

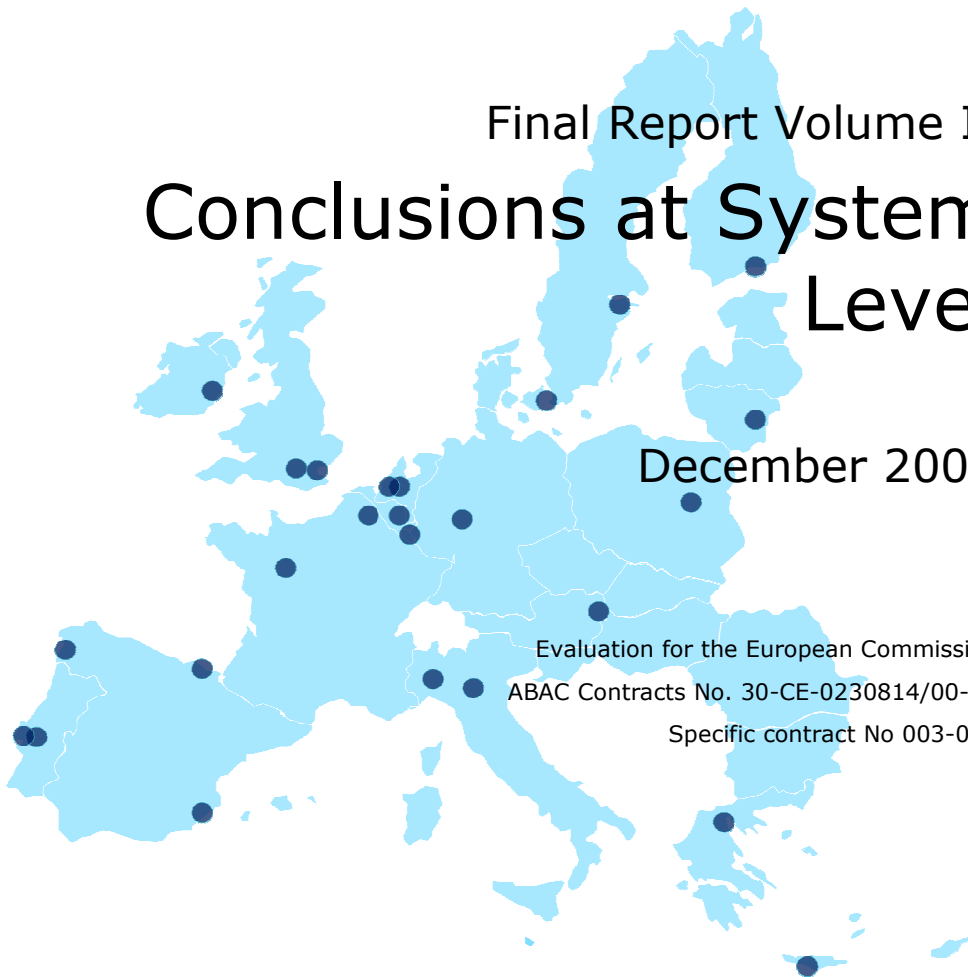
# Evaluation of the EU decentralised agencies in 2009

Final Report Volume II

## Conclusions at System Level

December 2009

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This evaluation was commissioned by the European Commission, in the context of the framework contract signed between the Commission and Ramboll Management-Euréval-Matrix, Lot 3.

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The progress of the evaluation was monitored by a steering group made up of representatives from DG BUDG, DG ADMIN, and the Secretariat-General. The IAS participated as an observer.

The opinions expressed in this document represent the authors' points of view which are not necessarily shared by the European Commission.

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**List of agencies covered by the study**

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

**Other acronyms**

ACER	Agency for the Cooperation of Energy Regulators (proposed agency)
BEREC Office	Office to support the Body of European Regulators for Electronic Communications (proposed agency)
EASO	European Asylum Support Office (proposed agency)
EP	European Parliament
FTE	Full-time equivalent (staff)
IAS	Internal Audit Service (of the Commission)
MS	Member State
NGO	Non-governmental organisation

## **1. This evaluation**

### **1.1 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 then, 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 of 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<sup>1</sup> and to postpone any proposals for establishing new agencies until the conclusion of this evaluation is delivered<sup>2</sup>.

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

### **1.2 Evaluation process**

This external evaluation has been launched 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. It comprised of representatives of the Commission, Council, Parliament, and agencies, as well as academic experts<sup>3</sup>.

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 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 content of this report.

