external auditor).

² Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

³ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

Article 248 of the EC Treaty. Article 93 specifies that the scrutiny carried out by the Court of Auditors shall be governed by Articles 139-144 of the Financial Regulation.

Article 95 specifies that the discharge authority will examine the annual and special reports of the Court of Auditors, along with their corresponding statement of assurance.

Annual specific reports

The number of annual specific reports has increased considerably over the past years, following the increase in the number of (financially autonomous) agencies. In November 2008, the Court issued 23 annual specific reports, covering the Court's assessment of the reliability of the accounts and the legality and regularity of the underlying transactions for the financial year 2007, for the same number of agencies⁴.

Financial Regulations of the agencies

The financial regulations of individual agencies do not deviate from the provisions set up in the Framework Financial Regulation, unless specific derogations have been granted by the Commission.

Main findings related to the agencies

As for the Court of Auditors' annual reports, the main and most frequent problems highlighted in relation to agencies concern procurement procedures, recruitment and carry over of appropriations. See in this regard also Fiche 28 (discharge).

In its Special Report of June 2008⁵, the Court of Auditors carried out a so-called "performance audit", so as to audit in a number of agencies the planning of activities, the introduction of sound tools for monitoring activities, the accounting of activities and evaluation of results. See in this regard also Fiches 13 (annual work programmes) and 21 (Activity-Based Budgeting).

Internal and External Audit

The Court of Auditors and the IAS communicate on the work carried out in agencies. The IAS receives copy of findings and reports established by the Court of Auditors and, conversely, the Court of Auditors receives final reports of the IAS.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

⁴ EMSA, EMEA, EMCDDA, EAR, FRONTEX, EFSA, CEPOL, EUROJUST, ERA, GSA, OHIM, CEDEFOP, CPVO, CdT, ENISA, CFCA, EEA, EU-OSHA, EUROFOUND, ECDC, ETF, FRA and EASA

⁵ Special Report No 5/2008 of the Court of Auditors, "The European Union's Agencies: getting results", June 2008

Analytical Fiche Nr° 28

Discharge

1) State of play *de jure* and in practice

Legal framework

By analogy with the general discharge procedure described in Article 276 of the EC Treaty and in accordance with Article 185 of the Financial Regulation¹ and the agencies' founding regulations (see also Article 94 FFR²), the European Parliament, upon a recommendation from the Council, gives the discharge to the Director of each agency that receives contribution from the EU budget in respect of the implementation of the budget.

An overview of the agencies subject to a separate discharge from the EP is presented in the table at annex.

The EP decision on discharge

The EP takes its decision on the discharge on the basis of the following (see Article 95 FFR):

- an examination of the accounts and financial statements of each agency;
- the annual report on budgetary and financial management, any relevant special report and the annual specific reports made by the Court of Auditors, together with the replies of the Director of the agency concerned;
- the statement of assurance concerning the reliability of the accounts and the legality and regularity of the underlying transactions, made by the Court of Auditors.

During the discharge procedure, EP's competent committee may organise hearings with the agencies' Directors or ask them to answer written questions. The Directors of the agencies are required to submit to Parliament any information required for the smooth application of the discharge procedure.

Follow-up to the EP recommendations

The Director concerned informs its Management Board of the observations made by the EP in the resolution accompanying the discharge decision. The Director is then responsible to follow up on the observations made by the EP and on the comments made in the discharge recommendation by the Council. At the request of either the EP or the Council, the Director reports on the measures taken and sends a copy to the Commission and the Court of Auditors

¹ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (Financial Regulation)

² Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

(Article 96 FFR). EP's competent Committee regularly follows up on previous years' observations in the next discharge exercise.

Concretely, the discharge was always given to agencies by the European Parliament, even in certain cases after difficult discussions in the Budgetary Committee (Council) or the Committee on Budgetary Control (Parliament)³.

Most frequently highlighted problems during discharge

The main and most frequent problems highlighted in relation to agencies in the Court of Auditors' annual reports concern procurement procedures, recruitment and carry over of appropriations (see in this regard also Fiche 27 on external audit). The EP on its part regularly highlights accountability issues such as the need for the publication of performance indicators and for regular evaluation of the agencies by the Commission.

The case of self-financed agencies

In the case of OHIM, it is the OHIM's Budget Committee⁴ who gives a discharge to the President of the Office in respect of the implementation of the budget⁵. In the case of CPVO, it is the Administrative Council that gives a discharge to the President of the Office.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

³ For example, during the discharge procedure for 2007, the EP rapporteur proposed to postpone the discharge for the CEPOL for reasons related to the private use of budgetary appropriations and due to insufficient explanations from the Agency, but MEPs finally voted in favour of the discharge.

⁴ The Budget Committee is composed of one representative of each Member State and one representative of the Commission (without voting rights) and their alternates.

⁵ Article 142(2) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark

ANNEX TO ANALYTICAL FICHE N°28

Discharge of EU Agencies, existing and under consideration, as at 12.09.2008

	Agency	Founding act	Contribution from EU budget	Separate discharge from EP
1	European Centre for the Development of Vocational Training	10.02.1975	yes	yes
2	European Foundation for the Improvement of Living and Working Conditions	26.05.1975	yes	yes
3	European Environment Agency	07.05.1990	yes	yes
4	European Training Foundation	07.05.1990	yes	yes
5	European Monitoring Centre for Drugs and Drug Addiction	08.02.1993	yes	yes
6	European Medicines Agency	22.07.1993	yes	yes
7	Office for Harmonisation in the Internal Market	20.12.1993	no	no
8	European Agency for Health and Safety at Work	18.07.1994	yes	yes
9	Community Plant Variety Office	27.07.1994	no	no
10	Translation Centre for the Bodies of the European Union	28.11.1994	? ⁶	yes
11	Europol	26.07.1995	no ⁷	no
12	Fundamental Rights Agency ⁸	02.06.1997	yes	yes
13	European Agency for Reconstruction ⁹	05.12.2000	yes	yes
14	European Police College	22.12.2000	yes	yes
15	European Institute for Security Studies	20.07.2001	no	no
16	European Union Satellite Centre	20.07.2001	no	no
17	European Food Safety Authority	28.01.2002	yes	yes
18	Eurojust	28.02.2002	yes	yes
19	European Maritime Safety Agency	26.06.2002	yes	yes
20	European Aviation Safety Agency	15.07.2002	yes	yes

⁶ Even if a Community subsidy towards the agency's budget is foreseen in the agency's founding regulation (Article 10(2b) of the Council Regulation No 2965/94 of 28 November 1994, establishing a Translation Centre for the bodies of the European Union, as amended by Council Regulation No 1645/2003 of 18 June 2003) since 1998, the agency has received merely a remuneration commensurate with its services to inter-institutional cooperation in the form of translation.

⁷ Europol will receive a Community subsidy as from 2010.

⁸ European Monitoring Centre on Racism and Xenophobia prior to 15.02.2007.

⁹ Mandate expired on 31 December 2008.

	Agency	Founding act	Contribution from EU budget	Separate discharge from EP
21	European Network and Information Security Agency	10.03.2004	yes	yes
22	European Centre for Disease Prevention and Control	21.04.2004	yes	yes
23	European Railway Agency	29.04.2004	yes	yes
24	European Global Navigation Satellite System Supervisory Authority	12.07.2004	yes	yes
25	European Defence Agency	12.07.2004	no	no
26	European Agency for the Management of Operational Coordination at the External Borders of the Member States of the European Union	26.10.2004	yes	yes
27	Community Fisheries Control Agency	26.04.2005	yes	yes ¹⁰
28	European Chemicals Agency	18.12.2006	yes	yes ¹¹
29	Institute for Gender Equality	20.12.2006	yes	yes ¹²
30	European Agency for the Cooperation of Energy regulators ¹³			
31	European Electronic Communications Market Authority ¹⁴			
32	Agency for the management of SIS II, VIS and EURODAC ¹⁵			
33	European Support Office for Asylum ¹⁶			

¹⁰ The parliamentary discharge procedure for agencies, although not yet in application for these newly established agencies, is foreseen in their legal bases and will apply from the financial year in which they become financially autonomous.

¹¹ Idem

¹² Idem

¹³ COM (2007) 530 of 19.9.2007

¹⁴ COM (2007) 699 of 13.11.2007

¹⁵ See SEC(2008) 323 of 11.3.2008.

¹⁶ See SEC(2008) 323 of 11.3.2008.

Evaluation of agencies

1) State of play de jure and in practice

Overall retrospective evaluation of the agency

This type of evaluation assesses the *raison d'être* of the agency. Twenty four agencies' constituent acts stipulate the need to conduct an evaluation of the agencies' performance and/or of the founding act establishing the agencies.¹ In the case of 16 agencies² the constituent act establishes the timing of the first evaluation, e.g. 3-5 years after the agency's creation or entry into force of the founding regulation. In the other eight cases³ the regulation only mentions the obligation to conduct an evaluation on a regular basis without indicating the timing.

