

Inter-institutional Working Group on regulatory agencies

Analytical fiches 20-30

Analytical *Fiche* Nr° 20

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 EU budget¹. Some agencies, however, depend fully or partially on revenue received from industry (fees):

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

The three former second pillar agencies (EDA, ISS and EUSC) are funded on an intergovernmental basis. As from 2010 EUROPOL (former third pillar) has become a fully Union financed agency.

Role of the budgetary authority

The budgetary authority (European Parliament and Council) authorises only the contributions from the EU budget, not the other revenues; all revenue sources, including the EU 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).

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. Court order of 12.02.2010 on case T-456/07 rejects the claim of the Commission as inadmissible on formal grounds. The controversial position between the parties remains as regards the substance of the matter.

Community "balancing" subsidy

The EU 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 EU budget (in the following year), up to the level of the total EU subsidy paid. The reasoning behind this provision is that a surplus means that the EU 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 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 EU 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

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.

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.

higher) EU 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 EU 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 EU 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 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 EU 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.

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

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

As set out in part 1, revenue for most decentralised agencies depends entirely on the Union contribution, which is authorised on an annual basis by the budgetary authority during the budgetary procedure (see fiche 22).

The analysis below also focuses on those agencies which receive other revenue (mostly revenue from industry fees) over and above the Union balancing contribution (i.e. "partially self-financed agencies"), as well as on agencies which depend entirely on own revenues ("self-financed agencies").

General aspects

A specific budgetary procedure

The Commission plays a specific role in agencies' budgetary procedure since it may, through its budgetary proposal in the Draft Budget, modify up- or downwards the EU contribution as initially requested by agencies. Several issues need to be pointed out as regards this procedure (see also fiche 22):

- the consideration of assigned revenue is made at a time when previous year's surplus is not yet final. This means that the EU contribution proposed in the DB is calculated on the basis of accounting figures which are likely to be modified after the presentation of the DB,
- the budget cuts made in relation to previous surpluses and vacancy rates create an incentive for spending,
- the role of Parent DGs in assessing agencies' requests is not clear nor formalised. The analyses carried out by each of them before proposing changes in the EU contributions are therefore likely to be uneven, creating obstacles for the Budgetary authority to assess the figures proposed by the Commission in a consistent way.

Carry-over rates and surpluses

More in general (to a lesser extent relating to the particular situation of the (partially) self-financed agencies as described above), the lack of a strong link between operational planning and resource planning often leads to unrealistic requirements for funds for agencies, which on the other hand translates into high carry-over and cancellation rates.⁹ Therefore, with a view to fully respecting the principle of sound financial management, it is necessary to ensure that agencies improve their planning and the follow-up of their budgetary requirements, bringing them in line with their detailed operational planning.¹⁰

This largely depends on the introduction of Activity Based Budgeting / Management (ABB/ABM, see fiche 21). In addition, such management tool should also facilitate the allocation of resources to the agency when the latter has to cope with emerging needs or requests from the Commission or the Budgetary authority.

Accuracy of cash forecasts

The issue of carry-overs and cancellation of credits links to making accurate cash forecasts, to fine-tune the balance between revenue and expenditure, as described in part 1. Despite the recent introduction of related provisions in the Framework Financial Regulation (see Art. 15, paragraph 5), further improvements in cash forecasting, in particular as regards making available the final tranche of the Union balancing contribution ("cash management approach"), are still needed in order to reduce the current level of agency surpluses, as shown in the provisional accounts for the financial year 2009. This concerns both the fully Union financed agencies and the partially self-financed agencies. The latter group of agencies has a more complex task to perform in this regard, given the built-in uncertainties as to the revenue to be received from industry.

Specific issues concerning fee-collecting agencies

The main issue when it comes to fee setting is aligning the level of fees with the agency's cost for providing a given service, as well as in forecasting demand from industry.

Fee setting – self-financed agencies

In the cases of the self-financed agencies (CdT, CPVO, OHIM, and ECHA as from 2010) there have been instances where the fees exceeded the costs, because user demand for the agencies' services, and thus the revenue from user fees, was larger than forecast, or, as in the case of CdT, because of overpricing, which is connected to inadequate costing and/or monopoly on the market. In the latter case, it should be borne in mind that CdT anyway reimburses annual surpluses to its clients, what is not the case for the other self-financing agencies mentioned above, which generate significant cash balances and interest income that do not flow back into the EU budget. Surpluses have accumulated, and the necessary adjustments were generally made through a long and complex process (see also part 1).¹¹ This involved a progressive fine-tuning (reduction) of fee levels, and/or reimbursement of surpluses to stakeholders. In doing so, the issue seems now largely under control, but this

⁹ Op. cit., point II.B.3b

¹⁰ Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2007 (5587/09), Council of the EU, Budget Committee Brussels, 4 February 2009, point 3 European Union agencies, p. 39

¹¹ EP study 2008, Autonomy regarding personnel and finance, p. 159

practice does not fix the root cause for the surpluses – difficulties to set the right fee levels and forecast demand.

Fee setting – partially self-financed agencies

By definition, for partially self-financed agencies (currently EASA and EMA) fee revenue from industry is at a level which is not sufficient to cover all expenditure and hence balancing contribution from the EU budget is still required¹². This raises the question how industry fees are set, and who decides on their level. In theory, fee levels should be set at a level, enough to cover the agencies' work for the industry, whereas the Union balancing contribution ought to be used to finance activities which the agency carries out on behalf of the Union, and which cannot and should not be charged to industry. In other words, activities carried out for and funded by industry / the Union should be strictly separated, in order to avoid cross-subsidising. In the case of EASA, the basic act specifically requires that fees collected and the Union contribution shall be dealt separately in the Agency's budget, thus forcing separate accounting for certification activities (and avoiding cross-subsidisation). Transparency is needed as to the cost structure of agencies, and the way in which fees are set.

The need for clear distinction between revenue from fees and revenue from the Union budget, as well as the need to avoid accumulating surpluses¹³, shows the importance of predicting revenue from industry. For instance in times of economic crisis, workload from industry, and, hence, revenue actually received from industry may be below forecast, which in turn would require a balancing contribution from the Union budget, over and above the foreseen Union contribution. This may effectively mean that the Union will have to finance staffing / activities which were foreseen to be funded from industry fees.

Using surpluses to offset the unpredictability of industry revenue

Nonetheless, the unpredictability of industry revenue has drawn political attention, especially from the side of the Parliament. Concretely, Parliament in recent years has chosen to keep the assigned revenues stemming from the recovery of partially self-financed agencies' surpluses available to the concerned agencies, as a precautionary reserve in case revenue from industry turns out lower than forecast, rather than to deduct these assigned revenues from the fresh appropriations required for the following financial year, as for the fully Union funded agencies. In case revenue from industry follows forecast, one drawback is that these credits ("reserved" for the agency) do not remain available as margin for unforeseen expenditure for the financial framework heading in question as a whole (i.e. not exclusively for the agency). This was the situation also before 2009 when assigned revenues were not considered for determining the contribution from the EU budget.

Effects of the varying time span for collecting fees

¹² In the case of EMA there are some tasks laid down in EU legislation for which no fees are to be charged and which should be financed from the EU contribution.

¹³ ECHA is in a special situation in 2010. ECHA is forecast to generate a surplus of about €250 million from the 2010 registration deadline and it is supposed to finance its activities from this surplus until end of 2013, i.e. it will become fully fee funded and require partial contribution subsequently. The reason is that the registration fees shall also cover evaluation activities and these evaluation activities can occur until several years after the registration has been made. Thus in the case of ECHA the accumulation of the surplus is in line with the REACH Regulation.

A related issue concerns forecasting when revenue from industry will actually be received: for instance in the case of EMA, industry has some room for manoeuvre as to paying fees towards the end of one financial year or at the beginning of the following year, depending also on their balance sheets in question. This impacts on the budget outturn of EMA, such as for the financial year 2008, to the extent that revenue actually received unexpectedly by end of year might lead to a budget surplus, as revenue received (in cash) turns out higher than forecast. In the case of ECHA, the timing of the fee income has led to a requirement for a subsidy in 2010. Even though the Agency is forecast to receive about € 330 million in revenue related to the first registration deadline for industry on 30 November 2010, greatly exceeding the agency's budget needs for 2010, the Commission must pay a subsidy in 2010 to provide cash for salary, rents, etc. before fee income is cashed towards the end of the year as industry will submit most of its dossiers only shortly before the deadline. The EU contribution thus required for 2010 will be recovered at the end of the financial year.