### **1.3 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);

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<sup>1</sup> "European Agencies - the way forward" - Communication of the Commission - 11 March 2008

<sup>2</sup> 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

<sup>3</sup> Prof. E.Ungaro (Bocconi University) and Ch.Pollitt (Leuven University)



- 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 having no responsibilities in the management or supervision of the agencies;
- Email questionnaire completed 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);
- A number of light benchmarking exercises, each one involving an international or national institution / agency<sup>4</sup>.

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 (five focus groups and five light 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 selected results and impacts in 15 selected agencies)
- Sub-cases (structured study of one or two noteworthy success or failure stories within each case study)

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

#### **1.4 Difficulties encountered and solutions found**

The difficulties have been limited and all of them could be managed satisfactorily.

The first most challenging problem was that of clustering agencies in homogeneous groups. There has been substantial resistance to this approach, which appeared as being actually a difficult one. In fact, many agencies implement a range of distinct activities, each one needing to be compared within distinct groups of agencies. This difficulty called for changing the approach in the course of the study, i.e. comparing homogeneous clusters of activities (see Table 31) 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 constructed (e.g. Tables 1 and 2 and Appendix 2), but they tend 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. There are however several years (at the very best) before such comparisons could be done in a satisfactory and routine way.

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<sup>4</sup> The benchmarking exercises turned out to provide limited added value since they were based on an agency clustering approach (according to agencies' "main tasks") which was subsequently abandoned since the approach involving clustering agencies on a single dimension turned out not to be feasible. For that reason, it was difficult to find relevant non-EU organisations to compare with, and the benchmarking exercise was only used to a very limited extent, mainly in relation to the attempt to identify potential indicators for comparisons of outputs, results and performance (cf. section 2.6.5).

## **1.5 Structure of this report**

The evaluation report includes four volumes as follows:

- I – Overall synthesis and recommendations
- II – Answered evaluation questions (this volume)
- III – Agency level findings
- IV – Evaluation method

A series of working documents are also available on a CD-Rom.

The remainder of this volume is structured according to the seven main evaluation questions which were given in the Terms of Reference, under the following headings:

- Rationale and relevance
- Agencies' input to the work of the EU institutions Governance of the agency system
- Coherence
- Effectiveness
- Efficiency
- Oversight activities

Each of these main sections are divided into sub-chapters which deal with the corresponding sub-questions, with summary answers/conclusions to each question at the end of each section and sub-section.

## 2. Answering the evaluation questions

### 2.1 Rationale and relevance

#### **Question and sub-questions**

##### Sub-questions:

- A** To what extent have the justifications/rationales for EU agencies proved to be relevant and adequate to the needs?
- Aa** To what extent were the **reasons for creating** / reforming agencies relevant, rational and adequate with respect to the needs which prevailed at the time of decision?
- Ab** What is the best possible **alternative** for addressing the identified needs, and to what extent is it preferable to address these needs through an agency?
- Ac** To what extent are the reasons for creating / reforming agencies **still relevant** and adequate to the needs which prevail today?

#### **Approach to answering the question**

This chapter starts with a factual and historical introduction to the creation of EU agencies in four successive waves from 1975 to the present time.

A second section focuses on the rationale for creating agencies. It addresses the sub-questions Aa (in part) and Ab by considering:

- Whether the reasons for creating agencies were stated in a clear enough way;
- The likeliness that agencies are created for implicit reasons such as facilitating policy development or easing staff constraints;
- Alternatives to the agency option, including that of extending the mandate of an existing agency;
- The extent to which alternatives are considered transparently.

The third section focuses on the relevance of agencies' activities to the needs of their intended addressees. It addresses the sub-questions Aa (in part) and Ac by considering:

- The typical addressees of the agencies' activities;
- Relevance to their needs at the time of the establishment of the agency;
- Continued relevance over time, and the process of adapting agencies to changing needs or context;
- Overall relevance of the structure of the agency system.

### 2.1.1 **Creating agencies**

#### **Four waves of agencies**

Several successive waves of agency creation can be distinguished<sup>5</sup>. The first two agencies (CEDEFOP and EUROFOUND) were created in 1975 with an aim to facilitate social dialogue in the area of employment policy.

A second wave was initiated in the nineties. During this period 10 agencies were set up, including three bodies established in order to cope with the technical and scientific challenges related to the newly finalised internal market (CPVO, EMEA, OHIM), and the CdT which was set up to provide the growing number of agencies with translation services.

Since 2001, 15 additional agencies have been created (third wave), of which 10 have already reached their cruise speed. There is no special pattern in this wave, except that four agencies belong to the area of Justice and Home affairs.