The constituent act of 17 agencies⁴ vests the agency itself with the responsibility to commission an independent external evaluation. In the rest of the cases⁵, the founding regulations vest this responsibility with the Commission.

The founding regulations of nine agencies⁶ do not foresee any obligation on evaluation. Seven of these agencies⁷ conduct an evaluation nevertheless. In four of them⁸ the evaluation is commissioned by the agency, and in three⁹ it is requested by the Commission. In the case of EU-OSHA an evaluation can be required by the agency and/or by the Commission.

The frequency of the evaluations differs among agencies and the period from one evaluation to the next can vary between 3 to 6 years.

The scope of the overall retrospective evaluation most often encompasses:

- Implementation of the constituent act;
- Agency's working methods and practices;
- Results obtained and fulfilment of mission;

¹ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, CFCA, EASA, EASO (as per Commission proposal), ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMSA, ENISA, ERA, ETF, FRA, FRONTEX, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL

² BEREC Office, ECDC, ECHA, EEA, EFSA, EIGE, EMSA, ENISA, ERA, FRA, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL

³ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO (as per Commission proposal), EMCDDA, ETF, FRONTEX

⁴ Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO (as per Commission proposal), ECDC, EEA, EFSA, EIGE, EMSA, FRA, FRONTEX, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL

⁵ ACER, BEREC Office, ECHA, EMCDDA, ENISA, ERA, ETF,

⁶ CdT, CEDEFOP, CPVO, EAR, EMEA, EU-OSHA, EUROFOUND, GSA, OHIM

⁷ CdT, CEDEFOP, CPVO, EAR, EMEA, EUROFOUND, OHIM

⁸ CdT, CPVO, EUROFOUND, OHIM

⁹ CEDEFOP, EAR, EMEA

- Agency's mandate, tasks, areas of activity, structure and functions defined in the founding regulation;
- Impact of the agency.

Evaluation of agencies activities and programmes (prospective and retrospective)

Article 25 of the Framework Financial Regulation¹⁰, establishes that all the agencies (except CPVO and OHIM)¹¹ should regularly carry out *ex ante* and *ex post* evaluations of programmes or activities which entail significant spending. The evaluation results should be sent to the Management Board.

In the case of evaluation of activities and programmes, the timing is defined by the lifecycle of the activities (*ex-ante/ex-post* evaluation).

Meta-study 2003

The purpose of the 2003 meta-study¹² was to contribute to the debate on the future of the Community agency system by taking a horizontal look at the individual evaluation reports that had been issued for ten (out of a total of fifteen) Community agencies at that time. The scope of this study is limited to those agencies that were created under the first pillar of the EU Treaty. The conclusions of the study are drawn on the basis of identified frequently recurring findings and other patterns in these reports.

The main conclusions centre on the rationale of outsourcing activities, the agencies' tasks and objectives, the primary addressees and beneficiaries of agencies' activities, agencies' relations with the European institutions and agencies' efficiency.

Meta-study 2008

A similar exercise was conducted in 2008. The 2008 meta-study¹³ was designed to increase the transparency concerning European agencies and respond to the information needs of the European institutions, in particular the European Parliament request for a cross-cutting analysis of evaluations of individual agencies. The study covered 26 European agencies, i.e. all first and third pillar agencies.

Some of the conclusions put forward in the 2008 meta-study touch upon agencies' relevance, the coherence of agencies' activities with the relevant Community policy, their effectiveness and added value.

Concretely:

- The evaluation reports tend to be more positive than negative as regards the relevance of agencies' objectives and priorities to the needs of their main addressees.

¹⁰ Regulation 2343/2002 of 23 December 2002, as last modified by Commission Regulation (EC, Euratom) N° 652/2008 of 9 July 2008, on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

¹¹ CPVO and OHIM are self-financed and thus are not covered by Article 185 of the Financial Regulation.

¹² Meta-evaluation on the Community Agency system. Final Report, European Commission, Budget Directorate General, Evaluation Unit, 15 September 2003

¹³ Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings. Final Report, Eureval/Rambøll-Management, September 2008

- The reasons put forward when agencies have been created or renewed tend to be just a repetition of the rationale for launching the EU policies served by these agencies. How a policy would work in the absence of an agency is a point which is most often missed.
- In the medium term, the objectives and priorities of the agency's work programme tend to be formally coherent with that of the concerned EU policy. This formal coherence is facilitated where the EU policy objectives are stated in a strategy document.
- The agencies and/or evaluators identify coherence or coordination issues with about two other agencies on average. Coherence issues are most often addressed in an informal way through coordination meetings and consultations.
- There are frequent coherence issues with other bodies such as international agencies or European intergovernmental bodies. These issues are most often managed through informal coordination approaches.
- Evaluation reports often assess effectiveness by analysing the clients' satisfaction and they tend to conclude positively in this respect.
- Assessments of added value are quite often positive and expressed in a conclusive way. The main areas where Community value is added are the production of European-level information, the setting of EU-wide methodological standards, and the contribution to policy-making processes at EU level.
- A positive image of the progress achieved in terms of internal efficiency, often in relation to the development of information technologies.
- This report shows that the issues covered in evaluation reports are uneven. Some issues are covered well enough across agency evaluations, i.e. relevance, coherence, Community added value, and internal efficiency. Other issues are however addressed in a few agencies only.

Evaluation of the system of EU decentralised Agencies, Jan-Nov 2009

As announced in the Communication "European agencies - The way forward"¹⁴, the Commission launched a thorough evaluation of the regulatory agencies, which will take a horizontal look at all agencies. This evaluation examines the efficiency and effectiveness of agencies, assessing the different factors that influence them. It shows a comparative view and will attempt to propose certain comparable indicators across the agency system. This evaluation will take into account the findings of the 2 meta-studies of 2003 and 2008. The Commission intends to report on the results of this evaluation by 2009-2010.

Review of the Founding Regulation

The evaluation may be followed by a revision of the founding regulation, by recommendations concerning the functioning of the agency, including putting an end to its activities.

¹⁴ Communication from the Commission to the European Parliament and the Council "European agencies - The way forward", COM(2008) 135 final

The founding regulation of 18 agencies¹⁵ foresee that on the basis of the evaluation, an appropriate body may present a proposal for a revision of the founding regulation establishing the agency or issue recommendations regarding changes on various issues, such as its working practices, tasks and the scope of its mission.

CdT's operating procedures as defined in the founding regulation can be reviewed by the Council on the basis of a proposal from the Commission and after the opinion of the European Parliament.

In the case of ECHA the Commission will carry out a review in order to assess whether to extend the application of the obligation to perform a chemical safety assessment and to document it in a chemical safety report to substances currently not covered by this obligation. On the basis of this assessment the Commission may, if appropriate, present a legislative proposal. Several reviews are foreseen, the first one is to take place by 1 June 2012 at the latest.

The constituent acts of all 2nd pillar agencies (EDA, EUSC and ISS) foresee that the head of agency presents a report to the Council on the implementation of the Joint Action establishing an agency with a view to its possible review.

Detailed information concerning the agencies' evaluations and the review of their founding regulations are presented in the Annex to this Fiche.

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

¹⁵ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CdT, CFCA, EAR, EASA, ECDC, EFSA, EMCDDA, EMSA, ENISA, EIGE, ERA, ETF, EU-OSHA, FRA, FRONTEX, CEPOL

ANNEX TO ANALYTICAL *FICHE* N°29

Agencies (1st pillar)	Provision of the Basic Legal Act on evaluation	Evaluation of activities: Nature/Commissioned <u>by</u>	Evaluation's date: Last/<u>Next</u>	Revision of Founding regulation
ACER (Agency for the Cooperation of Energy Regulators)	By the Commission with the assistance of an independent external expert. 3 years after the first Director has taken up his duties and then at least every 4 years.	Retrospective/Commission	3 years after the first Director has taken up his duties/ at least every 4 years	Recommendations from the Board of Regulators to the Commission.
Agency for Operational Management of SIS II, VIS and EURODAC	By an external expert. Within 3 years from the date of the agency having taken up its responsibilities, and every 5 years thereafter.	Retrospective/agency	within 3 years from the date of the agency having taken up its responsibilities/ every 5 years thereafter	Recommendations from the Management Board to the Commission.
BEREC Office	By the Commission. Within 3 years of the effective start of operations.	Retrospective/Commission	within 3 years of the effective start of operations/____	_____
CdT (Translation Centre for the bodies of the EU)	_____	Retrospective/agency	2001/____	3 years after the end of the Centre starting-up period.