Unexplored alternatives to the principle of charging for certain types of services

Finally, there are also unexplored alternatives to the principle of charging for certain type of services, notably in the case of ECHA (pre-registration is paid by the EU budget whereas registration will be charged to companies). As far as ECHA is concerned, it is expected by regulation to become fully fee-funded for a certain time and require partial contribution subsequently.

- 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 Regulation¹⁴

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 information¹⁵.

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.

¹⁴ 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.

¹⁵ The issue of activity-based budgeting links to the agencies' annual work programmes, see also Fiche 13.

2) Critical analysis of the issue at hand

In its Special Report of June 2008¹⁶, the Court of Auditors notes that some agencies prepare activity-based budgets¹⁷, for internal management needs. However, none of the agencies included in the audit of the Court had introduced ABB to its full extent. In this regard, the Court stated that introducing activity based budgeting and activity based management would encourage the agencies to clarify the aims they intend to achieve. Furthermore, genuine systems for fixing objectives and assessing results would serve to improve the quality of the annual activity reports and the periodic external evaluations, thereby enhancing agencies' accountability and transparency.

The benefits of ABM

Activity based management (ABM) provides the Institutions, and by extension, the agencies, with the tools to plan, monitor, report on and evaluate their activities. In this regard, objectives, indicators, inputs (in terms of human and financial resources) and key actions need to be defined, *ex ante*, to set out how the intended results are to be achieved, how progress towards these intended results can be measured, and which resources are required to produce these results. Key ABM tools are the annual management / work plan, to be drawn up in advance of the start of the year (towards the end of year n-1) and to be monitored throughout the year (in year n), as well as the annual activity report, which reports (*ex post*, in year n+1) on the achievement of the intended results as defined in the annual management / work plan. Thanks to the provision of performance information, ABB-ABM would allow agencies to be monitored on the basis their results and impacts, avoiding cruising speed agencies to be funded with no consideration to their results.

Activity based budgeting (ABB) is the budget element of the broader activity based management (ABM) concept, and relates mainly to operational activities. For the Commission, this is reflected in the fact that the activity statements¹⁸ apply to operational activities only, with a focus on spending programmes (objectives, indicators, expenditure related outputs and results). Whereas administrative resources in the Commission are clearly linked to operational activities (by Title and chapter), in order to show the full cost of carrying out the activities, administrative resources as such have to be seen more in the perspective of activity based management (annual management / work plan, annual activity report, etc.).

The section below tries to specify when activity based budgeting is justified by the agencies' activities, as foreseen in the Framework Financial Regulation.

The adequacy of ABB for agencies depends on the agency's activities and its size

Unlike the Commission, many agencies do not implement major spending programmes. Their type of core activities (e.g. collection of information, coordination between national bodies) is in reality more of an administrative nature. Such activities typically depend heavily on human

¹⁶ Special Report No 5/2008 of the Court of Auditors, "The European Union's Agencies: getting results", June 2008

¹⁷ EU-OSHA, EFSA, EMA

¹⁸ See, for more details, PDB 2010 Working Document I ("activity statements"), COM (2009) 300

resources, as reflected in the importance of expenditure related to staff (Title 1) and buildings (Title 2) as compared to operational expenditure (Title 3).

Some agencies, on the other hand, carry out activities which are to a larger extent of "operational" nature, for instance the operation teams of FRONTEX, the scientific opinions of EFSA, the anti-pollution measures of EMSA and evaluation of medicines (EMA, primarily financed by industry). In turn, this is reflected in the budget structure of the agencies: these agencies have a larger share of Title 3 expenditure, as compared to administrative expenditure (Title 1 and 2).

The classification of expenditure by nature in agency budgets at times may lead to debates, as the contribution of the agencies to the inter-institutional working group shows: "the separation between administrative and operational expenditure, as currently reflected in the EU funding to agencies, does not take into account the fact that agencies are delivery-oriented bodies and that most of their staff-related expenditure covers costs for staff directly assigned to carrying out their operational tasks (thus to be considered as operational expenditure according to the principles of activity-based budgeting). This separation (which normally corresponds to two separate budget lines of the EU budget) gives a distorted picture of the actual administrative expenditure of the agencies and often creates artificial constraints for budget allocation and management."¹⁹

The ABB methodology, however, requires a grouping of administrative and operational resources by (a number of) activities, with objectives, indicators and results to be achieved. This does not primarily relate to the ratio between administrative (Title 1/2) and operational expenditure (Title 3), which is a different issue; activity based budgeting is about presenting the full costs (operational and administrative financial resources combined) of activities in a coherent manner, linked to the intended results of the activity. Still, at the EU budget level, a system which would better distinguish between agencies' operational and administrative expenditure could be used to include their administrative expenditure in Heading 5 of the Multiannual Financial Framework, instead of in operational headings as is currently the situation.

Nonetheless, the Framework Financial Regulation reflects that the main activities which agencies carry out (i.e., of a more administrative or operational nature) impact on the ability of an agency to implement an activity based budget ("in so far as this is justified by the agencies' activities").

This also goes for the size of the agency, in terms of human and financial resources: a "larger" agency is likely to have more scope for activity based budgeting than a "smaller" agency with a limited number of staff and a more "networking" related mandate. The former is also more likely to be able to cope with the additional costs implied by the setting up and running of an ABB-ABM system. The latter, however, would still have to plan and report on its work using regular management tools such as the work programme and the annual activity report. See, in this regard, also fiches 13 (work programme) and 25 (reporting requirements).

Agencies which carry out clear operational activities and which have more significant human and financial resources at their disposal, should be in a position to further develop activity

¹⁹ The experience of the agencies: a contribution to the debate on the future of the agency model "Learning with the past, building the future", Agencies' Contribution to Interinstitutional Debate, p. 7

based budgeting, as foreseen in the Framework Financial Regulation and along the lines of the Court's report, so as to reinforce the orientation on performance in the agencies.²⁰

In addition to a better appraisal of agencies' performance, results and contribution to the achievement of EU objectives, key information from the agencies on objectives, indicators and results could in theory then be used in the activity statements of the Commission, in order to better justify the Community contribution to the agency in question. Moreover, this could clarify the role which the agency plays as compared to the related activities carried out by the Commission in a particular policy area. In reality, however, this may require considerable time and resources, both on the side of the agencies and on the side of the Commission, and should therefore rather be seen in a longer-term perspective.

- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

²⁰ CoA, point 49, p. 29. The Council also raised this issue, e.g. in its recommendation on the 2007 Discharge.

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 (Community²¹ subsidy and establishment plan)²² for year N fits into the budgetary procedure for the adoption of the general budget for year N as follows:²³

- Agency provisional draft estimate of revenue and expenditure (including establishment plan), to be sent to the Commission: 10 February year N-1;
- Commission Draft Budget (DB): end-April year N-1;
- Council reading: July year N-1;
- Parliament reading: October year N-1;
-
-
- Conciliation Committee: October / November year N-1;
- Definitive agency's budget and establishment plan: after final adoption of the general budget (at the earliest November year N-1).

This timetable reflects the changes to the budgetary procedure brought about by the entry into force of the Lisbon Treaty. These changes mainly concern the abolishment of the distinction between 'compulsory' and 'non compulsory' expenditure, , as well as, following the presentation of the Draft Budget (rather than the Preliminary Draft Budget) by the Commission, the replacement of the second readings of Council and Parliament by a conciliation committee, which is expected to reach a "joint text", to be approved by the two arms of the budgetary authority in accordance with their respective rules of procedure.

As such, the revised timetable does not directly impact the agencies' internal preparations for their estimates of revenue and expenditure, as the preparatory phase (agency and Commission deadlines) in practice has not changed with the entry into force of the Lisbon Treaty.

Role of the three Institutions - Commission

²¹ With the entry into force of the Lisbon Treaty, the "Community" subsidy has become the "European Union" subsidy. This will have to be corrected progressively in the applicable legislation.

²² This concerns only agencies which actually receive a Community subsidy.

²³ 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.

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 authority²⁴, the Commission provides key budgetary information on agencies in a dedicated working document to the (P)DB for year N, in May year N-1²⁵.

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.

In this regard, the Lisbon Treaty puts the two arms of the budgetary authority on equal footing, for the whole budget. This includes the Community contribution to the agencies and the establishment plans which from now on will have to be agreed upon by Parliament and Council at the latest in conciliation.

