

Evaluation of the EU de-centralised agencies in 2009

Final Report Volume I Synthesis and prospects

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The progress of the evaluation was monitored by:

- a steering group composed of representatives from DG BUDG, DG ADMIN, and the Commission's Secretariat-General. The IAS participated as an observer;
- a reference group composed of representatives from the Commission, Council, and Parliament, as well as three agencies and two external experts (Professors Eduardo Ongaro and Christopher Pollitt).

The opinions expressed in this document represent the authors' point of view which is not necessarily shared by the European Institutions.

Executive summary

Evaluation process

This evaluation applies to 26 EU decentralised agencies. These are independent EU bodies in charge of specific tasks which they undertake under their own responsibility. In 2008, their overall staff consisted of 4,698 people and their overall budget was €1,218 million. Most of the agencies are entirely funded by an EU budget subsidy, but in a few instances the resources originate entirely, or to a large extent, from invoicing services.

The evaluation was prepared by the Commission on the basis of an extensive consultation process involving other European Institutions, and then entrusted to an independent team through a competitive process. A high profile reference group has provided valuable advice at different stages. It comprised of representatives from the Commission, Council, Parliament and agencies, as well as academic experts. The evaluation team visited all agencies, reviewed several hundred documents, and interviewed about 300 people.

This evaluation is designed to contribute to the ongoing debate on the future of the Community agency system by taking a horizontal look at all agencies and examining the real implications of the creation and operation of agencies in the Union.

This report is comprised of four volumes, covering respectively (I) Overall synthesis and options to be discussed for the future, (II) Detailed conclusions at the level of the agency system, (III) Detailed findings at the level of individual agencies, and (IV) Evaluation method. A number of working documents are also provided in a CD-Rom.

Conclusions

The following conclusions respond to the questions asked in the terms of reference.

Relevance and rationale

To what extent have the justifications/rationales for EU agencies proven to be relevant and adequate to the needs?

There is no single legal framework governing the establishment and closure of EU decentralised agencies. On the contrary, EU agencies have been created on a case by case basis in successive waves through various mixes of political interests. The relevance of the overall structure of the agency system remains questionable in the sense that there is no overarching rationale cutting across agencies.

The regulations which established the agencies always include justifications, but in the past these documents did not sufficiently explain why new policy instruments had to be implemented through an agency, rather than something else. The practice of impact assessments has clarified this issue, at least for the newest agencies.

One of the implicit reasons why agencies were created is that they facilitate the development of EU policies. The assumption that they are created to ease staff constraints cannot be confirmed.

Where they are clearly stated, the reasons for creating agencies can be categorised in four groups: (1) to ensure independence from or to avoid conflict of interests with the Commission, (2) to implement tasks of an inter-governmental nature, (3) to implement tasks in a framework of dialogue with social partners or other interest groups, and (4) to develop a specific expertise or capacity.

The agencies' activities were aimed at addressing a variety of stakeholders, ranging from policy-makers and public managers at EU and Member State levels to targeted publics on the EU market, most often enterprises. There is a broad consensus among these stakeholders that the agencies were set up to address needs pertinent at the

time. This opinion is particularly emphasised in the cases of “internal market agencies” and agencies addressing problems transcending national borders. Generally speaking, the needs which the agencies were originally established to address still exist today, and they are clearly growing in some cases.

There are four main alternatives to creating agencies: (1) Commission or executive agency, (2) intergovernmental arrangement, (3) expert network, and (4) private sector. In addition, there is also the option of including the proposed agency’s task in an existing agency. Alternatives to creating agencies were paid limited attention until impact assessments came into practice. The creation of agencies is now justified in a transparent way, although it is not yet fully evidence-based and still does not cover all relevant issues.

One option not paid sufficient attention is that of extending the mandate of an existing agency instead of creating a new one. This option is of particular interest where small agencies are at risk of not reaching a critical mass.

During their lifetime, a majority of agencies have faced relevance problems, most often in the form of claims for addressing new needs, with tough relevance problems being the exception. These problems have generally been acted upon by extending the agencies’ mandates rather than closing or merging agencies. In fact, established bodies are almost never reconsidered, except in a few cases where agencies were established with a limited duration.

Agencies and the European Institutions

To what extent are the activities carried out by EU agencies relevant to the Commission’s/Union’s work?

About half of the agencies are primarily meant to provide harmonised information and cross-cutting analyses not available elsewhere, and useful for all those involved in the making of EU policies, including the European Institutions.

Some of the other agencies mainly provide expert advice as an input into the decision-making processes involving the Commission, the European Parliament, and the Council through specific committees, and related to the implementation of EU policies.

The remaining agencies contribute to implementing EU policies in a more direct manner by providing highly specialised services, dealing with individual applications for registration/certification, or facilitating Member State co-operation.

For about half of the agencies, their main tasks originate from a transfer of responsibilities, either from the Commission or the Member States, while a small majority have been created in response to entirely (or mainly) new tasks. Transfers from the Member States are justified by the need to ensure harmonisation and co-ordination at EU level. In this respect, there is a clear EU added value, but the sharing of roles is not always clear enough.

Transfers from the Commission are generally justified by problems such as lack of capacity or technical/scientific expertise, conflicts of interest, or the need to mobilise expertise in politically sensitive areas. The evaluation team understands that such transfers have not relaxed the constraint on the Commission’s resources or allowed it to focus more on its core tasks due to the continually rising scope and amount of work related to EU policies.

Building on its interviews, the evaluation team assesses that the quality and usability of agencies’ products and services are generally perceived as good within the European Institutions.

Good governance

To what extent is the process of creating, setting up and supervising EU agencies in accordance with the principles of good governance?

With regards to the creation of new agencies, there is a lasting concern about the decisions related to the seating of the agency in its host country. The decision on the location of the agency is typically made 2 years after that of creating the agency. Over time it has often involved a certain amount of "horse-trading" between Member States at Council meetings, a practice which has not always led to efficient seating conditions. In terms of the main dimensions of accessibility, attractiveness for staff, cost of premises, and VAT exemption, a number of "location packages" are assessed as inefficient by the evaluation team.

Regarding the practical setting up of new agencies, little learning seems to take place and the practice does not seem to be managed efficiently, with ECHA being one notable exception. However, a new Roadmap for setting up agencies has been prepared and may help to address some of these issues when setting up agencies in the future.

A connected issue is the fact that established agencies are almost never reconsidered, except some agencies which have been established for a limited duration. Also, periodic agency evaluations do not in practice provide the opportunity to reconsider the agencies since the evaluations are not managed in a way that could result in reform or closure of an agency.

In the majority of cases, the composition of the management boards does not fully balance the interests needing to be taken into account. In particular, there is a tendency to include full representation of all Member States, although it may not be necessary. This often occurs at the expense of the representation of other more relevant stakeholders. In a few instances, an imbalance in the forces of some players entails blockages or inefficiencies. Overall, the evaluation team concludes that the standard approach is unnecessary, costly, and ineffective.

There are interesting exceptions to the dominant model of agency governance, for instance in the case of EFSA having a 15 member board mainly composed of professionals and experts. Such cases may to some extent be considered as pilots for future reforms and at a minimum deserve consideration.

The process of establishing the agencies' budgets tends to be disconnected from performance information (which in itself is scarce). Among the decisions of the Budgetary Authority, budget cuts are particularly sensitive ones. They are sometimes due to under-spending in previous years or the agency supplying a lack of proper justification for their budget. The evaluation team understands that the current process creates an indirect but powerful incentive for spending.

The implementation of staff and financial regulations are often cited by the agencies as burdensome and difficult to adapt to their special circumstances. However, there are actually a number of possibilities for adapting the implementing rules to better suit the needs of the agencies and these margins of manoeuvre do not seem to be fully exploited.

It is the assessment of the evaluation team that the staff and financial regulations themselves are not really the issue, since they offer a safe framework for dealing with public money and international staff. Rather, the issue seems to be that the agencies do not have sufficient flexibility for managing their human and financial resources efficiently. It is not clear to the evaluation team why there is a need for the Budgetary Authority to control in detail the composition of the staff or budget, or why there is a need to constrain the implementation of the framework regulations as long as agencies match sound management standards, fulfil their tasks, and achieve results.

Coherence

To what extent are the objectives and activities of agencies coherent between agencies and with EU policy objectives?

The activities of the majority of agencies are coherent with their mandate; something which is sometimes reflected directly in their organisational structure.

Complementarities and coherence with EU policies are generally maintained on a more continuous basis through the agencies' work programmes. These are usually subjected to extensive consultation with parent DGs and often also other relevant DGs. Coherence is greatly enhanced where the agency serves a specific EU policy which is itself defined in a well structured strategy paper.

There are, however, a couple of examples of mandates not fully in line with the actual needs, leading to budget allocations and prioritisation of activities not quite coherent with the mandate. Surprisingly, these examples are found among new or newly recast agencies.

In the agencies with a communication strategy, there is an overall coherence with that of the Commission. In a minority of instances, a precondition for achieving the intended impacts is that the agency is perceived as an independent body by interest groups, European citizens, and international players. For other agencies, it may not be a good use of resources to try to create a distinct image from that of the European Institutions.

Most agencies have several connections to other EU agencies working within neighbouring areas, sometimes on a very wide range of issues, while a few have none. Such co-operations are increasingly being formalised through memoranda of understanding between agencies. However, the degree to which such arrangements entail significant co-operation varies in practice, and there are still potential synergies to be realised in several areas.

Most agencies maintain multiple relations with other key operators, especially sister organisations at the level of the United Nations, other international organisations, and sister agencies in third countries.

Effectiveness

To what extent have the EU agencies met their objectives, in particular those set out in their work programmes?

For about half of the agencies, clear evidence of having achieved the planned outputs could be found through a review of annual reports, work programmes, and recent evaluations. For the remaining half, the opinions gathered through interviews and questionnaires are also that planned outputs have been generally achieved, with only minor exceptions.

In the minority of agencies which undertake periodic client surveys, user satisfaction with the services provided was good. This was confirmed by the evaluation team's interviews with individual stakeholders.

Recent agency evaluation reports often come to positive conclusions about effectiveness, albeit in rather general terms.

Through an in-depth analysis of a series of successful cases, the evaluation shows that merits of achieved impacts must always be shared with other contributors, such as Member States and national agencies, the Commission, international institutions, scientific networks, other European bodies (Parliament, other agencies), or civil society organisations.

To a certain extent, all success stories owe to the availability of adequate and flexible internal expertise. Some factors are of special importance in achieving certain types of

effects: (1) policy dialogue and communication capacity in the case of input into the policy-making, (2) closeness to national agencies and clear division of responsibilities where the agency facilitates cooperation between Member States, and (3) continuous improvement of standard tasks.

A specific issue is that of working in 27 Member States. Successes have been achieved by agencies setting up their own field work processes through international calls for tenders and framework contracts with national information providers, or by establishing a network of focal points and attracting their contribution through incentives. The key issue here is that agencies achieve better results where key stakeholders in the Member States see the added value of the Agency and hence become more willing to cooperate.

Efficiency

To what extent have the agencies conducted their activities efficiently and achieved their objectives in a cost-effective manner?

The evaluation has identified a series of factors affecting external efficiency, i.e. achieving good results and impacts at low cost.

Of these, administrative tasks are by far the most significant. On average, they consume about one-third of the agencies' staff resources, although variations between agencies are substantial, with figures ranging from 14% to 54%. Smaller agencies are at a significant disadvantage since the regulations and procedures with which the agencies have to comply are largely the same regardless of the agency's size. It seems that in order to operate efficiently, an agency needs to reach a certain critical size. The data indicates that this critical size lies somewhere between 50 and 100 staff.

Agencies must comply with the staff and financial regulations which apply to all EU bodies. There are frequent complaints by the agencies that these obligations entail a significant risk in terms of effectiveness because the rules which the regulations apply are not suited to their particular circumstances. Agencies have some room for flexibility in the sense that (1) they can adopt or amend their own implementation rules with prior approval from the Commission, and (2) they can derogate from their implementing rules in exceptional circumstances. However, this flexibility is not, or cannot, always be fully exploited. Some, but not all of these problems, can be related to inexperience on the part of new agencies, and it appears that there is a learning curve regarding the administration of the rules.

One of the most problematic rigidities is said to lie in the fact that the agencies have little freedom to decide for themselves the composition of their staff, although agencies employ a majority of temporary and contract agents rather than permanent agents (officials).

The location cost also affects efficiency to a significant extent, again with considerable differences between agencies. Less accessible locations, in terms of travel cost and time, affect both the resources needed for achieving results and the results themselves, especially where agencies' activities require extensive networking. The other part of the location cost, namely the cost of premises, also varies widely depending on local conditions, including the size and nature of the support provided by the host country. This ranges from practically zero to more than full coverage of premise costs. In some cases, travel costs and premise costs off-set each other, for instance because the host country compensates for a distant location by considerable financial support to premises. However, there are agencies which score highly on both indexes.

In the investigated impact (success) stories, impressive results and far reaching benefits have been achieved at surprisingly low cost. A series of factors have been identified as determining external efficiency in that they affect both results and costs. These factors include internal expertise, mobilisation of external experts, field research in the Member States, and communication.

Another series of factors are also interesting because they have major consequences on effectiveness while involving limited or no costs. These factors include standardisation, flexible reallocation of key resources, closeness to users and mutual trust with users.

The agencies do not achieve cost-effectiveness through transferring costs and administrative burdens to the users of their services. Cost transfers and administrative burdens are primarily an issue where customers have to apply and pay for certification, registration, or assessment. The principle of charging agency services to users is a matter of EU policy-making which is not subjected to substantial discussion. Instead, the level of fees is what is discussed. There have been instances where the fees exceeded the costs and surpluses accumulated. In most, but not all, cases, the necessary adjustments were made, although the process was long and complex.

Oversight activities

To what extent are the mechanisms for monitoring, reporting and evaluating EU agencies adequate for ensuring accountability and for an appropriate assessment of performance in the context of the agency system?

Two types of evaluations are undertaken by agencies: overall evaluations and evaluations of specific activities/tasks. Requirements and practices vary widely, and the evaluation team concludes that more streamlined requirements, in particular for periodic overall evaluations, would contribute to improving the transparency of the agency system.

In terms of periodic evaluations, much of the evaluation effort does not fully satisfy the needs of accountability of the agencies, particularly with regard to the effectiveness of achieving policy objectives and cost effectiveness. Furthermore, evaluations consider the basic rationale for the existence of the agency only to a limited extent.

Since 2008, the Commission's Internal Audit Service (IAS) has been responsible for the internal audit function in the majority of agencies, thus ensuring a professional and harmonised approach to auditing the agencies. A number of agencies furthermore maintain their own internal audit capability to increase the focus on proper procedures within agencies. There is a widespread sentiment in agencies of "audit overload". Audits seem to not always be discussed in the management boards.

Overall, the evaluation team's conclusion is that internal audits are making satisfactory progress towards balancing regularity and performance, but that ownership and use remain as two serious problems.

Adequate monitoring is the basic requirement for being able to carry out the other oversight activities in a way that lives up to the requirements. However, monitoring is not very well developed in terms of the use of quantifiable objectives and indicators. All agencies monitor their use of resources and most monitor output in some way. Several agencies are making an effort to develop results-based performance indicators, usually connected to their activity-based management systems. However, actual use of such indicators is still extremely rare, meaning that the monitoring of results and impacts is almost non-existent. Thus, the monitoring activities share the basic flaw of the evaluation practice: that real effectiveness cannot be (is not) assessed, which means that the contribution of monitoring activities towards improving performance is, at best, only applied to outputs and internal efficiency, and not results. This is carried directly over into the reporting activities, which almost never go beyond outputs and the use of resources because the monitoring activities do not produce the full range of data required to live up to the requirements of the framework Financial Regulation.

Identified problems and options for improvement

Reconsidering agencies periodically

The evaluation concludes that the standard model of agency governance (with all Member States represented in the board) has multiple inconveniences, and that it should not be considered as compulsory since there are a few examples of agencies benefiting from small professional boards which balance the interests of various stakeholders. In some instances, Member State representatives face conflicts of interests because they both govern the agency and compete with it, or benefit from it through contracts or subsidies. Furthermore, directors and boards do not enter in the kind of counter-power interplay which should be part of good governance.

An option for addressing these problems is to submit all agencies to a thorough reconsideration process within a flexible 10-year programme. The proposed approach would provide opportunities for recasting inappropriate governance arrangements, and also for dealing with several other problems, as seen below.

Merging small agencies with larger ones where relevant

Although the process of establishing EU agencies has improved considerably over recent years, the evaluation team considers that the issue of an agency's critical size is not yet assessed in sufficient depth. For instance, when it comes to comparing the option of a new agency versus extending the mandate of an existing agency.

Where relevant, the proposed reconsideration approach would open windows of opportunity for merging agencies

Improving the transparency of seating conditions

The process of establishing agencies in their host countries is not transparent and involves quite uneven outcomes. The evaluation team has investigated the seating conditions (accessibility, attractiveness for staff, cost of premises, and tax exemptions) and concludes that 5 agencies have particularly inefficient conditions.

In order to improve the transparency of seating conditions, an option would be that the Council equip itself with a capacity to (1) require fully explicit and detailed proposals from the candidate host Member States, (2) make transparent comparisons between such proposals, and (3) hold host countries accountable for keeping their promises.

The proposed reconsideration approach is also a possibility of reconsidering inefficient location packages.

Providing administrative support to new agencies

Newly established agencies tend to lack sufficient guidance, support, and transfer of lessons learned with regards to administrative issues.

It is therefore suggested that the parent DG nominates a senior officer with strong experience of EU agencies as project leader ("coordinator"), and maintains this function until the agency has moved to the host country and recruited its main managers. In parallel, an administrative support task-force might be established for the purpose of supporting new agencies and learning/transferring lessons from the process of establishing agencies.

Establishing an inter-agency audit and performance committee

The discharge procedure implemented by the budgetary authority (Parliament and Council) makes agency directors accountable for regularity rather than performance. In parallel, the budgetary process tends to be disconnected from performance informa-

tion and conducted in such a way that it creates an indirect, but quite powerful, tive for spending.

A first step for addressing this problem should be to strengthen the capacity of the agency system as a whole to produce and use performance information. For this purpose, it is suggested that the chairpersons of all agency boards establish a high profile audit and performance committee at inter-agency level. This committee should be responsible for developing performance information and performance comparisons, and for discussing internal audit reports.

When performance information becomes available and usable, the discharge procedure should progressively balance the concerns of performance and regularity, the process of establishing the budget should be closely connected to performance targets.

Developing inter-agency comparisons

The evaluation team assesses that the inter-agency comparison of performance and impact information is not presently feasible, although it could be developed progressively within groups of agencies implementing similar activities.

If the above mentioned audit and performance committee was established, it would be a unique place where inter-agency comparisons could be developed.

Alleviating administrative burdens

There is an efficiency problem with respect to implementing the Staff and Financial Regulations since this represents a cost, particularly in the small agencies, and a constraint on flexible response to needs.

Administrative burdens can first be alleviated by better using existing freedoms. In this respect, it is proposed that an informal working group gather experienced heads of administration and involved services in the Commission under the responsibility of the Secretariat-General. The purpose would be to identify, validate, and promote opportunities for reducing complexity and rigidity in implementing the regulations. Additional flexibility would be accompanied by reinforced checks and balances between the director and the board.

A more challenging and long-term option would be to (1) identify a limited number of pilot agencies that have mature governance structures, effective risk management and control mechanisms, and sustainable good records in matching performance targets, and (2) allowing them additional operating freedoms. Such freedoms could consist of giving them the possibility of revising and simplifying their implementing rules in certain areas after consultation of the Commission, instead of prior approval which is the current requirement. This approach would require a legislative change but it would create a strong incentive for measuring, managing, and ultimately achieving performance.

Agency level information and conclusions

The third volume of this report is made of 26 chapters addressing the following issues: (1) activities of the agency, (2) rationale and relevance, (3) agency's input to the work of the EU institutions, (4) internal and external coherence, (5) effectiveness in achieving outputs and customer satisfaction, and (6) efficiency in managing resources and executing the budget.

The same document also includes a series of comparative tables covering: creation, rationale, relevance, tasks, related EU policies, organisational settings, governance, budget, staff, management, accessibility, location package, overall evaluations, evaluation of tasks, audit and discharge, monitoring, and reporting.

Overview of agencies

Agency	Main category of activity	Date of creation	Location	Parent DG	Staff	Overall budget € million	Type of governance
CdT	Service and support	1994	Luxembourg (LU)	DGT	189	42	Users and MS
CEDEFOP	Soft coordination	1975	Thessaloniki (GR)	EAC	122	18	Tripartite
CEPOL	Soft coordination	2000	Bramshill ¹ (UK)	JLS	32	9	Member States
CFCA	Operational coordin.	2005	Vigo (ES)	MARE	47	9	Standard
CPVO	Individual applications	1994	Angers (FR)	SANCO	45	13	Standard
EAR	Service and support	2000	Thessaloniki (GR)	ELARG			Standard
EASA	Individual applications	2002	Köln (DE)	TREN	440	85	Standard
ECDC	Information	2004	Stockholm (SE)	SANCO	195	40	Standard
ECHA	Individual applications	2006	Helsinki (FI)	ENTR	219	66	Standard
EEA	Information	1990	Copenhagen (DK)	ENV	167	37	Standard
EFSA	Expert advice	2002	Parma (IT)	SANCO	395	66	Expert
EIGE	Information	2007	Vilnius (LT)	EMPL	N/A	7	Standard
EMCDDA	Information	1993	Lisbon (PO)	JLS	99	14	Standard
EMEA	Individual applications	1993	London (UK)	ENTR	547	183	Standard
EMSA	Operational coordin.	2002	Lisbon (PO)	TREN	179	50	Standard
ENISA	Information	2004	Heraklion (GR)	INFSO	57	8	Standard
ERA	Expert advice	2004	Lille (FR)	TREN	113	18	Standard
ETF	Service and support	1990	Torino (IT)	EAC	124	19	Standard
EU-OSHA	Communication	1994	Bilbao (ES)	EMPL	64	15	Tripartite
EURO-FOUND	Information	1975	Dublin (IE)	EMPL	87	21	Tripartite
EUROJUST	Operational coordin.	2002	The Hague (NL)	JLS	172	20	Member States
EUROPOL	Operational coordin.	1995	The Hague (NL)	JLS	408	65	Member States
FRA	Information	2007	Wien (AU)	JLS	55	15	Expert
FRONTEX	Operational coordin.	2005	Warsaw (PL)	JLS	185	70	Standard
GSA ²	Service and support	2005		TREN	52	11	Standard
OHIM	Individual applications	1994	Alicante (ES)	MARKT	705	318	Standard

Categories of activities explained in Volume I, 2.1.2

Parent DG in 2009 – Some changes may take place around the time of finalising this report.