CEDEFOP (European Centre for the Development of Vocational Training)	_____	Retrospective/Commission	2007/2013	No references to an external evaluation by the Commission in the Founding Regulation
CFCA (Community Fisheries Control Agency)	By an external evaluator. Evaluation requested by the Management Board (5 years after the agency start-up).	/agency	2004/ every five years	_____
CPVO (Community Plant Variety Office)	_____	Retrospective (2001)/agency Satisfaction survey (2004)/ agency	2004/ <u>2009</u>	No provisions mentioned in the founding regulation, but an evaluation on the CPVO regime is planned in 2010/2011.
EAR ¹ (European Agency for Reconstruction)	By the Commission (30.06.2004 at the latest)	Retrospective/Commission	2008/ N/A	30.06.2004 at the latest.
EASA (European Aviation Safety Agency)	By an external evaluator. Evaluation requested by the Management Board (3 years after the start-up, then every 5 years).	/agency-IA-Commission	2008/ every 5 years	_____

¹ Agency's mandate expired on 31 December 2008, agency disbanded.

EASO (European Asylum Support Office)	By an external evaluator. 3 years after the agency becomes operational. Future evaluations decided by the Management Board in agreement with the Commission.	Retrospective/Commission	3 years after the agency becomes operational/ to be decided by the Management Board in agreement with the Commission	On the basis of evaluation report.
ECHA (European Chemicals Agency)	01.06.2012 at the latest	Retrospective /Commission	Not evaluated yet / <u>2012</u>	Several reviews are foreseen (ex: scope of application, review of annexes...) 1.06.2008 1.12.2008 1.06.2012 1.06.2013 1.06.2014 1.06.2019
ECDC (European Centre for Disease Prevention and Control)	By an external evaluator. Evaluation requested by the Management Board (20.05.07 at the latest; periodicity afterwards to be determined).	/agency	2008/ to be determined <u>article 14B of founding regulation provides for external evaluations to be carried out every five years</u>	Recommendations from the Management Board to the Commission.

EEA (European Environment Agency)	By the agency (before the 15.12.1999). After Commission report and Council evaluation (31.12.2003 at the latest).	Retrospective/agency	2000-2004-2006/ <u>2008- 2009</u> and every 5 years afterwards	_____
EFSA (European Food Safety Authority)	By an external evaluator. Evaluation requested by agency on the basis of a mandate issued by the Management Board in agreement with the Commission (before 01.01.2005, afterwards every 6 years).	Retrospective/agency	2005/ every 6 years afterwards	Recommendations from the Management Board to the Commission. ., the Council and the European Parliament (Article 61 (3) of Regulation (EC) No 178/2002).
EIGE (European Institute for Gender Equality)	18.10.2010 at the latest. The institute will request an external evaluation upon the basis of a mandate issued by the Management Board.	/agency	Not evaluated yet / <u>2010</u>	Recommendations from the Management Board to the Commission.
EMCDDA (European Monitoring Centre for Drugs and Drug Addiction)	By an external evaluator, every six years (coincide with the completion of two of the Centre's three-year work programmes.	Retrospective/Commission	2007/2013 and every 6 years afterwards	In the context of the evaluations the Commission may present a proposal for a revision of the founding regulation.
EMA (European Agency for the Evaluation of Medical Products)	_____	Retrospective/ Commission	2000/2009 every 5 years after 2010 (request by the European Parliament)	Recommendations from the Management Board to the Commission

				and Parliament (request by the Parliament)
EMSA (European Maritime Safety Agency)	By an external evaluator. Evaluation commissioned by the Management Board which has delivered tasks specification to the contractor in agreement with the Commission. 5 years after the agency start-up in 2003.	Retrospective/external evaluator	<u>2008</u> / ____	Evaluation completed (Such evaluation recommended an amendment to the founding regulation to include regular evaluations every 5 years).
ENISA (European Network and Information Security Agency)	By the Commission (17.03.2007 at the latest) ² .	Retrospective/	2007/ ____	Recommendations from the Management Board to the Commission (2007). Commission Proposal foreseen for March 2010.

² The agency was established the 14 March 2004 for a period of five years.

ERA (European Railway Agency)	By the Commission. 5 years after the beginning of the agency's activities.	Retrospective/Commission	____/2010	No recommendations from the Management Board. However, the EP and the Council will examine the convenience of revising the management board's composition, in accordance with the general framework that will be adopted by the Regulatory agencies.
ETF (European Training Foundation)	The Foundation shall regularly carry out ex ante and ex post evaluations of its activities where these necessitate significant expenditure. The Governing Board shall be notified of the results of these evaluations.	Retrospective & prospective/ Commission	2002-2006/2007-2008	The Commission shall evaluate the implementation of the regulation every four years. The evaluation shall be carried out by external experts
EU-OSHA (European Agency for Occupational Safety and Health)	_____	Retrospective/ Commission-external(2001) agency-external (2007)	2001/EC/external 2007/retrospective/agency/ external	5 years after coming into force at the latest.

<p>EUROFOUND (European Foundation for the Improvement of Living and Working Conditions)</p>	<p>The EUROFOUND regulation has no provision for evaluation. The EUROFOUND financial regulation provides for "<i>ex ante</i> and <i>ex post</i> evaluations of programmes or activities... which entail significant spending (...)".</p>	<p>Global evaluation of agency: Retrospective/external evaluators (2001)</p> <p>Ex-post evaluation of the 4-year work programme: Retrospective/external evaluators, external consultants</p> <p>Ex-ante evaluation of the 4-year work programme: Prospective/internal</p>	<p>Global: : beginning (1976) until 2001</p> <p>Ex-post evaluations of the 4-year work programmes: ➤ 2001-2005 (2007) 2005-2008 (2009)</p> <p>Ex-ante evaluation of the 4-year work programme: 2009/2012</p>	<p>_____</p>
<p>FRA (Fundamental Rights Agency - Ex European Monitoring Centre on Racism and Xenophobia)</p>	<p>The agency regularly evaluates its activities ex ante and ex post. By 31.12.2011 the agency will request an external evaluation for its first 5 years of activity. The time and scope of successive external evaluation will be decided by the Management Board in agreement with the Commission.</p>	<p>Retrospective/agency (in practice also Commission)</p>	<p>Not later than 31.12.2011</p>	<p>Commission proposal after having assessed the evaluation report and the recommendations from the Management Board.</p>
<p>FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU)</p>	<p>By an external evaluator. Evaluation requested by the Management Board (during the 3 years after its start-up, then every 5 years).</p>	<p>Retrospective/agency</p>	<p>2008/2013 and every 5 years then</p>	<p>Recommendations from the Management Board to the Commission.</p>

GSA (European GNSS Supervisory Authority)	<p style="text-align: center;">_____</p>	<p style="text-align: center;">_____</p>	<p style="text-align: center;">_____</p>	Commission proposal to modify Regulation 1321/2004 was adopted on 24 March 2009 and is currently examined by Council and Parliament.
OHIM (Office for Harmonisation in the Internal Market)	<p style="text-align: center;">_____</p>	Retrospective/agency Prospective/ Commission - as part of 2009-2010 study on functioning of the trade mark system in Europe	2001/ <u>2008</u>	<p style="text-align: center;">_____</p>

Agencies (2nd Pillar)	Provision of the Basic Legal Act on evaluation	Evaluation: Nature/Commissioned <u>by</u>	Evaluation(s) date last/next	Revision of Founding regulation
EDA (European Defence Agency)	_____	_____	_____	No later than 3 years from the entry into force of the Joint Action.
EUSC (European Union Satellite Centre)	_____	_____	_____	No later than 3 years from the entry into force of this Joint Action.
ISS (European Institute for Security Studies)	_____	_____	_____	No later than 3 years from the entry into force of this Joint Action.

Agencies (3rd Pillar)	Provision of the Basic Legal Act on evaluation	Evaluation: Nature/Commissioned by	Evaluation(s) date last/next	Revision of Founding regulation
EUROPOL (European Police Office)	Within 4 years of the date of application of the Council Decision and 4 four years thereafter. Independent external evaluation of the implementation of the Decision and of the EUROPOL's activities, commissioned by the Management Board.	Retrospective/agency	within 4 years of the date of application of the Council Decision/ every 4 years thereafter	_____
EUROJUST (European Union's Judicial Cooperation Unit)	Before 4 June 2014 and every five years thereafter. Independent external evaluation of the implementation of the Council Decision and of the EUROJUST's activities commissioned by the College.	Retrospective/agency	before 4 June 2014/ and then every 5 years	_____
CEPOL (European Police College)	Within 5 years after the Council Decision takes effect, and every 5 years thereafter. Independent external evaluation of the implementation of the Decision and of the CEPOL's commissioned by the Governing Board.	Retrospective/agency	within 5 years after the Council Decision takes effect/ every 5 years thereafter	_____

Transparency/Relations with stakeholders¹

1) State of play *de jure* and in practice

Access to documents

All twenty-seven 1st pillar agencies should apply the principles of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents². The Management Board adopts the practical arrangements for implementing Regulation (EC) No 1049/2001. Twenty-two agencies' founding regulations³ stipulate that these practical arrangements should be adopted within six months of entry into force of the founding regulation establishing the agency, whereas for five agencies⁴ the deadline is not foreseen.