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

²⁴ Joint statements, ECOFIN (Budget) Council of 13 July 2007, doc. DS 605/1/07 REV 1

²⁵ See, for more details, PDB 2010 Working Document III ("agencies"), COM (2009) 3000.

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

Commission role

The Commission has gradually increased its role in assisting and supervising the financial management of the agencies.²⁶ In line with the budgetary authority's request, one successful initiative was its new approach of taking the agencies' surpluses (to be recovered by the Commission as assigned revenue, see fiche 20) into account when establishing the preliminary draft budget 2009, with the aim of contributing to reduce the agencies' annual surpluses and need for fresh appropriations, as well as to increase transparency surrounding these funds.²⁷ It is also recognised that in the framework of the budgetary procedure the Commission provides now for more accurate working documents related to agencies' budget, especially as concerns their human and financial resources.²⁸

By and large, the Commission policies for assessing agency needs in terms of human and financial resources have broadly been accepted by the budgetary authority, when they were not initiated by the latter. This concerns in particular:²⁹

- The classification of agencies, on the basis of their stage of development, as either "cruising speed", "new tasks" or "newly created" agencies, with a corresponding impact on the growth of the Union contribution and staffing levels;
- The key role of the multiannual financial programming 2007-2013 as a basis for the Union contribution;
- The deduction of assigned revenue stemming from the recovery of previous years' surpluses from the fresh appropriations required for the following year, except for fee-collecting agencies;
- Fine-tuning of the Union contribution by taking into account (recurring) "large" agency surpluses, as a percentage of revenue actually received.
- The annual submission to the budgetary authority of agencies' staffing levels, justified in the multiannual staff policy plan, which is a multiannual programming tool in the area of human resources (see fiche n°23).

From this point of view, the Commission plays an important role in assessing agency needs, in particular in the preparation of the Draft Budget. The entry into force of the Lisbon Treaty, and the fact that both arms of the budgetary authority have been placed on equal footing,

²⁶ This was recognised by the Council in its recommendation on the discharge 2007, p. 39

²⁷ See Council discharge 2007 and Rapport d'information sur l'évaluation de l'activité des agences européennes, Denis Badré, Sénat, Commission des affaires européennes et de la commission des finances, 7 octobre 2009, point I.C.1b

²⁸ Op. cit., point II.A

²⁹ See, for more details, PDB 2010 Working Document III ("agencies"), COM (2009) 300, sections 2.1.3 and 2.1.4.

might in practice further increase the importance of the Commission proposals, given that Parliament and Council in the past have taken diverging views on agency needs, as described below.

The Commission plays an equally important role in the implementation of the annual budget, as regards the assessment of possible amending budgets and/or transfers to modify agency contribution and/or staffing levels (similar to the Commission assessment of the agency requirements for the following year), as well as in analysing agency cash needs on the basis of forecasts of revenue and expenditure, with a view to balancing agency budgets ("cash approach"), so as to avoid agency surpluses.

Parliament role

In the past, Parliament typically used to restore the PDB proposals when Council had introduced cuts in its draft budget, as mentioned above. Some amendments of the specialised EP committees would often even go beyond the Commission proposals, although the budget as voted in Plenary in most cases corresponded to the initial Commission proposals or agencies' initial budgetary requests. However, one particular issue for which Parliament in recent years has not followed the Commission proposals concerns the deduction of assigned revenue for partially self-financed agencies, as described in more detail in fiche 20.

In the new budgetary procedure following the entry into force of the Lisbon Treaty, Parliament does not have anymore the last word on non compulsory expenditure and therefore on agencies' budget. An agreement on their budgets between both arms of the budgetary authority is now required.

Council role

Experience shows that when budget cuts are made, these are usually introduced by Council. Justifications for budget cuts are often found in under-spending by agencies in previous years, which may be linked to high vacancy rates, and/or because agencies are not seen as sufficiently justifying their budget requests for (additional) human and financial resources. In this respect, it has to be stressed that at that point in the process agencies are no longer directly involved (i.e. there is no dialogue on the cuts), and budget cuts are thus largely dissociated from the process of work planning.³⁰ This means that agencies boards have to adapt the work programme on the basis of the voted Union contribution, when adopting the final agency's budget and establishment plan. In this respect, standard flat rate abatement on requested budget increases may raise difficulties for the fulfilment of agencies' tasks.

3) Possible solution(s) for addressing identified weaknesses

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

³⁰ Evaluation 2009, Volume II, point 2.3.2, p. 56

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 Guidelines³¹ 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 agencies³² 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;

³¹ C(2005)5304 of 9 December 2005: Guidelines on Staff Policy in the European Regulatory Agencies

³² 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

- schooling facilities for staff's children;
- 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 with the Commission services' opinion.

2) Critical analysis of the issue at hand

Added value of SPP as a programming tool

When looking at the experience gained so far, it can be considered that SPP has proved to be a valuable tool. In fact, as a programming document, the SPP contributed to improve (clarify) the personnel policy and to better justify the creation of new posts.³³ In particular, SPP complemented the multi-annual planning of agency's activities, thus reinforcing the link between resource planning and operational planning.

Adequacy of the SPP content for small structures

Small scale agencies perceive the SPP as too detailed and would like to simplify its content. They argue that the heading concerning estimated promotions allows in the case of small structures an easy identification of the envisaged staff, thus creating the risk of legitimate expectations which might not be satisfied eventually.

At the same time, it is important to ensure that all agencies provide the same type of information about their staff policy. It is then up to the Commission services to take into account the specificities and the needs of each agency when they give their opinion on the SPP.

³³ Evaluation 2009, Volume II, point 2.3.2, p. 59-61

In any case, any substantial adjustment of the template of the SPP should be undertaken in cooperation with the agencies, in order to preserve the "ownership" of the exercise.

Timing of the exercise

The Financial regulation provides for two different deadlines for submitting the establishment plan and the Staff Policy Plan by the agencies: the deadline for submitting the draft establishment plan to the Commission's services is the 10th of February, whereas the deadline for submitting to the Commission and the budgetary authority the final version of the SPP is the 31st of March (as foreseen in the Financial Regulation). Considering the fact that these two exercises are inextricably linked, there is still a margin for improving the level of coordination between the two.

Follow-up to the Commission's opinion on draft SPPs

The Commission formulates an opinion on the draft SPP submitted by the agencies before the deadline provided by the Financial regulation (31st of March). The SPP is finalized by each agency and then adopted by the management boards. There is no certitude that the comments formulated by the Commission's services are taken into account in the final version of the SPPs, and when they are not, there is no justification why. An explicit explanation in cases when the Commission's opinion is disregarded would facilitate the budgetary process.

Link with the budgetary procedure

The SPPs offer the budgetary authority a multi-annual (3-year) prospect of the staff policy of the agencies, which puts the annual agency requests for human resources (establishment plan, external personnel) in a broader, medium-term perspective, which also makes staff policy and staffing requests more comparable across agencies.

Meanwhile, the budgetary procedure itself remains annual: the following two years covered by the Staff Policy Plan (in the current 2011-2013 exercise, 2012 and 2013) remain indicative, and the orientations for coming years as laid down in the SPPs do not bind the budgetary authority in its annual analysis of the requests for the financial year in question. The same goes for the Commission, in its opinion delivered annually to the draft Staff Policy Plans.

- 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)³⁴ applicable to Community bodies in the sense of Article 185³⁵ of the general Financial Regulation (FR)³⁶, 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 former 1st pillar agencies (although OHIM voluntarily aligns its Financial Regulation to the FFR)³⁷, 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

³⁴ 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

³⁵ 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.

³⁶ 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)

³⁷ 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.

necessary before the agency can adopt its Financial Regulation. Since the last review of the FFR in 2008, only three regulatory agencies have formal derogations from it³⁸. Agencies implement their budget in accordance with their own Financial Regulation, and resort to Commission support services 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

The Financial Regulation applicable to the general budget of the European Communities and the Framework Financial Regulation (FFR) are among those regulations that provide for the most relevant control but at the same time also set most administrative requirements/"burdens" for EU agencies.³⁹ The latter cover the full budget cycle of agencies, from the establishment (Art 27-32 of the FFR) and implementation (Art 33-69 and 74 of the FFR) of the budget to the presentation of the accounts (Art 76-90 of the FFR) and the audit (Art 71-73 and 91-93 of the FFR, Art 140 of the FR) and discharge procedure (Art 94-96 of the FFR). On average, administrative staff represents around 30% of agencies' total staff.