Staff (actual) and budget figures apply to the year 2008

Types of governance: Standard = all Member States plus Commission; Member States = Member States only have voting rights; Tripartite = Member States plus social partners; Expert = board members nominated on a professional basis.

¹ 70 km from London

² Host country not yet chosen. Since 2008, due to changes in the context, the agency has been subjected to a significant downsizing in terms of staff, budget and mandate.

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Agencies covered by the study

Acronym	Name	Seat
CdT	Translation Centre for the Bodies of the European Union	Luxemburg
CEDEFOP	European Centre for the Development of Vocational Training	Thessaloniki (GR)
CEPOL	European Police College	Bramshill (UK)
CFCA	Community Fisheries Control Agency	Vigo (ES)
CPVO	Community Plant Variety Office	Angers (FR)
EAR	European Agency for Reconstruction	(closed)
EASA	European Aviation Safety Agency	Köln (DE)
ECDC	European Centre for Disease Prevention and Control	Stockholm (SE)
ECHA	European Chemicals Agency	Helsinki (FI)
EEA	European Environment Agency	Copenhagen (DK)
EFSA	European Food Safety Authority	Parma (IT)
EIGE	European Institute for Gender Equality	Vilnius (LT)
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction	Lisbon (PO)
EMA	European Medicines Agency	London (UK)
EMSA	European Maritime Safety Agency	Lisbon (PO)
ENISA	European Agency for Networks and Information Security	Heraklion (GR)
ERA	European Railway Agency	Lille/ Valenciennes (FR)
ETF	European Training Foundation	Torino (IT)
EU-OSHA	European Agency for Safety and Health at Work	Bilbao (ES)
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions	Dublin (IE)
EUROJUST	European Body for the Enhancement of Judicial Co-operation	The Hague (NL)
EUROPOL	European Police Office	The Hague (NL)
FRA	Fundamental Rights Agency	Vienna (AT)
FRONTEX	European Agency for the Management of Operational Co-operation at the External Borders	Warsaw (PL)
GSA	European GNSS Supervisory Authority	
OHIM	Office for Harmonisation in the Internal Market	Alicante (ES)

New agencies not covered by the study

Acronym	Name
ACER	European Agency for the Cooperation of Energy Regulators
BEREC	Office of the Body of European Regulators for Electronic Communications
EASO	European Asylum Support Office
-	Agency for the operational management of large-scale IT systems

Other acronyms

Acronym	Name
DG	Directorate General
DG ADMIN	Directorate General Personnel and Administration
DG EMPL	Directorate General Employment, Social Affairs and Equal Opportunities
DG BUDG	Directorate General for Budget
EC	European Commission
EU	European Union
MS	Member State
OECD	Organisation for Economic Development
OLAF	European Anti-Fraud Office
UN	United Nations

1. The EU decentralised agencies

EU decentralised agencies are independent bodies, entrusted by the European Institutions with one or several tasks which they undertake under their own responsibility³. This evaluation covers 26 such agencies, i.e. the agencies included in the Draft General Budget for 2010, plus EAR (reconstruction in the Balkans) which has been closed recently, but provides some interesting opportunities for learning. Table 1 provides the list of agencies covered by this report.

The agencies which are subjected to this evaluation were created over a thirty-year period on a case by case basis. As shown in Table 1, two agencies were created in 1975 with an aim to facilitate social dialogue in the area of employment policy. Ten agencies were set up during the 90's, including three bodies established in order to cope with technical and scientific challenges related to the newly finalised internal market. Fifteen agencies have been created since 2001, of which 10 have already reached their cruise speed. Finally four agencies are in the process of being created at a time when the overall agency system is under close scrutiny.

Most agencies have been created as entirely new bodies, but there are exceptions. EUROPOL is an intergovernmental body which has been converted into an agency. In the cases of ECDC, ERA and FRA, another body or network had been in existence before the agency was created.

There is no single legal framework governing the establishment and closure of European decentralised agencies. There is certainly no "agencification policy" such as in Sweden or the UK where the implementation of most public policies involve autonomous and/or decentralised bodies.

The overall number of staff working for the agencies included within this study was 4698 in 2008. Five agencies had more than 300 staff members in 2008 (OHIM, EUROPOL, EMEA, EASA, and EFSA). The eight smaller agencies in terms of staff are: CEPOL, CFCA, CPVO, EIGE, ENISA, EU-OSHA, FRA, and GSA.

The overall budget of the agencies under study was €1218 m in 2008. The budget of individual agencies ranged from €8 m (ENISA) to €318 m (OHIM). Some agencies rank higher in terms of budget than in staff because they externalise a significant share of their tasks to Member States or the private sector, such as EMEA.

Agencies are almost entirely funded by an EU budget subsidy, except where the resources originate from invoicing services entirely (CdT, CPVO, OHIM) or to a large extent (EASA, EMEA⁴).

The typical EU agency is governed by a board⁵ involving all Member States and two representatives of the Commission (parent DG) with full voting rights. The agency's director is nominated through a process involving both the Commission and the board. A number of agencies however depart from the standard model on one or another point⁶, e.g.:

- Not all Member States in the board (EFSA, EIGE);
- Commission has no representative or no voting right (CEPOL, EUROJUST);
- Parliament nominates experts as board members with voting rights (ECDC, ECHA, EEA, EMEA); or
- Users and/or other stakeholders are represented in the board with voting rights in small (EFSA, EMEA) or large (CdT, CEDEFOP, EU-OSHA, EUROFOUND) numbers.

³ The evaluation does not cover the executive agencies which contribute to the management of Community programmes under the responsibility of the Commission. They are set up for a fixed period. They are based in Brussels or Luxembourg.

⁴ ECHA will soon be part of this category.

⁵ In this report, "board" is used as an equivalent to "administrative board", "management board", "administrative council", or "governing board".

⁶ This issue is further discussed in section 4.1.

Table 1 - Profiles of the agencies covered by the evaluation

Agency	Location	Year of creation	Stage in lifecycle	Parent DG	Staff	Overall budget € million	EU subsidy %
CdT	Luxembourg (LU)	1994		DGT	189	42	0%
CEDEFOP	Thessaloniki (GR)	1975		EAC	122	18	94%
CEPOL	Bramhill ⁷ (UK)	2000		JLS	32	9	100%
CFCA	Vigo (ES)	2005	Growing	MARE	47	9	78%
CPVO	Angers (FR)	1994		SANCO	45	13	0%
EAR	Thessaloniki (GR)	2000	Closed	ELARG			
EASA	Köln (DE)	2002	Growing	TREN	440	85	35%
ECDC	Stockholm (SE)	2004		SANCO	195	40	98%
ECHA	Helsinki (FI)	2006	Growing	ENTR	219	66	95%
EEA	Copenhagen (DK)	1990		ENV	167	37	86%
EFSA	Parma (IT)	2002		SANCO	395	66	100%
EIGE	Vilnius (LT)	2007	Start up	EMPL	N/A	7	100%
EMCDDA	Lisbon (PO)	1993		JLS	99	14	93%
EMEA	London (UK)	1993		ENTR	547	183	25%
EMSA	Lisbon (PO)	2002		TREN	179	50	100%
ENISA	Heraklion (GR)	2004		INFSO	57	8	100%
ERA	Valenciennes / Lille (FR)	2004		TREN	113	18	100%
ETF	Torino (IT)	1990	Changing ⁸	EAC	124	19	96%
EU-OSHA	Bilbao (ES)	1994		EMPL	64	15	93%
EUROFOUND	Dublin (IE)	1975		EMPL	87	21	100%
EUROJUST	The Hague (NL)	2002		JLS	172	20	100%
EUROPOL	The Hague (NL)	1995	Changing ⁹	JLS	408	65	100%
FRA	Wien (AT)	2007		JLS	55	15	100%
FRONTEX	Warsaw (PL)	2005		JLS	185	70	97%
GSA ¹⁰		2005	Changing	TREN	52	11	100%
OHIM	Alicante (ES)	1994		MARKT	705	318	0%

Sources: documentary analysis and agency visits.

Lifecycle includes the following stages: "Start up" (i.e. not yet established in their host country), "Growing" (i.e. still in the process of recruiting their planned staff), "Cruise speed" (i.e. stable staff and budget), and "Changing" (i.e. facing a thorough change in their mandate and/or resources). Empty cells means "cruise speed".

Parent DG in 2009 – Some changes are underway at the time of finalising this report.

Staff and budget figures apply to the year 2008.

⁷ 70 km from London

⁸ Following the recast in 2008.

⁹ EUROPOL had a status of intergovernmental body until 2009, and will be funded by a EU subsidy from 2010 onwards.

¹⁰ Host country not yet chosen. Since 2008, the agency has been subjected to a significant down-sizing in terms of staff, budget and mandate, due to changes in the context.

A minority of agencies (7) have a bureau which deals with administrative issues without having to gather widely attended board meetings.

The director is typically nominated by the board for a five year renewable term on the basis of a list of candidates proposed by the Commission after an open competition. The director has a full management power in the framework of financial and staff regulations, applying to all EU bodies and adapted to the context of each agency as far as necessary after prior approval of the Commission. However, several agencies depart from that standard model by having their director nominated by the Commission (CEDEFOP, EUROFOUND), by the Council (CPVO, EUROPOL, OHIM), by the board only (CEPOL, EUROJUST), or by the board on the basis of candidates prioritised by the Council and the Parliament (FRA).

The board proposes the agency's budget and the price of the agency's services. It also approves the director's annual activity report¹¹.

In the most frequent case where the agency receives an EU subsidy, the agency submits its annual budgetary request to the parent DG. The request is then processed as part of the overall budgetary procedure involving the Commission (DG Budget, draft preliminary budget) and the Budgetary Authority (Parliament and Council). The director is accountable to the Budgetary Authority for the use of the EU subsidy.

All agencies are subjected to regular external audits by the European Court of Auditors, and to the discharge procedure of the budgetary authority. All agencies except CPVO and OHIM are also subjected to regular visits by the Commission's Internal Audit Service, which plays the role of internal auditor for the agency.

Agencies are required to evaluate their activities on a regular basis as far as significant spending is involved¹². In addition, the funding regulations of almost all agencies require overall evaluations to be carried out periodically, typically every five years.

2. This evaluation

2.1 Context and purpose of the evaluation

In 2005 the Commission submitted a proposal for an Inter-institutional Agreement aiming to improve and harmonise the governance of the "agency system", but this document could not reach the decision stage.

Since this date, rapidly growing resources have been devoted to decentralised agencies, and this has raised concerns about the budgetary impact and the relevance of the agency model. Over the same time period decentralised agencies have been subjected to a growing number of studies, including several parliamentary studies, a special report from the Court of Auditors, and a meta-evaluation by the Commission (see Appendix 1).

In this context, the Commission committed itself to launching a thorough evaluation of the agency system in order "to contribute to the ongoing debate on the future of the Community agency system by taking a horizontal look at all agencies and examining the real implications of the creation and operation of agencies in the Union"¹³. It was also decided that any proposals for establishing new agencies should be postponed until the conclusion of this evaluation is delivered¹⁴.

An inter-institutional working group was created in 2009 with an aim to reflect on the future of EU agencies. This evaluation is meant to be a major input into the works of this group.

¹¹ The financial accounts are appended to the activity report.

¹² Regulation 2343/2002, Art 25/4.

¹³ "European Agencies - the way forward" - Communication of the Commission - 11 March 2008.

¹⁴ With a few specified exceptions, i.e. agencies for which the proposals for creation were already on the table when the Communication was issued. These agencies are ACER (Energy regulation), BEREC (Regulation of electronic communication), EASO (Asylum), and the agency for operational management of databases in the area of justice and home affairs.

2.2 Evaluation process

This external evaluation has been launched and resourced by the Commission. Contractual matters have been managed with the help of a technical steering group involving Commission officers. A high profile Reference Group has advised on substantial matters and provided valuable input at different stages of the evaluation process. It comprised representatives of the Commission, Council, Parliament, and agencies, plus two academic experts¹⁵.

The works and the writing of this report have been entrusted to an independent evaluation team through a tendering process. The team members belong to a consortium of three European companies (Rambøll Management - DK, Euréval - FR, and Matrix - UK). During the busiest part of the data collection phase, the team comprised of up to 20 consultants.

The evaluation team acknowledges the helpful comments received during the five meetings of the steering group and the three meetings of the reference group. It however takes full responsibility for the contents of this report.

2.3 Evaluation method

The findings and conclusions of this report derive from the following sources:

- Relevant documents pertaining to individual agencies (regulations, work programmes, activity reports, external audit and discharge documents, impact assessments and evaluation reports);
- Studies and reports pertaining to the agency system;
- Face to face and telephone interviews with about 300 people, including about 70 interviews with individual stakeholders who have no responsibilities in the management or supervision of the agencies;
- Email questionnaire filled in by 457 members of the agencies boards (out of 1024);
- Five focus group meetings, each one attended by about 10 participants (agency officers, Commission officers, and external stakeholders); Three light benchmarking exercises, each one involving an international or national institution / agency.

The date of the reviewed documents range from 2005 (with a few exceptions) to summer 2009. Interviews were carried out in spring and summer 2009.

The investigations and analyses have been conducted at five levels as follows:

- Agency system
- Clusters of agencies (focus groups and benchmarking exercises pertaining to agencies implementing comparable activities)
- Individual agencies (26 two-day visits, telephone interviews with agency stakeholders inside and outside European Institutions, email questionnaire to agency board members)
- Case studies (in-depth investigation into specific chains of activities, results and impacts in 15 selected agencies)
- Sub-cases (structured study of one or two noteworthy success or failure stories within each case study)

Volume IV of this report presents the evaluation method in detail.

2.4 Difficulties encountered and solutions found

The difficulties encountered were limited and all of them were managed satisfactorily.

The most challenging problem was that of clustering agencies in homogeneous groups. There has been substantial resistance to this approach, which made this issue particu-

¹⁵ Prof. E.Ungaro (Bocconi University) and Ch.Pollitt (Leuven University).

larly challenging. In fact, many agencies implement a range of distinct activities, each one deserving to be compared within distinct groups of agencies. This problem called for changing the approach during the course of the study, i.e. comparing homogeneous clusters of activities (see Table 6), rather than homogeneous clusters of agencies.

Another major challenge was that of comparable performance information. A number of comparable indicators could be identified, and some new ones have been constructed¹⁶, but they tended to focus on resources, organisation, and tasks, rather than results and impacts. This evaluation makes just a few proposals towards comparing performance across agencies carrying out comparable activities (Table 5). However, it will be several years (at the very best) before it will be possible to make such comparisons in a satisfactory and routine way.

2.5 The evaluation report

The present document is part of a series of four volumes constituting the evaluation report:

- I. Overall synthesis and prospects (this first volume)
- II. Conclusions at system level
- III. Agency level findings
- IV. Evaluation method

A series of working documents are also available on a CDROM.

The next chapters of this volume cover the following:

- 3 – Evaluation team's answers to the evaluation questions
- 4 – Challenging issues and identified problems
- 5 – Proposed options for addressing the problems

3. Overview of answered questions

This chapter summarises the conclusions of Volume II. Its structure follows that of the questions asked in the Terms of Reference.

3.1 Rationale and relevance

No single legal framework governs the establishment and closure of European decentralised agencies. European agencies have been created on a case by case basis through various mixes of political interests¹⁷.

Even if the establishment of each individual agency is formally justified, the relevance of the overall structure of the agency system remains questionable in the sense that there are no overall objectives or explicit rationales applying across agencies. One of the implicit reasons why agencies were created is that they facilitated the development of EU policies¹⁸.

The regulations which established the agencies always include justifications, but in the past these documents were not sufficient in explaining why new policy instruments had to be implemented through an agency rather than something else. Alternatives to the agency option used to be paid limited attention but the recent impact assessment practice achieves a better transparency, at least for the newest agencies, although not yet fully evidence-based and not covering all relevant issues.

Where they are clearly stated, the reasons for creating an independent body, working at arm length of the Commission, can be categorised into four groups: (1) to ensure independence from, or to avoid conflict of interests with, the policy-makers or deci-

¹⁶ About e.g. efficiency of seating conditions, see Volume II, 2.6.1

¹⁷ see Volume II, 2.1.1

¹⁸ see Volume II, 2.1.2 for this paragraph and the next three ones.

sion-makers, (2) to implement tasks of an inter-governmental nature, (3) to implement tasks in a framework of dialogue with social partners or other stakeholders, and (4) to develop a specific expertise or capacity. In addition, all agencies develop an internal expertise which would be difficult to maintain within the Commission.

Four main alternatives to creating agencies have been identified: (1) Commission or executive agency, (2) intergovernmental arrangement, (3) expert network, and (4) private sector. One option is not paid sufficient attention, i.e. that of extending the mandate of an existing agency instead of creating a new one. This option is of particular interest where small agencies are at risk of not reaching the critical mass required for being effective or efficient (see 4.2.5).

The agencies' activities were aimed at addressing a variety of stakeholders, ranging from policy-makers and public managers at EU and Member State levels to targeted publics on the EU market, most often enterprises. There is a broad consensus among these stakeholders that the agencies were set up to address needs pertinent at the time. This opinion is particularly emphasised in the cases of "internal market agencies" and agencies addressing problems transcending national borders. Generally speaking, the needs which the agencies were originally established to address still exist today, and they are clearly growing in some cases.

During their lifetime a majority of agencies have faced relevance problems, most often in the form of suggestions for addressing new needs, something which tends to be acted upon by extending mandates. In this respect, it is worth mentioning that agency mandates tend to be amended once or more per decade¹⁹.

3.2 Agencies and the EU institutions

The activities carried out by EU agencies are indeed relevant to the Commission's/Union's work. Agencies provide relevant inputs, including cross-cutting analyses, which are useful to the Commission and the other European institutions, and there is little overlap between the activities of the agencies and the European Institutions²⁰.

A number of agencies were established specifically in order to provide input to (mainly) the European Institutions in their policy-making work, in the shape of information and advice. This means that they are of more direct use in the Commission's daily work, and that of the Parliament and Council to a lesser extent. Other agencies implement EU policies through activities such as registration/certification or Member State co-operation. Such activities are not directly used by the Commission but are still highly relevant to the Union's work²¹.

For about half of the agencies, their main tasks originate from a transfer of responsibilities²², either from the Commission or the Member States, while a small majority have been created in response to entirely (or mainly) new tasks²³.

The transfer of tasks is assessed as justified. Transfers from the Commission are generally justified by problems such as lack of capacity or technical/scientific expertise, conflicts of interest or the need to mobilise expertise in politically sensitive areas. Transfer of tasks from the Member States is justified by the need to ensure harmonisation and co-ordination at European level. In this respect, there is a clear European added value, but the sharing of roles is not always clear-cut.

The quality and usability of the agencies' inputs is generally good. A majority of the agencies provide work which is useful, and sometimes indispensable, to the Commission. However, there is little evidence that the transfer of tasks to agencies has eased

¹⁹ see Volume II, 2.1.3

²⁰ see Volume II, 2.2.2

²¹ see Volume II, 2.2.4

²² Transfer of a responsibility does not necessarily mean a transfer of workload. For instance, in case of transfer from the Commission, it is common that the volume of tasks has expanded significantly since the establishment of the agency, with new tasks being added which were not carried out previously.

²³ see Volume II, 2.2.1, also for the next paragraph

the constraint on Commission resources and allowed them to focus more on its core tasks, or even reduce the number of staff; most likely because the scope and amount of work to be carried out by the Commission is continually rising²⁴.

Besides providing relevant and useful input to the Commission's preparation or development of policies, agencies also provide, albeit to a limited extent, input to other European Institutions' (mainly the Parliament's) policy-making activities²⁵.

3.3 Governance of the agency system

Governance is the process by which decisions are taken and implemented. As regards the agency system, the main decisions are that of creating, merging and/or closing agencies, setting or changing their mandates, and balancing the powers in their boards. Governance is assessed as good if such decisions are transparent, open to consultation, and evidence based. Good governance also implies that decision-makers are accountable and concerned with efficiency.

With regards to the creation of new agencies, the recent practice of impact assessment has considerably improved the transparency of decisions, especially in terms of justifying why a new agency is needed instead of something else; an issue which was usually not addressed in the previous waves of agency creation²⁶.

There remains a concern about the decisions related to the seating of agencies in their host countries. Such decisions are not yet transparent. In the past, they have been the cause of a series of inefficient "location packages".