The constituent acts of the 2nd pillar agencies - EDA, EUSC, ISS - and of the 3rd pillar agencies - CEPOL, EUROJUST and EUROPOL - foresee that the Management Board adopts rules on public access to the documents of the agencies upon a proposal by the Director, and taking into account the principles and limits laid down in the above-mentioned Regulation (EC) No 1049/2001.

According to the Article 15(3)⁵ of the consolidated version of the Treaty on the Functioning of the European Union, as amended by the Lisbon Treaty⁶, any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Union institutions, bodies, offices and agencies.

Transparency

The founding regulations of nine agencies⁷ include provisions which explicitly state that the agency should act with a high level of transparency. Often the founding regulations request agencies to publish relevant documents on their websites, such as the list of members of the Management Board and Scientific Committees, the minutes of the Management Board's

¹ This fiche refers to "stakeholders" in the general sense of the term. In fact, for some agencies it includes Member States and the Commission, for some other agencies it refers to civil society.

² OJ L 145, 31.05.2001, p. 43

³ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, CEDEFOP, CdT, CFCA, EAR, EASA, EASO (as per Commission proposal), ECDC, EEA, EFSA, EIGE, EMEA, EMSA, ENISA, ERA, EU-OSHA, EUROFOUND, FRA, GSA, OHIM

⁴ CPVO, ECHA, EMCDDA, ETF, FRONTEX

⁵ "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph. (...)"

⁶ OJ C 115, 09.05.2008, p. 47

⁷ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, ECHA, EFSA, EMSA, ENISA, ETF, FRA

meetings, the annual activity report, the internal rules of procedure, the evaluation report, the opinions issued by the agencies, as well as specific documents produced by the agencies as defined in the founding regulation, e.g. the annual aviation safety review in the case of EASA. Thirteen agencies' founding regulations⁸ stipulate that the opinions, documents as well as information and databases concerning their activities are accessible to the general public.

Consultations and contacts with stakeholders

Nine agencies' founding regulations⁹ include provisions on consultations with relevant stakeholders in the framework of the accomplishment of the tasks of agencies.

In addition, nine agencies' founding regulations¹⁰ stipulate the need to establish appropriate contacts with interested parties, such as public and private specialised bodies, national or international authorities, foundations, educational institutions, workers' and employers' organisations, in order to exchange, on a regular basis, experiences and information in the domain of their activities.

The founding regulations of five agencies¹¹ foresee the cooperation with the stakeholders via the networks established by the agency. The stakeholders' views are taken into account during the evaluation on the implementation of the founding regulation of 11 agencies¹².

Participation of stakeholders in agency's bodies

Three agencies' founding regulations¹³ stipulate that representatives of the employers' and employees' organisations from Members States are members of the Management Board.

The founding regulations of six agencies¹⁴ foresee the possibility for the representatives of interested parties to participate in the meetings of the agency's bodies as observers.

According to their founding regulation, nine agencies¹⁵ establish advisory bodies whose members are stakeholders and interested parties. These bodies give their opinions regarding the activities of the agencies as well as preparation of some documents, e.g. work programmes.

EUROJUST and EUROPOL

In order to perform their tasks, both agencies have established information systems enabling the national authorities to have access to the data gathered by the agencies. Individuals may have access to data which directly concern them.

⁸ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, ECDC, ECHA, EFSA, EIGE, EMEA, EMSA, ENISA, ERA, EU-OSHA, ETF

⁹ ACER, CFCA, CPVO, EASA, ECHA, EFSA, EIGE, EMEA, ERA

¹⁰ CEDEFOP, ECDC, ECHA, EEA, EFSA, EMCDDA, EU-OSHA, EUROFOUND, ETF

¹¹ EEA, ECDC, EIGE, EMCDDA, EU-OSHA

¹² Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, EASA, EASO (as per Commission proposal), ECDC, EIGE, EMSA, ENISA, ERA, FRA, FRONTEX

¹³ CEDEFOP, EU-OSHA, EUROFOUND

¹⁴ ECHA, EMCDDA, EMSA, ENISA, ERA, ETF

¹⁵ CFCA, EASA, EASO (as per Commission proposal), ECDC, EIGE, EMEA, ENISA, ERA, FRA

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Commission role

1) State of play de jure and in practice

The European Commission's role vis-à-vis European regulatory agencies is mainly governed by:

- The provisions of the agencies' constituent acts;
- Article 185 of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹;
- The Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, as last modified by Commission Regulation (EC, Euratom), No 652/2008 of 9 July 2008 on the framework Financial Regulation for the bodies referred to in Article 185 of the above-mentioned Council Regulation (EC, Euratom) No 1605/2002².

The Commission has a dual role to play towards agencies - supervision and assistance in different areas. This role is defined through its right of initiative, its representation on the Management Board, nomination power, political supervision, examination of legality, implication in the budget procedure and in the agencies' audit via the Internal Audit Service, as well as through its agreement to agencies' implementing rules under the Staff Regulations.

Right of initiative

The European Commission has the right of initiative concerning the creation of European Union regulatory agencies and draws up proposals establishing such agencies. Together with the proposal for the creation of an agency, the Commission provides detailed information on the multi-annual budgetary and staffing consequences of the proposal in a so-called legislative financial statement. Concerning the 3rd pillar agencies, the right of initiative is shared with the Member States.

Representation on the Management Board

The Commission has its representatives on the Management Board and, where existing, on the Executive Board of all but 3rd pillar agencies. Their number varies from 1 to 6. In some cases, Commission representatives are without voting rights. In some agencies the Commission representative chairs the Management Board. Further details on the composition and designation of the Management Board can be found in Fiche 5.

Nomination power

The Commission plays a role in the nomination procedure of the Director in all 1st pillar agencies, except for OHIM. Notably, in some cases, the Commission prepares a short list of candidates for the post of Director, who is then appointed by the Management Board or by the Council. In other cases, the Commission appoints the Director upon a proposal of the

¹ OJ L 248, 16.09.2002

² OJ L 357, 21.12.2002

Management Board. Further details on the appointment and dismissal of the Director can be found in Fiche 7.

The Commission plays an important role during the agency's establishment, by appointing the Interim Director from within its organisation.

The Commission is involved in the appointment procedure for members of other bodies of most agencies - scientific committees, boards of appeal, working parties and others - or has its representatives at those bodies.

Political supervision

In most agencies, the Commission is involved in the process of adopting the annual work programme. In some cases the Commission is consulted³, in others the annual work programme is adopted after receiving the Commission's opinion⁴, while in two cases the Commission agreement is necessary before an annual work programme can be approved⁵. Some agencies' founding regulations do not impose an annual work programme and some do not specify the role of the Commission concerning the adoption of the annual work programme. In this case, there are often informal consultations between the agency and the parent DG. Further details on the agencies' annual work programme can be found in Fiche 13.

The Commission receives the annual activity report of agencies. Providing such information to the Commission can be either an obligation stemming from the founding regulation or a voluntary practice.

Most agencies have to receive the Commission's opinion before adopting the multi-annual staff policy plan⁶. The Commission is also consulted during the process of drafting and/or approval of some agencies' rules of procedure of the Management Board.

For most agencies, the Commission can request an independent external evaluation of agencies' activities, assessing, *inter alia*, the degree of implementation of the founding regulation, the results obtained by the agency and its working methods. In some cases, following the evaluation, the Commission can present, if necessary, a proposal for revision of the agency's founding regulation. Further details on evaluation of agencies can be found in Fiche 29.

Examination of legality

In the case of four agencies⁷ Member States, members of the Management Board and third parties directly and personally involved may refer to the Commission any act of the agency, whether express or implied, for the Commission to examine the legality of that act.

In the case of CPVO and OHIM, the Commission shall check the legality of those acts of the President in respect of which Community law does not provide for any check on legality by another body and of the acts of the Administrative Council relating to the Office's budget and of the Budget Committee respectively. Member States, any members of the Management Board or any persons directly and personally involved in the case of CPVO, while only

³ ACER, Agency for Operational Management for SIS II, VIS and EURODAC (as per Commission proposal), EAR, EASO (as per Commission proposal), EFSA, EIGE, ETF, EU-OSHA, CEPOL

⁴ CFCA, EASA, EEA, EMCDDA, EMSA, ENISA, ERA, FRA, FRONTEX, GSA, EUROPOL

⁵ CEDEFOP, EUROFOUND

⁶ See Fiche 23 on the process of adopting a multi-annual staff policy plan.