Using ABAC facilitates compliance with the FFR

One of the advantages of agencies using the ABAC system provided by the Commission is that all updates concerning changes in the regulations are done by the Commission, thus ensuring that the agencies' accounts will be accepted. In addition, the system can be further tailored to agencies' specificities (e.g. by creating new modules) in cooperation with agencies themselves.⁴⁰

Flexibility in implementing the Financial Regulations

The obligations of the Financial Regulations sometimes hinder agencies' capacity to mobilize internal resources flexibly, which entails a significant risk in terms of cost-effectiveness. A part of this problem is solved by using the available possibilities of derogation with prior approval of the Commission, but another part of the problem remains unsolved because the margins of manoeuvre are far from fully used.⁴¹ Where the respect of FFR provisions raises serious difficulties (see the reports of the Court of auditors) or requires a significant amount of resources, it may be analysed whether the derogations granted could be generalised, on the basis of lessons drawn from their implementation in individual agencies.

However, the FFR has been recently modified⁴² in order to allow some facilities concerning in particular the transfers' procedure (article 23 FFR), the simplification of the publication of their budgets, the specific provisions applicable to fees and charges (article 59 FFR), the possibility to apply a direct debit system for periodic payments (Article 66 FFR) and the introduction of special rules for procurement taking into account needs arising from the experience gathered by the existing bodies (Article 74 FFR).

³⁸ CDT (on specific provisions applicable to fees and charges), EASA (on fees and charges considered as a category of assigned revenues), EUROJUST (on public procurement). Europol has asked for one derogation on public procurements and operational, strategic and classified information. The Commission is expected to take a decision on Europol's requests by May 2010.

³⁹ EP study on common support, point 2.2.2, p. 27

⁴⁰ EP study on common support, point 3.1.2, p. 49-50

⁴¹ Evaluation 2009, Volume II, point 2.3.2, p. 57-59

⁴² Commission regulation EC, EURATOM No 652/2008

In addition, there are unexploited simplification possibilities. For example, Article 27⁴³ of the Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 that regulates the establishment of the budget, as well as Article 76 *et seq.*⁴⁴ concerning the presentation of the accounts, are among those that could be re-examined. In any case, any modification to the provisions of the FFR should be made after a thorough analysis of its impact on the respect of the principles of transparency and accountability. A possible reduction of complexity in these areas would create especially gains for small and young agencies, which are heavily loaded by these requirements.⁴⁵ See also *fiche* 16.

At the same time there are a number of things in the Framework Financial Regulation that cannot be changed (basic principles) – for instance, the control for fraud by OLAF – but some flexibility can be allowed where justified by a specific need in the secondary provisions which concern implementation by the agencies themselves. For instance, agency's assigned revenue is made available as from the moment it is established and not as from the moment when it has been effectively received as provided in Article 10(2) IR. Furthermore, the maximum amount paid by the imprest account has been reduced for agencies considering their limited budgets.

Compliance burden diminishes with agency's age

Newer agencies find it more difficult to cope with the financial regulations and the implementing rules, whereas older agencies generally have fewer problems with

⁴³ Article 27 of the Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 that regulates the establishment of the budget

1. The budget shall be established in accordance with the provisions of the constituent instrument of that Union body.

2. In accordance with its constituent instrument, the Union body shall send the Commission an estimate of its revenue and expenditure and the general guidelines underlying that estimate, together with its work programme, by 31 March each year at the latest.

3. The estimate of revenue and expenditure of the Union body shall include:

(a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;

(b) where there is a change in the number of persons in post, a statement justifying the request for new posts;

(c) a quarterly estimate of cash payments and receipts;

(d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators; evaluation results shall be consulted and referred to as evidence of the likely merits of a proposed budget amendment .

4. As part of the procedure for adopting the general budget, the Commission shall send the Union body's statement of estimates to the budgetary authority and propose the amount of the contribution for the Union body and the number of staff it considers that the body needs.

5. The budgetary authority shall adopt the establishment plan of the Union body and any subsequent amendment thereto in accordance with Article 32(1).

6. The budget and the establishment plan shall be adopted by the management board. They become definitive after final adoption of the general budget setting the amount of the contribution and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.

⁴⁴ Title VII "Presentation of the accounts and accounting", Chapter 1 "Presentation of the accounts" of the Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 that regulates the establishment of the budget

Article 76

The annual accounts of the Union body shall comprise:

(a) the financial statements of the Union body;

(b) the reports on implementation of the budget of the Union body.

The accounts of the Union body shall be accompanied by a report on budgetary and financial management during the year.

⁴⁵ EP study on common support, point 3.3.5, p. 79

implementation. This can largely be explained by the fact that most administrative staff in agencies do not have experience within the institutions and are thus not familiar with the intricacies of implementing EU financial regulations. Thus, there seems to be a learning curve for new agencies – and their new administrative staff.⁴⁶

3) Possible solution(s) for addressing identified problems

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

⁴⁶ Evaluation 2009, Volume II, point 2.3.2, p.58

Reporting requirements and processes

1) State of play de jure and in practice

Annual Activity Report⁴⁷

In accordance with Article 40 of the Framework Financial Regulation (FFR)⁴⁸, 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 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.

⁴⁷ Some agencies have to provide one annual report in addition to the Annual Activity Report, e.g. EEA, EU-OSHA, ECHA, CEDEFOP.

⁴⁸ 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 agencies⁴⁹ submit a report on carrying out their duties upon the request of the Council or the European Parliament.
- The founding regulations of five agencies⁵⁰ 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 former 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.

2) Critical analysis of the issue at hand

Timely, but merely descriptive reporting

Appropriate reporting and controls are key factors for ensuring efficient and transparent management, as well as accountability. Generally, agencies comply with requirements related

⁴⁹ ACER, EASA, FRONTEX, GSA, CEPOL

⁵⁰ EIGE, EMCDDA, ENISA, ERA, FRA

to audit, monitoring, and reporting processes with the required timing and frequency. However, the problem is the extent to which the oversight activities are carried out in a way that satisfies the need for holding agencies accountable and which promotes performance.⁵¹ In particular, reporting is often merely descriptive, as it rarely goes beyond outputs and the use of resources and it seldom addresses the obstacles encountered and possible repercussions on future programmes. This is due to shortcomings in the planning of agencies' activities and to inadequate monitoring systems which can not or simply do not track performance and results/impacts (see also fiches 13 and 14).⁵²

Streamlining existing processes

Many agencies complain that they are subject to a considerable number of controls, audits, reporting and evaluation processes which often require providing similar data to different authorities (e.g. Internal Audit Service, Court of Auditors, European Parliament).⁵³ In particular, according to agencies the existing controls and reporting processes raise concerns in terms of proportionality and effectiveness, especially when taking into account their number and frequency, their appropriateness to the risk involved, their costs, the workload entailed and the risk of overlap.⁵⁴

One important factor that contributes to increased workload for agencies is the fact that in addition to the requirement on reporting stemming from articles 40 (annual activity reports) and 76-90 (accounts) of the Framework Financial Regulation, more than half of the agencies have additional reporting requirements, as listed in part 1 of this *fiche*. The decision on the additional reporting has been taken for each agency in its constituent act, without any overall coherence at the level of the agency system. Limiting the number of reporting requirements, as well as streamlining and harmonising the whole reporting system, to the extent possible, would reduce the workload of agencies and contribute to a more effective allocation of resources.

3) Possible solution(s) for addressing identified problems

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

⁵¹ Evaluation 2009, Volume I, point 3.7, 10

⁵² Evaluation 2009, Volume II, point 2.7.4, Box Reporting, p. 178 - CoA, Annual activity report, points 30-34, p. 24-25

⁵³ EP study on common support, point 3.3.4, p. 78 - The experience of the agencies: a contribution to the debate on the future of the agency model "Learning with the past, building the future", Agencies' Contribution to Inter-institutional Debate, p. 2-3

⁵⁴ The experience of the agencies: a contribution to the debate on the future of the agency model "Learning with the past, building the future", Agencies' Contribution to Inter-institutional Debate, point 4.2, p. 9

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*

IAS audit activities in Agencies

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
European Agencies (Former 1 st pillar)			
EUROFOUND	Yes	Yes	
CEDEFOP	Yes	Yes	
CdT	Yes	Yes	
EEA	Yes	Yes	
EMA	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	It will be covered in 2011
BEREC Office	Not yet	No	It will be covered in 2012
EASO	Not yet	No	It will be covered in 2011
Police & Judicial Cooperation Agencies (Former 3 rd pillar)			
EUROJUST	Yes	Yes	
CEPOL	Yes	Yes	
EUROPOL	Yes	No	In the IAS portfolio since 1.01.2010

Following the adoption by the Heads of Agencies in October 2009 of a "model Charter" for the internal audit activity with the IAS, the process of signature of the IAS Charter by each agency (signed by the Executive Director and the Chair of the Board) has been initiated and will be finalised in 2010. The charter describes 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.