Finally four agencies are in the process of being created at a time when the overall agency system is under close scrutiny.

**Table 1 – Successive waves of European decentralised agencies**

Phase	Definition	No. of agencies	Agencies established
1 <sup>st</sup>	Before 1990	2	CEDEFOP, EUROFOUND
2 <sup>nd</sup>	1990s	9	CdT, CPVO, EEA, EMCDDA, EMEA, ETF, EUROPOL, OHIM, OSHA
3 <sup>rd</sup>	2000s	15	CEPOL, CFCA, EAR, EASA, ECDC, ECHA, EFSA, EIGE, EMSA, ENISA, ERA, EUROJUST, FRA, FRONTEX, GSA
Creation in process	2010s	4	ACER, BEREC Office, EASO, IT Agency <sup>6</sup>
Agencies: N=26 + 4 - Sources: agency documents – See Volume III, Appendix 1a			

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, EMCDDA, ERA and FRA, a pre-existing network has been upgraded into an agency.

On average, it takes 2 years for a newly created agency to settle into its host country.

Almost all the agencies are still active. One agency has been dissolved so far (EAR at the end of 2008) and another one (ETF) has had one of its tasks transferred to an executive agency.

<sup>5</sup> Andoura and Timmerman: Governance of the EU: The reform debate on European agencies reignited, EPIN Working Paper no. 19, October 2008

<sup>6</sup> The "IT Agency" does not yet have a name – it is foreseen to cover Operational Management of SIS II, VIS and EURODAC.

### ***Ad hoc creation process***

There is no single legal framework governing the establishment and closure of European decentralised agencies, and there is also no “agencification policy” such as in Sweden or the UK. On the contrary, European agencies have been created on a case by case basis, either through the political pressure of Member States (e.g. FRONTEX, EASO) or that of the Commission (e.g. EIGE).

Interviews within two of the four newly established agencies (EIGE, EURO-POL<sup>7</sup>) indicate some gaps in the written guidance around how to set up an agency from a practical perspective either in the form of a guide or handbook. It also indicates that Commission services have limited capacity to provide agencies hands-on support in this process.

*Contribution to answering evaluation questions:*

#### **Process of creating agencies (Aa)**

There is no single legal framework governing the establishment and closure of European decentralised agencies, and there is no “agencification policy” such as in Sweden or the UK. On the contrary, European agencies have been created on a case by case basis through various mixes of political pressure.

### **2.1.2 Rationale for creating agencies**

#### ***The agency option is often justified, but not always***

The regulations which establish new agencies always include justifications but some of these documents do not disentangle the reasons for establishing new policy instruments from that of having these instruments managed through an agency (see Table 2 below, last line).

Overall, the survey of Management Board members shows that three respondents out of four (78%) agreed that the reasons for creating their agency were clearly defined in their Constituent Act.

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<sup>7</sup> Not a new body in absolute terms, but a new agency as regards financial and staff issues

**Table 2 – Reasons for establishing an agency**

	No. of agencies	Agencies
Reasons why an agency was needed rather than something else, of which the main one is ...	20	
to ensure <b>independence</b> from or to avoid conflict of interests with the Commission		CFCA, EFSA, FRA
to implement tasks of an <b>intergovernmental</b> nature		CEPOL, EMSA, EUROJUST, EUROPOL, FRONTEX
to implement tasks in a <b>social dialogue</b> framework		CEDEFOP, EUROFOUND, EU-OSHA
to develop a specific <b>expertise</b> or capacity		EAR, EASA, ECDC, EEA, EMCDDA, EMEA, ENISA, ERA, GSA
Reasons not distinguished from that of implementing the new policy or policy instrument	6	CdT, CPVO, ECHA, EIGE, ETF, OHIM
Sources: evaluation team's assessment – See Volume III, Appendix 1, Table 2		

**Agencies are often created together with a new policy instrument**

It might be assumed that new agencies are mainly established in connection with the creation of new policy instruments. This assumption is confirmed in a majority of cases as shown below.