⁷ CEDEFOP, ECDC, EU-OSHA, EUROFOUND

Member States and any person directly and personally involved in the case of OHIM, may refer to the Commission the abovementioned acts of the President, whether express or implied, to examine the legality of those acts.

Budget and accounts

The Commission receives an agency's estimate of revenue and expenditure, which includes a draft establishment plan. This estimate is then forwarded by the Commission to the European Parliament and the Council, together with the preliminary draft general budget of the European Union. On the basis of the statement of estimates, the Commission enters in the preliminary draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the grant to be charged to the general budget, which it places before the budgetary authority in accordance with Article 272 of the Treaty.

Similarly, during the financial year itself, to the extent it considers necessary, the Commission forwards agency requests for changes to the authorised amount of the Community grant or to the authorised establishment plan to the budgetary authority, entered in a preliminary draft amending budget⁸.

The Commission accounting officer receives the provisional accounts of an agency together with a report on the budgetary and financial management for that financial year. The Commission consolidates the provisional accounts of the institutions and decentralised bodies. The Commission forwards then the provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year is also forwarded to the European Parliament and the Council. The Commission, together with the European Parliament, the Council, and the Court of Auditors receives the final accounts with the Management Board's opinion.

Financial regulation

The Commission is consulted on the agency's specific financial regulation. Where agencies receive Community subsidies, the rules defined in the agency specific financial regulation have to be consistent with the Commission Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) N° 1605/2002 unless specifically required for the agency's operation and with the Commission's prior consent.

Audit

Article 185(3) of the Financial Regulation stipulates that: "The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1⁹ as he/she does in respect of Commission departments". For further information on internal audit, please refer to Fiche 26.

⁸ During the financial year, the agency may make transfers within the limits laid down in Article 23 of the Framework Financial Regulation (Commission Regulation (EC, Euratom) No. 2343/2002 of 23 December 2002, as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008).

⁹ Article 185(1) "The Commission shall adopt a framework financial regulation for the bodies set up by the Communities and having legal personality which actually receive contributions charged to the budget. The financial rules of these bodies may not depart from the framework regulation except where their specific operating needs so require and with the Commission's prior consent."

Implementing rules to the Staff Regulations

Agencies shall adopt implementing provisions for giving effect to the Staff Regulations and Conditions of Employment for other servants. Pursuant Article 110 of the Staff Regulations, agencies shall do so in agreement with the Commission.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

Parliament role

1) State of play de jure and in practice

I. Introduction

European Parliament's role in the supervision of European agencies is mainly governed by the provisions of the constituent acts, Article 185 of the Financial Regulation 1605/2002 applicable to the general budget, the Framework Financial Regulation 2343/2002, and by Parliament's internal rules and guidelines in force¹. These have developed in practice and can be looked at through traditional Parliament's roles and prerogatives: co-legislator, arm of the budgetary authority, nomination power, political supervision, user of expertise.

1. Co-legislator

When it is co-legislator:

- Parliament can **create or prevent the creation** of a new agency, although it has never prevented the creation of an agency so far.
- Parliament can influence the scope of tasks, competencies, activities, objectives, structures and accountability mechanisms of agencies, including possible parliamentary supervision.

2. Arm of the budgetary authority

a) Budget

According to Article 272 of the EC-Treaty, European Parliament decides in close collaboration with the Council in the case of "non-compulsory expenditures" and therefore also on the **budget of European agencies**. Currently 23 agencies are (fully or partially) funded by the Community budget².

- Since the 2006 IIA on **budgetary discipline** (Article 47), Parliament can ensure that no agency is created before an agreement on its funding is reached.
- The **budgetary procedure boosts bilateral contacts** between Parliament's Committees on Budgets and on Budgetary Control (BUDG/CONT) and the agencies (see their annual meeting with agencies), as well as between the specialised committees and the agencies in order to identify and clarify budgetary needs of the agencies.

¹ Decision of the Conference of Presidents of 5 March 1998 concerning rules on the designation by the EP of members of the management board of the specialised agencies and bodies; Conference of Committee Chairs' "Guidelines on cooperation between the committees with competence concerning the decentralised Community agencies" of 14 July 1998; Rule 119 of the Rules of Procedures on requests to European Agencies.

² For more detailed information see: Working Document Part IV, Table 3, Preliminary Draft General Budget of the European Commission for the Financial Year 2009, COM (2008) 300, May 2008.

- In the annual budget procedure, by putting a certain amount of agencies' budget in **the reserve** (as it did so in 2007 and 2009), it can possibly contain the evolution of their cost but also impose extra information requirements: for instance.
- before releasing the reserve for the 2007 budget, BUDG required a positive evaluation of the specialised committees on the basis of agencies' work programmes; in this context, the Committee on Industry, Research and Energy (ITRE) required additional information from ENISA and GSA, and held an exchange of views with the Executive Directors in the frame of the ordinary committee meetings.
- before considering releasing the reserve for the 2009 budget, the Committee on the Environment, Public Health and Food Safety (ENVI) required EFSA to provide prove of full operability and efficient working methods; in this context, ENVI required additional information from EFSA, and held an exchange of views with the Executive Director in the frame of the ordinary committee meetings.
- In accordance with Articles 23 and 24 of the Financial Regulation applicable to the general budget, the Commission has to send a request for lifting the reserve to BUDG. The reserve will only be released if BUDG agrees to such a request.

b) Discharge

The European Parliament, on a recommendation from the Council of the EU, gives the Commission a **discharge** for the implementation of the budget pursuant to Article 276 of the EC-Treaty. The discharge procedure applicable to the agencies is laid down in the financial regulations³.

These rules require Parliament to give a discharge to the decentralised agencies which actually receive grants charged to the EU budget. CONT monitors the implementation of the EU budget by the agencies through the discharge procedure.

During the discharge procedure CONT may organise hearings with the agencies' directors or ask them to answer written questions. The directors of the agencies are required to submit to Parliament any information required for the smooth application of the discharge procedure. In addition, the directors of the agencies must act on Parliament's observations accompanying the discharge decisions. At Parliament's request, they shall report on the measures taken. CONT regularly follows up on these observations in the next discharge exercise.

Through the discharge exercise CONT regularly highlights accountability issues such as the need for the publication of performance indicators and for regular evaluation of the agencies by the Commission.

3. Nomination power

a) Management Board

The rules and procedures for the **nomination of Management Board members**⁴ of

³ Council Regulation (EC, Euratom) No 1605/2002 applicable to the general budget, Article 185(2); Commission regulation No 2343/2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation applicable to the general budget, Articles 94-96

⁴ Terminology differs, e.g. use of the term "Governing Board" (ETF) or "Administrative Council" (CPVO) instead of "Management Board".

regulatory agencies differ to a large extent⁵:

- The **number, as well as the composition** of Management Board members **differ**.
- Parliament is **involved in the nomination process** of some (see below) members of the management boards of eight agencies (ACER, ETF, ECDC, EEA, EFSA, EMCDDA, EMEA, ECHA) which fall under the remit of four committees (LIBE⁶, EMPL⁷, ITRE and ENVI).
- Two members of the ACER, EMCDDA, ECDC, ECHA, EEA and EMEA management board are **directly designated by the European Parliament**. For ETF, European Parliament appoints three non-voting experts to the "Governing Board". In addition, European Parliament is to be **consulted** in the nomination of all members of EFSA management board and of four specialist members of the EMEA management board.
- When negotiating EFSA's founding regulation, Parliament accepted to give up its nominees in the Management Board if the Member States dropped the usual practice of "one representative per Member State". **EFSA's board** is then composed of only **14 members** appointed by the Council in consultation with the European Parliament from a list drawn up by the Commission, plus a representative of the Commission.

Where the European Parliament is involved in the nomination of management board members⁸:

- As a principle, those members should never be "representatives" of the Parliament - in order not to commit *a priori* the EP in agencies' activities: they are **independent** and have no formal mandate.
- Committees may organise **hearings** of the candidates in order to select them and clarify Parliament's expectations.
- As the "**eyes and ears**" of Parliament, they constitute a valuable source of information for the competent committee (e.g. circulation of meeting documents, feedbacks).
- They may report about Parliament's positions inside the management board.
- They may be directly involved in EP's activities (e.g. presence or participation in hearings of experts, support to the organisation of a committee delegation to the agency).
- The more they are active in the board, the more they are a useful interlocutor for Parliament (for instance, the EP-nominee for the ECDC management board has been appointed vice chair of the management board).

⁵ EUROFOUND shall transmit the rules of procedure of the Governing Board for information to the European Parliament.

⁶ Committee on Civil Liberties, Justice and Home Affairs

⁷ Committee on Employment and Social Affairs

⁸ In relation to the following political approach see: "Decision of the Conference of Presidents of 5 March 1998 concerning rules on the designation by the EP of members of the management board of the specialised agencies and bodies".