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. In line with article 72§3 FFR the IAS limits the dissemination of its audit and follow-up reports both to the agency Director and the Board (represented by its Chair). Final reports of IAS are also copied to the European Court of Auditors (ECA).

The IAS obtained certification of its compliance with the international standards of the Institute of Internal Auditors 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 2011.

The IAS carries out a new audit engagement in each agency every year. Recommendations from audits carried out during prior years and reported by agencies as implemented are regularly followed up by the IAS. The IAS also 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. Since 2008, this report also includes an overview of all recommendations not yet implemented for which management actions are still required. 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.

The Internal Audit Capabilities (IAC)

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 Audit Committees recognised as such by the IIA standards are part of the Board. The table below provides further details:

Agency	IAC	Audit Committee	
			Comments
EMA	Yes	No	Not on Board level but advisory to the Director. Includes external members. Includes Director. Does not include Board members.
EFSA	Yes	Yes	On Board level. Includes the Director. Includes members of the Board. Does not include members external to the Board, but members of the Board are independent.
ECDC	No	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. 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 practice, the IAS chairs a network that meets 2 or 3 times per year (Auditnet for agencies).

So far, the IAS in its 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

Frequency of audits

Agencies complain of audit overload, with typically 1-2 audits carried out by the IAS and 1 by the Court of Auditors every year. The majority of agencies are satisfied with the services of IAS, thus limiting the problem with audit rather to frequency than to procedure. Some agencies indeed complain about an audit overload and more generally an inflation in oversight mechanisms and controls, raising the question of the coordination of audit work (see also fiche 27).

The burden of audits

Audits often run in parallel with or are shortly preceded/ followed by a considerable number of other controls, which often require providing similar data to different authorities (e.g. Internal Audit Service, Court of Auditor, European Parliament, etc.).⁵⁵ In that regard agencies need to devote significant resources to these control mechanisms, which incurs extra costs for them that are not displayed in the budget.⁵⁶ This makes it necessary to adapt the burdens related to various controls - including IAS - to the activity, size and budget of the Agency and introduce a proportionality principle in planning and conducting audits.⁵⁷ The IAS costs (mainly staff and travel costs) for the audit activities in agencies are paid from the Commission's budget and are not re-invoiced to the Agencies.

⁵⁵ EP study on common support, point 3.3.4, p. 78

⁵⁶ EP study 2008, Findings for EU agency governance regarding accountability and transparency, Audit, p. 194-195

⁵⁷ EP study on common support, point 3.1.2, Internal Audit Service (IAS), p. 52-53

At the same time, the duty of IAS as an internal auditor for agencies also poses problems in terms of staff availability. EP notes that, as in 2003, 2004 and 2005, IAS expressed in its annual activity report for 2006 a reservation about the audits of the regulatory agencies: "While the IAS received posts for the audit of regulatory agencies, the parallel increase in the number of the agencies, now 23, still does not enable the IAS to properly fulfil its obligation assigned by article 185 of the Financial Regulation. At the end of 2006, all the agencies were audited at least once over a three-year period instead of once every year as provided for by the Financial Regulation".⁵⁸ In 2007, with the additional audit resources granted by the budgetary authority, the IAS could – for the first time – cover all 23 agencies in the scope of its activities, and the reservation in its annual activity report was lifted. The number of agencies to be covered by the IAS has increased or will increase:

- EUROPOL and EIGE in 2010
- EASO, ACER, in 2011
- SIS/VIS, BEREC, the European Banking Authority, the European insurance and occupational Pension Authority, the European Securities and Markets Authority in 2012.

Follow-up to audit conclusions

In the Commission, internal audit reports are reviewed by a Commissioner level Audit Progress Committee, which includes external experts and which holds frequent meetings. This provides a forum for discussing, possibly challenging, and most often ensuring implementation of the audit conclusions. This system is, with a few exceptions, not systematically implemented in the case of the agencies. It is therefore the joint responsibility of the director and the board to use the audit conclusions. It seems though that audit conclusions may even not be discussed in board meetings. Apart from possibly lack of willingness to discuss and use audit conclusions, and in some cases a certain reluctance of the Agency's management to share internal audit reports with the entire Board, there are practical limitations to that – board members are experts in the agency's core business, but they do not necessarily have competence and/or interest in the area of management and administration and therefore are not an effective counterweight to the Directors⁵⁹. Therefore, there is no system in place that can guarantee the proper use of audit conclusions.

The added value of agencies' own internal audit capability

The role of IAS vis-à-vis agencies ensures a professional and harmonised approach to auditing agencies. However, several agencies have also set up their own permanent internal audit function (IAC), but only two are composed of three or more members of staff. One can consider that IACs have more insight on agencies day-to-day business, which is an advantage. At the same time, they are also very close to the agency's management and their concerns. Experience also shows that IACs are more involved in advisory / consultancy activities, when the IAS through its audits provides independent assurance work to the Director and the Agencies' Boards (including the Commission). This is where IACs added value mostly is. Since 2008, in a large majority of Agencies, the IAS ensured that the work plans of both IAS and IACs are coordinated to avoid overlaps. While having an internal audit capability is rather advantageous for agencies, small agencies, even if willing, are reluctant to set up one because of staff constraints.

⁵⁸ EP discharge 2006, point 231, p. 43-44

⁵⁹ Evaluation of EU decentralised Agencies in 2009 – Vol I p25

- 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

Treaty on the functioning of the EU

Article 287 TFEU (ex Art. 248 EC) 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 examination⁶⁰.

In accordance with Article 287, 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 Regulation⁶¹ specify in more detail the audit role of the Court as laid down in Article 287 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 Regulation⁶² lays down that the Court of Auditors shall scrutinise the accounts of each Community body submitted to the FFR, in accordance with

⁶⁰ 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).

⁶¹ 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 278 TFEU. 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 agencies⁶³.

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

Except in very rare occasions⁶⁴, the Court always gave a positive opinion without reserves on the accounts and on the legality and regularity of the underlying transactions.

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

The annual specific reports do not deal with performance of the agencies. As is the case for the DAS and annual report for the Commission, the reports concentrate on accounts, and legality/regularity of the transactions.

In its Special Report of June 2008⁶⁵, 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

⁶² 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

⁶³ EMSA, EMA, EMCDDA, EAR, FRONTX, EFSA, CEPOL, EUROJUST, ERA, GSA, OHIM, CEDEFOP, CPVO, CdT, ENISA, CFCA, EEA, EU-OSHA, EUROFOUND, ECDC, ETF, FRA and EASA

⁶⁴ As for CEPOL (budget year 2007)

⁶⁵ Special Report No 5/2008 of the Court of Auditors, "The European Union's Agencies: getting results", June 2008

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 hand⁶⁶

Audit reports of the Court of Auditors (ECA)

For the ECA, as for the IAS, the main difficulty is to optimise the audit work carried out - which is increasing in scope with the number of agencies - under resources constraints: in recent years audit resources dedicated to agencies did not increase at the same pace as the number of agencies. According to international audit standards, audit work and resources should also be determined with due consideration to the financial materiality of agencies in the EU budget. As a result, the ECA focuses on the requirements foreseen by the legislation, at the expense of possible more in-depth audits on the effectiveness and performance of agencies. The performance of any additional audit task by the ECA implies additional audit resources.

This issue acquires a particular importance considering the fact that a limited information from ECA (e.g. in terms of agency's performance and internal control), would certainly affect the result of the work of the Discharge Authority.

Even when indirectly concerned, the Commission is not invited in contradictory procedures.