Considering the practical setting up of new agencies, little learning seems to take place. Although there is an encouraging success story (ECHA), newly created agencies receive insufficient administrative assistance throughout their set-up process.

It has also been noted that established agencies are almost never reconsidered, except for some agencies which have been established for a limited duration. Periodic overall agency evaluations do not provide in practice the opportunity for reconsidering the agencies since they are not managed for such a utilisation.

Regarding the management boards, in a majority of cases, their composition does not fully reflect the balance of interests which deserve to be taken into account. In particular, it is almost automatic that all Member States are represented, although this may not be always necessary. Moreover, this practice results in overweighed boards, which makes it difficult to involve other relevant stakeholders²⁷.

3.4 Coherence

There is a high degree of coherence between the agencies' objectives and activities, and EU policies, at least where the "parent DG policy" is concerned. With EU policies, coherence is generally established through the founding regulations of the agencies and on a more continuous basis through consultations on the agencies' work programmes. Coherence is considerably facilitated where the corresponding EU policy is described in a clear strategy document²⁸.

There are a large number of interfaces and linkages between the agencies working within neighbouring areas. Co-operation is increasingly being formalised through memoranda of understanding between agencies, but the degree to which such arrangements entail significant co-operation in practice varies, and there are still potential synergy effects to be realised in several areas²⁹.

²⁴ see Volume II, 2.2.3

²⁵ see Volume II, 2.2.5

²⁶ see Volume II, 2.3.1, also for the next three paragraphs

²⁷ see Volume II, 2.3.2

²⁸ see Volume II, 2.4.3

²⁹ see Volume II, 2.4.2

Most agencies maintain multiple relations with other key operators, especially UN and other international organisations, sister agencies in third countries, and Member State agencies. While, coherence and complementarity between the tasks of the agencies and their international and Member State counterparts cannot be determined, these multiple contacts at least form a significant basis for alignment. In a few cases, relationships with both international and Member State organisations have been strained due to competition and overlaps³⁰.

3.5 Effectiveness

Overall, the agencies largely achieve the objectives set in their work programmes, with minor exceptions. For about half of the agencies, clear evidence of having achieved the planned outputs could be found through a review of Annual Reports and Work Programmes, and existing, recent evaluations. For the remaining half, there is little or no factual evidence, due to a lack of performance management, although the opinions collected through interviews and questionnaire surveys is that planned outputs are generally achieved in these agencies as well³¹.

Generally, user satisfaction is good, but only some agencies actively measure user satisfaction (through surveys). Both user surveys and interviews with individual stakeholders point to overall satisfaction with the services provided³².

The merit of successes (or the responsibility for failure) has always to be shared with contributors other than the agency alone: Member States and national agencies, Commission, International Institutions, scientific networks, other European bodies (Parliament, other agencies), and Civil Society Organisations. However, agencies are most often the primary contributors in the cases of successful effectiveness³³.

To a certain extent, all success stories owe to the availability of adequate and flexible internal expertise. This factor is quoted in all investigated examples but the successful strengths of internal experts are quite diverse and depend on the context. Another factor determining effectiveness is the fact that some tasks are standard enough to be managed in a continuously improved way (e.g. dealing with applications for registering trademarks). This second factor is however identified in a minority of analysed examples³⁴.

Some factors are of special importance in achieving certain types of effects: (1) policy dialogue and communication capacity in the case of input into the policy-making, and (2) closeness to Member State agencies and clear division of responsibilities in the case of law enforcement across borders.

A specific issue is that of working in 27 Member States. The evaluation shows that agencies achieve better results where key stakeholders, such as Member States, see the added value of the Agency and hence become more willing to engage in supplying information, participating in joint activities, etc.

3.6 Efficiency

The evaluation has identified two cost elements related to the institutional and organisational set-up which are particular in their significance to the EU agencies: administrative costs, and location costs³⁵. Both factors affect the agencies' ability to

³⁰ see Volume II, 2.4.4

³¹ see Volume II, 2.5.1

³² see Volume II, 2.5.2

³³ see Volume II, 2.5.3

³⁴ see Volume II, 2.5.4, also for the next two paragraphs

³⁵ The evaluation team has also considered the cost of management board meetings which may range from negligible to 1.5% of the agency's total budget, depending on the size of the board and the accessibility of headquarters.

achieve good results at low cost, since they consume resources which cannot be spent directly on achieving results through operational activities³⁶.

Of these, administrative costs are by far the most significant, as they consume, on average, about a third of the agencies' staff resources. There is however a clear reverse proportionality between the size of the agency and the share of staff devoted to administrative tasks. Small agencies are at a significant disadvantage since the regulations and procedures with which they have to comply are largely the same regardless of the agency's size. It has been suggested that in order to operate efficiently, an agency needs to reach a minimum size of 100 staff. However the available data do not suggest any specific threshold between 50 and 100. In order to categorise "small agencies", the evaluation team has chosen a 0-75 range.

The age of the agency also has a certain impact, but only during the first few years of existence. The youngest agencies devote a much larger share of their staff resources to administrative tasks, but this share quickly falls towards the average share.

The location cost³⁷ is another significant factor of efficiency. Again, the situation varies considerably between agencies. Less accessible locations (in terms of travel cost and time) affect both resources and effectiveness. The other part of the location cost, namely the cost of premises also varies widely depending on local conditions, including the size and nature of the support provided by the host country.

The methods and the quality of systems used for management of resources and accountability, vary significantly between agencies. About half the agencies have fully implemented an activity-based management system linking budget and actual expenditures with outputs and (to some extent) objectives. One third of the agencies have implemented a results-based management system, and half of the agencies have implemented a quality management system. Examples of agencies that have implemented ABM systems in recent years show that these agencies experience improvements in both efficiency and transparency (accountability)³⁸.

A number of key factors influence the cost-effectiveness (external efficiency) of the agencies. A series of factors have been identified in that they affect both results and costs. These factors include internal expertise, mobilisation of external experts, field research in the Member States, and communication. Another series of factors are also interesting in that they entail major consequences on effectiveness while involving limited or no costs. These factors include standardisation, flexible reallocation of key resources, closeness to and mutual trust with users³⁹.

The evaluation also establishes that the agencies generally do not achieve cost-effectiveness through transferring costs and administrative burdens to other stakeholders⁴⁰.

Finally, comparing performance across agencies has shown itself to be difficult. The evaluation team has compiled a substantial amount of comparable information on a series of key aspects of agencies, but this information does not apply to performance. Moreover, performance comparisons may only apply to activities which aim at achieving similar results for similar publics⁴¹.

3.7 Oversight activities

The formal requirements of audit, monitoring, and reporting are largely coherent across the agencies, with some exceptions, particularly with regards to overall evaluation. The requirements stem mostly from the agencies' framework financial regulation and, in the case of overall evaluation, from their constituent acts. The agencies comply

³⁶ see Volume II, 2.6.1, also for the next three paragraphs.

³⁷ Travel costs plus premise cost less host country support.

³⁸ see Volume II, 2.6.3

³⁹ see Volume II, 2.6.2

⁴⁰ see Volume II, 2.6.4

⁴¹ see Volume II, 2.6.5

with those requirements with adequate timing and frequency. A problem is the extent to which the oversight activities are carried out in a way that satisfies the need for holding agencies accountable, and that promotes performance.

The evaluation team concludes that internal audits are making satisfactory progress towards balancing regularity issues and performance ones. However, two serious problems remain around the ownership and use of audit information. Inside agencies, there is a widespread sentiment of “audit overload” while audit information seem to be insufficiently discussed in the boards⁴².

Monitoring is not well developed as far as verifiable objectives and performance indicators are concerned. In most instances, monitoring applies to activities, outputs, and internal efficiency, but not to results. This weakness is carried directly over into the reporting activities, which seldom go beyond outputs and the use of resources⁴³.

Regarding evaluation, requirements and practices vary across agencies in terms of frequency, contents, responsibility, dissemination, and the extent to which the agency is required to carry out overall evaluations. The assessment of the evaluation team is that much of the evaluation effort does not satisfy the needs of accountability of the agencies, in particular with regards to the effectiveness of achieving policy objectives, and cost effectiveness. Furthermore, evaluations only to a limited extent, and in specific cases, consider the basic rationale for the existence of the agency, or the extent to which changes to the agency mandate are required⁴⁴.

4. Cross-cutting issues and identified problems

Through this chapter, the evaluation team moves from its findings and overall conclusions to more specific issues that are considered problematic and, that require action to be taken. For this reason, the following sections have a predominantly negative tone.

The chapter draws on the findings and conclusions related to all agencies and all evaluation questions. It is structured in five themes⁴⁵:

- Governance
- Establishing agencies
- Accountability
- Performance
- Comparability

At the end of each section, a box highlights the identified problems.

4.1 Governance of agencies

The governance of a given agency is the process by which major decisions are taken. Major decisions pertain to the reasons why an autonomous body was created, e.g. addressing contradictory expectations of users and other interest groups, ensuring independent scientific or technical expertise, setting up coordination arrangements with Member States. In this section, the autonomy of EU decentralised agencies is not just seen as a matter of management, but also as one of strategy-making and communication. Governance arrangements are considered to be effective if they make room for all relevant interests to be voiced and balanced in such a way that the benefits of autonomy overpass its inconveniences.

⁴² see Volume II, 2.7.2

⁴³ see Volume II, 2.7.3

⁴⁴ see Volume II, 2.7.1

⁴⁵ These themes are close to what the Commission has suggested in its terms of reference.

4.1.1 The balance of powers may not be in line with the needs

Agencies are meant to be autonomous from both the Commission and the Member States, but rather than being granted on paper, autonomy has to be constructed on the basis of a good balance of powers within the agency's governance⁴⁶.

Agency governance may be understood as an institutional issue (voting rights in the management board and nomination of the executive director), or as a more complex matter which combines institutions, closeness to relevant stakeholders (advisory groups / committees, consultation processes), and various kinds of powers (hierarchy, budget, access to information, access to networks). In this report the second approach is chosen and various powers are considered such as:

- Power of the Parliament and the Council through a process of establishing the budget, contribution to nominating the director and some board members, discharge procedure, hearings, questions, Committees' demands⁴⁷;
- The Commission's power through participation in boards, contribution to nominating the director, discussion or approval of work programmes, process of establishing the budget, evaluation, specific demands, specific contributions, administrative assistance;
- Power of individual Member States through participation in boards and/or committee, consultation on work programme, specific demands, access to information (focal points), access to experts and interest groups;
- Users and other stakeholders' power through participation of specific interest groups in the board (tripartite agencies, professional board members with specific background), participation in advisory committees, consultations on work programme, access to information.

The above presentation should not suggest that the Parliament, the Council, the Commission or a given Member State speaks with one voice. For instance the powers of the Parliament are typically drawing in two directions (budget and policy committee). Similarly, Member States may speak with several voices, one of which being that of the national counterpart of the agency.

Beyond formal institutional arrangements, governance is the 'de facto' balance of forces applying to the agency in general and to its director in particular.

In a purely institutional view of governance, the balanced forces apply to the director through the nomination procedure, the decisions of the board, and the discharge procedure. Beyond that, the director is fully responsible for his/her management, from financial and human resources to achieving the desired outputs and results.

In a wider view of governance, the director and the higher management are subjected to an array of forces which also include the powers of providing budgetary resources, administrative authorisations, legitimacy, access to expertise, information, and so on. In this context, the borderline between governance and management is not totally clear-cut.

The evaluation team considers that the governance arrangements of an agency are good if they correspond to the reason why the "agency option" was chosen, e.g.

- Public trust, something which is particularly needed in case the agency produces politically challenging information or advice on disputed issues (e.g. FRA, EFSA);
- Relevance to policy-making needs, something which is a must for agencies producing information on which future EU policies or international negotiations are to be grounded (e.g. EEA, EUROFOUND);
- Member States' confidence, a pre-requisite for agencies facilitating the coordination of national agencies, especially if law enforcement is at stake (e.g. EUROPOL, FRONTEX);
- Impartiality in dealing with opposite interests of different categories of stakeholders, in agencies such as EU-OSHA and ECHA;

⁴⁶ This section elaborates upon Volume II, 2.3.2, as well as the two following ones.

⁴⁷ In the case of FRA's Homophobia Report, the Parliament's demand has played a major role in legitimising the works of the agency (see Volume II, Appendix 1).

- Impartiality in dealing with opposite interests within a given category of stakeholders (e.g. OHIM, CPVO, EASA);
- User-orientation, the most important issue where the agency provides a given service or support to targeted bodies or institutions (e.g. CdT).

A key criterion for assessing the governance arrangements of an agency is the extent to which the balance of de facto powers is in line with that of the needs to be considered, taking into account the reasons why an autonomous body was desirable. This point is developed in the next table.

Table 2 – Alignment of governance arrangements and needs

Reasons why autonomy is desirable	Main needs to be considered	Powers to be given to ...
Public trust in the agency's information and advice in disputed contexts	Interest groups and the wider public	Independent and credible experts nominated by several European Institutions (EFSA is a good example ⁴⁸)
Relevance to the needs of various players in the policy making process	EU policy-makers and other stakeholders	Representatives of all key players in the EU policy-making process, including in some instances civil society organisations (EIGE) or international institutions (EEA)
Mutual confidence with national bodies to be co-ordinated	Operational agencies in Member States	Representatives of Member States and the Commission (FRONTEX as a show case)
Impartiality in dealing with opposite interests of different interest groups	Interest groups	Representatives of various interest groups and the Commission (e.g. EU-OSHA)

In some instances, the balance of forces has been carefully adjusted to the needs, e.g. EFSA⁴⁹. In other instances, an imbalance in the forces of some players creates a self-blocking or counter-productive system, e.g. OHIM, EUROJUST⁵⁰.

In most instances the approach to setting governance arrangements is that of 'one-size-fits-all'. A typical example is that of ECHA where Member States are given a prominent role in the board whilst some tripartite arrangements would have deserved to be considered⁵¹. The evaluation team assesses that there is a gap between governance arrangements and needs in the cases of CEPOL, CPVO, EASA, ECHA, EEA, EIGE, EMSA, ENISA, EUROJUST, GSA, and OHIM.

4.1.2 Committee-like boards with all Member States may be inadequate

Almost all agencies have a full representation of all Member States in their board. In the case of CEDEFOP, EU-OSHA, and EUROFOUND, the social partners are also involved on a national basis, which raises the number of board members nominated on a national basis to 3 per Member State, and the size of the board to more than 80 by the present times.

⁴⁸ Although not free from criticism since some stakeholders express doubts about EFSA's impartiality in addressing GMO issues. EFSA's board includes 14 experts, of which several have their background in the concerned interest groups, plus a representative of the Commission.

⁴⁹ See Vol III, section 23.

⁵⁰ Insufficient power given to EU level interests in both cases, and insufficient power of users in OHIM, see Vol III, sections 21 and 26.

⁵¹ It must however be stated that stakeholders are closely involved with the agency's activities through an advisory Socio-Economic Analysis Committee. See Vol III, 9.2.

This is especially relevant where the agency's main activity is to organise Member State cooperation, which is sometimes unnecessary. For instance in the case of Malta having a voice in ERA's board despite having no railways, and Hungary being a passive member of the Maritime Safety Agency, to quote just two typical examples. In the case of FRONTEX, the UK and Ireland have an observer status because they do not belong to the Schengen area. This latter example demonstrates that it is not compulsory to have all Member States represented in a "committee-like" board.

Moreover, the system is often ineffective. This is indicated by a number of interviewees stating that Member State representatives (1) do not have a high enough profile, or (2) do not attend meetings because their voice has no chance to be heard.

Finally, the fact that 27 representatives (or sometimes 81) attend two meetings a year in more than 20 agencies, has a cost which may be significant⁵².

There are two exceptions which provide evidence that this approach is not compulsory:

- EIGE has 18 Member State representatives participating in board meetings on a rotating basis;
- EFSA has 15 board members, i.e. one representative of the Commission and 14 members appointed by the Council in consultation with the Parliament. In addition, there is an advisory Forum composed of representatives from National Food Safety authorities with equivalent role to EFSA and which is in charge of providing advice on work programme and priorities.

The case of EFSA shows that the interests of Member States have been considered as needing to be voiced on an individual basis, even if the committee-like system is abandoned. The EFSA approach is however much less demanding in terms of physical attendance to frequent meetings because the advisory forum is only meant to channel national interests on an individual basis.

Overall, the evaluation team assesses the standard committee-like approach as sometimes unnecessary, costly, and ineffective.

4.1.3 Users and other stakeholders are involved in a sub-optimal way

In this section, and in this report more generally, the term "other stakeholders" applies to all those who have an interest in the activities of an agency, beyond European Institutions, Member States and the direct users of the agency's services. Examples of such interest groups are aircraft passengers in the case of EASA, or social partners in the case of EUROFOUND.

Through its analysis of agency governance the evaluation team's found that a majority of agencies ought to have ties with their users (4), other stakeholders (15), or both (2).

Out of these 21 agencies, 15 have no voting representatives of the concerned groups in their board (CFCA, CPVO, EASA, ECDC, ECHA, EEA, EIGE, EMCDDA, EMSA, ENISA, ERA, ETF, FRA, GSA, OHIM). Where interest groups are not given any formal power in the governance system, there are however several means through which they may be involved in the management of agencies, such as:

- Board members designated by the Parliament or the Member States, and having both voting right and a background in the relevant interest groups (CDC, ECHA, EEA, FRA);
- Board members representing the relevant interest groups without voting right (ECHA⁵³, EMSA, ERA); or
- Various types of advisory committees or consultation processes in a majority of agencies.

⁵² The evaluation team's estimate of that cost amounts to €2,5m per year and up to 1.5% of the budget in some small agencies

⁵³ ECHA has three board members representing interested parties with no voting right. They are nominated by the Commission.

In some agencies, the board involves a large number⁵⁴ of users or social partners with voting rights (CdT, CEDEFOP, EU-OSHA, EUROFOUND). Interviewees are generally satisfied with this type of arrangement, which the evaluation team considers as effective but inefficient since stakeholders' interests could be voiced at lower cost, and probably even more effectively, if the interest groups were represented by a small number of more experienced board members.

FRA is governed by a Management Board of 27 independent professionals appointed by Member States. This approach combines the representation of both interest groups and national interest in an innovative way, and it is positively assessed by interviewees.

Finally, only two agencies have both a need to involve interest groups with full voting rights and a fully efficient approach for doing that:

- EFSA's board is mainly composed of fourteen experts of whom four have their background in interest groups;
- EMEA's board includes two representatives of patients' organisations, one representative of doctors' organisations and one representative of veterinarians' organisations appointed by the Council in consultation with the European Parliament on the basis of a list drawn up by the Commission.

Overall, the evaluation team assesses that users and other stakeholders are often given insufficient weight for aligning governance arrangements and the justification of the agency option (CFCA, CPVO, EASA, ECDC, ECHA, EEA, EIGE, EMCDDA, EMSA, ENISA, ERA, ETF, GSA, OHIM). Moreover, stakeholders are sometimes involved at the level of all Member States, an approach which is inefficient (CEDEFOP, EU-OSHA, EUROFOUND).

4.1.4 Some agencies are not governed in a strategic enough manner

The next table displays the evaluation team's understanding of the key governance decisions in the EU agencies, depending on the activities implemented. Such decisions may be of three kinds:

- Setting mid-term priority, e.g. through stakeholder consultation and forward looking approaches;
- Setting and supervising rules that secure credibility, e.g. through scientific independent expertise;
- Setting and supervising rules that secure quality, e.g. through responsiveness to user's needs and sound risk assessment.

Building upon this table, it may be said that all agencies having Information, Communication, or Soft Coordination as their first or second main activity should 'govern' their mid-term priorities. As explained in a recent report of the European Court of Auditors⁵⁵, a good practice for taking such strategic decisions is to adopt and monitor a multi-annual programme, preferably a rolling-programme.

At the time of this evaluation, 15 agencies have a multi-annual programme. Among the agencies which do not (yet) have such a programme, it is the evaluation team's assessment that four of them would deserve to have one, either as regards their first main activity (EIGE, ERA), or their second main activity (CFCA, FRONTEX).

⁵⁴ From 35 to 54

⁵⁵ European Court of Auditors, 2008, The European Union's Agencies: Getting Results

Table 3 – Key governance decisions

Agency's activity	Key decision(s)
Collecting and disseminating harmonised information to policy-makers in EU & MS as to support an evidence-based policy-making process	Setting mid term priority Setting and supervising rules that secure credibility
Communicating towards a targeted public at EU level as to raise awareness on a given issue	
Contributing to the soft coordination between Member States and European Institutions as to better achieve EU objectives	
Providing expert advice to policy-makers in EU & MS as to support an evidence-based decision-making process	
Facilitating operational coordination between public managers in MS as to better achieve the objectives of a given EU policy	Setting and supervising rules that secure quality
Dealing with individual applications from a targeted public as to ensure safety on the EU market	
Delivering a highly specific service or support to targeted bodies or institutions as to better achieve the objectives of a given EU policy	
Sources: Evaluation team's interpretation	

4.1.5 The European interest may be weighted or voiced inadequately

The evaluation team defines the EU interest as contrasting with that of the individual Member States. It is not only expressed by the Parliament and the Commission, but also by the Member States acting collectively, for instance when the Council appoints the director of an agency. The typical agency board has 2 representatives of the Commission in addition to the representatives of all individual Member States. This suggests that the power balance would be biased at the expense of the EU interest⁵⁶.