**Table 3 – New agencies and new policy instruments**

Agencies established	No. of agencies	Agencies
at the same time as EU was given a new competency and / or established a new instrument	15	CEPOL, CFCA, CPVO, EASA, ECHA, EMCDDA, EMEA, EMSA, ERA, ETF, EUROJUST, EUROPOL, FRONTEX, GSA, OHIM
in the context of an existing policy which was not subjected to a significant reform	11	CdT, CEDEFOP, EAR, ECDC, EEA, EFSA, EIGE, ENISA, EU-OSHA, EUROFOUND, FRA
Sources: evaluation team's assessment – See Volume III, Appendix 1, Table 2		

### ***Increasing EU staff is not a major reason for creating agencies***

The previous finding may suggest that an implicit reason why EU agencies are created could be to enable the EU to develop new competencies / policies without breaking the staff ceiling imposed on the Commission. This assumption has been tested by the evaluation team (see following table), and the finding is that in the absence of an agency the alternative option<sup>8</sup> would seldom have involved an unmanageable staff increase.

**Table 4 – Are new agencies created for relaxing staff constraints?**

	No. of agencies	Agencies
Possibly YES In the absence of the agency the Commission would have had to implement the task and would have faced staff problems	1	ECHA
Possibly NO In the absence of the agency the Commission would not have had to implement the task, or it would have had to do it but without major staff problems	25	All others
Sources: evaluation team's assessment – See Volume III, Appendix 1, Table 2		

It is obvious that all agencies develop an internal expertise which would be difficult to maintain within the Commission. This might be a major reason why agencies are created in a number of countries, but there are indications that this reason may not have been the first one in the case of many EU agencies, e.g.

- CdT doing exactly the same tasks as its parent DG;
- ETF assisting in the enlargement process in the area of training while the Commission was doing the same tasks in all other policy domains;
- OHIM being staffed with EU officials

### ***Alternatives to the agency option used to be paid limited attention***

The 2008 Meta-study<sup>9</sup> found only a few instances where an agency was created with due attention paid to alternative options. Alternatives were considered at length in the case of CEPOL (ex-ante evaluation), EAR (founding regulation) and CFCA (impact assessment and ex ante evaluation). Three alternative options were also reconsidered in the case of the latest evaluation of EEA.

Unsurprisingly, the interviews in the agencies have most often failed to identify alternative options, whilst external stakeholders tend to suggest some possibilities.

In this uncertain context, the evaluation team's own estimates (cf. Table 5) rely upon a relatively loose definition of the term "alternative", which takes stock of (1) the alternatives actually quoted in the analysed documents or (2) by our interviewees, and (3) the situation prevailing before the agency was

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<sup>8</sup> See next section

<sup>9</sup> Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings, Final Report, European Commission, DG Budget, September 2008

created. Four types of alternatives have been identified by order of frequency. The alternative option for implementing the main task of the agency may be one of the four following ones (per order of frequency):

- The Commission or an executive agency supervised by the Commission
- Some kind of intergovernmental arrangement, e.g. formal intergovernmental convention separate from the EU, MS cooperation within the European Council, MS cooperation with some support from the Commission, ...
- A Europe-wide network of experts belonging to national agencies, and/or academic research centres, and working within an intergovernmental arrangement (ERA) or under the umbrella of the Commission (ECDC).
- The private sector.

In a few instances, interviewees have quoted international organisations as potential, but poorly credible alternatives, e.g. World Health Organisation in the case of ECDC.

In case several alternatives can be envisaged, only the main one is considered. As mentioned above, the alternative options mentioned in this section are those which *could*, in the view of the evaluator, have been considered at the time of creation of the agencies but this does not necessarily mean that the options *were* considered.

**Table 5 – Alternative to the agency option at the time of creation**

Main alternative option for implementing the main task of the agency	No. of agencies	Agencies
Commission or executive agency	9	CFCA, EAR, ECHA, EEA, EFSA, EIGE, ENISA, ETF, EU-OSHA
Intergovernmental arrangement	8	CEPOL, CPVO, EASA, EMSA, EUROJUST, EUROPOL, FRONTEX, OHIM
Expert network	7	CEDEFOP, ECDC, EMCDDA, EMEA, ERA, EUROFOUND, FRA
Private sector	2	CdT, GSA
Sources: evaluation team's assessment – See Volume III, Appendix 1, Table 2		

The next table displays the reasons why the agency option is preferred to the alternative one, at least where such reasons are stated in a more or less explicit way:



**Table 6 – Reasons why the agency option is preferable**

Justification of the agency option ...	... applying mainly where the alternative is
Independence and credibility to all players in the EU policy-making process (e.g. CEDEFOP, EFSA, EIGE), especially where Member States have the main competency (ECDC, EMCDDA)	Commission or expert network
Closeness to stakeholders (e.g. CEDEFOP, EIGE, EU-OSHA, EUROFOUND)	Commission or expert network
Separation of risk assessment from risk management or control from advice (e.g. CFCA, EFSA, EMSA)	Commission or intergovernmental arrangement
Greater public scrutiny through the establishment of a discharge procedure by elected officials in the European Parliament (e.g. EUROPOL)	Intergovernmental arrangement
Easily adaptable legal framework allowing to address evolving needs without requiring unanimity and subsequent ratification by each Member State (e.g. EUROPOL)	Intergovernmental arrangement
Offering attractive working condition packages instead of working under the labour laws of the host country and benefiting from the EU staff privileges and immunities (e.g. CEPOL)	Intergovernmental arrangement
Need to secure continuity and financial sustainability. Networks have to undergo a complete financial decision process periodically, with the obligation to renew their approach even if it is effective (e.g. ECDC, ERA)	Expert network
Need to reach quality standards which combine customers' satisfaction and public sector interests (e.g. CdT, CPVO, EMEA, GSA, OHIM)	Intergovernmental arrangement or private sector
Dealing with highly specific needs and multiple demands with high quality in a rapid and flexible way (e.g. CdT, CPVO, EAR, ECDC, ENISA, ETF)	All options
Recruiting highly specialised staff so as to be a strong technical interlocutor within the sector (e.g. EEA, EIGE, EMSA, ERA, EU-OSHA, GSA)	All options
Sources: evaluation team's assessment on the basis of documentary analysis and interviews	

**Recent impact assessments introduce more transparency**

Only since 2004 has it become compulsory to carry out an ex-ante evaluation, and then an impact assessment before establishing a new agency. This practice should therefore have to apply to:

- Six recent agencies: CFCA, FRONTEX, GSA, ECHA, EIGE, FRA
- Four agencies being established: ACER, BEREC, EASO, the Agency for Operational Management of SIS II, VIS and EURODAC

In the 2008 Meta-study, the reviewed documents were said to "assess the no-agency option without referring to a strong enough alternative scenario".

A review of the three latest impact assessments shows a much more interesting picture. For instance, the impact assessment of EASO considers five alternative options, of which the three best ones (Commission, expert net-

work, and extending FRA's mandate) are studied with almost<sup>10</sup> the same attention as the agency option.

Some limitations remain however, in that the comparability with the best possible alternative (increasing human and financial resources of the service in charge in the Commission) is not fully secured. In addition, a heavy weight is given to the criterion of "political feasibility". The evaluation team's view is that impact assessments should feed the policy-making process with non political information (see also 2.3.1).

### ***The issue of critical mass is not given due attention***

The issue of "critical mass" frequently surfaces in relation to, especially, smaller and newer agencies. Critical mass is here understood as a certain minimum size which an organisation (in this case, an agency) needs in order to undertake its tasks effectively and efficiently. The "critical mass challenge" is highlighted in a recent study of the European Parliament<sup>11</sup> which shows that agencies with less than 100 staff have a much higher share of administrative staff, something which suggests that they face efficiency constraints (cf. section 2.6.3). For this reason, it will often be relevant to consider the option of incorporating the tasks (activities) to be undertaken into an already existing organisation rather than creating a new organisation.

In the above example of EASO, three alternative options involved the extension of the mandate of pre-existing agencies (FRA, FRONTEX, and the future IT Agency). If the same exercise had been done at the time of establishing older agencies, it is the evaluation team's view that the following pairs of agencies should have been considered:

- CEPOL and EUROPOL<sup>12</sup>
- CPVO and OHIM
- EIGE and FRA
- EIGE and EUROFOUND
- ETF and CEDEFOP
- EU-OSHA and EUROFOUND

In the course of this evaluation, all the above pairs of agencies except the last one have been quoted as deserving some reflection in the interviews and/or documents.

In the case of EIGE, the option of extending the remit of FRA or EUROFOUND was actually considered prior to the establishment of the agency. These options were rejected on the basis that gender equality would remain a peripheral matter in the extended agencies and thus would not be given sufficient attention (Ex ante Evaluation 2005, pp. 11-12). With regards to the FRA alternative, it has to be noted that a DG EMPL study had to assess the option of extending the mandate of FRA, an agency under the umbrella of DG Justice and home affairs. Despite the fact that impact assessments involve an inter-service consultation, this casts doubts about the impartiality of the assessment process<sup>13</sup>.

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<sup>10</sup> In average, each alternative is devoted two third of the length text defending the agency option, and there is no bias in the quality of the justifications.