Overlaps between internal and external audit

Agencies express the opinion that there is an audit overload, with typically 1-2 audits carried out by the IAS and 1 by the ECA every year. An explanation may be that "internal audit" is carried out by a body which is perceived as external. Another explanation may be that audits have become systematic only since 2008, mostly thanks to a substantial increase of resources for internal audit of agencies. In any case, agencies see overlaps in what concerns providing same documents, answering similar questions, explaining disagreements, etc to different institutions/bodies at the same time.⁶⁷ However, this has to be put into perspective: beneficiaries of EU funds often complain about over-auditing. Commission services and the Court try to coordinate their audit efforts, but the purpose of the controls is not always comparable.

The burden of compliance

The burden of compliance with audit requirements differs depending on the agency's size, age and type of activities. For small and/or young agencies, audits are particularly burdensome in light of their limited resources and experience.⁶⁸ Experience shows that agencies conducting operational activities spend less time for cooperation with ECA than agencies with other type of activities, i.e. soft coordination, providing expert advice, providing harmonised information, etc.

3) Possible solution(s) for addressing identified weaknesses

⁶⁶ The views of the Court of Auditors will be sought via informal contacts.

⁶⁷ EP study on common support, point 3.3.3, p. 70

⁶⁸ EP study on common support, point 3.3.4, p. 78

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

Discharge

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

Legal framework

By analogy with the general discharge procedure described in Article 319 of the TFEU (ex Art. 276 EC) and in accordance with Article 185 of the Financial Regulation⁶⁹ and the agencies' founding regulations (see also Article 94 FFR⁷⁰), 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 its 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.

Every year, the EP appoints a specific *rapporteur* for all agencies' discharge. 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.

Given the growing number of agencies requiring a discharge, in 2007 and 2008 the EP invited to the hearings of the CONT committee representatives of the agencies for which the situation was the most critical according to the Court's reports. In the same way as for the discharge on the general budget, the hearings focused on legality/regularity questions.

⁶⁹ 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)

⁷⁰ 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

Generally, the discharge decisions of the EP contain horizontal recommendations addressed to the Agencies, the Commission or the Court of Auditors. In 2009 and 2010 (budget year 2007 and 2008), these general and horizontal recommendations were gathered in a single specific report dedicated to performance, financial management and control of agencies (own initiative report by the rapporteur)⁷¹.

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

Most frequently highlighted problems during discharge

The main and most frequent problems highlighted in relation to agencies in the Court of Auditors' annual reports and in the EP resolutions are problems related to the carry-over and cancellation of the agencies' operational appropriations, weaknesses in procurement procedures, shortcomings in the planning and in the implementation of staff recruitment procedures, shortcomings in host agreements, lack of performance information from the agencies.

The case of self-financed agencies

In the case of OHIM, it is its Budget Committee⁷² who gives a discharge to the President of the Office in respect of the implementation of the budget⁷³. In the case of CPVO, it is the Administrative Council that gives a discharge to the President of the Office.⁷⁴

2) Critical analysis of the issue at hand

Discharge given to agencies

Up to 2009, 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), either with or without comments. During 2008 discharge procedure all agencies received comments related to regulatory issues, internal control and their performance but only in eight of them (CEPOL, EEA, EMSA, EUROFOUND, EUROJUST, FRA, FRONTEX, and GSA) the Parliament issued special

⁷¹ 2008 discharge: [European Parliament resolution of 5 May 2010 on performance, financial management and control of agencies \(P7_TA-PROV\(2010\)0139\)](#) and, before, 2007 discharge: [European Parliament resolution of 23 April 2009 on financial management and control of EU agencies \(P6_TA\(2009\)0274\)](#).

⁷² The Budget Committee is composed of one representative of each Member State and one representative of the Commission (without voting rights) and their alternates.

⁷³ Article 142(2) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark

⁷⁴ Article 111(3) of Council Regulation (EC) No 2100/1994 of 27 July 1994 on Community plant variety rights.

concerns. For the specific case of CEPOL, for the first time, in 2010, the MEPs followed the CONT rapporteur's recommendations⁷⁵ to postpone 2008 discharge (EP decision of 5 May 2010)⁷⁶. In her second draft report to be voted in October's plenary session, the rapporteur proposed to refuse for the first time the discharge to an Agency (CEPOL). Here, in fact, the rapporteur considers unacceptable that, since the College's establishment (2006) as an agency, the CEPOL did not meet the standards of good administration expected from a regulatory agency and that at least four other years (until 2014) are deemed necessary to possibly reach them. The rapporteur also questions the sense responsibility and professionalism the College's director in the years 2006-2009⁷⁷.

It is worth noting that the Council's discharge recommendation to the Parliament generally contains specific paragraphs about the agencies. These cover in particular a reminder of the role of Commission and Member States representatives in the agencies' boards, as well as over-budgeting and staffing issues.

As is the case for the general discharge, the discharge concerns regulatory and legal compliance, according to the "DAS" (declaration d'assurance) methodology and the requirements laid down in Art 287 of the TFUE, rather than performance. The EP, nevertheless, has already stressed the importance of including an assessment of agencies' performance in the discharge process⁷⁸. Indeed, in order for the discharge procedure to be extended to performance, the Parliament would have to rely upon sound performance information from the agencies and for the ECA, i.e. information related to the agency's own responsibility in achieving its intended outputs and results at a reasonable cost, which today is scarce⁷⁹. To this end, in recent discharge resolutions, the EP has called on agencies to:

- draw up multiannual work programmes,
- promote the introduction of a risk assessment process which should reinforce and allow close monitoring of the agency's activities,
- promote the introduction of a performance-driving integrated management control system consisting of interconnected IT-based management application that enable an agency's management to monitor project progress and resource use in real time,
- supply the discharge authority with a 'logic model' to be presented in its performance audit, with a view to identifying and setting out the relationship between the socio-economic needs to be addressed by the agency and its *objectives, inputs, processes, outputs, and outcomes*, which include *results* (immediate changes that arise for direct addressees at the end of their participation in a public intervention) and *impacts* (longer term effects of the intervention).

Furthermore, the agency's introduction of valuable systems for fixing objectives and assessing results and associated costs would certainly contribute to improve the quality of the annual activity reports and the periodic external evaluations, thus enabling the discharge authority to perform its task in full knowledge of the facts.⁸⁰ It would also be useful to streamline and possibly harmonise reporting requirements, in order for agencies to focus on key reporting

⁷⁵ Already in 2009, for 2007 discharge for CEPOL was delayed, for regularity reasons, but finally voted.

⁷⁶ Texts adopted, 5.5.2010, P7_TA-PROV (2010) 0140.

⁷⁷ Draft second Report on discharge in respect of the implementation of the budget of the CEPOL for the financial year 2008, PE443.079v01-00.

⁷⁸ See for example, on the [European Parliament resolution of 5 May 2010 on performance, financial management and control of agencies \(P7_TA-PROV\(2010\)0139\)](#).

⁷⁹ See in the Evaluation 2009, Volume I, point 4.3.1, p. 23

⁸⁰ ECA, Executive summary, point X, p. 5

(see also fiche 25), as well as to provide the ECA with adequate staff and funding to extend its audit work also to performance auditing.

Weaknesses of current system

As required by the TFUE⁸¹, the Budgetary Authority is mainly relying on the information and evaluations given by the ECA and the agencies. Therefore, the quality and completeness of such information (e.g. in terms of information related to the agency's performance, internal control and recurrence of the irregularities along the years) certainly affect the result of the work of the Budgetary Authority.

Moreover, it is not always clear how systematically agencies follow-up on the discharge recommendations.

Certainly, the growing number of agencies does not allow an in-depth examination of individual cases by the Council or the EP.. Indeed, while a special rapporteur issues a specific report on each agency, voted separately by plenary, in depth discussion in CONT Committee and in plenary is only reserved to the most "problematic" agencies.

3) Possible solution(s) for addressing identified weaknesses

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

⁸¹ Article 319 of the TFUE

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	? ⁸²	yes
11	Europol	26.07.1995	no ⁸³	no
12	Fundamental Rights Agency ⁸⁴	02.06.1997	yes	yes
13	European Agency for Reconstruction ⁸⁵	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

⁸² 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.

⁸³ Europol will receive a Community subsidy as from 2010.

⁸⁴ European Monitoring Centre on Racism and Xenophobia prior to 15.02.2007.

⁸⁵ Mandate expired on 31 December 2008.