In fact, the evaluation team assesses that the EU interest is voiced in a far more powerful way than suggested by the number of Commission representatives in the board since it may be pushed through various forces, including institutional powers:

- Parliament nominating board members with voting right (ECDC, ECHA, EEA, EMCDDA, EMEA) or without voting right⁵⁷ (ECHA, ETF);
- Council nominating EU level board members (CEPOL, EFSA, EMEA);
- Commission, Parliament, and/or Council playing a role in the appointment of the director (all agencies except CEPOL and EUROJUST);

... and less formal powers:

- Commission's advice on or approval of the work programme;
- Commission, Parliament, and/or Council allocating all or part of the agency's resources (all agencies except CPVO and OHIM);
- Commission approving⁵⁸ the implementing rules of the Financial and Staff Regulations (see 4.4.1);
- Commission, Council or Parliament requesting advice or opinion from the agency;

⁵⁶ This section elaborates on Volume II, 2.4.3, as well as the following one.

⁵⁷ It must be noted that the Parliament nominates experts and give them full autonomy as to clear up any ambiguity about being accountable to itself (decision of the Conference of Presidents of 11/9/1997).

⁵⁸ Categorised as informal power in the sense that it applies to administrative matters and only indirectly to the kind of strategic decisions which characterise governance.

- Obligation for the agency to adopt a work programme that is in line with EU policy / strategy documents in the area covered (EFSA, EMCDDA).

Some interviewees consider that the Commission's power in the process of establishing the budget is the main force in the overall balance of powers, well above the number of representatives in the board⁵⁹. Taking all the above forces into account, it is concluded that the EU interests are most weighted in the governance of 11 agencies (CdT, CEDEFOP, CFCA, EASA, ECDC, EEA, EFSA, EMCDDA, EMEA, ETF, and FRA), and least in that of six agencies (CPVO, ERA, EUROFOUND, EUROJUST, GSA, and OHIM). There does not seem to be any transparent explanation for such differences since all agencies are meant to deal with EU policies.

It has already been quoted (see 4.1.1) that the insufficient weight of the EU interests has created a self-blocking or counter-productive system in the cases of OHIM and EUROJUST⁶⁰.

Another important point is that of how the EU interests are voiced in the governance system. In most instances, this is done by the parent DG mainly, through different channels such as board membership, director's nomination, discussion of the work programme, and/or budgetary process. In some instances, the EU interests may be voiced by different DGs and/or different European Institution (CEDEFOP, CEPOL, ECDC, EEA, EFSA, EMEA, EMSA, ETF, EUROPOL, FRA, OHIM).

It would be naïve to expect that the three European Institutions and their various sub-divisions (DGs, Committees) speak with one single voice. In the context of the governance of an agency, it must however be recognised that the EU interest may conflict with that of the individual Member States, or that of some interest groups. If the EU interest is voiced in a contradictory or conflicting way, it might therefore be considerably weakened and the whole governance system might become unbalanced.

The overall picture is that the EU interest is under-weighted in the governance arrangements of a few agencies, but that it is at risk of being voiced in a contradictory way in many instances.

4.1.6 The political role of agencies' communication is not well governed

The Commission has the initiative of EU policy-making which rests eventually in the hands of the Council and Parliament. From a formal standpoint, it is clear that agencies have no initiative and no responsibility in such matters. This point has been stressed with much emphasis by a number of interviewees and by the Reference Group⁶¹.

In reality, policy-making is a complex process since it includes the framing of policy problems, opinion-making, setting of political agenda, public debates, and stakeholder consultations. It is more than just the formal process of preparing and passing directives and regulations.

If the term "policy-making" is understood in its wider sense, then there is a grey area between policy-making and a number of agency activities, i.e. collecting and disseminating harmonised information, raising awareness on a given issue, contributing to soft coordination, providing expert advice. These activities resemble one another in that they feed into the making of EU policies or decisions rather than simply applying existing policies. For this reason, they have been called "upstream activities" as opposed to "downstream activities"⁶².

Several evaluators pointed out in the past that agencies overlapped with the Commission's policy-making responsibility in the way they disseminated information

⁵⁹ Such a power is obviously limited or nullified in case the agency's resources originate from invoiced services in part or in totality. In such instances, there would be a need for giving European Institutions a heavier weight in the board.

⁶⁰ See Vol III, Sections 21 and 26

⁶¹ See Volume II, 2.2.4

⁶² European Commission, 2008, Meta study on decentralised agencies: cross-cutting analysis of evaluation findings

(CEDEFOP, EUROFOUND). Subsequent evaluations have shown that the problem has been resolved by the establishing and running appropriate coordination mechanisms.

A typical example is that of EEA which has a structured consultation process with the Commission about its multi-annual work programme and its communication activities⁶³.

A contrasted case is that of FRA's Homophobia Report, a success story which has been subjected to an in-depth investigation during this evaluation. In this instance, the agency responded to a demand of the Parliament, and it has fuelled an EU wide debate with a clear political dimension. The study does not show any trace of contradiction with the policy-making role or political communication of the Commission, but there was obviously a risk of communication mismatch.

This example is rather exceptional but the evaluation team considers that it is a good opportunity to analyse of a common problem. Many agencies take a proactive part in shaping new policy issues and raising awareness of these issues among policy-makers, interest groups, and the wider public. In doing so, they play a political role, but this role is always left implicit by interviewees who seem to comply with the institutional division of responsibilities. The risks of overlap between agencies and the Commission are managed through daily coordination efforts, which are most often successful.

The evaluation team considers it regrettable that these risks are not acknowledged in an explicit way and addressed as a governance issue. This point is strongly connected to the issue of strategic priorities addressed in 4.1.4.

4.1.7 The image and visibility of agencies are not well governed

Beyond the issue of political overlapping, the communication of agencies also raises the problem of their visibility as independent bodies, i.e. the fact that interest groups, European citizens, and international players perceive the agency as an independent body, with a distinct image from that of other European Institutions⁶⁴.

Independent visibility is a precondition for achieving the intended impacts if the agency (1) produces politically challenging information or advises on disputed issues, (2) produces information on which future policies or international negotiations are to be based, or (3) deals with opposite interests of different categories of stakeholders. This is the case for CEDEFOP, EASA, ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMEA, EU-OSHA, EUROFOUND, and FRA.

In such cases, there is a need for the agency to create its own independent image, separate from that of other EU Institutions. In all other cases, such a need does not exist, and it may be counter-productive to try to identify one more body in a landscape which most EU citizens do not yet understand clearly enough.

The evaluation team considers that the issue of autonomous visibility is not given the attention it would deserve at the level of governance⁶⁵.

⁶³ European Court of Auditors, 2008, The European Union's Agencies: Getting Results, Box 4.

⁶⁴ This section elaborates on Volume II, 2.4.6

⁶⁵ A related point is the fact that agencies have repeatedly been said to contribute to making the EU closer to its citizens. It is worth recalling here that the recent Commission's meta-study "could not make sense of this idea of proximity" (European Commission, 2008, Meta study on decentralised agencies: cross-cutting analysis of evaluation findings, p 50). Another related point is that an agency might be created, at least in part, for the sake of increasing the visibility of an EU policy (see 5.2.1, case of EIGE).

Governance

Identified problems

In most instances the approach to choosing the governance arrangements is that of 'one-size-fits-all'. In a minority of instances (11 agencies), this leads to an under-optimal balance of power, which may in turn entail serious ineffectiveness or inefficiency (2 agencies).

The evaluation team regards the standard committee-like approach, with all Member States attending two board meetings per year, as sometimes unnecessary, costly, and ineffective.

Overall, the evaluation team concludes that interest groups are not involved in the governance arrangements as much as they should be, and that actual instances of involvement are often inefficient.

Agencies having Information, Communication, or Soft Coordination as their first or second main activity should 'govern' their mid-term priorities through a multi-annual programme; something which is usually done, but not (yet) systematically.

The EU interest is under-weighted in the governance arrangements of a few agencies, and it is at risk of being voiced in a contradictory way in many instances.

Many agencies take a proactive part in shaping new policy issues and raising awareness of these issues among policy-makers, interest groups and the wider public. In doing so, they play a political role and they take political risks which are managed through daily coordination efforts. Regrettably, this is not considered to be a governance issue.

There is a need for some agencies to create their own independent image, whilst it may be counter-productive to do that in other instances. This option is not yet addressed as a governance issue.

4.2 Establishing agencies

4.2.1 Alternatives are not yet assessed in a fully transparent and impartial manner

Until recently, the process of establishing agencies was all but transparent and this also applied to the choice between a new agency and alternative options⁶⁶.

The recent improvements in the practice of impact assessment have resulted in a considerable change since 2005. Impact assessments are done by the parent DG of the future agency, and also in case of recast of an existing agency. The quality of the assessment is verified by the Commission's Impact Assessment Board, a high level group of internal experts. The most recent impact assessments do address the issue of alternative options in a substantial way.

There are five main alternatives to creating new agencies, i.e. entrusting its planned tasks to (1) the Commission or an executive agency, (2) another existing agency, (3) an intergovernmental arrangement, (4) an expert network supported by the Commission, or (5) public procurement to private sector.

The option of extending the mandate of an existing agency is of particular interest where small agencies are at risk of not reaching a critical mass (see 4.2.5).

⁶⁶ This section elaborates on Volume II, 2.1.1

Table 4 – Alternatives and criteria for choosing the agency option

Agency's activity	Alternatives	Criteria
Collecting and disseminating harmonised information to policy-makers in EU & MS as to support an evidence-based policy-making process (e.g. EEA)	Expert network supported by the Commission; DG ESTAT; Intergovernmental arrangement; Cooperation with an international institution.	Tasks are too heavy for an expert network; Tasks are not (yet) stable enough for being handled by DG ESTAT; Needs of EU policy-makers and EU level interest groups would not be satisfied by an inter-governmental or international arrangement.
Communicating towards a targeted public at EU level as to raise awareness on a given issue (e.g. EU-OSHA)	Parent DG in the Commission	Communication needs to depend on interest groups (e.g. social partners) and not just European Institutions
Contributing to the soft coordination between Member States and European Institutions as to better achieve EU objectives (e.g. CEDEFOP)	Parent DG in the Commission	Tasks requiring specialised expertise;
Providing expert advice to policy-makers in EU & MS as to support an evidence-based decision-making process (e.g. EFSA)	Expert network supported by the Commission	Tasks are too heavy and too urgent for being entrusted to an expert network; Need for expert advice to be recognised as fully independent from the Commission
Facilitating operational coordination between public managers in MS as to better achieve the objectives of a given EU policy (e.g. EUROPOL)	Inter-governmental arrangement	
Dealing with individual applications from a targeted public as to ensure safety on the EU market (e.g. OHIM)	Coordination of national agencies	The trans-national dimension of the tasks would not be promoted well-enough through an inter-governmental arrangement; Tasks requiring a critical mass of specialised expertise.
Delivering a highly specific service or support to targeted bodies or institutions as to better achieve the objectives of a given EU policy (e.g. CdT)	Internal EC expertise, Executive agency, Outsourcing to external experts	The market cannot supply the service; The service need to remain within the public sphere, but not just under control of the parent DG.

The evaluation team's view is that some limitations remain in the current practice at four levels:

- The fact that the future parent DG undertakes the assessment creates a bias if an alternative option consists of extending the mandate of an agency connected to another DG⁶⁷;
- Assessment criteria are sometimes questionable: one of the criteria determining the best option in the recent Impact Assessment of EASO is that of "political feasibility". The evaluation team's view is that impact assessments should feed the policy-making process with evidence based information only;

⁶⁷ In the case of EIGE, DG EMPL's ex ante evaluation had to assess the alternative option of extending the mandate of FRA, an agency under the umbrella of DG Justice and home affairs. Of course, the Impact Assessment process involves a inter-service consultation and a quality assessment, but the evaluation team remains concerned by the risk of bias.

- Governance arrangements tend to be of a 'one-size-fits-all' nature and alternatives are not systematically considered⁶⁸ (see 4.1.2);
- Decisions about the location package⁶⁹ are taken without considering alternatives and without assessing their impact on agency's performance (see 4.2.3).

Overall, and despite considerable progress, the evaluation team assesses that the alternatives to the agency option are not yet assessed in a transparent and impartial enough manner. Moreover no alternatives are considered for the governance arrangements and the location package⁷⁰.

4.2.2 The existence of established agencies is almost never reconsidered

Most agencies have an undetermined duration, except the two cases of EAR and ENISA which have been established for a five year period. The duration of ENISA's mandate was extended once, and the duration of EAR was extended twice, including a change of its mandate. EAR is now closed⁷¹.

There is a general understanding that agencies need to be evaluated every five years with an aim to reconsider their mandate or even their very existence. This view is stated in the specific financial regulations of many agencies, and it is sometimes made explicit in the founding regulations. An analysis of the current practice shows that the periodic agency evaluations do not have a high enough profile for leading to a serious reconsideration of an agency, and even less to its closure.

In some instances (e.g. ECDC, EFSA, ENISA, EIGE) there is also an obligation to evaluate new agencies after three years, something which is by far too short⁷² and irrelevant in a reconsideration perspective, if not in any perspective at all (Vol II, 2.3.1.a).

The evaluation team has identified 16 agencies whose relevance has been discussed over the last years (documents and interviews). In most instances the issue was that of new needs to be addressed or major changes in the context.

In five instances, the relevance issue was addressed through a change in the agency's mandate or another major decision, i.e. change in the main activity (CEDEFOP), extension of the geographic coverage and thematic scope (ETF), change in the governance and management (EUROJUST), downsizing and continuation (GSA), and closure (EAR).

From the analysis of these decisions, the evaluation team understands that the solution to major relevance problems has almost always⁷³ been sought in terms of survival (continuation with a smaller size or extension of the mandate) rather than in terms of closure or merging.

4.2.3 Some location packages are inefficient

One Member State has three agencies (Spain), six have two agencies (France, Greece, Italy, Netherlands, Portugal, UK), nine have one agency (Austria, Denmark, Finland,

⁶⁸ Exceptions are however visible in some recent cases. For instance, the governance arrangements of EIGE are innovative. Also in the case of EASA, the Impact Assessment Board questioned the evidence base for the initial project and led the lead service to finally conclude that a less heavy governance solution would deliver more effectively on the set objectives.

⁶⁹ Including accessibility of headquarters, attractiveness for staff, cost of premises, host country support, and VAT exemption.

⁷⁰ Furthermore, the location decision is made separately from, and often much later than, the decision to establish the agency.

⁷¹ See Volume II, 2.1.3.

⁷² The first year in the life of an agency is dominated by logistics and administration to set up the infrastructure and hire the staff. Operational activities tend to start on the second year, and their impact may occur one or two years later. It is therefore very unlikely that impact related conclusions can be delivered after three years.

⁷³ In the exceptional case of closure of EAR, the mandate of the agency had been changed once in order to extend its scope and duration.

Germany, Ireland, Lithuania, Luxembourg, Poland, and Sweden). Ten new Member States have no agency (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Malta, Romania, Slovakia, and Slovenia). It has been decided that new agencies would be located in one of the latter countries⁷⁴.

Once the host country is selected, the remaining options are taken through bilateral discussions, in a way which is far from transparent⁷⁵, and with quite uneven outcomes. The evaluation team has strived to improve the transparency of the costs and benefits associated with these options. The main dimensions of this issue are (1) accessibility, (2) attractiveness for staff, (3) cost of premises, and (4) VAT exemption.

Accessibility is a matter of travel cost and travel time⁷⁶, the latter being affected by the need to have flight connections, the need to stay one or two nights in the agency headquarter city, and the sometimes long taxi drive to the airport⁷⁷. Accessibility is however not needed for all European agencies. In fact, it is mainly desirable where the agency has an intense networking activity, something which occurs where its main activity consists of collecting harmonised information, contributing to the soft coordination between Member States and European Institutions, providing advice to policy-makers through panels or networks of experts, and facilitating operational coordination between Member States. The evaluation team's estimates⁷⁸ combine all these elements and indicate that six agencies have an accessibility problem (EFSA, EIGE, EMCDDA, EMSA), or a serious one (CFCA, ENISA).

The attractiveness of the agency's location for newly recruited staff is approximated by accessibility, presence of an international school, and exemption of national income tax⁷⁹. The evaluation team's estimates show that seven agencies have an attractiveness problem (CEPOL, ENISA, ERA, EU-OSHA) or a serious one (CFCA, CPVO, OHIM).

The evaluation team has calculated the cost of premises per actual staff member, less the host country support (significant in the case of CFCA, ENISA, EU-OSHA, EUROFOUND, EUROPOL, FRA, and FRONTEX). Overall the highest costs have been found in ECHA, EMCDDA, EU-OSHA, and EMEA, where it is more than 50% above the average.

Finally, all agencies are exempt from VAT in principle, but some agencies mention limitations (CPVO, EMCDDA, EMSA, ERA, FRONTEX). In the case of OHIM, the absence of a seat agreement leads to an absence of both exemption and reimbursement.

Overall, the location packages are assessed as particularly inefficient in the cases of CPVO, CFCA, EMCDDA, ENISA, and OHIM.

4.2.4 The EC support to young agencies is uneven

The four most recent agencies are ECHA, EIGE, EUROPOL, and FRA. The two latter ones build upon a pre-existing body and are therefore not completely new. Interviews within two of these agencies (EIGE, EUROPOL) indicate some gaps in terms of guidance and suggest that Commission services have limited capacity to provide agencies hands-on administrative support in this process.

On the contrary, ECHA is acknowledged as a good practice in terms of rapid establishment and staffing, as well as effective support from the Commission, the host country, and transfer of lessons learnt in other agencies. Three factors are said to explain this success: (1) political challenge of launching the REACH instrument, (2) large size of the agency, (3) good anticipation on the side of the parent DG.

⁷⁴ See Volume II, 2.3.1

⁷⁵ Transparency is defined in the section, and more generally in this report, as the fact that comprehensive information about a given decision process is open and freely available.

⁷⁶ Both elements have been equally weighed.

⁷⁷ Or even a shuttle system costing 1 m€ / year and considerable travel time in the case of EFSA, due to the absence of an international airport in Parma.

⁷⁸ See Vol II, 2.3.1, also for the next section.

⁷⁹ The first element has been weighed twice the other ones.

Overall, the evaluation team assesses that the ECHA success story is an exception and that the newest agencies have been established without sufficient support.

4.2.5 Small agencies face efficiency problems

Eight agencies had less than 75⁸⁰ staff members in 2008 (CEPOL, CFCA, CPVO, EIGE, ENISA, EU-OSHA, FRA, and GSA). In a recent study of the European Parliament⁸¹ small agencies were found to be facing specific efficiency constraints. In the case of ENISA a recent agency evaluation concluded that “the operational staff is probably under the critical mass needed for effectiveness”⁸².

It is also worth noting that governance may be a non-negligible fixed cost in proportion of the resources of small agencies, as can be seen in the case of EU-OSHA having more board members (84) than staff (64), or CEPOL having 27 board members and 30 staff members⁸³.

The evaluation team considers that this critical mass issue has not yet been assessed in sufficient depth in the impact assessments, especially when it comes to comparing the option of a new agency vs extending the mandate of an existing agency.

Establishing agencies

Identified problems

Alternatives to the agency option used to be paid limited attention but the recent impact assessment practice achieves a better transparency, although not yet perfect, especially as regards governance and seating arrangements.

There is no effective mechanism for reconsidering established agencies. In case of major relevance problems the solution has almost always been sought in terms of survival of the agency rather than in terms of closure or merging.

Once the host country is selected, the remaining options are taken through bilateral discussions, with quite uneven outcomes and no transparency. Six agencies have been assessed as having particularly inefficient location packages.

With the exception of ECHA, the most recently established agencies have not benefited from sufficient guidance, support, and transfer of lessons learnt with regards to administrative issues.

The evaluation team considers that the critical mass⁸⁴ issue is not yet assessed in sufficient depth in the impact assessments, especially when it comes to comparing the option of a new agency vs extending the mandate of an existing agency. The problem of critical mass also applies to small existing agencies.

⁸⁰ See 3.1.6.

⁸¹ European Parliament, 2009, Opportunity and feasibility of establishing common support services for EU agencies.

⁸² See Volume III, 16.2

⁸³ Actual staff, year 2008.

⁸⁴ In this report, the term “critical mass” applies to the staff threshold over which the agency (1) makes a difference in terms of results and impacts, and (2) implements its administrative tasks in accordance to good practices while not devoting an excessive share of its resources to such tasks.

4.3 Accountability

In the EU agencies the directors are accountable to the board through the approval of annual reports, and most often to the Parliament through the discharge procedure. Accountability means that they have to report on their accomplishments, and that they incur risks if these accomplishments are considered as unsatisfactory.

The Commission is also accountable to the Parliament regarding its own responsibilities in relation to agencies.

Ideally, executives should be accountable for both regulation and performance. It is however much easier to identify who is responsible for regularity problems than performance ones. Accountability for performance is therefore a notoriously difficult issue.

4.3.1 Performance reporting is almost nonexistent

Performance information relates to the agency's own responsibility in achieving its intended outputs, and results at a reasonable cost. Needless to say, such information is scarce⁸⁵.

The Court of Auditors does not touch the issue of performance in its annual reports⁸⁶. The agencies are slowly progressing towards Activity Based Reporting and Budgeting. At the time of this evaluation, most agencies declare that they implement an Activity Based Management system either totally (12 agencies) or in part (9 agencies), but the evaluation team's analysis of the main activities of the agencies shows that only a small minority of them are expressed in both verifiable objectives and targets. The extent to which targets have been met and the impact of the agency's work are seldom covered in the activity reports.

Good practices have been identified in three areas: (1) EEA runs an integrated management system which enables the agency to monitor its outputs⁸⁷, (2) EUROPOL has a very elaborated and systematic monitoring of users' satisfaction, and (3) EURO-FOUND monitors its results with a number of relevant indicators⁸⁸.