<sup>11</sup> European Parliament, 2009, Opportunity and feasibility of establishing common support services for EU agencies, Table 3

<sup>12</sup> It is to be mentioned that the context has changed substantially since the conversion of EUROPOL from an intergovernmental body to an EU agency

<sup>13</sup> Evaluation team's assessment based on interviews

Overall, it is worth reflecting upon the proximity<sup>14</sup> of some agencies because of the critical mass challenge. This point is to be related to the fact that four of the above quoted agencies have a staff which will permanently remain under 100 (CEPOL, CPVO, EIGE, and EU-OSHA).

*Contribution to answering the evaluation questions*

**Reasons for creating agencies (Aa)**

The regulations which established the agencies always includes justifications, but these documents do not always unravel the reasons for establishing new policy instruments from that of having these instruments managed through an agency.

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 stakeholders, and (4) to develop a specific expertise or capacity.

One of the implicit reasons why agencies are created is that they facilitate the development of EU policies. The assumption that they would be created for easing staff constraints is not confirmed.

**Alternatives to the agency option (Ab)**

There are four main alternatives to creating agencies: (1) Commission or executive agency, (2) intergovernmental arrangement, (3) expert network, and (4) private sector.

Alternatives to the agency option used to be paid limited attention but the recent impact assessment practice achieves a better transparency, although it is not yet perfect.

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 that is of particular interest where small agencies are at risk of not reaching a critical mass.

**2.1.3 Initial and continued relevance**

**Typical addressees of the agencies' activities**

The main task of each agency has been identified by the evaluation team (see Volume III, Appendix 1) on the basis of the following criteria: (1) financial and (2) human resources devoted to the task, and (3) reasons why the agency was created.

The next table displays the logic of these tasks in terms of which are the main intended results / impacts for which addressees.

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<sup>14</sup> I.e. the degree to which their remits are closely related and present possibilities for being managed in one (larger) organisation instead of two smaller.

**Table 7 – Logic of the agencies’ main tasks**

Activity	Addressees	Intended result / impact	Agencies
Collecting and disseminating harmonised <b>information</b>	Policy-makers in Member States and European Institutions	To support an evidence-based policy-making process	CEDEFOP, EEA, ECDC, EFSA, EMCDDA, ENISA, EUROFOUND, FRA
Facilitating <b>operational coordination</b>	Public managers in Member States	To better achieve the objectives of a given policy	CFCA, EMSA, EUROJUST, EUROPOL, FRONTEX
Dealing with <b>individual applications</b>	Targeted public on the EU market	To ensure security on the market	CPVO, EASA, ECHA, EMEA, OHIM
Delivering a highly specific <b>service or support</b>	Targeted institutions inside or outside Europe	To better achieve the objectives of a given policy	CdT, CEPOL, EAR, ETF <sup>15</sup> , GSA
Contributing to <b>soft coordination</b> <sup>16</sup>	Policy-makers in Member States and European Institutions	To better achieve the objectives of a given policy	CEDEFOP <sup>17</sup> , CEPOL, CFCA, ECDC, EIGE, EMSA, ENISA
Providing <b>expert advice</b>	Decision-makers in Member States and European Institutions	To support an evidence-based decision-making process	ECDC, ECHA, EFSA, EMEA, ERA, FRA
<b>Communicating</b>	Targeted public at EU level	To raise awareness on a given issue	CEDEFOP, EEA, EFSA, EU-OSHA, FRA
Agencies N=26 - Sources: Evaluation team’s estimate – see Vol III, Table 4 Up to three tasks are considered for each agency			

The above table shows an accurate picture of the agencies which have just one task (e.g. OHIM) or one major task and some marginal ones (e.g. EUROPOL). On the contrary, the picture needs to be refined where agencies are implementing several tasks of similar importance (e.g. CEDEFOP). This is why it is useful to consider the most frequently associated tasks (see next table) .

It is worth noting that the first two lines in Table 8 relate to agencies which have their main task addressing the needs of specific target groups at EU level (mostly enterprises) whilst their second task serves the needs of policy-makers. On the contrary, the three bottom lines relate to agencies which have

<sup>15</sup> The evaluation team acknowledges that ETF provides tailored assistance to policy-makers as e.g. CEDEFOP and EIGE, but the addressees are not European governments, and this makes a major difference in terms of the overall logic of the activities. ETF and DG EAC disagree with the evaluation team’s interpretation.

<sup>16</sup> This type of activity is close to the ‘Open Method of Coordination’. It aims at improving the making of Member State policies through advice, mutual learning, transfer of good practices, capacity building, and the monitoring of progress towards common targets.

<sup>17</sup> At present

their first and second main tasks targeted at more or less the same addressees, i.e. public sector managers and policy-makers.