	Agency	Founding act	Contribution from EU budget	Separate discharge from EP
20	European Aviation Safety Agency	15.07.2002	yes	yes
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
28	European Chemicals Agency	18.12.2006	yes	yes
29	Institute for Gender Equality	20.12.2006	yes	yes ⁸⁶
30	European Agency for the Cooperation of Energy regulators ⁸⁷	13.07.2009	yes	yes ⁸⁸
31	Body of European Regulators for Electronic Communications (BEREC) and the Office	25.11.2009	yes	yes ⁸⁹
32	Agency for the management of SIS II, VIS and EURODAC ⁹⁰			
33	European Support Office for Asylum ⁹¹			

⁸⁶ 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.

⁸⁷ COM (2007) 530 of 19.9.2007

⁸⁸ Idem

⁸⁹ Idem

⁹⁰ See SEC(2008) 323 of 11.3.2008.

⁹¹ 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.⁹² In the case of 16 agencies⁹³ 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 cases⁹⁴ the regulation only mentions the obligation to conduct an evaluation on a regular basis without indicating the timing.

The constituent act of 17 agencies⁹⁵ vests the agency itself with the responsibility to commission an independent external evaluation. In the rest of the cases⁹⁶, the founding regulations vest this responsibility with the Commission.

The founding regulations of nine agencies⁹⁷ do not foresee any obligation on evaluation. Seven of these agencies⁹⁸ conduct an evaluation nevertheless. In four of them⁹⁹ the evaluation is commissioned by the agency, and in three¹⁰⁰ 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;

⁹² ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, CFCA, EASA, EASO, ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMSA, ENISA, ERA, ETF, FRA, FRONTEX, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL

⁹³ BEREC Office, ECDC, ECHA, EEA, EFSA, EIGE, EMSA, ENISA, ERA, FRA, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL

⁹⁴ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO, EMCDDA, ETF, FRONTEX

⁹⁵ Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO, ECDC, EEA, EFSA, EIGE, EMSA, FRA, FRONTEX, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL

⁹⁶ ACER, BEREC Office, ECHA, EMCDDA, ENISA, ERA, ETF,

⁹⁷ CdT, CEDEFOP, CPVO, EAR, EMA, EU-OSHA, EUROFOUND, GSA, OHIM

⁹⁸ CdT, CEDEFOP, CPVO, EAR, EMA, EUROFOUND, OHIM

⁹⁹ CdT, CPVO, EUROFOUND, OHIM

¹⁰⁰ CEDEFOP, EAR, EMA

- Results obtained and fulfilment of mission;
- 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 Regulation¹⁰¹, establishes that all the agencies (except CPVO and OHIM)¹⁰² 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-study¹⁰³ 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 former 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-study¹⁰⁴ 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 former 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:

¹⁰¹ 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

¹⁰² CPVO and OHIM are self-financed and thus are not covered by Article 185 of the Financial Regulation.

¹⁰³ Meta-evaluation on the Community Agency system. Final Report, European Commission, Budget Directorate General, Evaluation Unit, 15 September 2003

¹⁰⁴ Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings. Final Report, Eureval/Rambøll-Management, September 2008

- 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.
- 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.
- Evaluation reports often assess effectiveness by analysing the clients' satisfaction instead of looking at real impacts.
- 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.
- 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"¹⁰⁵, the Commission launched a thorough evaluation of the regulatory agencies, taking a horizontal look at all agencies. This evaluation examines the implications of agencies' creation and operation for EU governance and EU policies, agencies' effectiveness and efficiency. The evaluation report concludes positively on several aspects of the agency system such as the generally timely and adequate input from agencies to EU policies, coherence of the agencies' activities with the mandates and key policy priorities and transparency vis-à-vis the general public.

At the same time it points at weaknesses of the agency system. Among these weaknesses is also the existing evaluation practice with regard to timing and content. 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.

The founding regulation of 18 agencies¹⁰⁶ 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.

¹⁰⁵ Communication from the Commission to the European Parliament and the Council "European agencies - The way forward", COM(2008) 135 final

¹⁰⁶ 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

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 former 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

On a general level, not all agencies' constituent acts contain provisions on evaluation, and where there are rules, they are not coherent across the different agencies. In addition, the obligations following from the provisions in the agency's founding act are often not well differentiated from the obligations under the Framework Financial Regulation for agencies.

Timing and frequency of agencies' overall retrospective evaluations

The added value of the agency's overall retrospective evaluation depends to a great extent on the timing, i.e. whether it takes place at a moment when the agency has been fully operational for long enough time to produce results. In cases, where this evaluation takes place 3 years after the agency's creation, the exercise can for the most part tackle questions relating to the agency's start-up (setting up, organisation, recruitment), but not on actual performance. The problem is that the deadlines which are imposed by the basic regulations in some cases do not take sufficient account of the fact that it is hard for an agency to reach its "cruising speed" until it has been in existence for two years.¹⁰⁷

Transparency of the agency system would be improved if all agencies were subject to similar requirements. In terms of frequency, a comprehensive overall evaluation of all agencies every 4-5 years seems reasonable (and is also the most widespread practice).¹⁰⁸

Content of agencies' overall retrospective evaluations

As a tool for accountability and for promoting performance, overall retrospective evaluations need to cover an adequate set of aspects of agencies' operation. The overall evaluations tend to cover a limited number of issues, i.e. relevance, coherence, added value in general and EU added value, and internal efficiency, and they fall short of concluding on rationale, effectiveness (in achieving policy objectives), and cost effectiveness (or external efficiency).¹⁰⁹ (For details on the importance of that aspect, see *fiche* 4 on 'ending of

¹⁰⁷ CoA, Evaluations, points 36, p. 25

¹⁰⁸ Evaluation 2009, Volume II, point 2.7.1, p. 123

¹⁰⁹ Evaluation 2009, Volume I, point 4.3.6, p. 26

agencies'). This, on the other hand, means that evaluations add little value in terms of accountability, as compared to audits.¹¹⁰

Overall agency evaluation: to be commissioned by the agency or by the Commission?

The widespread practice currently is that the agency itself is in charge of managing its overall evaluation (see Annex), and in a limited number of cases this is the responsibility of the Commission. If one is to strengthen the overall evaluations by ensuring that they provide a critical view on agencies' existence and relevance, then it would be inappropriate to have agencies managing this process.

The ultimate aim being that evaluations provide relevant and reliable insights in agencies' activities and value added, the selected external contractor should also have a sound knowledge of both the core business of the agency and the agency system in general. The reliability and objectiveness of the findings may also be ensured through the involvement (administrative management of the evaluation, quality checks) of a third party, as is the case for impact assessments. Parliament already suggested that such a role be played by the Court of auditors.

Ex-ante and ex-post evaluations of agencies' activities and programmes

It seems that most agencies do not conduct ex-ante evaluations of their activities/programmes. One of the main advantages of the *ex ante* evaluation is that it obliges agencies to present their objectives in a structured manner that underpins the whole planning process.¹¹¹ A mandatory ex-ante evaluation of agencies' activities/programmes would foster the setting of SMART objectives. However, the effort invested in an ex-ante evaluation should be proportional to the size of the budget to be used for the relevant activity/programme. *Ex post* evaluations of agencies' programmes and activities, on the other hand, provide useful input to the periodic updating of strategies and for organising the agencies' structure.¹¹²

A potential problem with regard to both ex-ante and ex-post evaluations is that the specific financial regulation of an agency may not have meaningful rules for these types of evaluation (e.g. sometimes those rules are copied from the Commissions Implementing Rules).

Follow-up to evaluations

Effective follow-up to evaluations increases their added value. It seems however that, left at agencies' own discretion, often evaluations are not sufficiently followed-up upon.^{113 114}

About half of the agencies state that they follow up in a structured way on evaluations. Generally, follow-up on task (activity) evaluation seems to be less formalised than for overall

¹¹⁰ Evaluation 2009, Volume I, point 4.3.6, p. 26

¹¹¹ CoA, point 12, p. 15

¹¹² CoA, Evaluations, points 35, p. 25

¹¹³ Op. cit., point II.B.2

¹¹⁴ Rapport d'information sur l'évaluation de l'activité des agences européennes, Denis Badré, Sénat, Commission des affaires européennes et de la commission des finances, 7 octobre 2009, point II

evaluations.¹¹⁵ In this respect, the involvement of Management Boards seems too weak to guarantee ownership and adequate follow-up of evaluations findings.

- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**

¹¹⁵ Evaluation 2009, Volume II, point 2.7.1, p. 123

ANNEX TO ANALYTICAL *FICHE* N°29

Agencies (Former 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.
EAR¹¹⁶ (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	_____

¹¹⁶ 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 no later than 19 June 2014	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) ¹¹⁷ .	Retrospective/	2007/____	Recommendations from the Management Board to the Commission (2007). Commission Proposal foreseen for March 2010.