Overall, it is clear that performance reporting is almost nonexistent, at least in the strong and accurate form which could serve as a basis for the discharge procedure.

4.3.2 The discharge procedure is limited to regularity

Directors are made accountable to the Parliament and the Council through the annual discharge procedure⁸⁹. The Parliament takes its decision on the basis of (1) agency's accounts and reports, (2) statement of assurance and report made by the Court of Auditors, (3) Council's advice, and as far as necessary (4) hearing⁹⁰ of the director and director's answer to written questions.

The main and most frequent problems highlighted in relation to agencies in the Court of Auditors' annual reports relate to procurement procedures, recruitment and carry-over of appropriations. The Parliament, for its part, regularly highlights the need for publishing performance indicators and for regular evaluation of the agencies by the Commission⁹¹. The evaluation team has however not seen any substantial and strong

⁸⁵ See Volume II, 2.6.5

⁸⁶ Except in its 2008 report "The European Union's Agencies: Getting Results" which deals with performance monitoring and management rather than substantial assessments about performance.

⁸⁷ European Court of Auditors, above quoted report, Box 7.

⁸⁸ European Court of Auditors, above quoted report, Box 8.

⁸⁹ Except in the case of CPVO and OHIM, two agencies which are totally funded by in-voiced services. These agencies are therefore not involved in the budgetary and discharge processes, although the level of fees results from a decision of the European Institutions through a specialised committee. These agencies are not subjected to the "internal audits" of the Commission's Internal Audit Service.

⁹⁰ Not for all agencies, but typically in four instances a year.

⁹¹ A typical example is the latest CEDEFOP discharge (year 2007).

comment on performance made by the budgetary authority in the framework of the discharge procedure⁹².

The discharge was always given to agencies by the European Parliament, either with or without comments. During the latest discharge procedure, the evaluation team has noted comments in eight instances (CEPOL, EEA, EMSA, EUROFOUND, EUROJUST, FRA, FRONTEX, and GSA), almost all of them relating to regularity issues. For the first time in 2009, the discharge of an agency (CEPOL) was delayed, again for regularity reasons⁹³, but finally voted.

Interviewees in the European Institutions express convergent views that agencies and their directors are challenged by the discharge procedure, and pay careful attention to the risks incurred in this procedure.

The evaluation team interprets and assesses the above facts and opinions as follows: the powerful force of the discharge procedure makes agency directors actually accountable for regulatory and legal compliance, but not for performance.

4.3.3 Audits are not sufficiently owned and used

Until 2003, all agencies were responsible for their internal audit function. By this date, and under strong Parliamentary pressure, the Internal Audit Service of the Commission became responsible for playing this role on behalf of the agencies, except in the cases of CPVO and OHIM⁹⁴. The new system was progressively implemented and it reached its cruise speed in 2008. All agencies are now audited every year by people with a much better knowledge of risks⁹⁵.

A significant share⁹⁶ of the audits undertaken in 2008-2009 are closely connected to the agency's performance in achieving outputs and results, e.g. quality management in ECDC, planning and monitoring in ECHA, external communication in EFSA.

Ten agencies have maintained their own internal audit capability, and two agencies (EMSA and CFCA) share a common audit capability. These functions are typically in the hands of one person (exceptionally three) who coordinates closely with the Commission's internal auditors.

A very high number of interviewees inside the agencies express the opinion that there is an audit overload. An explanation may be that "internal audit" is carried out by a body which is perceived as external. Another explanation may be that professional audits have become systematic only since 2008.

The audit reports are sent to the director and to the board through its chairperson. It is also available to the parent DG and to the Court of Auditors. Instances of specific risks⁹⁷ are transmitted to OLAF (3 instances in a typical year).

In the Commission, internal audit reports are reviewed by a high level Audit Committee, which includes external experts and which holds frequent meetings. This provides an arena for discussing, possibly challenging, and most often using the audit conclusions. This system does not exist in the case of the agencies⁹⁸. It is therefore the joint

⁹² Performance issues are exceptionally addressed in the comments of the Budgetary Authority, but in relatively vague terms, a typical example being "satisfaction that ECDC was able to develop a considerable number of products and services on epidemiology, surveillance and prevention and control of communicable diseases, as well as publish a variety of scientific reports".

⁹³ For reasons related to the private use of budgetary appropriations and due to insufficient explanations from the Agency.

⁹⁴ These agencies are totally funded by invoiced services.

⁹⁵ See Volume II, 2.7.2, also for the next sections.

⁹⁶ 9 out of 43.

⁹⁷ One person overuses his/her power or the system is open to fraud in areas such as procurement and recruitment.

⁹⁸ Except EFSA and ECDC where there are audit committees, and OHIM where there is a Budget Committee responsible for discharge. Bureaus may also play a part of this role where they have been established (CEDEFOP, EEA, EMCDDA, EU-OSHA, EUROFOUND, FRA). This is evidenced in the case of CEDFOP for instance.

responsibility of the director and the board to use the audit conclusions. In fact, the boards cannot really play this role at a significant level. First, board members are experts in the agency's core business, but they do not have competence and interest in the area of management and administration. Moreover, it seems that audit conclusions may even not be discussed in board meetings⁹⁹.

Finally the evaluation team understands that the boards counterweight the directors' power as far as core business is concerned, but not that much in the area of regularity and management.

Overall, the evaluation team's conclusion is that internal audits are making satisfactory progress towards balancing regularity and performance, but that ownership and use remain as two serious problems.

4.3.4 Directors' accountability is limited in scope

As seen earlier (4.2.1 and 4.2.3) the director of an agency is made accountable through the Parliament's discharge principally, i.e. on a limited number of big regularity issues. Boards are also supposed to play a counter-power role for making the director accountable through the approval of the annual activity report and the appended financial report. However, in the frequent cases where there is no audit committee or equivalent system, this role is played quite superficially. Moreover there is a long way before accountability could extend to performance.

From the evaluation interviews, it can be derived that no agency director has ever been visibly challenged for regularity or performance problems. Two examples have been quoted¹⁰⁰ where directors were not re-appointed at the end of their mandate¹⁰¹ because of such problems.

In the view of these findings the evaluation team concludes that directors are not really made accountable, except for with big regularity issues.

4.3.5 The Commission is sometimes made accountable for what is beyond its responsibility

Many interviewees express the opinion that the Commission is requested to take responsibilities in relation to agencies in a way which is not proportionate to its weight in the balance of powers. This can be illustrated by an extract of the Parliament's discharge¹⁰² to an agency which "urges the Commission to ensure that the Agency maintains strict financial discipline in the future and always works within the agreed budgets".

As seen earlier (4.1.5) the weight of European Institutions in the agency's governance is quite variable, and this weight is sometimes shared between the Commission, the Parliament and/or the Council. In this context, the Commission should be accountable in the proportion of its weight in the governance arrangements.

In this respect, the Commission's responsibility stands at three distinct levels¹⁰³:

- Institutional level, e.g. contributing to the design of effective governance arrangements;
- Interactive level, e.g. cooperating with other players in order to reach win-win compromises, possibly unplanned ones;
- Instrumental level, e.g. contributing to achieve the objectives of EU policies by leveraging the forces of the other players.

⁹⁹ Based on a review of the proceedings of a typical agency board.

¹⁰⁰ Conditional to confidentiality.

¹⁰¹ All directors have a 5 year term, usually renewable once, except EUROPOL and CEPOL (4 years).

¹⁰² EASA, discharge 2007.

¹⁰³ This point builds upon the concepts developed in W.Kickert, E.Klijn, and J.Koppenjan (1997) *Managing Complex Networks, Strategies for the Public Sector*, London:Sage.

At all three levels, the Commission is responsible for playing its role and for its contribution to the outcomes, but not for the outcomes per se.

The evaluation team's conclusion is that the Commission's accountability with regards to agencies has not yet been clarified sufficiently.

4.3.6 Evaluations are not undertaken at the right time and level

Most founding regulations require that agencies be subjected to periodic overall evaluations. Only three agencies are not subjected to such a requirement (EU-OSHA, GSA, OHIM). These evaluations are typically carried out every five years in general (exceptionally 3, 4, 6, or 10). Nearly 30 evaluations of this kind have already been undertaken. These evaluations are always carried out externally. They fall under the responsibility of the agency or the parent DG, but they are usually managed in close cooperation¹⁰⁴.

Agency evaluations are sometimes referred to as an opportunity for reconsidering the agency's mandate or its very existence (see 4.2.2), and also as a way through which agencies could be held accountable for their results or impacts.

In fact, they tend to cover a limited number of issues, i.e. relevance, coherence, Community added value, and internal efficiency, and they fall short of concluding on rationale, effectiveness (in achieving policy objectives), and cost effectiveness (or external efficiency).

There are three reasons for these findings: (1) the political profile of these evaluations is too low¹⁰⁵ to attract the evaluation of management issues, (2) a serious reconsideration cannot be put on the political agenda every five years¹⁰⁶, and (3) evaluators have difficulties in assessing many results and impacts at a time, which means that they can conclude on a specific activity, but not as well on the whole range of activities of an agency, which may be wide.

Besides overall agency evaluations, there is also a practice of evaluating individual activities and programmes within agencies. Thirteen agencies have started to carry out such evaluations, which typically apply to activities entailing significant spending¹⁰⁷. This is usually done by external evaluators in agencies producing harmonised information, and internally by agencies facilitating operational coordination. Some of these evaluations provide clear conclusions about results and impacts.

From the above, the evaluation team concludes that the bulk of evaluation efforts apply to periodic agency evaluations which fall short of concluding on results and impacts, and therefore add little value in terms of accountability, as compared to audits.

Accountability

Identified problems

The ownership and use of 'internal audits' (carried out by the Commission's Internal Audit Service) are two serious problems.

Performance reporting has not yet the strong and accurate form which could serve as a basis for the discharge procedure.

The bulk of evaluation efforts apply to periodic agency evaluations which add little value in terms of accountability for results and impacts.

¹⁰⁴ See Volume II, 2.7.1.

¹⁰⁵ They typically involve administrative staff in the agency and Commission.

¹⁰⁶ This would mean that the existence and mandate of five to six agencies would be reconsidered every year in average. Moreover, agencies could not develop a long term vision (5.3.1) if their mandate is really challenged every five years.

¹⁰⁷ This practice is required by the Framework Financial Regulation, without any specific obligation in terms of frequency or contents.

At present, the powerful force of the discharge procedure makes agency directors accountable for regularity, but not for performance.

A point which has not yet been clarified sufficiently is the need to hold the Commission accountable for its interactions with the agencies but not for the activities of the agencies that are independent bodies.

4.4 Performance and comparability

In this section, performance is defined as the achievement of intended outputs and results at low cost. Results are understood to be short term effects of agencies on their direct addressees (users, clients). As far as they are defined in this way, results can be monitored and performance information can be used for daily management and annual reporting purposes.

Contrary to results, impacts are defined as mid / long term and/or indirect effects. Impacts can be assessed only through specific studies or surveys, usually in the framework of evaluations, and generally not on an annual basis. Contrary to performance monitoring, evaluations cannot be used for daily management and systematic reporting. They rather feed into reform processes.

4.4.1 Administrative costs affect performance negatively

Interviewees within agencies complain about rigidities and administrative burdens in an almost systematic way. The evaluation team understands the context of these complaints as follows¹⁰⁸:

- Agencies have to fulfil the rules of the Financial and Staff Regulation applying to all European bodies. This involves benefits¹⁰⁹ and facilities¹¹⁰, but also a series of rules which have been developed over 50 years of European history.
- The common financial and staff regulations have to be applied to the particular context of each agency through specific implementation rules. Initially, this was done by agencies on an individual basis, under appropriate controls. This process has led to a complicated array of heterogeneous rules. European Institutions, and especially the Parliament, pushed for harmonising these rules.
- With regards to financial issues, agencies establish their own regulation which has to be harmonised with the EU framework regulation. Since 2002, the Commission's prior consent is requested if a specific implementing rule departs from the agency's financial regulation.
- With regards to staff, the agencies were required in 2004 to get Commission's prior agreement in relation to the implementation of rules. Templates for implementing rules have been drafted by the Commission in close cooperation with the agencies, which have then been particularised for the case of each agency and adopted by the management boards. This harmonised new approach has involved significant changes in a number of practices, which might explain a part of the complaints.

Through its own investigations (i.e. a series of 14 case studies of actual results and impacts) the evaluation team finds that one of the important factors determining cost-effectiveness is the agency's capacity to take rapid decision as to mobilize internal resources flexibly¹¹¹. This is both exemplified and demonstrated in two contrasted cases: ECDC's response to the H1N1 Influenza crisis, and EASA's control of the airworthiness of aircrafts. In the first case, the necessary flexibility was enabled by the existing fi-

¹⁰⁸ See Volume II, 2.3.2, last paragraphs, also for the next section.

¹⁰⁹ Mainly attractive salaries and tax exemptions.

¹¹⁰ For instance in terms of attracting and managing expatriates, or enabling mobility between European bodies.

¹¹¹ It must be however recognised that eight other important factors have also been identified as determining cost-effectiveness, something which tends to soften the overall negative picture arising from the interviews.

financial rules and their usual margins of manoeuvre. In the second case, the flexibility need was constrained by staff and financial rules.

Several interviewees and convincing examples suggest that agencies do not use, do not dare to use, or cannot use¹¹² the margins of manoeuvre which are available to them (i.e. establishing the implementing rules of the staff regulation within a range of possibilities with the Commission's prior consent, derogating from their implementing rules in exceptional cases under control of their board)¹¹³.

The evaluation team considers there to be two explanations for not using the available freedoms:

- The current approach to accountability, which focuses on regularity only (see 4.3.1), may create an incentive towards rigid compliance;
- Agencies do not always have administrative staff (especially Head of Administration) fully aware of the Community legal framework.

The issue of cost-effectiveness also needs to be considered from another standpoint, i.e. that of administrative costs, or the fact that some agencies devote excessive resources to administrative tasks at the expense of their core tasks and their overall performance. In average, European agencies devote 30% of their human resources and 25% of their financial resources to their administrative tasks¹¹⁴. In the case of small agencies¹¹⁵, the weight of such costs clearly appears as excessive in a recent study¹¹⁶ of the Parliament.

In general, agencies strive to reduce their administrative costs by:

- Hiring administrative staff familiar with European rules;
- Using the administrative instruments of the Commission through Service Level Agreements instead of developing their own ones. The most frequently shared services are: Paymaster Office, European Personnel Selection Office, Publications Office, DG ADMIN's training courses, DG BUDG's accounting system¹¹⁷. Some EC framework contracts are also made available to agencies (e.g. DG EMPL in the area of evaluation, but some agencies complain for not having access to communication framework contracts); or
- Developing horizontal cooperation with other agencies on administrative matters, e.g. the above quoted case of EMSA and CFCA sharing an internal audit capability.

Overall, the evaluation team understands that a flexibility problem does exist which raises a significant risk in terms of performance. A part of this problem is solved by using the available freedoms, but another part seems to remain unsolved because the margins of manoeuvre are not used as they could be.

That being said, the main problem appears to be the cost of applying EU rules¹¹⁸. Many of the possibilities of reducing this cost are already used, but the administrative burden remains heavy and detracts a significant share of the agencies' resources from their core tasks. This is particularly problematic in the small agencies.

¹¹² The common position of the heads of agencies on an earlier version of this report states that "the approach taken in the past by the individual Commission Services, as gatekeepers to the use of these flexibility margins, did not allow de facto any significant use of this regulatory capacity which therefore remains mainly theoretical".

¹¹³ Some interviewees in the agencies also say that the margins of manoeuvre are almost non-existent.

¹¹⁴ Source: Court of Auditor's annual specific reports (2006-2007) compiled by the Parliament, cross-checked with the evaluation team's survey (2008-2009).

¹¹⁵ New agencies also tend to devote heavy resources to administration, but this may simply reflect the fact that administrative functions have to be proportionate to the future size of the organisation.

¹¹⁶ European Parliament, 2009, Opportunity and feasibility of establishing common support services for EU agencies, Table 3.

¹¹⁷ European Parliament, above quoted study, p39.

¹¹⁸ Which includes that of using the available margins of manoeuvre.

4.4.2 Insufficient incentives for achieving results

It has already been said (4.3.1) that the current approach to accountability concentrates 100% of its powerful incentives on regularity.

The process of establishing the agencies' budgets also needs to be considered in this respect. It proceeds as follows: (1) the agency submits an estimate to the parent DG, which (2) discuss it and proposes a possibly different version to DG BUDG, which (3) discuss it and possibly amends it before it is sent as part of the draft general budget which is successively submitted to (4) first reading and amendment in the Council, (5) first reading and amendment in the Parliament, and (6) second reading in the Council and compromise with the Parliament if necessary. Overall, this process includes five possibilities of amendments.

A first important issue is that the budgetary changes tend to be disconnected from the programming of agencies results¹¹⁹. A number of interviews, inside and outside agencies, state that a budget cut of e.g. 5% is not associated with a clear enough indication of which tasks, outputs, and results should be changed accordingly¹²⁰. In case of budget cuts, the most frequent reasons are: (1) recurrent surpluses, and (2) recurrent vacancies (in which case a part of the resources tends to be cut).

The evaluation team interprets these findings as follows: (1) the budgetary process is not clearly connected to performance, and (2) budget cuts tend to be done in such a way that they create an indirect, but quite powerful incentive for spending.

A third point needs to be made regarding performance incentives. It relates to the much softer issue of agency coordination with external bodies. The series of in-depth case studies carried out during this evaluation shows that coordination is the most frequent and the most important factor determining both effectiveness and cost-effectiveness. Coordination enables agencies to fully realise their potential synergies with other institutions at EU, national and/or international levels. EU agencies are typically small in relation to their corresponding partners and they need to find their right place as to add value in a complex system. This evaluation shows that coordination is a relative strength of European agencies and that there are visible benefits in terms of synergy.

Coordination has however a cost, and this may explain the fact that agency evaluators and interviewees tend to regret that some relevant coordination efforts are not undertaken.

Whilst there are not many incentives towards performance, it must be said that such incentives are even scarcer as regards coordination, since the merit of achieving synergies cannot be easily attributed to any of the partners, and therefore not to the agency itself.

4.4.3 Comparing performance across agencies is difficult

Over the last few years, considerable progress has been achieved in terms of comparing EU agencies in terms of e.g. administrative costs, management methods¹²¹, and evaluation practices¹²².

This evaluation has strived to develop new indicators with some success (accessibility), some first steps (staff attractiveness), and some failures (staff turn-over)¹²³.

¹¹⁹ The same would also apply more broadly to the EU budget as a whole.

¹²⁰ This is exemplified by an observation of the Court of Auditors quoted in the 2007 discharge of ECDC: "although the agency's work programme was activity-based, the budget amendments were not accompanied by an estimate of their impact on the work programme and the achievement of objectives". In its cross-checking exercise, the evaluation team has found a (rather exceptional) counter-example, i.e. "in view of the foreseen budget cuts for the years 2009 to 2013, CEDEFOP is presently analysing the potential for ... substantial cuts which would require abolishing some activities or developing activities at a slower pace" (discharge 2006).

¹²¹ Court of Auditors' reports

¹²² European Commission, DG BUDG - Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings, 2008.

Most of these comparisons however have serious limitations:

- They result from one-shot studies and their regular updating is all but secured;
- They often rely upon questionnaires which add to the agencies' administrative burden; or
- They apply to resources and processes rather than results and impacts, although the later comparisons would be the most meaningful ones.

The evaluation team has done a comprehensive review of all indicators used in the agencies' documents, especially in their annual activity reports. This review shows¹²⁴ that inter-agency comparisons are not feasible because (1) outputs and results are not counted in the same unit¹²⁵ or (2) similar indicators measure things which are not comparable¹²⁶.

During this evaluation, a series of focus groups and benchmarking exercises has clearly shown that performance indicators and performance comparisons can be considered only between agencies which implement similar activities. It has also been recognised that there is a limited prospect for achieving inter-agency performance comparisons in the short term. Such a prospect seems to be:

- Good for establishing common performance criteria within groups of agencies implementing similar activities;
- Average for defining and quantifying common performance indicators;
- Poor for comparing performance indicators across agencies and identifying 'best in class' agencies.

The evaluation team has however identified some promising practices in terms of performance indicators which have a potential for comparing agencies. The most interesting prospect has been discussed with three agencies collecting and disseminating harmonised information as to feed policy-making at EU and Member State level (see Table 5). The discussion also involved OECD which implements very similar activities. Seven other EU agencies also implement similar activities as their first or second main ones.

Table 5 – Comparing agencies' performance, an example

<i>Agencies collecting and disseminating harmonised information as to feed policy-making at EU and Member State level</i>		
Performance criterion	Indicator	Prospect for comparison
Dissemination of information	Presentations of agency's works in conferences and workshops organised by institutions other than the agency	Possible
Public interest in information	Website visits ¹²⁷ and downloads	Possible
Use of service	Citations of agency's works	Rather difficult

¹²³ See Volume II, 2.3.1, and CDROM.

¹²⁴ See Volume II, 2.6.5.

¹²⁵ E.g. consultation of a given web page measured in hits, visits, or downloads.

¹²⁶ E.g. the count of downloads applies to the whole website (including general information) or to specific outputs of the agency.

¹²⁷ The fact that a website page has remained open long enough for the user to read it.