**Table 8 – Typically associated activities**

Associated activities		Agencies
Dealing with <b>individual applications</b> from a targeted public as to ensure security on the EU market	Providing <b>expert advice</b> to policy-makers in EU & MS as to support an evidence-based decision-making process	EASA, ECHA, EMEA
<b>Communicating</b> towards a targeted public at EU level as to raise awareness on a given issue	Collecting and disseminating harmonised <b>information</b> to policy-makers in EU & MS as to support an evidence-based policy-making process	CEDEFOP, EEA, EFSA, EU-OSHA FRA,
Contributing to the <b>soft coordination</b> between Member States and European Institutions as to better achieve EU objectives		CEDEFOP, ECDC, EIGE, ENISA, EU-OSHA
Providing <b>expert advice</b> to policy-makers in EU & MS as to support an evidence-based decision-making process		ECDC, EFSA, FRA
Facilitating <b>operational coordination</b> between public managers in MS as to better achieve the objectives of a given EU policy	Contributing to the <b>soft coordination</b> between Member States and European Institutions as to better achieve EU objectives	CFCA, EMSA, EUROPOL, FRONTEX
No significant <sup>18</sup> activity associated with the main agency's task		CdT, CEPOL, CPVO, EAR, EMCDDA, ERA, ETF, EUROFOUND, EUROJUST, GSA, OHIM
Agencies N=26 - Sources: Evaluation team's estimate		

**Relevance at the time of establishment: positive opinions**

The overwhelming consensus among stakeholders and agency staff interviewed for this evaluation is that the needs that the agencies were set up to address were pertinent at the time.

Such opinions have been expressed with particular emphasis in two instances:

- Agencies justified by the “internal market argument”, such as CPVO, EFSA, or OHIM;
- Agencies addressing problems that transcend national borders, such as EUROPOL.

Our survey of management board members confirms and refines these findings, although in a less positive way since an average of 57% of respondents

<sup>18</sup> Being devoted more than 10% of either human or financial resources

agree that the “agency addressed the need it was created to address when it became operational”. Opinions are particularly positive where agencies have been set up for facilitating Member State cooperation (77% of respondents agree). Opinions are slightly more negative where agencies have been set up for delivering expert advice (11% disagreed compared to 4% overall).

It is however the evaluation team’s opinion that this assessment might be biased for several reasons:

- The relevance of the agencies’ activities is often confused with that of the EU policy which is served;
- Interviewees have been informed by a number of documents which provide one-sided justifications of the establishment and existence of agencies;
- Interviewees’ opinion tends to loose accuracy if the agency was created years ago.

### ***Continued relevance: positive assessment***

The conclusions of the evaluation reports on the continued relevance of agencies are more reliable. The 2008 Meta-study found that these conclusions tend to be positive, i.e. that the agencies’ objectives and priorities correspond to the needs of their main addressees.

Some evaluation reports point out weaknesses in setting priorities and adjusting activities to changing needs. The interviews carried out in the framework of the Meta-study show that action has generally been taken in the years following such negative assessments.

The interviews carried out in the framework of this evaluation tend to confirm that the needs which the agencies were originally established to address still exist today. In several areas, the need even seems to be growing, as in the following examples:

- For EEA, the global focus on environmental issues – in particular the area of climate change – has become even stronger during the last few years.
- EUROPOL’s relevance has, if anything, grown since its establishment given e.g. the rise in terrorism.
- In the area of food safety, EFSA’s workload is increasing in terms of addressing new risks and new technological advances, as well as new legislative demands e.g. in relation to pesticides, plant health, nutrition, and food improving agents.

It is also interesting to identify and to analyse the main changes which occurred in the needs to be addressed by EU agencies or in their context, together with the actions taken (see details in Volume III, Appendix 1). This is done in the next table which shows that most often this issue has been one of extending the scope of the needs to be covered by EU agencies. In this respect, it is worth mentioning that agencies’ mandates tend to be amended once or more per decade.

**Table 9 – Evolving relevance and action taken**

Relevance issue	Action taken	Agencies
Proposal that new needs be addressed	Mandate adapted	EASA, EMSA, ETF, EU-OSHA, OHIM
	None to date	CdT <sup>19</sup> , CPVO, ECDC, EMEA, FRONTEX <sup>20</sup>
Major changes in the context	Mandate adapted	CEDEFOP, GSA, ETF
	None to date	CEPOL
Needs satisfied	Closure	EAR
Under-utilisation of agency's services	Mandate adapted	EUROJUST
Likelihood that the needs cannot be satisfied	None to date	ENISA
Sources: Evaluation team's estimate		

It must be noted that all actions taken in relation to relevance issues pertain to agencies created before 2003 (except GSA).