¹¹⁷ 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 (Former 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 (Former 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 stakeholders¹¹⁸

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

Access to documents

All former 1st pillar agencies apply 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 documents¹¹⁹. In fact, following the joint Declaration adopted by the European Parliament and the Council on 30 May 2001¹²⁰, the Regulations setting up the agencies were amended as a result of the adoption of a number of Regulations by the Council on 18 June 2003 and by the European Parliament and the Council on 22 July 2003¹²¹. These Regulations, which came into force on 1 October 2003, make Regulation 1049/2001 applicable to the agencies. The agencies were required to adopt implementing rules by 1 April 2004. For newly created agencies, the basic Regulation includes a provision making Regulation 1049/2001 applicable and requiring the Management Board to adopt the practical arrangements for implementing Regulation (EC) No 1049/2001. Twenty-two agencies' founding regulations¹²² 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 agencies¹²³ no deadline is foreseen.

The constituent acts of the former 2nd pillar agencies - EDA, EUSC, ISS - and of the former 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. However, as these agencies do not fall within the scope of Regulation 1049/2001, their rules on public access may diverge from those of the Regulation.

According to the Article 15(3)¹²⁴ of the consolidated version of the Treaty on the Functioning of the European Union, as amended by the Lisbon Treaty¹²⁵, any citizen of the European

¹¹⁸ 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.

¹¹⁹ OJ L 145, 31.05.2001, p. 43

¹²⁰ OJ L 173, 27.6.2001, p. 5

¹²¹ Regulations 1641/2003 to 1655/2003, OJ L 245, 29.9.2003

¹²² ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, CEDEFOP, CdT, CFCA, EAR, EASA, EASO, ECDC, EEA, EFSA, EIGE, EMA, EMSA, ENISA, ERA, EU-OSHA, EUROFOUND, FRA, GSA, OHIM

¹²³ CPVO, ECHA, EMCDDA, ETF, FRONTEX

¹²⁴ "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.

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. The Court of Justice, the ECB and the EIB are subject to this provision only when exercising their administrative tasks.

Transparency

The founding regulations of nine agencies¹²⁶ 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 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 regulations¹²⁷ stipulate that the opinions, documents as well as information and databases concerning their activities are accessible to the general public.

The principle of transparency is implemented in the financial regulation of each agency by providing that :

- The financial regulation of the agency shall be published in the Official Journal of the European Union;
- A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption;
- The agency shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council¹²⁸;
- The final accounts of the Agency, consolidated with those of the Commission, shall be published in the Official Journal of the European Union.

Consultations and contacts with stakeholders

Nine agencies' founding regulations¹²⁹ include provisions on consultations with relevant stakeholders in the framework of the accomplishment of the tasks of agencies.

In addition, nine agencies' founding regulations¹³⁰ 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'

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. (...)"

¹²⁵ OJ C 115, 09.05.2008, p. 47

¹²⁶ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, ECHA, EFSA, EMSA, ENISA, ETF, FRA

¹²⁷ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, ECDC, ECHA, EFSA, EIGE, EMA, EMSA, ENISA, ERA, EU-OSHA, ETF

¹²⁸ OJ L8, 12.01.2001, p. 1

¹²⁹ ACER, CFCA, CPVO, EASA, ECHA, EFSA, EIGE, EMA, ERA

¹³⁰ CEDEFOP, ECDC, ECHA, EEA, EFSA, EMCDDA, EU-OSHA, EUROFOUND, ETF

organisations, in order to exchange, on a regular basis, experiences and information in the domain of their activities.

The founding regulations of five agencies¹³¹ foresee the cooperation with the stakeholders via the networks established by the agency. In addition, the stakeholders' views are taken into account during the evaluation on the implementation of the founding regulation of 11 agencies¹³².

Participation of stakeholders in agency's bodies

Three agencies' founding regulations¹³³ stipulate that representatives of the employers' and employees' organisations from Members States are members of the Management Board.

The founding regulations of six agencies¹³⁴ 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 agencies¹³⁵ 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.

2) Critical analysis of the issue at hand

Access to documents and transparency

Agencies' documents are generally available and easily accessible to the public.

All former 1st pillar agencies have applied the principles of Regulation (EC) N° 1049/2001 regarding access to documents through their founding regulations. Former 2nd and 3rd pillar agencies have applied similar rules through decisions adopted by the Management Boards. The assessment of the actual implementation of these principles is positive.¹³⁶

All agencies publish a substantial amount of documentation on their websites, such as reports, scientific papers, data, etc. There are differences in the volume of publishable information depending on the nature of the agency's tasks. For instance, EUROJUST, dealing with issues of a highly sensitive nature, publishes only official documents, press releases, annual reports

¹³¹ EEA, ECDC, EIGE, EMCDDA, EU-OSHA

¹³² Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, EASA, EASO, ECDC, EIGE, EMSA, ENISA, ERA, FRA, FRONTEX

¹³³ CEDEFOP, EU-OSHA, EUROFOUND

¹³⁴ ECHA, EMCDDA, EMSA, ENISA, ERA, ETF

¹³⁵ CFCA, EASA, EASO, ECDC, EIGE, EMA, ENISA, ERA, FRA

¹³⁶ Evaluation 2009, Volume II, point 2.3.2, p. 61-63

and other documents of general interest. There have been difficulties in making agencies' websites multilingual, so as to facilitate consultation by citizens of all Member States.¹³⁷

With a view to facilitating access to information about agencies, a common website for Commission/regulatory agencies was launched by the Commission a couple of years ago. The aim of this common website is to establish a comprehensive, up to date library of information relating to agencies, to promote an understanding of the common challenges faced by agencies, and to improve the way agencies function by learning from good practices.¹³⁸ Although it would be a good platform for accessing relevant general or agency-specific documents, notably for the exercise of the Budgetary authority's prerogatives, this website is not kept up to date.

Consultations and contacts with stakeholders

Most agencies maintain multiple relations with other key operators, especially UN and other international organisations, sister agencies in third countries, and Member States' agencies. Co-operation with other stakeholders take place at different levels, including through MoUs and joint action programmes and projects. While the extent to which there is actual coherence and complementarity between the tasks of the agencies and their international and Member States' counterparts cannot be determined, these contacts should be regarded as positive even if further potential synergies could be realised.¹³⁹ The sharing of role between EU and Member States' agencies is not always clear.

Participation of stakeholders in agency's bodies

In a significant number of cases, the composition of the Management Boards does not fully reflect the needs of the relevant stakeholders.¹⁴⁰ In fact, in some agencies' stakeholders and users are not represented at all,¹⁴¹ while in other cases stakeholders attend board meetings without voting rights.¹⁴²

In a few agencies the board involves a large number of users or stakeholders with voting right.¹⁴³ The assessment of this type of arrangement is mixed. On the one hand, stakeholders bring valuable expertise and information. On the other hand, these agencies have sometimes experienced difficulties in gaining reputation as autonomous, politically neutral entities, thus capable of performing tasks independently of stakeholders.¹⁴⁴ In addition, the high number of stakeholders, whose representatives come from all Member States, contributes to an excessive size of boards, which jeopardises the capacity of the latter to fulfil their tasks effectively (see also Fiches 5 and 6). Bearing this in mind, the composition of Management Boards remains currently unbalanced at the expense of Agencies' stakeholders other than Member States' representatives.

¹³⁷ CoA, footnote 32, p. 24

¹³⁸ CoA, Replies of the Commission and agencies to the Special Report of the Court of Auditors "The European Union's agencies: Getting Results", point 42, p. 43

¹³⁹ Evaluation 2009, Volume II, point 2.4.4, p. 75-79

¹⁴⁰ Evaluation 2009, Volume II, point 2.3.3, p. 65

¹⁴¹ CPVO, GSA, and OHIM

¹⁴² CFCA, EEA, ECHA, EMSA, ENISA, ERA, OHIM, EASA

¹⁴³ CdT, CEDEFOP, EU-OSHA, EUROFOUND

¹⁴⁴ EP study 2008, Findings for EU agency governance regarding management and Control, Structural and Procedural Oversight, p. 155-156

- 3) Possible solution(s) for addressing identified weaknesses**
- 4) Possible ways for implementing the viable solution(s)**