Table 6 – Agencies having comparable activities

Comparable activity ¹²⁸	Agency's first main activity	Agency's second or third main activity	Performance criteria ¹²⁹
Collecting and disseminating harmonised information as to feed policy-making at EU and Member State level	ECDC, EEA, EIGE, EMCDDA, ENISA, EUROFOUND, FRA	CEDEFOP, EFSA, ETF, EU-OSHA	Dissemination of information Acknowledgement of information Inputs in policy-making
Communicating towards a targeted public at EU level as to raise awareness on a given issue	EU-OSHA	CEDEFOP, EEA, EFSA, FRA	Dissemination of information Addressees' acknowledgement of information Addressees' awareness of the issue
Contributing to the soft co-ordination ¹³⁰ between Member States and European Institutions as to better achieve EU objectives	CEDEFOP, CEPOL	CFCA, ECDC, EIGE, ENISA, EMSA, EU-OSHA, EUROPOL, FRONTEX, ERA	Participation of Member States Member States' commitments to take action Actual changes in Member States' agenda
Providing expert advice to policy-makers in EU & MS as to support an evidence-based decision-making process	EFSA, ERA	EASA, ECDC, ECHA, EMEA, FRA	Responsiveness to decision-makers' demands Credibility of delivered advices Inputs in decision-making
Facilitating operational co-ordination between Member States as to better achieve the objectives of a EU policy	CFCA, EMSA, EUROJUST, EUROPOL, FRONTEX		Participation of Member States in multi-country operations Satisfaction of participating Member States Success of operations
Dealing with individual applications of firms as to ensure safety on the EU market	CPVO, EASA, ECHA, EMEA, OHIM		Responsiveness to users' needs Users' satisfaction Absence of contested decisions / assessments
Service and support to targeted institutions outside Europe, as to better achieve the objectives of EU external and externalised policies	ETF ¹³¹	CEPOL	Satisfaction of targeted institutions

¹²⁸ This table does not mention one of the activities covered by this report, i.e. providing services and support to targeted institutions as to better achieve the objectives of an EU policy. The reason behind that choice is that such activities do not lend themselves to any performance comparisons, except user satisfaction.

¹²⁹ Only the first cell has been tested with concerned agencies. All other cells are just derived from the logic of the corresponding activities.

¹³⁰ This type of activity is close to the 'Open Method of Coordination'. It aims to improve the making of Member State policies through advice, mutual learning, transfer of good practices, capacity building, and the monitoring of progress towards common targets.

¹³¹ There is a lasting disagreement about the categorisation of ETF activities (see Vol III, section 18.1).

The three examples presented in Table 5 are an exception. No similar table could be developed for activities other than information.

These examples should also be considered with prudence since the "prospect for comparison" will never materialise in a spontaneous way. A considerable amount of coordination work would be needed as to harmonise these three indicators across the concerned agencies, and there is no arena where such a work can be undertaken.

Building upon its findings, the evaluation team considers that comparability is feasible within six groups of agencies focusing on similar activities, as stated in Table 6. Each of these six categories has a single logic in terms of tasks, targeted groups or institutions, intended results and impacts, and should offer good prospects for developing common criteria and indicators through some kind of work group arrangements.

A seventh category of activity consists of delivering highly specific services or support to targeted bodies or institutions as to better achieve EU policy objectives. The evaluation team does not see any prospect for comparing performance in achieving that type of activity, except client's satisfaction.

It must also be mentioned that a strong resistance has been opposed to the idea of clustering agencies per categories of activity. One of the reasons for this resistance is that many agencies implement several categories of activities at a time and reject the idea of being characterised by just one type of activity. The above six categories do not lead to this kind of problem since one single agency may belong to two, or even three groups.

Performance and comparability

Identified problems

This evaluation shows that inter-institutional coordination is the most important factor determining agencies' cost-effectiveness, but it must be recognised that incentives for coordination are even scarcer than incentives for other ways of performing.

Progress is being made in inter-agency comparisons but the regular updating of existing comparisons is not secured and it relies upon questionnaires which add to the agencies' administrative burden.

Comparisons do not apply to performance, although this would be the most interesting one.

Performance comparisons may only apply to activities which aim to achieve similar results for similar targets. The prospect for such comparisons is good as far as performance criteria are concerned, but it will take years before some kind of league table could be established.

5. Prospects

This chapter addresses fourteen issues which deserve to be discussed in the inter-institutional process, and which are structured in five sections, successively dealing with:

- Reconsidering agencies periodically
- Clarifying roles and responsibilities
- Developing a far-reaching vision
- Managing performance
- Alleviating administrative burdens

Each issue is presented in six points: (1) problems addressed, (2) first option, (3) second option(s), (4) time horizon, (5) concerned parties, and (6) pros and cons of the various options, including benefits, risks, difficulties, and any further analysis before implementation.

The first option is generally the easiest one and can be implemented in the short term. It may just consist of continuing the current practice if the identified problem is not severe, and if the status quo is assessed as acceptable. The second option is either an alternative or a complement to the first one. It tends to require a longer time or specific preconditions for being implemented.

5.1 Reconsider agencies periodically

This series of options build upon the basic idea that agencies would be subjected to a thorough reconsideration process within a flexible ten-year programme (5.1.2). The process of reconsidering a given agency would start with a high profile agency-level evaluation which would create a window of opportunity for:

- Merging small agencies where relevant (5.1.3);
- Recasting governance arrangements (5.1.4);
- Improving the location package or even relocating the agency (5.1.5).

Reform proposals would be subjected to strengthened impact assessments, as well as the establishment of new agencies (5.1.1).

5.1.1 Strengthen the impact assessments

Problem addressed

- Alternatives are not yet assessed in a fully transparent and impartial manner (4.2.1)
- Small agencies face efficiency problems (4.2.5)
- Committee-like boards with all Member States may be inadequate (4.1.2)

First option

The current practice of impact assessment constitutes a major improvement. Continuing in the same way may be an acceptable option.

Second option

Strengthen the impact assessments by investigating deeper into the one best alternative to implementing the main activity of the agency. This alternative should be presented in a fully comparable manner against a list of criteria depending upon the agency's main activity (see Appendix 3).

The strengthened impact assessments would involve a significant input of the Commission's service or European body which would be in charge of the best alternative.

The strengthened impact assessment should:

- Address the issue of critical mass, i.e. the fact that small agencies tend to have an excessive share of administrative costs, and may not make a difference in addressing the problems to be solved;

- Fully specify the one best alternative to creating / continuing the agency in a comparable enough manner, and make a systematic comparison in the light of conditions / criteria depending on the main activity (see Table 4 and Appendix 3);
- Present and assess at least one alternative for the governance arrangements (in the case of the agency option); and
- Avoid using criteria which are not evidence based.

Time horizon

Impact assessments could be strengthened immediately.

Concerned parties

In case impact assessments are to be strengthened:

- Parent DG for dealing with the above recommendations;
- Commission's service or European body which would be in charge of the no-agency alternative for investing time and resources into the discussion of this alternative;
- Commission's Impact Assessment Board, for ensuring that the recommended improvements are actually applied.

Pros and cons

At first, it should be noted that the recommended improvements are fully compatible with the quality standards established by the Commission for its impact assessments. What is recommended is to improve the practice in the case of agencies.

An important change consists of concentrating the impact assessment on the agency's main activity and the main justification for implementing this activity through a new or continued agency instead of the one best alternative. Existing agencies and the promoters of new agencies will certainly resist such a narrower focus of impact assessments since it has been shown (4.2.2) that agencies' mandates tend to be expanded over time rather than restricted, especially where relevance problems occur. However, it may not be justified to entrust an agency with secondary activities if the rationale of its primary activity becomes questionable. Narrowly focusing impact assessments on the first main activity is therefore a way to better control the growth of the agency system.

It is also recommended to pay more attention to the critical mass issue, something which may contribute to (1) avoid creating inefficient small agencies, or (2) push for considering the merging alternative in case of recasting small agencies (5.1.3).

The recommended approach also provides for thoroughly reconsidering governance arrangements where relevant (5.1.4).

Finally, it is recommended that the impact assessment involves a significant input from the Commission's service or European body which would be in charge of the best alternative to creating / continuing the concerned agency. This practice may involve some risk of conflict between the promoters and opponents of the agency option within the Commission, but the current practice of inter-service consultation is already dealing with such a risk. Through its quality control, the Impact Assessment Board would ensure that all options are fairly assessed in case of conflict.

5.1.2 Reconsider existing agencies periodically

Problem addressed

- Established agencies are almost never reconsidered (4.2.2)
- Evaluations are not undertaken at the right time and level (4.3.6)

First option

Take the opportunity of some evaluations for asking questions challenging the existence of the agency, and for that purpose:

- Adapt the current practice of overall agency evaluations by undertaking two distinct exercises alternatively (one of these evaluations would be a light formative¹³² exercise as usual, but the second exercise would be a high profile “political” evaluation launched and used through an informal inter-institutional cooperation, or an ad hoc inter-institutional working group if relevant);
- In the context of high profile evaluations, ask questions pertaining to rationale, critical mass, governance arrangements and location package;
- If a high profile evaluation is likely to challenge the very existence of an agency, then establish an ad hoc inter-institutional working group with the mandate of using the conclusions of the evaluation.

Second option

Establish and implement a rolling multi-annual evaluation work programme aimed at reconsidering all agencies every ten years at least, and for that purpose:

- Progressively amend all founding regulations as to require an overall agency evaluation every ten years at least instead of typically five years at present¹³³;
- Through an informal inter-institutional consultation process, set up a rolling multi-annual evaluation work programme providing for all agencies to be subjected to a high-profile overall evaluation when relevant and every ten years at least;
- As said above, require such evaluations to address challenging questions and establish an ad hoc inter-institutional working group if relevant.

Time horizon

Both options would unfold over a ten year time period.

Concerned parties

For both options, the concerned parties are:

- Commission, Council, Parliament and agencies for interacting informally about high profile evaluations, and for creating ad hoc inter-institutional working groups if relevant;

... plus in the second option:

- Commission’s Secretariat-General for designing and managing the multi-annual evaluation work programme;
- Parent DGs for introducing changes in the evaluation requirements every time a funding regulation is amended;
- DG Budget for clarifying the rules applying to evaluation in the Financial Framework Regulation as far as necessary;
- Agencies for amending their own financial regulation if necessary.

Pros and cons

Both options introduce the idea of reconsidering agencies every ten years at least through high profile evaluations in a context of inter-institutional cooperation. This approach may contribute to address relevance and critical mass problems by closing or merging agencies instead of extending their mandate, which is the typical solution under the current practice.

Both solutions include a change in the time frame of agency evaluations since high profile exercises would be carried out every ten years or so instead of typically five years. This proposal builds upon the assumptions that (1) European Institutions would not have the capacity to thoroughly reconsider five or six agencies per year¹³⁴, and (2)

¹³² Formative evaluations are meant to learn lessons as to suggest incremental changes

¹³³ This recommendation does not apply to the evaluation of agencies’ tasks (see 5.3.2) which need to be carried out on a more frequent basis

¹³⁴ Assuming that there will soon be about 30 agencies, an average number of six agencies have to be reconsidered every year if the current five-year cycle is maintained, something which probably exceeds the absorption capacity of the EU decision-makers. Doubling the length of the

agencies could not develop a sound multi-annual strategy if they are challenged too frequently.

Both options involve the setting of ad hoc inter-institutional working groups when the very existence of an agency is challenged. This practice would follow that of the current evaluation. It is however quite demanding in terms of procedure (mandate, nominating members and chair, gathering meetings), and should be used only in case of especially sensitive issues.

The second option involves a heavy process of amending all funding regulations. This process could however be lightened if it was attached to the changes in agencies' mandates, something which typically occurs once or more per decade.

The first option does not require any legal change, but it might be legally difficult for the Commission to launch a high profile overall evaluation where the funding regulation states that the agency is responsible for such exercises. This point should be subjected to further investigation.

5.1.3 Merge small agencies where relevant

Problem addressed

- Small agencies face efficiency problems (4.2.5).

First option

Seek and promote synergies between small agencies and larger similar ones, especially by pooling administrative tasks.

Second option

Merge small agencies where relevant, and for that purpose:

- Pay more attention to the critical mass issue in the impact assessments (5.1.1) and in the overall agency evaluations (5.1.2);
- Carefully consider the option of extending the mandate of another existing agency dealing with similar goals, tasks and/or interest groups instead of creating / continuing agencies, especially if the staff is assumed to remain under 75 for some years; and
- Merge small agencies with larger ones where potential synergies are important enough, under the condition that the governance system of the merged body makes room for all concerned interests to be voiced.

Time horizon

The first option is a short term one since some examples are already visible, e.g. EMSA and CFCA sharing a common internal audit capability.

The second option is connected to the reconsideration process (see 5.1.2) which needs to be developed over a decade.

Concerned parties

In the case of the first option:

- Agencies directors for pooling administrative tasks.

For implementing the second option:

- Commission's Secretariat-General and Commission's Impact Assessment Board, for raising the issue of critical mass in the multi-annual evaluation work programme and in the impact assessments respectively;
- Commission, Council and Parliament for deciding upon mergers, possibly through a formal inter-institutional cooperation if relevant (5.1.2);

cycle from five to ten would lead to reconsider an average three agencies per year, something which is assumed to be manageable.

Pros and cons

From the conclusions of this evaluation, it can be derived that small agencies should be merged or not created, but the current system has never succeeded in addressing that challenges¹³⁵.

By implementing the two previous recommendations, the European Institutions would periodically open a window of opportunity for discussing the merging issue (5.1.2), and they would strengthen the merging option against that of creating / continuing a small agency (5.1.1).

Indeed, a careful analysis should be undertaken before merging smaller agencies since merging has a cost, and the small size of some agencies may be well suited to be responsive to changing stakeholder needs. On the side of benefits, there are annual savings in administrative staff and governance, reallocating resources to operational tasks, and developing synergies as regards core businesses. In case of merging, the governance arrangements of the larger body should be amended in order to ensure that the stakeholders of the smaller body are properly represented in the merged system.

The alternative solution is an easy one since it does not require any recast of the governance arrangements. Both costs and benefits would however be smaller, especially in terms of synergies in the area of core businesses. It might be also difficult to pooling administrative services while maintaining the authority of the directors.

5.1.4 Reform governance arrangements as far as relevant

Problem addressed

- The balance of powers and the profile of needs are sometimes misaligned (4.1.1).
- Committee-like boards with all Member State are inefficient (4.1.2).
- Users and other stakeholders are involved in a sub-optimal way (4.1.3).

First option

Improve the governance arrangements in a limited number of cases only, i.e. new agencies and existing agencies where national representatives have obvious conflicts of interests (e.g. EASA, OHIM).

Second option

Reconsider all governance arrangements over a ten year period in the framework of the above quoted evaluation work programme (5.1.2), and for that purpose:

- Include a specific chapter devoted to governance arrangements in the impact assessments of new and recast agencies (5.1.1);
- Unless the agency's main task is to organise operational coordination between Member States, reduce the number of board members by using approaches such as that of EFSA (15 professional board members, and an advisory committee gathering all Member States);
- Ensure that board membership achieves a reasonable balance between EU and national interests, and ensure that Member State representatives are nominated in such a way that they have no conflict of interests;
- As far as relevant, include representatives of users and other interested parties in the boards, with voting right, in line with the current practice of e.g. EMEA.

¹³⁵ A mention of CEPOL-EUROPOL merger was included in the early versions of the "Stockholm Programme", but it was deleted subsequently.

Time horizon

The first option can be implemented in two or three years since it only requires that a few agencies have their constituent act amended.

The second option is connected to the reconsideration process (see 5.1.2) which needs to be developed over a decade.

Concerned parties

In both cases:

- Council for nominating representatives of national interests in the recast agency boards;
- Parent DGs and agency directors for implementing changes in the governance arrangements.

In the case of the second option:

- Commission's Secretariat-General and Commission's Impact Assessment Board, for raising the issue of governance arrangements in the multi-annual evaluation work programme (5.1.2) and in the strengthened impact assessments (5.1.1);
- Council, Parliament and Commission for endorsing the principle of small professional boards in the framework of the Inter-institutional Working Group, and for agreeing upon recast governance arrangements where relevant;
- European Institutions for nominating representatives of interest groups in the recast agencies' boards.

Pros and cons

To a larger or smaller extent, both options involve a major change in the representation of Member States in the boards. In the second option, a majority of agencies would no longer have a Committee-like board with representatives of all Member State. This is already the case in EFSA and EIGE.

The first main reason for such a change is that of aligning the balance of powers and the needs to be served by the agency (4.1.1). In many instances, the needs of users and other stakeholders are underweighted in the governance system (4.1.3). Tripartite agencies (e.g. EUROFOUND) address this problem by involving social partners on a national basis, but the size of their boards has reached nearly one hundred members and will continue to grow with the enlargement process. This system is however costly and ineffective in the sense that the board loses its governance capacity. Reducing the size of the boards (to e.g. 15 members) is a way to have all interests represented in a balanced and efficient way, something which would induce large benefits in terms of relevance of agencies' works to the needs of institutions, users and other stakeholders. The problem of nominating a few experts voicing a given category of interests with full voting rights cannot be considered as an obstacle to the proposed option since it has been resolved in the cases of EMEA and EFSA (see Table 2).

The second main reason for the proposed change is that Member State representatives are sometimes in a position of conflict of interest in that they are both governing the agency and competing with it or benefiting from it through contracts or subsidies. In both proposed solutions, the Council would nominate a small number (e.g. 5 to 10) of representatives having no conflict of interest and voicing the interests of the Member States efficiently.

Finally, directors and boards could enter in a sound counter-power interplay if the boards were smaller and more professional (4.3.4).

The Member States would not really lose out from the proposed changes since the overall increase in the power of the board would clearly compensate for the relative decrease of their power within the board.

The second option requires that a number of founding regulations be amended over the next years. As seen earlier (5.1.3), these changes could be implemented in a progressive basis over a ten year cycle in relation with a multi-annual evaluation work programme (5.1.2), and through strengthened impact assessments (5.1.1). The first

solution is more modest in that it would only recast the governance arrangements where conflicts of interests are the most obvious.

5.1.5 Improve inefficient location packages

Problem addressed

- Some location packages are inefficient (4.2.3).

First option

Develop the existing pragmatic solutions (e.g. meetings in Brussels, meeting rooms close to the nearest international hub) and require additional host country support in case of excessively inefficient location package.

Second option

Require the host country to provide the agency with an efficient enough location package, and for that purpose:

- Before selecting the host country, establish the terms of reference of the location package¹³⁶;
- Ensure that Member States offering to host an agency specify the proposed location package in an explicit and detailed way;
- Refer to the host country's commitments when choosing the location of an agency;
- Assess the efficiency of the location package in the framework of periodic high profile evaluations (5.1.2);
- Move the agency's headquarters (possibly within the same country) or grant financial compensation in case of excessively inefficient location package.

Time horizon

The first option can be implemented immediately since it relies upon existing practice.

The second option is connected to the reconsideration process (see 5.1.2) which needs to be developed over a decade, but it could be implemented immediately as far as new agencies are concerned.

Concerned parties

In both cases:

- Heads of agencies for periodically updating and improving the location package indicators proposed in this report;
- Heads of agencies and host countries for negotiating improvements in case of excessively inefficient location packages.

In the second option:

- Parent DG for establishing and updating the draft terms of reference of the location package for new agencies in relation with its needs in terms of networking and attracting / retaining highly qualified international staff;
- Council for deciding upon the terms of reference, and ensuring that candidate host countries offer a fully explicit and detailed host package;
- Council for contributing to a transparent comparison between candidate host country proposals in the light of the terms of reference;
- Commission's Secretariat-General and Commission's Impact Assessment Board, for raising the issue of location packages in the multi-annual evaluation work programme (5.1.2) and in the strengthened impact assessments (5.1.1);
- Agency and parent DG for building a relocation project, if relevant;

¹³⁶ The term "location package" covers (1) accessibility of the agency's headquarter for networking activities, (2) attractiveness for staff, (3) cost of premises, and (4) VAT exemption.

- Commission, Council and Parliament for suggesting relocation decisions to the Heads of States and Governments, if relevant (5.1.2).

Pros and cons

Selecting the host country and the location of the agency in the host country is and will remain a political process. In the past, this process has given birth to excessively inefficient situations, especially where an agency which requires considerable international networking is located in a poorly accessible city, or where an agency which needs to constantly renew its internal expertise has difficulties to attract staff because international schools are lacking, or job opportunities for spouses are too limited.

Depending on their activities, agencies have uneven needs in terms of accessibility or staff attractiveness. This is why it is important to describe these needs in the form of terms and reference to be updated in case of change in the agency's mandate. The parent DG (in case of creation) and the agency (in case of reconsideration) should play a major role in describing the needs, but these players have an interest in being excessively demanding. This is why the terms of reference should be validated at a higher level in the Commission (Secretary-General see 5.2.2)) and / or in the Council.

In the current practice, the host country is selected first and then, the location package is finalised at a stage where the bargaining power of the agency is null, and where inefficient locations cannot be prevented. Both proposed options involve a change in this practice in that the candidate host country should offer a package including location, facilities, exemptions, and possibly financial support. These offers should be explicit and transparent enough as to constitute a commitment.

The above approach should not only apply to new agencies, since this would leave the problem of inefficient location packages unresolved in the case of existing agencies. This is why it is suggested that the location package should be included in the above mentioned reconsideration process (5.1.2), and to establish a process through which location problems could be solved. In this respect, the second option proposes to develop and discuss relocation projects in an open minded way. Even if relocation has a high cost and may be appear as a rather unlikely decision¹³⁷, the actual relocation of one or two agencies would create a strong pressure on future host countries to offer efficient location packages, and on current host countries to improve existing packages where necessary.

In the first solution, European Institutions would avoid relocating agencies. In the case of inefficient location packages, a financial compensation would be sought in the form of additional host country support. This solution is less likely to induce significant changes in efficiency, and it would be difficult to establish an undisputed basis for calculating the compensation.