- In cases where the European Parliament has to be consulted in the nomination process, the **lists of candidates** drawn up by the Commission tend to be too short to allow sufficient margin for manoeuvre for MEPs, although the founding acts foresee that such list "includes a number of candidates substantially higher than the number of members to be appointed".

b) Executive Director

Usually the Executive Directors⁹ of the regulatory agencies shall be appointed by the management boards on the basis of a list of candidates proposed by the Commission. The founding acts of ten agencies (ACER, ETF, EFSA, ECDC, EMEA, ENISA, ECHA, EMCDDA, Gender Institute and FRA) however provide - with every time a comparable wording - that, before appointment, the candidate nominated by the Management Board shall be invited without delay to make a **statement before the European Parliament** and to answer questions put by members of this institution¹⁰. This presentation is generally without legal consequences except for the Director of the FRA where a so-called "**cooperation procedure**" is foreseen: on the basis of a list drawn up by the Commission, applicants are asked to address the Council and the competent EP committee. Parliament and Council then give their opinions and state their orders of preference, and the Management Board appoints the Director taking these opinions into account. In any case:

- Parliamentary committees developed the practice to organize a formal **hearing** of the Executive Directors designated in order to give some political and parliamentary inputs to the nomination procedure. Recent examples show that the hearing is not purely ceremonial (e.g. hearing of the nominated ECHA's Executive Director or hearing of the newly appointed ENISA's Executive Director).
- **Parliament can indirectly and informally influence** the nomination of an Executive Director when it has nominees in the Management Board.

c) Other agency bodies

Parliament also nominates two members of the Experts Forum of the Gender Institute and is consulted on the composition of the Scientific Committee of the FRA.

In some cases, European Parliament may also intervene in the nomination process of agency body members if this is not explicitly foreseen in the founding regulation but considered as being politically appropriate¹¹.

4. Political supervision

Political supervision is based on practical arrangements between Parliament and the relevant agencies rather than on legal requirements:

- In order to ensure **information flow** on a regular basis from the agencies to the relevant Committees in the Parliament some Committees;
- appoint a "**standing rapporteur**" or "**contact person**" for agencies under the

⁹ Terminology differs, e.g. "President" (OHIM) instead of "Executive Director".

¹⁰ Some agencies have specific rules for reappointment of the Executive Director (e.g. FRA and ETF). Furthermore, the founding regulation of BEREC Office foresees that the candidate selected by the Management Committee may be subject to a non-binding opinion of the European Parliament.

¹¹ In 2008, e.g., ENVI commented on the short list of candidates for the ECHA Board of Appeal.

committee's responsibility (e.g. contact persons in ENVI for EMEA, EFSA, EEA, ECDC and ECHA, also ITRE opted to appoint standing rapporteurs for GSA and ENISA);

- give a specific administrator the task of following-up one or several agencies;
- formalise their relations to agencies through an **exchange of letters** (e.g. ENVI-EEA);
- Parliament generally receives agencies' **work programmes and activity reports** which are most often drawn up on an annual basis, although some agencies provide longer programmes or more frequent reporting. Such information to Parliament can be an obligation stemming from the founding regulation or rather a voluntary practice¹²;
- Parliamentary committees **monitor** agencies' activities but can also **influence** the agencies' working agenda, notably by **discussing it once a year with the Executive Directors**¹³;
- Committees may win additional influence by linking the presentation of the work programmes to the budgetary procedure; the specialised committee assesses the annual programme and send an **evaluation letter** to the BUDG Committee;
- Committees may obtain the creation of an extra budget line to allow an agency to start work on a given topic (e.g. OSHA on the implementation of health and safety regulations in the SMEs);
- The FRA's founding regulation provides for **Parliament's consultation** on its 5-year multi-annual framework (which is adopted by Council). Such provision resulted in a LIBE report and a plenary resolution on 17 January 2008 proposing a number of amendments. In addition, the framework must take into account the EP resolutions in the field of fundamental rights;
- **Parliamentary committees organise visits to agencies.** Since January 2008, the revised rules on travel by committee delegations has extended to all agencies the possibility to send, every two years, a three-member delegation outside the quota normally available for committee delegations. Committees tend to consider these committee delegations as an important way to keep a link with their agencies¹⁴.

5. User of agencies' expertise

Some founding regulations explicitly require agencies to provide the Community institutions with scientific or technical advice (e.g. EMEA, EFSA and ECHA), whereas other agencies' tasks are mainly focussed on data collection or comparable functions. Parliament may be a direct beneficiary of agencies' expertise:

¹² See, e.g. legal requirements for EU-OSHA and CDT to send annual reports on Agency's activities to the European Parliament.

¹³ The Executive Director of EFSA may invite representatives of the European Parliament to take part in the work of the EFSA Advisory Forum.

¹⁴ ITRE, e.g., visited ENISA with a delegation in 2008 when the legislative proposal on extending the mandate of the agency was being discussed in the committee in order to gather an in-depth view on the functioning of the agency. This delegation visit took place under the special quota set aside for visiting agencies.

- Parliament may use the information (e.g. **reports, studies, scientific opinions**) published by the agencies in the framework of their usual activities;
- **Parliament may submit requests** to agencies, where the founding regulation provides for it (e.g. EFSA and ECHA) and pursuant to the Article 119 of the Rules of Procedure. In practice, Parliament's requests are also expressed where it does not formally have this right, and they can be formulated in a different manner, for instance in the context of a debate on an agency's work programme (see point 4 above);
- **Executive Directors** may come to committee meetings for an **exchange of views** on a report published by their agency;
- Agency experts may be invited to address the committee during **hearings** or **seminars** on a particular topic. They can also be invited to **brief a rapporteur** in the context of an ongoing parliamentary procedure;
- Individual MEPs may even be associated to an agency's activity (e.g. internal working groups on disease surveillance networks within the ECDC).

2) Critical analysis of the issue at hand

3) Possible solution(s) for addressing identified weaknesses

4) Possible ways for implementing the viable solution(s)

ANNEX I TO ANALYTICAL FICHE N°32

	EC, Euratom and EU decentralised agencies	Founding act	Grant from EU budget	subject to separate discharge from EP	Codecision at the time of creation/ revision	Seat	Responsible committee¹⁵	Nominees in the Board	Involvement in the nomination of the Director
1	European Centre for the Development of Vocational Training	10.02.1975	Yes	Yes	No/No	Thessalonique	EMPL*	-	No
2	European Foundation for the Improvement of Living and Working Conditions	26.05.1975	Yes	Yes	No/No	Dublin	EMPL*	-	No
3	European Environment Agency	07.05.1990	Yes	Yes	No/Yes	Copenhagen	ENVI*	2	No
4	European Training Foundation	07.05.1990	Yes	Yes	No/Yes	Turin	EMPL*	(3)	No
5	European Monitoring Centre for Drugs and Drug Addiction	08.02.1993	Yes	Yes	No/Yes	Lisbonne	LIBE*	2	Yes
6	European Medicines Agency	22.07.1993	Yes	Yes	No/Yes	Londres	ENVI*	2/(4)	Yes
7	Office for Harmonisation in the Internal Market	20.12.1993	No	No	No/No	Alicante	JURI*	-	No
8	European Agency for Health and Safety at Work	18.07.1994	Yes	Yes	No/No	Bilbao	EMPL*	-	No
9	Community Plant Variety Office	27.07.1994	No	No	No/No	Angers	AGRI*	-	No
10	Translation Centre for the Bodies of the European Union	28.11.1994	No	Yes	No/No	Luxembourg	-	-	No
11	Europol	18.07.1995	No ¹⁶	No	No	The Hague	LIBE*	-	No
12	Fundamental Rights Agency ¹⁷	15.02.2007	Yes	Yes	No	Vienne	LIBE*	-	No
13	European Agency for Reconstruction ¹⁸	05.12.2000	Yes	Yes	No/No	Thessalonique	AFET*	-	No
14	European Police College	22.12.2000	Yes	Yes	No	Bramshill	LIBE*	-	No
15	European Institute for Security Studies	20.07.2001	No	No	No	Paris	AFET*	-	No
16	European Union Satellite Centre	20.07.2001	No	No	No	Madrid	AFET*	-	No
17	European Food Safety Authority	28.01.2002	Yes	Yes	Yes	Parme	ENVI*	-	Yes
18	Eurojust	28.02.2002	Yes	Yes	No	The Hague	LIBE*	-	No
19	European	26.06.2002	Yes	Yes	Yes	Lisbonne	TRAN*	-	No

¹⁵ Committee responsible as set out by Annex VI of the Rules of Procedure

¹⁶ Only as from 2010.

¹⁷ European Monitoring Centre on Racism and Xenophobia prior to 28.02.2007.

¹⁸ Due to end in 2008.