5.2 Clarify roles and responsibilities

This series of options aim to coin a reasonable compromise between the autonomy of each agency, which is the very reason why it was created, and its necessary links with European Institutions, and especially with the Commission.

The following points are covered successively:

- Ensuring that the European interest is voiced in a loud and coordinated enough manner within the agency's governance system (5.2.1);
- Bringing the agency to birth through an effective support of the Commission (5.2.2);
- Coordinating the autonomous communication of the agency with that of the Commission in the context of policy-making (5.2.3);
- Developing the autonomous visibility of the agencies to the wider public where relevant only (5.2.4).

¹³⁷ This however happened once in the case of CEDEFOP being relocated from Berlin to Thessaloniki.

5.2.1 Ensure that the European interest is properly voiced

Problem addressed

- The European interest may be weighted or voiced inadequately (4.1.5);

First option

Maintain the current system.

The European interest may be voiced by the Commission through various means including representatives in the board, or by board members nominated by the Council and/or the Parliament, most often experts or professionals. The parent DG plays a coordination role in order to ensure that the Commission speaks with one voice. The risk that the EU interest is weakened by inter-DG conflicts is assessed as limited. For this reason, the status quo is an acceptable option.

Second option

Ensure that the European interest is voiced in a loud and coordinated enough manner within the agency's governance system, and for that purpose:

- Ensure that the parent DG plays its coordination role in all relevant circumstances, e.g. positions and votes in the board, nomination of director, advice on work programme, evaluation questions;
- Reconsider the parent DG if relevant in order to fit in with the EU policy which is primarily served by the agency¹³⁸;
- Change the term "parent DG" into "contact DG"¹³⁹;
- Ensure that the Parliament holds the Commission accountable for its actual responsibilities in dealing with the agencies (and no more).

Time horizon

Both options are short term ones.

Concerned parties

- Parent DG for ensuring a fair and systematic coordination at all stages of its interaction with the agency;
- Commission's Secretariat-General for raising the issue of the appropriate parent DG in the periodic overall evaluations;
- Parliament for addressing to the Commission only such requests (during discharge, etc) which are within Commission's competence and respect agencies' autonomy.

Pros and cons

Except in a few instances (e.g. CPVO, EUROJUST, OHIM), the EU interest is powerful enough in the governance system. This power arises from various sources such as voting rights in the board, nomination of directors, budgetary processes, interaction on work programmes, approval of financial and staff rules.

The EU interest may however be seriously weakened if it is voiced in a contradictory way, something which may take the form of competition between DGs.

In the case of EEA, the problem has been addressed by setting up coordination mechanisms involving various DGs and the agency. Since this approach is positively assessed by all partners, it is likely that it would develop as far as relevant if the current situation continues (first option). There is however a potential risk in this

¹³⁸ For instance, the evaluation team questions the fact that ETF's parent DG is in charge of the internal education and training policy whilst the agency is primarily contributing to the EU external policy. This is however not the opinion of DG EAC - See 4.1.5..

¹³⁹ The term "line DG" has also been suggested. It echoes the term "line ministry" which is used at national level, but it does convey a real meaning, contrary to "contact DG" which clearly tells two things: (1) absence of any hierarchic authority, and (2) interaction and coordination role.

approach in that the agency may become a player in an inter-DG power game, something which would seriously weaken the EU interest. In order to reduce such a risk, it is suggested in the second option that the parent DG plays a strengthened internal coordination role where necessary (see Table 9).

The relationship between European Institutions also needs to be clarified in another area, i.e. accountability of the Commission and the agency respectively. In this respect, it needs to be recalled that the governance system of an agency is meant to impose compromises between the EU interest and that of the Member States and/or other stakeholders. Except in a narrowly limited number of instances¹⁴⁰ the Commission has no direct power on agencies, and cannot be made responsible for bringing agencies to do or not to do something. Through the discharge procedure, the Parliament however tends to require the Commission to play a rather hierarchical role which may blur the lines of accountability. The Commission and Parliament should agree upon a general clarification of responsibilities in a common document (second option) so that the Commission does not have to repeatedly provide proof of its limited responsibility (status quo).

5.2.2 Better support new agencies

Problem addressed

- The EC support to young agencies is uneven (4.2.4).

First option

The support to new agencies could be strengthened by:

- Nominating a senior officer with strong experience of EU agencies, as project leader in the parent DG ("coordinator"), and maintain this function until the agency has moved to the host country and recruited its main managers;
- Establishing a permanent working group of new agencies with a knowledge transfer purpose¹⁴¹.

Second option

This option could be implemented in parallel with the first one. It consists of establishing a support task force, common to the Commission's Secretariat-General, DG ADMIN and DG BUDG, for the purpose of supporting new agencies and learning / transferring lessons from the process of establishing agencies¹⁴². This task force could also play a role in the context of alleviating administrative burdens (see 5.5).

Time horizon

Both options are short term ones.

Concerned parties

- Parent DG for nominating coordinators;
- Newly created agencies for entering into a mutual learning working group
- Commission's Secretariat-General for launching and securing the above facilities, or playing a more proactive role in the case of the second option.

¹⁴⁰ e.g. Commission's approval of the rules established by agencies for implementing the financial and staff regulations.

¹⁴¹ This group would gather the directors and heads of administration of the agencies which have been established in their host country most recently (on an evolving basis) plus representatives of all new and future agencies.

¹⁴² An example of function shared by several DGs is the Evaluation Unit common to DG RELEX, DEV and AIDCO.

Pros and cons

The successful role played by the parent DG in the case of ECHA suggests that this role should be reinforced. Similarly, the fact that the founders of ECHA have received useful advice from other agencies suggests that this co-operation be maintained with an aim to foster mutual learning. However, the administrative cost of gathering a working group of new agencies should be considered (including mandate, nominations and meetings).

Together with the recommendation related to the location package (5.1.5), the Commission's support to new agencies would increase their bargaining power in relation with the host country.

The alternative / complementary solution would reinforce the above benefits (mutual learning, capitalisation, bargaining power), but its administrative cost would be higher.

Both solutions involve a risk of undermining the independence of the nascent agency, with negative consequences in terms of credibility. This risk is however limited to the duration of the start up phase of the agency.

5.2.3 Adapt agencies' communication to the needs

Problem addressed

- The political role of agencies' communication is not well governed (4.1.6).

First option

Continue the current practice where agencies implement their own communication policies without being accountable for their coherence with the communication needs of the EU as a whole.

Second option

Make agencies accountable for the coherence of their communication policies at EU level, especially in the case of upstream¹⁴³ activities that contribute to frame the policy debates. The following steps can be taken for that purpose:

- Where there is a need to demonstrate the independence of the agency, develop a communication strategy targeted at opinion-makers and the wider public, so as to distinguish the image of the agency from that of other European bodies;
- As far as necessary, clarify the founding regulations by identifying upstream activities and recognising the potential role of these activities in framing new policy issues;
- Require the agencies to set priorities with regards to such activities (through a rolling multi-annual programme – 5.3.1);
- Require the agencies to evaluate their inputs into the policy-making processes (5.3.2), and to report on them;
- Extend the Parliament's discharge procedure to the agencies' contribution in the framing of the EU political agenda (5.4.3).

Time horizon

Both options are short term ones.

Concerned parties

- Parent DGs and agencies for identifying upstream activities and establishing informal coordination arrangements on a short term and mid-term basis;
- Agencies for evaluating their inputs into the EU policy-making process, in co-operation with the Commission;

¹⁴³ "Upstream" activities consist of research and information gathering in areas which are relevant for future policy-making, contrary to downstream activities which relate to the implementation of existing policies.

- Parliament for holding agencies accountable for such contributions.

Pros and cons

At present, agencies may develop communication policies with an aim to be perceived as distinct institutions by the wider public, even if this is not a precondition for achieving their goals. This problem involves some incoherence and inefficiency, although to a limited extent since useless communication efforts have a cost in a context of limited resources. This is why the status quo option is acceptable in this respect.

There is more concern about another dimension of the agencies' communication, i.e. the fact that a number of agencies disseminate information that may affect or frame the political debates. In the EU system the Commission is responsible for policy initiatives, and a large part of its communication activities are related to setting and shaping the political agenda. Whilst they do not overlap with the Commission's political responsibilities, the agencies' information releases also contribute to shaping the political agenda. This has periodically resulted in communication conflicts between agencies and the Commission.

Up to now, the Commission has used its power in the agencies' governance system as a way in which to promote close coordination between upstream activities and the relevant DGs. Over time, this system tends to become effective in almost all circumstances. This is why an option is to leave things unchanged.

It should however be preferable to acknowledge the potential conflict in a more explicit way in order to foster the autonomy of the agencies within their mandate. In counterpart they should become accountable for their role in shaping policy issues.

5.3 Develop a far-reaching vision

The two recommendations below aim to improve the long term and far reaching vision of agencies as to create a framework for performance management.

5.3.1 Improve multi-annual programming

Problem addressed

- Some agencies are not governed in a strategic enough manner (4.1.4)

First option

The status quo is acceptable since all agencies are progressively developing and improving their practices of multi-annual programming¹⁴⁴.

Second option

Develop and strengthen the practice of rolling multi-annual programmes where relevant¹⁴⁵. The following steps can be taken for that purpose:

- Where relevant design and monitor a multi-annual work programme under responsibility of the board;
- Prioritise the programme with reference to the main activity of the agency and the reasons justifying its existence;
- Use the powers of the Commission and Parliament in the governance system as to promote best practices, i.e. consultation, rolling programme, connection to budgetary process, reporting, and performance management.

Time horizon

Both options are short term ones.

¹⁴⁴ See Volume III, Table 10

¹⁴⁵ Multi-annual programming may be less relevant where the activity of an agency is totally demand driven

Concerned parties

- Agencies for setting up their multi-annual programming systems or to improve them.

Pros and cons

Most agencies needing a multi-annual work programme already have one, and it is likely that the best practices will progressively be adopted by an increasing number of agencies. This is why the status quo option is acceptable.

The second option consists of promoting a faster development of multi-annual programmes both in quantity and quality, while keeping in mind that this approach may not always be relevant (e.g. cruise speed agencies dealing with routine demand driven activities such as OHIM).

5.3.2 Evaluate impacts

Problem addressed

- Evaluations are not undertaken at the right time and level (4.3.6);
- Insufficient incentives for achieving results and impacts (4.4.2).

First option

Evaluate the agencies' main activities periodically with a view to their contribution to achieving the intended impacts of the related EU policies¹⁴⁶, and for that purpose:

- Design and implement a rolling multi-annual evaluation programme for each agency, in close coordination with the parent DG;
- Focus these evaluations on the main activity/activities of the agency, in line with the principle of proportionality;
- Evaluate impacts, and especially the contribution of the agency's activities to achieving the intended impacts of the related EU policies¹⁴⁷;
- Connect this evaluative information to the budgetary and discharge procedures as to create incentives for achieving impacts.

Second option

- Promote impact evaluation only where the exercise is particularly relevant, and prioritise quality management and satisfaction surveys in other instances¹⁴⁸.

Concerned parties

- Agencies for setting their evaluation work programme, and implementing it;
- Parent DGs for cooperating in the area of evaluation;
- Parent DG, DG Budget, Council and Parliament, for connecting evaluative information and the budgetary process.

Time horizon

Both options are short term ones.

Pros and cons

Only six agencies evaluate their tasks on a more or less regular basis, and almost none evaluate them from the standpoint of achieving the intended impacts of the related EU policies. Such evaluations would however be very useful in terms of making sense of the agencies' activities, especially in the context of the budgetary process.

¹⁴⁶ This section focuses on the evaluation of specific tasks, contrary to Section 6.1.2 which pertains to high profile evaluations of the agency itself.

¹⁴⁷ For instance, contribution of EASA to achieving passengers' security, contribution of CdT to achieving multilingism

¹⁴⁸ Agencies dealing with individual applications and agencies providing highly specialised services

Impact evaluations of individual activities would deserve to be carried out in close co-operation with the parent DGs since they pertain to the very objectives of the related EU policies. Because such evaluations are difficult, it is recommended to focus on the agencies' main activities primarily, and not to cover the whole range of agencies' tasks.

Such evaluations could also be less frequent in the agencies running quality management systems which include a continuous feedback from the clients, although such systems do not provide for a wide and far reaching vision.

5.4 Develop performance management

This series of recommendations respond to the disappointing conclusion that agencies complain from excessive oversight whilst much progress remains to be done in terms of using audit conclusions and managing for results. Recommendations successively relate to:

- Creating an arena where audit and performance information could be used and promoted (5.4.1)
- Paying attention to results throughout the budgetary process (5.4.2)
- Extend the scope of the discharge procedure as to include performance (5.4.3)

5.4.1 Establish an inter-agency Audit and Performance Committee

Problem addressed

- Directors are not accountable enough (4.3.4);
- Audits are not sufficiently owned and used (4.3.3);
- Performance reporting is almost nonexistent (4.3.2);
- Comparing performance across agencies is difficult (4.5).

First option

As regards accountability through regularity audits, a first option could be to strengthen the counter-power of the boards by relying upon one or several existing solutions:

- Establishing an audit committee as in EFSA;
- Establishing a bureau as in many agencies;
- Waiting for future reforms as to progressively professionalize board membership (see 5.1.4 – second option).

As regards accountability through performance indicators, the necessary progress could be expected from:

- Agencies own efforts under pressure of the budgetary authority (see 5.4.3);
- Inter-agency cooperation on a voluntary basis, e.g. through benchmarking exercises.

Second option

Both dimensions of accountability could be considerably improved by establish a high profile "Audit and Performance Committee" at the level of all agencies. Such a committee would be responsible for discussing internal audit reports and developing comparative performance information. The following steps can be taken for that purpose:

- Create an Inter-Agency Audit and Performance Committee as a permanent small group of top level administrators nominated by the chairpersons of the boards of all agencies¹⁴⁹;
- Entrust this committee with the responsibility of advising each individual board on the actions to be taken / follow ups to be made on the recommendations issued by internal and external auditors;

¹⁴⁹ Similar to the Commission's Audit Committee, this group would involve independent members with appropriate experience in the fields of governance, risk management and internal controls.

- Have the boards acknowledge the committee's report before approving the annual report of the director;
- As far as relevant, develop a joint internal audit capacity at this level and transfer the corresponding responsibility from the Commission's Internal Audit Service;
- Also entrust this committee with the responsibility of developing common performance criteria and indicators, and undertaking joint benchmarking exercises;
- As far as performance is concerned, structure the work in sub-committees covering all or part of the groups of agencies identified in Table 6, i.e. agencies whose main activities have the same logic.

Time horizon

The first option can be implemented immediately since it relies upon existing practice.

The second option requires that (1) a wide enough consensus is reached among agencies boards, and (2) a completely new body is established and resourced. It is therefore a mid-term solution.

Concerned parties

The first option does not really require any new commitment from any parties. On the contrary, the second option relies upon:

- Network of agencies' directors for initiating and supporting the process¹⁵⁰;
- Chairpersons of all agencies' board for establishing the cooperation, nominating the Committee members, and devoting time to discussing the Committee's opinions;
- Commission's Internal Audit Service for supporting the establishment of the Committee, reporting to it, and assisting in the building of an internal audit capacity at this level;
- Commission's Secretariat-General for supporting the development of inter-agency performance comparisons and benchmarking exercises at the level of sub-committees.

Pros and cons

Both options are likely to resolve several problems at a time, the main ones being (1) insufficient checks and balances within the agencies governance system, (2) insufficient ownership of the internal audit activities, and (3) lack of comparable performance information.

The second option is similar in spirit (if not in size) to the Audit Commission which was established in the 80's in the United Kingdom, and which played a successful role in bringing local authorities to compare their performance.

Indeed, the establishment of a new administrative body would entail costs and administrative burdens, but (1) some audit activities could be transferred as to avoid increasing overheads, (2) the impact of the audit works would be strengthened, and (3) the many benefits of the option would probably overweight its inconveniences.

Both options are purposely open in terms of clustering agencies. Performance comparisons would be developed within ad hoc working-groups or sub-committees focusing on similar activities. A given agency could contribute to several strands of performance comparisons as far as it implements several main activities.

¹⁵⁰ It is to be noted that a first inter-agency meeting on result-based management practices and performance analysis will take place in November 2009.

5.4.2 Better connect budget with performance information and evaluation

Problem addressed

- Insufficient incentives for achieving results (4.4.2);
- Evaluations are not undertaken at the right time and level (4.3.6).

First option

Reconcile performance information and the budgetary process, and for that purpose:

- Require that activity-based management is immediately established where this is not already done, and use the discharge procedure as a levy to promote the corresponding changes;
- Define activities in a way which enables comparisons across agencies (5.4.1);
- Provide a user-friendly and permanently updated access¹⁵¹ to performance information (criteria, targets, qualitative assessments, ratings, indicators, analyses, conclusions);
- Establish a substantial connection between result information and any key step of the budgetary process (changes in appropriations, dealing with surpluses and carry-over, reduction of subsidy in comparison to agency's demand, amendments to the draft budget).

Second option

- In addition to performance information (i.e. information on outputs and direct results), also report on evaluative information (i.e. information on impacts) as often as possible (5.3.2).

Time horizon

Both options rely upon the assumption that performance and evaluative information is provided in a systematic and reliable way, but this assumption is not confirmed at present. The time horizon is therefore a matter of several years and it heavily depends on the success of the options proposed in sections 5.4.1 as regards performance information, and 5.3.2 as regards evaluation information.

Concerned parties

- Agency directors for improving the practices of performance management and evaluation, and then new approaches to budgeting;
- Parent DGs, DG Budget and Parliament for systematically referring to performance information throughout the budgetary process;
- Parliament and Council for using the discharge procedure as a way to promote the desired changes.

Pros and cons

Both options are closely connected to the previous sections (5.4.1 and 5.3.3 respectively).

The main difficulty is to produce sound performance and evaluative information. It is assumed that the main limitation of the current process comes from the lack of performance information and not from a lack of interest in this information on the side of the Budgetary Authority.

5.4.3 Extend the scope of the discharge procedure to performance

Problem addressed

- The discharge procedure is limited to regularity (4.3.2).

¹⁵¹ Through a publicly accessible website. This might be the role of the above quoted Audit and Performance Committee.

First option

Systematically refer to the quality of performance and evaluation information in the discharge procedure, as to create an incentive for improving accountability in these areas.

Second option

Introduce substantial performance-related conclusions in the Court of Auditors' works and in the discharge procedure, and for that purpose:

- Introduce performance related comments in the discharge decisions, such as a request for justification of the failure to reach targets;
- Require information about the follow-up of evaluation conclusions;
- Progressively increase such comments and reduce regulatory compliance comments to the most challenging ones in order to achieve a sound balance between performance and regularity.

Time horizon

The first option can be implemented immediately since it relies upon existing practices.

The second option requires that performance and evaluation information be developed significantly. The time horizon is therefore a matter of several years and it heavily depends on the success of the options proposed in sections 5.4.1 as regards performance information, and 5.3.2 as regards evaluation information.

Concerned parties

- Parliament and Council for adopting a new approach;
- European Court of Auditors for undertaking a parallel change.

Pros and cons

In the framework of the discharge procedure, the Parliament increasingly addresses performance issues, mainly by requiring that agencies better report on their results. This can be seen as the first step of what is proposed above as the first option.

The second option goes far beyond bringing in the Budgetary Authority to comment on agencies' successes and failures in their intended results. In the short term, and considering the present state of performance information, the recommendation is just not feasible. On the contrary, it can be implemented within the next years as far as the two above recommendations (5.4.1 and 5.4.2) are implemented.

By progressively considering performance in addition to regularity, the Parliament and the Council would create a powerful incentive for monitoring results, which in turn would facilitate the implementation of the above recommendations.

In this context, the case of CPVO and OHIM, which are not subjected to the discharge procedure, would deserve special attention.

5.5 Alleviate administrative burdens

This section focuses on the issue of alleviating administrative burdens whilst achieving good standards in terms of sound public expenditure and exemplary human resource management.

Problem addressed

- Administrative burdens affect performance negatively (4.4.1)

First option

Use and enlarge the existing margins of manoeuvre as far as relevant.

- Ensure that agencies have a consistent interaction on administrative matters with the Commission; for that purpose, establish an informal working group gathering experienced heads of administration and concerned services in the Commission (DG ADMIN, DG BUDG, DG DIGIT, ...) under the responsibility of Secretariat-General (see similar option presented in 5.2.2)¹⁵²;
- Bring this working group to identify, extend, and promote administrative practices that actually reduce complexity and rigidity in implementing the framework regulations¹⁵³;
- As far as flexibility increases, ensure that agencies' management is subjected to sound internal controls, involving reinforced checks and balances between the director and the board (see 5.1.4 and 5.4.1);
- Promote flexibility and develop quality management¹⁵⁴ in the framework of the so-called service level agreements (services provided by the Commission to agencies);
- Open the existing inter-agency co-operations (e.g. joint internal audit capacity of EMSA and CFCA) to other agencies where this is relevant, and promote other collaborations;
- Give agencies access to the Commission's framework contracts where this is possible, and create inter-agency framework contracts where relevant.

Time horizon

- This option can be implemented in the short term since it only includes actions which have already been tested. However, flexibility should not progress too fast in order to allow for the internal controls to be strengthened at the same pace.

Concerned parties:

- Agencies' directors for actually using current and enlarged margins of manoeuvre in a proactive way, ...
- ... and the same for Secretariat-General, and the concerned DGs.

Second option

This option is complementary to the first one rather than being an alternative, since it could only apply to a limited number of pilot agencies. However, the approach is quite different in terms of time frame and administrative culture.