	EC, Euratom and EU decentralised agencies	Founding act	Grant from EU budget	subject to separate discharge from EP	Codecision at the time of creation/ revision	Seat	Responsible committee¹⁵	Nominees in the Board	Involvement in the nomination of the Director
	Maritime Safety Agency								
20	European Aviation Safety Agency	15.07.2002	Yes	Yes	Yes	Cologne	TRAN*	-	No
21	European Network and Information Security Agency	10.03.2004	Yes	Yes	Yes	Héraklion	ITRE*	-	Yes
22	European Centre for Disease Prevention and Control	21.04.2004	Yes	Yes	Yes	Stockholm	ENVI*	2	Yes
23	European Railway Agency	29.04.2004	Yes	Yes	Yes	Valenciennes	TRAN*	-	Yes
24	European Global Navigation Satellite System Supervisory Authority	12.07.2004	Yes	Yes	No/No	Bruxelles (provisoire)	ITRE*	-	No
25	European Defence Agency	12.07.2004	No	No	No	Bruxelles	AFET*	-	No
26	European Agency for the Management of Operational Coordination at the External Borders of the Member States of the European Union	26.10.2004	Yes	Yes	No	Varsovie	LIBE*	-	No
27	Community Fisheries Control Agency	26.04.2005	Yes	Yes	No	Bruxelles (provisoire) - Vigo	PECH*	-	No
28	European Chemicals Agency	18.12.2006	Yes	Yes	Yes	Helsinki	ENVI*	2	Yes
29	Institute for Gender Equality	20.12.2006	Yes	Yes	Yes	Vilnius	FEMM*	-	Yes
30	European Agency for the Cooperation of Energy regulators ¹⁹								
31	European Electronic Communications Market Authority ²⁰								
32	Agency for the management of SIS II, VIS and EURODAC ²¹								

¹⁹ COM (2007) 530 of 19.9.2007

²⁰ COM (2007) 699 of 13.11.2007

²¹ See SEC(2008)323 of 11.3.2008.

	EC, Euratom and EU decentralised agencies	Founding act	Grant from EU budget	subject to separate discharge from EP	Codecision at the time of creation/ revision	Seat	Responsible committee¹⁵	Nominees in the Board	Involvement in the nomination of the Director
33	European Support Office for Asylum ²²								

²² See SEC(2008)323 of 11.3.2008.

ANNEX II TO ANALYTICAL *FICHE* N°32 (Extract from the European Parliament's Rules of Procedure)

Rule 126: Requests to European Agencies

1. Where Parliament has a right to submit a request to a European Agency, any Member may submit such a request in writing to the President of Parliament. Such requests shall be on matters falling within the mission of the Agency concerned and shall be accompanied by background information explaining the issue and the Community interest.
2. The President shall, after consulting the committee responsible, either forward the request to the Agency or take any other appropriate course of action. The Member submitting the request shall be immediately informed thereof. Any request sent by the President to an Agency shall include a time limit for response.
3. If the Agency considers that it is unable to respond to the request as formulated, or seeks to have it modified, it shall inform the President forthwith, who shall take any appropriate action, after consulting the committee responsible as necessary.

ANNEX III TO ANALYTICAL FICHE N°32

**RULES ON THE DESIGNATION BY THE EUROPEAN PARLIAMENT OF MEMBERS OF THE MANAGEMENT BOARDS OF THE SPECIALISED AGENCIES AND BODIES
DECISION OF THE CONFERENCE OF PRESIDENTS**

OF 5 MARCH 1998

DECISION OF THE CONFERENCE OF PRESIDENTS

OF 5 MARCH 1998²³

PE339.471/BUR/Rev. 1

The Conference of Presidents,

- having regard to Rule 24(4) of the Rules of Procedure;

HAS DECIDED

Article 1

These rules shall be applicable where the regulation establishing a specialised agency or body provides that the European Parliament shall designate one or more members of the management board of the agency or body.

Article 2

(a) The European Parliament shall, according to the case, designate the full member(s) and alternate(s) provided for by the regulation setting up the agency or body.

(b) These persons shall be designated for the period specified by the regulation establishing the agency concerned or, where no period is specified, for three years. Their term of office shall be renewable.

Article 3

(a) The applications received from persons offering the qualifications required by the regulation establishing the agency or body and holding the nationality of one of the Member States shall be submitted to the committee responsible by a political group or 29 Members.

(b) The committee responsible shall verify that the candidates actually fulfil the abovementioned conditions and that they are willing to accept the appointment. Candidates shall also disclose to the committee their financial or other interests in the area of activity of the agency or body and, where applicable, any incompatibility with other duties they may have taken up in activities in the same area. The committee responsible shall draw candidates' attention to the requirements of impartiality and independence which they will undertake to

²³ Consolidated by the Bureau on 3 May 2004 and amended by the Bureau on 14 January 2008.

fulfil, where applicable, pursuant to Article 5(b) below²⁴; it shall apprise them of Parliament's general guidelines with regard to the objectives and method of operation of the agency or body. Candidates may be given a personal hearing.

(c) The committee responsible shall, by a majority of its members, adopt a list, in the order of votes obtained, of persons eligible to be appointed full members and of persons eligible to be appointed alternate members. This list shall comprise a number of candidates, full members and alternates, equal to at least twice the number of posts to be filled.

Article 4

(a) The list thus adopted shall be forwarded, in the form of a letter accompanied by a standardised communication (see annex), to the President, who shall refer it to the Conference of Presidents. The Conference of Presidents may seek any relevant information it deems useful from the committee responsible.

(b) On the basis of the list proposed by the committee responsible, the Conference of Presidents shall, in accordance with Rule 23(3) of Parliament's Rules of Procedure, designate the full members and the alternate members.

Article 5

(a) The President shall inform the persons designated of Parliament's intention to appoint them to the management board of the agency or body.

(b) He shall draw their attention to the range of responsibilities inherent in these duties and shall ask them to give a written undertaking to carry out these duties impartially and independently of any private body or public authority throughout their term of office. He shall also draw their attention to Parliament's general guidelines with regard to the objectives and method of operation of the agency or body.

(c) On receipt of the above-mentioned undertaking, the President shall, on behalf of Parliament, officially designate the persons to serve as full members of the management board of the agency or body and their respective alternates.

(d) The President shall inform the chairman of the management board of the specialised agency or body concerned of these appointments.

Article 6²⁵

(a) A regular exchange of information may take place between Parliament and the persons designated.

(b) These persons may be invited by the committee responsible to inform it of the activities of the agency or body on which they serve; they may also be requested to submit a report.

(c) Where the persons designated travel to one of Parliament's places of work at the invitation of the committee responsible or of another Parliament body, their travel and subsistence expenses shall be reimbursed by the European Parliament in accordance with the arrangements applicable to hearings of experts and subject to a maximum of two journeys per

²⁴ At its meeting of 11 September 1997 the Conference of Presidents decided that the persons designated shall be external experts and not Members of the European Parliament.

²⁵ Article 6(d) was amended following the Bureau decision of 14 January 2008.

year for each designated person. Such visits shall not be included in the quota of experts who may normally be invited by the committee concerned to attend its hearings.

(d) Pursuant to paragraph 2a of Article 2 of the rules governing travel by committee delegations outside the places of work of the European Parliament²⁶, every two years each committee shall be authorised to send, during weeks set aside for external parliamentary activities and for a maximum of three days, a delegation consisting of three members to the agencies for which it is responsible within the meaning of Annex VI to the Rules of Procedure. These delegations shall not be taken into account when calculating the quota referred to in Article 2(1) of the said rules.

Article 7

The persons designated shall refrain from any act incompatible with or prejudicial to the exercise of their mandates. The Conference of Presidents may withdraw the mandate from any person who fails to fulfil the obligations of his office or violates the principles of impartiality or independence. The person concerned shall be given a prior hearing.

Article 8

The decisions of the Conference of Presidents in the implementation of these rules shall be final.

²⁶ PE 352.673/BUR./Rev3 - Rules governing travel by committee delegations outside the three places of work of the European Parliament.

ORIENTATIONS

relatives à la coopération entre les commissions ayant des compétences touchant aux organes décentralisés de la Communauté

Au cours de sa réunion du 14 juillet 1998, la conférence des présidents de commission a adopté les orientations ci-après à l'effet de faciliter l'échange d'informations entre les commissions ayant des compétences différentes en ce qui concerne les organes décentralisés et de contribuer à l'amélioration de l'efficacité du contrôle parlementaire. Ces orientations ne se substituent pas au règlement, pas plus qu'elles ne prennent le pas sur celui-ci.

1. Les commissions qui participent au contrôle des agences peuvent nommer un rapporteur permanent et/ou des représentants pour chaque agence et jouent un rôle d'interlocuteur vis-à-vis de l'organe concerné. Chaque commission veille à l'échange d'informations.
2. Tous les deux ans, la commission compétente envoie une délégation d'un maximum de trois membres en visite auprès de l'agence concernée, pour contrôler ses activités.
3. Les commissions veillent à assurer la transparence, au sein du Parlement, sur toutes les questions de forme touchant aux agences. Si une commission reçoit des informations officielles, la visite officielle de représentants d'une agence ou d'autres services concernés ou si elle inscrit à son ordre du jour des problèmes relatifs aux agences, elle veille à ce que les autres commissions concernées en soient informées. Les documents reçus peuvent être consultés par toutes les commissions intéressées, y compris la commission institutionnelle, sur la base d'une liste de documents diffusée à intervalles réguliers.
4. Les commissions font le nécessaire, au niveau interne, pour examiner avec les représentants des agences l'exécution du programme d'activité de l'année en cours et le projet de programme pour l'année suivante. Les rapporteurs permanents et/ou les représentants de la commission des budgets et de la commission du contrôle budgétaire sont invités à participer à ces réunions.
5. Les rapporteurs permanents et/ou les représentants des commissions concernées sont invités à assister aux réunions qu'organise, le cas échéant, la commission des budgets avec les directeurs d'agence ou leurs représentants au sujet des aspects budgétaires et administratifs des activités des agences, dans la perspective du budget de l'exercice suivant (et vice versa).
6. Les états prévisionnels des agences sont transmis à l'autorité budgétaire, accompagnés des pièces justificatives (projet de programme d'activité, organigramme, justification des augmentations de la subvention, etc.), ainsi qu'aux commissions.
7. Les commissions compétentes peuvent émettre un avis préliminaire sur l'avant-projet de budget et un avis sur le projet ainsi que proposer des amendements, sur la base de l'évaluation des programmes d'activité des agences et des priorités politiques.
8. Avant que la commission des budgets adopte sa recommandation pour la première lecture du budget, le rapporteur général et le rapporteur sur les agences communiquent leurs positions respectives aux commissions spécialisées.

9. Dans le cas où des crédits sont inscrits en réserve, le rapporteur général sur le budget informe la(les) commission(s) concernée(s) de la demande de virement concernant la libération des crédits inscrits en réserve. Cela s'applique aussi lorsque sont proposés des transferts entre lignes ou à destination ou à partir d'une ligne relative à une agence. La commission ou ses rapporteurs permanents et/ou représentants peut/peuvent émettre un avis sur la demande de virement, lequel est dûment pris en considération. La position de la commission est communiquée en temps utile à la commission des budgets et à la commission du contrôle budgétaire, pour que celles-ci puissent respecter les délais prévus à l'article 26 du règlement financier.

10. Les commissions peuvent émettre un avis à l'intention de la commission du contrôle budgétaire sur la rentabilité des agences, à la lumière d'une analyse de l'exécution du programme d'activité.

11. La commission du contrôle budgétaire évalue la rentabilité des agences dans le cadre de la procédure de décharge.

Council role

1) State of play *de jure* and in practice

The Council's role in the supervision of regulatory agencies is mainly governed by:

- The provisions of the agencies' constituent acts;
- Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹;
- Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, as last modified by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008, on the framework Financial Regulation for the bodies referred to in Article 185 of the above-mentioned Council Regulation (EC, Euratom) No 1605/2002².

The Council supervises agencies in its role of co-legislator and budgetary authority, as well as by exercising its nomination power and political supervision.

Legislator

The Council decides on the creation of agencies, on its own or together with the European Parliament. In fact, fourteen 1st pillar agencies were created on the basis of a Council act, while ten 1st pillar agencies were established through the co-decision procedure. All 2nd pillar agencies were created by a Council Joint Action. Two of the 3rd pillar agencies - EUROJUST and CEPOL - were created on the basis of a Council Decision, whereas EUROPOL was established on the basis of the Council Act drawing up the convention based on Article K.3 of the Treaty on the European Union. However, on 1 January 2010 the new legal basis of EUROPOL - a Council Decision - will be applicable.

Budgetary authority

The agencies' estimates of revenue and expenditure are forwarded by the Commission to the European Parliament and the Council (the budgetary authority) together with the preliminary draft budget of the European Union. The budgetary authority authorises the appropriations for the subsidy to the agencies and the establishment plan for the agencies.

The Council receives also the report on the budgetary and financial management for the financial year, as well as the final accounts of an agency with the Management Board's opinion.

¹ OJ L 248, 16.09.2002, as last amended by Council Regulation (EC) No 1525/2007 of 17 December 2007, OJ L 343 of 27.12.2007, p. 9

² OJ L 357, 21.12.2002

Discharge authority

Article 185(2) of the Financial Regulation foresees that discharge for the implementation of the budget of the agencies is given by the European Parliament, on recommendation of the Council.

In the case of EUROPOL, the Council is responsible for the adoption of the budget, and currently it gives the discharge for the implementation of the agency's budget³.

Nomination power

Concerning first pillar agencies, in three cases⁴ the Management Board includes representatives of all Member States who are appointed by the Council. The Management Boards of three agencies⁵ includes members who either do not represent the Member States or represent some of them on a rotating basis and are appointed by the Council.

The Management Board of 2nd pillar agencies (EDA, EUSC, ISS) is chaired by the Secretary General/High Representative of the Council, while the Management Board of two 3rd pillar agencies (CEPOL and EUROPOL) is chaired by the representative of the Member State holding the Presidency of the Council of the EU. Instead, the President and the Vice-Presidents of the College of EUROJUST are elected among the national members of the College for a term of office of three years, irrespective of which Member State is holding the presidency of the Council.

Further details on the composition and designation of the Management Board can be found in Fiche 5.

In three agencies⁶, the Council appoints and dismisses the Director and vice-directors upon a proposal of the Commission or of the Management Board. The Council exercises also disciplinary authority over them. In addition, the Council approves the rules regarding the selection of candidates for the post of Director of CEPOL.

Further details on the appointment and dismissal of the Director can be found in Fiche 7.

Political supervision

The Council alone or together with the European Parliament, depending on the decision-making procedure, decides on the review of the agency's founding regulation on the basis of a proposal from the Commission. The revision can pertain to the agency's operating rules, its objectives, mandate and functions, as defined in the founding regulation.

The Council receives the annual and, where existent, the multi-annual work programme of the agencies. In addition, the Council approves the annual work programme of CEPOL and the multi-annual framework of FRA.

The Council receives the annual activity report of the agencies and the report on future activities of EDA and EUROPOL.

³ According to the new Council Decision establishing the European Police Office, which will be applicable as of 1 January 2010, the Council gives the recommendation to give the discharge for the implementation of the budget of the agencies, in line with Article 185(2) of the Financial Regulation.

⁴ CEDEFOP, EU-OSHA, EUROFOUND

⁵ ACER, EFSA, EIGE

⁶ CPVO, OHIM, EUROPOL

The constituent acts of some agencies give the Council the right to ask at any time for a hearing of the Director on any subject related to the agency's activities and invite the Director to report on the carrying out of his/her tasks.

At present, in the case of EDA and EUROPOL the Council adopts the agencies' specific financial regulation indicating, in particular, the detailed rules for drawing up, amending and implementing the budget and for monitoring its implementation, as well as for the manner of payment of financial contributions by the Member States.⁷ In the case of EUSC and ISS the Council gives its assent for the agency specific financial regulation.

The Council approves the rules of procedure of EUROJUST and EUROPOL on a proposal from the College and the Management Board respectively. The provisions of the rules of procedure which concern the processing of personal data can be the subject of separate approval or modification by the Council.

The Council can set up guidelines for EDA and lays down priorities for EUROPOL, on a recommendation by the Management Board. In addition, it can also instruct EUROPOL to deal with certain issues.

In the case of 3rd pillar agencies dealing with personal data (EUROJUST and EUROPOL), the Council approves the implementing rules for personal data files, in particular the categories of personal data, and provisions concerning the security of the personal data concerned, as well as the internal supervision of their use. The Council can also determine general rules concerning exchange of personal data.

At present, in four cases⁸ the Council adopts the agency's staff regulation, following the Management Board's opinion.⁹

For agencies operating in the field of Common Foreign Security Policy, the Council exercises political supervision over the activities of the agencies, without impinging on their independence in carrying out research and seminar activities.

- 2) Critical analysis of the issue at hand**
- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

⁷ In the case of EUROPOL, according to the new Council Decision establishing the European Police Office, which will enter into force on 21 January 2010, the Management Board will adopt these rules, after consulting the Commission.

⁸ EDA, EUSC, ISS, EUROPOL

⁹ In the case of EUROPOL, according to the new Council Decision establishing the European Police Office, which will enter into force on 21 January 2010, the Management Board will adopt the agency's staff regulations, on a proposal from the Director and after seeking agreement from the Commission.