The option consists of (1) identifying agencies that demonstrate sustainable good records in reaching management standards and matching performance targets, and (2) allowing them a series of additional operating freedoms¹⁵⁵. For instance they could be authorised to set up, revise and/or simplify their own rules for implementing the staff and financial regulations in some specific areas after consultation of the Commission instead of prior approval as is currently the case. Of course, full compliance with the framework regulations should be ensured under the control of the courts. The option would imply to:

- Establish a list of basic EU management standards as well as the corresponding indicators (e.g. multinational staff, competitive procurement), monitor the achievements of all agencies in this respect, and identify the agencies that perform sustainably well;

¹⁵² A similar arrangement is already in place in the area of human resource management (see Volume II, section 2.3.2).

¹⁵³ For instance, agencies have some freedoms in establishing their own implementation rules of the Framework Staff Regulation since the Commission has sorted out these regulations in three categories where: (1) strict harmonisation with other institutions is required, (2) agency specific rules can be accepted if necessary, and (3) considerable flexibility is given. In addition, the directors can make individual exceptions to the agency's implementing rules of the staff and framework regulations, provided that such exceptions are recorded in a register which is reviewed by the board.

¹⁵⁴ Including feedback and learning from agencies' satisfaction.

¹⁵⁵ This approach refers to the concept of "earned autonomy" which has been developed in the UK since 2001 in the sphere of local authorities and health services.

- Monitor agencies performances in achieving results and develop the practice of inter-agency benchmarking (see 5.4.1);
- Define a series of specific areas where additional operating freedoms could be granted to agencies;
- Grant such freedoms to a few pilot agencies which have been performing well enough over several years.

Time horizon

- This option depends on a series of successive pre-requisites. This is therefore a long term process.

Concerned parties:

- Commission (Secretariat-General, DG ADMIN, DG BUDG) and agencies' directors (on a voluntary basis) for establishing a list of management standards associated with indicators, and a list of additional operating freedoms;
- Agencies for monitoring performance and administrative achievements;
- Commission (Secretariat-General, DG ADMIN, DG BUDG) for creating additional operating freedoms;
- European Institutions for making the legislative changes enabling additional freedoms as far as relevant;
- Court of auditors, Parliament and Council for integrating the new approach in the external audits and discharge procedure.

Pros and cons

From an institutional standpoint, the first option is highly feasible in that it relies upon a series of mechanisms which are already in place. However, from a practical standpoint the approach is less easy to implement since the existing margins of manoeuvre are not spontaneously used at present. It is assumed that the strengthening of internal controls, involving reinforced checks and balances between the director and the board, could create the climate of confidence which would enable a parallel downsizing of external controls. This would require that more professional boards (see 5.1.4) enter in a sound counter-power interplay with the directors about regularity and performance issues (see 5.4.1).

The second option raises challenging feasibility problems. Firstly adequate provisions should be inserted in the Staff and Financial Regulations as to relax the obligation to receive prior approval of the Commission in specific instances¹⁵⁶. Secondly, this option may breach the principle of equal treatment of EU bodies' staff, something which would probably raise social difficulties. Thirdly, there may be a risk of coming back to the situation of disorder which prevailed before the 2005 Reform¹⁵⁷. This risk is however very limited since the option would be applied only in agencies having demonstrated sound management capabilities. Finally this option involves a deep change in the culture of the European Institutions which is currently oriented towards achieving goals by the means of rules rather than incentives.

In the second option, the administrative burden would be alleviated by freeing some of the current constraints but the workload devoted to monitoring the achievement of management standards and performance targets would increase at the same time. Overall the administrative burden might shift from rule to performance, rather than diminish in absolute terms.

The potential benefits are important since the option would create a strong incentive for measuring, managing, and ultimately achieving performance.

¹⁵⁶ This would require amending Article 99 of the Framework Financial Regulations and Article 110 of the Staff Regulations.

¹⁵⁷ See Volume II, p 59.

Appendix 1 – Documents reviewed

This appendix displays the main documents reviewed at the level of the agency system. See Volume IV for a presentation of the documents reviewed at the level of individual agencies.

Legal documents

- Council Regulation 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European communities
- Commission Regulation 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
- Commission Regulation 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Council Regulation 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

Studies and reports

- Barbieri, Ongaro – EU Agencies: What is common, what is distinctive compared with national level public agencies. International Review of Administrative Science, 2008.
- European Court of Auditors – Special Report N°5 : The European Union Agencies : Getting results, 2008
- European Commission, The operating framework for the European Regulatory Agencies (COM 2002 718), 2002
- European Commission, draft interinstitutional agreement on the operating framework for the European regulatory agencies (COM2005 59), 2005
- European Commission, European agencies – The way forward, {SEC(2008) 323, 2008
- European Commission, DG BUDG -Meta-evaluation of the Community Agency System, 2003.
- European Commission, DG BUDG - Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings, 2008.
- European Commission – White Paper on European Governance, COM(2001) 428.
- European Commission - White Paper on European Governance, Report by the Working Group "establishing a framework for decision-making regulatory agencies" June 2001.
- European Commission, DG BUDG - Practical guide on community bodies, June 2008.
- European Parliament, Council and Commission: Interinstitutional Agreement on budgetary discipline and sound financial management (2006/C139/01)
- European Parliament - Report on the communication from the Commission: 'The operating framework for the European regulatory agencies' (COM(2002) 718 – 2003/2089(INI))
- European Parliament, Budgetary Affairs, Budgetary support Unit. Internal notes on agencies: origin of tasks, local conditions and staffing- 17 October 2007.
- European Parliament - Report on a strategy for the future settlement of the institutional aspects of Regulatory Agencies (2008/2103(INI))

- European Parliament - Budgetary implementation of EU Agencies –The use of EC appropriations by agencies and the assigned revenue instrument. Budgetary affairs, July 2008.
- European Parliament – Opportunity and feasibility of establishing common support services for EU Agencies, 2009
- European Parliament - Budgetary Support Unit, Agencies’ Buildings – Study, Dec 9th 2008
- European Parliament - Budgetary Support Unit, Agencies’ discharge – Study, Dec 12th 2006
- European Parliament - Budgetary affairs, Best practice in governance of agencies – A comparative study in view of identifying best practice for governing agencies carrying out activities on behalf of the European Union, 2008
- European Parliament - Budgetary affairs, Budget and staffing of the Agencies: Reply by the Agencies to a European Parliament questionnaire, 2007
- Giandomenico Majone - The Agency Model: The Growth of Regulation and Regulatory Institutions in the European Union, EIPA.
- Sami Andoura & Peter Timmerman, Governance of the EU: The Reform Debate on European

Appendix 2 – Comparative overview of agency level findings

The tables of this appendix summarise the main findings and assessments related to agencies on an individual basis. Each item is briefly defined and referred to the main text of this report (section 5) or to the Volume II, for further information. This appendix covers all agencies as regards their ...

- Establishment
- Main tasks
- Governance
- Location package
- Oversight

Establishment

<i>Item</i>	<i>Definition</i>	<i>Reference</i>
New policy instrument	The agency has been established in connection with the creation of a new policy instrument	Vol II, Table 3
Rationale for the agency option	<p>The main reason why an agency was needed rather than something else was</p> <ul style="list-style-type: none"> • to ensure independence from or to avoid conflict of interests with the Commission • to implement tasks of an intergovernmental nature • to implement tasks in a social dialogue framework • to develop a specific expertise or capacity 	Vol II, Table 2
Alternative	<p>The main alternative to creating a new agency was:</p> <ul style="list-style-type: none"> • the Commission or an executive agency • another existing agency • an intergovernmental arrangement • an expert network supported by the Commission • public procurement to private sector 	Vol II, Table 5
Critical mass issue	The small size of the agency suggests that its efficiency and/or effectiveness is constrained	Vol II, Section 2.1.1, latest sub-section
Relevance issue	The agency's relevance has been subjected to discussion during the last years	Vol II Table 9
Action taken	Action has been taken in relation to the above quoted relevance issue	

Table 7 – Comparative findings about agency establishment

Agency	New policy instrument	Rationale for the agency option	Alternative	Critical mass issue	Relevance issue	Action taken
CdT			Priv.		New needs	none
CEDEFOP		Dialog.	Com.		Context changed	Mandate adapted
CEPOL	X	Intergov.	Intergov.	X	Context changed	none
CFCA	X	Indep.	Com.			
CPVO	X		Intergov.	X	New needs	none
EAR		Expert.	Com.		Needs satisfied	Closure
EASA	X	Indep.	Intergov.		New needs	Mandate adapted
ECDC		Expert.	Exp.		New needs	none
ECHA	X		Com.			
EEA		Expert.	Com.			
EFSA		Indep.	Com.			
EIGE			Com.			
EMCDDA	X	Expert.	Exp.	X		
EMEA	X	Expert.	Intergov.		New needs	none
EMSA	X	Intergov.	Intergov.		New needs	Mandate adapted
ENISA		Expert.	Com.	X	Critical mass	none ¹⁵⁸
ERA	X	Expert.	Exp.			
ETF			Com.		New needs and context changed	Mandate adapted
EU-OSHA			Com.	X	New needs	Mandate adapted
EUROFOUND		Dialog.	Exp.			
EUROJUST	X	Intergov.	Intergov.			
EUROPOL	X	Intergov.	Intergov.			Mandate adapted
FRA	X	Indep.	Exp.			
FRONTEX	X	Intergov.	Intergov.		New needs	none
GSA	X	Expert.	?		Context changed	Mandate adapted
OHIM	X		Intergov.		New needs	Mandate adapted

Source: evaluation team's assessment on the basis of agency chapters in this volume

Explanation: see previous page

¹⁵⁸ The Commission has however proposed in 2007 to integrate the tasks of ENISA in a new larger agency (see Vol. III, 16.2), a proposal which was not adopted by the Council and Parliament.

Main activities

Item	Definition	Reference
Information	Collecting and disseminating harmonised information to policy-makers in EU & MS as to support an evidence-based policy-making process	Vol II Table 7 and Vol III Agency chapters Tables of activities
Communicating	Communicating towards a targeted public at EU level as to raise awareness on a given issue	
Soft co-ordination	Contributing to the soft coordination between Member States and European Institutions as to better achieve EU objectives	
Expert advice	Providing expert advice to policy-makers in EU & MS as to support an evidence-based decision-making process	
Operational coordination	Facilitating operational coordination between public managers in MS as to better achieve the objectives of a given EU policy	
Individual applications	Dealing with individual applications from a targeted public as to ensure safety on the EU market	
Service and support	Delivering a highly specific service or support to targeted bodies or institutions as to better achieve the objectives of a given EU policy	
The figures in the table indicate the rank of each activity, i.e. 1 = main activity, 2 = second main activity, 3 = third main activity. Activities are ranked with a view to the human and financial resources which are devoted to them.		
This table supports the evaluation teams conclusions about clustering activities (see 4.5, 5.4.1, and Appendix 3)		

Table 8 – Comparative findings about agencies' main activities

<i>Agency</i>	<i>Information</i>	<i>Communication</i>	<i>Soft coordination</i>	<i>Expert advice</i>	<i>Operational coordination</i>	<i>Individual applications</i>	<i>Service and support</i>
CdT							1
CEDEFOP	2	3	1				
CEPOL			1				2
CFCA			2		1		
CPVO						1	
EASA				2		1	
ECDC	1		3	2			
ECHA				2		1	
EEA	1	2					
EFSA	2	3		1			
EIGE	1		2				
EMCDDA	1						
EMEA				2		1	
EMSA			2		1		
ENISA	1		2				
ERA			2	1			
ETF ¹⁵⁹	2						1
EU-OSHA	2	1	3				
EURO-FOUND	1						
EUROJUST					1		
EUROPOL			2		1		
FRA	1	2		3			
FRONTEX			2		1		
GSA							1
OHIM						1	

Source: evaluation team's assessment on the basis of agency chapters in Vol III

Explanation: see previous page

¹⁵⁹ There is a lasting disagreement about the categorisation of ETF activities (see Vol III, section 18.1)

Governance

Item	Definition	Reference
Under represented interests	There is a gap between governance arrangements and the needs to be served, for instance at the expense of the EU interest, or the interests of users or other stakeholders.	Vol II Table 16
Governance cost	The seven agencies having the highest estimated governance cost ¹⁶⁰ .	Vol II Table 24
European voices in governance	The EU interest is likely to be voiced by different DGs and/or different European Institutions, and this calls for specific co-ordination efforts.	This volume, Section 4.1.5
No need for agency's own visibility	EU wide visibility is not a precondition for achieving the intended impacts of the agency, and it may just be counter-productive to try to identify one more body in a landscape which most EU citizens do not understand clearly enough.	This volume, Section 4.1.7

¹⁶⁰ On the basis of the evaluation team's estimates of the cost of travel plus work time, and assuming that all board members attend two meetings a year

Table 9 – Comparative findings about agency governance

Agency¹⁶¹	Under repre- sented interests	Governance cost	Several Euro- pean voices in governance¹⁶²	Need for agency to create a dis- tinct image
CdT				
CEDEFOP		high	X	X
CEPOL	EU		X	
CFCA	Other interest groups	high		
CPVO	EU, Users	high		
EASA	Other interest groups			X
ECDC	Other interest groups		X	X
ECHA	Users, other inter- est groups			X
EEA	Other interest groups		X	X
EFSA	Other interest groups		X	X
EIGE	Other interest groups			X
EMCDDA	Other interest groups			X
EMEA			X	X
EMSA	Other interest groups		X	
ENISA	Other interest groups	high		X
ERA	Other interest groups			
ETF	Other interest groups		X	
EU-OSHA		high		X
EUROFOUND		high		X
EUROJUST	EU			
EUROPOL			X	
FRA			X	X
FRONTEX		high		
GSA	Users			
OHIM	EU, users		X	

Source: evaluation team's assessment on the basis of agency chapters in this volume

Explanation: see previous page

¹⁶¹ EAR is not covered in this table

¹⁶² A cross in this column does not mean that EU interest is voiced in a contradictory way, but only that there is a particular need for coordination

Location package

<i>Item</i>	<i>Definition</i>	<i>Reference</i>
Remoteness	The agency has a remoteness problem if (1) it needs to be connected to multiple networks and (2) it has a poor accessibility: XX: the two most problematic locations X: the four next ones	Vol II Table 14
Attractiveness	The agency is assumed to have problems in attracting international staff if (1) it has a poor accessibility, and / or (2) there is no international school, and /or (3) staff does not benefit from any tax exemption. The overall attractiveness score is the aggregation of the three items, accessibility being weighed twice as the other items. It ranges from XXX to Null. Attractiveness is considered to be a problem if the overall score is XX or more.	
Cost of premise	Annual cost of premises, less host country support, divided by actual staff. Year 2008. Cost of premise is considered as problematic if the index is 50% or more above the average.	
VAT exemption	In principle, all agencies are exempted from VAT as other EU bodies. VAT exemption is considered as a problem if the agency has mentioned some limitation.	

Table 10 – Comparative findings about agencies location packages

<i>Agency</i>	<i>Remoteness</i>	<i>Attractive- ness</i>	<i>Cost of premise</i>	<i>VAT exemption</i>	<i>Overall inef- ficiency score</i>
CFCA	XX	XX			XXXX
CPVO		XX		X	XXX
ENISA	XX	X			XXX
OHIM		XX	?	X	XXX
EMCDDA	X		X	X	XXX
EMSA	X			X	XX
ERA		X		X	XX
EU-OSHA		X	X		XX
CEPOL		X			X
ECHA			X		X
EFSA ¹⁶³	X				X
EIGE	X		?		X
EMEA			X		X
FRONTEX				X	X
CdT					
CEDEFOP					
EASA			?		
ECDC					
EEA					
ETF					
EUROFOUND					
EUROJUST					
EUROPOL					
FRA					
<p>Source: evaluation team's assessment on the basis of own calculation (remoteness) and information provided by agencies (other columns)</p> <p>Explanation: see previous page</p> <p>EAR and GSA are not covered</p>					

¹⁶³ EFSA has established a shuttle system compensating the absence of an international airport in Parma. The cost of the system is € 1 m per year.

Oversight and management

<i>Item</i>	<i>Definition</i>	<i>Reference</i>
Commission's IAS	Internal audit is done by the Commission	This volume Section 4.3.3
Internal audit capacity	In addition, the agency has its own internal audit capacity	
Structured quality management	The agency has a quality management system involving continuous feedback from its users	Vol II Table 28
Activity based management	The agency has structured its financial management in line with activities	
Latest / next overall evaluation	Either required in the founding regulation or not	Vol II Table 31
Evaluations of tasks	Actual practice	Vol II Section 2.7.1

Table 11 – Comparative findings about Oversight and management

Agency	Commission's IAS	Internal audit capacity	Structured quality management	Activity based management	Latest / next overall evaluation	Evaluations of tasks
CdT	yes	yes	yes		2005	
CEDEFOP	yes	yes	yes	yes	2007	
CEPOL	yes			rather yes	2010	x
CFCA	yes	yes (shared with EMSA)	rather yes	rather yes	2012	
CPVO	no (private audit firm)		rather yes	yes	2009	X
EASA	yes	yes	yes	yes	2008	
ECDC	yes		rather yes	rather yes	2008	
ECHA	yes	yes	yes	rather yes		
EEA	yes	yes	yes	yes	2008	X
EFSA	yes	yes	yes	yes	2005	X
EIGE	yes				2010	
EMCDDA	yes			rather yes	2007	
EMEA	yes	yes	yes	yes	2009	X
EMSA	yes	yes (shared with CFCA)		rather yes	2008	X
ENISA	yes		rather yes	rather yes	2007	X
ERA	yes	yes		yes	2010	
ETF	yes		yes	yes	2006	X
EU-OSHA	yes		yes	yes	2007	
EURO-FOUND	yes				2010	
EUROJUST	yes		yes	yes	2014	
EUROPOL	not yet in 2009	yes	rather yes	yes	2013	X
FRA	yes		rather yes		2008 ¹⁶⁴	X
FRONTEX	yes	yes		rather yes	2009	x
GSA	yes		yes	rather yes	2008	
OHIM	no (private audit firm)		yes	yes		

Source: information provided by agencies

Explanation: see previous page

EAR is not covered

¹⁶⁴ Evaluation of European Monitoring Centre on Racism and Xenophobia only

Appendix 3 – Types of activities - an overview

As explained in 2.4 and 4.5, it has not been possible to cluster agencies into clear-cut categories since most of them implement activities of several types as shown in Table 6. The evaluation team's recommendations take stock of this finding in that it avoids suggesting any arrangement based on clusters of agencies¹⁶⁵. If the agencies however need to be clustered for any administrative reason, then the following categories can be proposed:

Table 12 – Clustering agencies

Agencies dealing with	Agency's first main activity
Information, advice, and soft coordination	CEDEFOP, CEPOL, ECDC, EEA, EFSA, EIGE, EMCDDA, ENISA, ERA, EU-OSHA, EUROFOUND, FRA
Operational coordination	CFCA, EMSA, EUROJUST, EURO-ROPOL, FRONTEX
Individual applications	CPVO, EASA, ECHA, EMEA, OHIM

No clustering is proposed for CdT, ETF, and GSA

The next table summarises the evaluation team's findings, assessments, and proposals per type of activity:

¹⁶⁵ See for instance 5.4.1

Table 13 – Clustering activities

Comparable activity ¹⁶⁶	Alternatives to the agency option ¹⁶⁷	Specific criteria for disbanding agencies ¹⁶⁸	Performance criteria
Collecting and disseminating harmonised information as to feed policy-making at EU and Member State level	Europe wide network of experts supported by the Commission DG ESTAT	Information can be produced in a routine manner by DG ESTAT No policy reform in a foreseeable future	Dissemination of information ¹⁶⁹ Acknowledgement of information Inputs in policy-making
Communicating towards a targeted public at EU level as to raise awareness on a given issue	Commission	Communication campaigns could be handled by the parent DG	Dissemination of information Addressees' acknowledgement of information Addressees' awareness of the issue
Contributing to the soft co-ordination between Member States and European Institutions as to better achieve EU objectives	Intergovernmental collaboration supported by the Commission	Policy-makers in the Member States could be targeted by a "mutual learning programme" managed by the Commission ¹⁷⁰	Participation of Member States Member States' commitments to take action Actual changes in Member States' agenda
Providing expert advice to policy-makers in EU & MS as to support an evidence-based decision-making process	Europe wide network of experts supported by the Commission International Institution	Advice could be obtained through an agreement with an international institution	Responsiveness to decision-makers' demands Credibility of delivered advice Inputs in decision-making
Facilitating operational co-ordination between Member States as to better achieve the objectives of a EU policy	Intergovernmental collaboration supported by the Commission	Member States have established confident and strong enough mutual connections and could co-operate through a light intergovernmental network supported by the Commission	Participation of Member States in multi-country operations Satisfaction of participating Member States Success of operations
Dealing with individual applications of firms as to ensure a safe functioning of the EU market	Network of national agencies coordinated by the Commission		Responsiveness to users' needs User' satisfaction Absence of contested decisions / assessments
Delivering a highly specific service to other EU bodies as to better achieve the objectives of a given policy	Private sector procurement	The market has developed sufficient capacity for allowing the Commission to buy the service through public procurement	User satisfaction

¹⁶⁶ See Table 8 for identifying the agencies concerned

¹⁶⁷ See Vol II

¹⁶⁸ In addition to generic criteria such as insufficient size, merging opportunities

¹⁶⁹ See Table 5 for a proposition of indicators in relation to this cluster

¹⁷⁰ See DG EMPL's programme in the framework of the Open Method of Coordination