ENISA represents an interesting example which is linked to the establishment of the BEREC Office. The first evaluation of ENISA, undertaken in late 2006 (only a little over a year after the agency had become fully operational) stated a.o. that the operational staff was probably below the critical mass needed for effectiveness. With reference to this evaluation, the Commission included in its 2007 proposal for review of the telecoms package a plan to establish a new European authority (European Electronic Communication Market Authority (EECMA)) to serve as its main advisor on all European regulatory affairs. The proposed Authority was to include (take over) the functions of ENISA. However, this proposal was rejected by both the Council and Parliament during the autumn of 2007. In 2008, the Council and Parliament adopted the Commission's proposal to extend ENISA's mandate for another 3 years (until 2012) without any changes to its tasks or set-up.

Rather than setting up EECMA as a new "regulatory super agency" within the field of telecoms, it was agreed to establish BEREC (Body of European Regulators for Electronic Communications) as a much leaner organisation with the objective to become the main advisor, both for the European Commission and for the different national regulators, in the field of regulating the electronic communications market. BEREC will have the lean structure of a Board of Regulators composed of the heads of 27 national regulatory authorities and a non-voting observer representing the European Commission. It will be supported by the BEREC Office (established as an agency) which will provide professional and administrative support services to BEREC.

The reasons for establishing a new, separate organisation rather than incorporating ENISA into a larger organisation which would also cover regulatory issues seems to have been mainly that the objectives (main tasks) of the two organisations were not compatible, as ENISA's tasks are not related to BEREC's (and EECMA's) main objective of promoting competition on the tele-

<sup>19</sup> An amendment to the founding regulation is being prepared

<sup>20</sup> An amendment to the founding regulation is being prepared

communications market, and the fact that there was quite a lot of resistance towards the creation of the EECMA as a regulatory authority, which was seen as infringing on the principle of subsidiarity.

The debate and the end results in this case provides an interesting perspective both regarding the evolving relevance of agencies, but also on the issue of critical mass, as discussed above. ENISA is one of the agencies whose size is considered below the critical mass, and this challenge has not been addressed with the extension of the mandate<sup>21</sup>. At the same time, a new (even smaller) agency will be set up in the form of the BEREC Office. However, it is the assessment of the evaluator that, in this case, the objectives of the two agencies and, not least, their way of operating, do not seem compatible.

### ***Adapting to changing needs or context***

Among the relevance issues mentioned in the above table, the five most challenging ones (CEDEFOP, EAR, ETF, EUROJUST, GSA) are described and analysed in this section.

CEDEFOP, one of the oldest agencies (established in 1975), has experienced a significant change in the needs to be addressed. According to the 2007 evaluation of CEDEFOP, the Lisbon/Copenhagen processes represented a critical point in the history of the agency. The agency had actually contributed to this process as far as its expertise was concerned (Vocational Education and Training), but once the process was finalised, the agency faced some important constraints in seeking to take on new challenges within its original mandate. This called for amending its founding regulation in 2004.

EAR had been set up for re-construction of war damages in the Balkans: rebuilding destroyed houses, power plants and lines, hospitals and schools, etc. After the most urgent reconstruction tasks had been fulfilled, the agency's mandate was extended by the Parliament to institutional reform in 2002, and eventually to assistance to pre-accession. At some point, it was considered to extend EAR's mandate to managing reconstruction programmes in other parts of the world, but the agency was finally closed by the end of 2008.

ETF (European Training Foundation), created in 1990, became operational in 1994 in Turin, Italy. Initially, the agency supported the implementation of the vocational training component of the PHARE programme. Its scope was progressively extended, through successive constitutional amendments, to include the TACIS, CARDS and MEDA programmes. In 2008, a recast took into account developments in the EU external policy and granted the agency a more cohesive regulatory framework. The new regulation extended ETF's thematic remit to cover all matters related to Human Capital Development issues, and extended the geographical scope to developing countries. The evaluation team understands that the 2004 enlargement considerably downsized the needs to be addressed and that, instead of closing the agency, successive amendments extended its mandate<sup>22</sup>.

EUROJUST was originally set up to address multilateral cases and to act as the European Public Prosecutor. This was intended to go beyond the European Judicial Network, an informal round table of public prosecutors, already in place which dealt exclusively with bilateral cases. In practice, Member States' demands pertaining to multilateral cases have been much lower than expected and a large part of EUROJUST's work load remains at the level of

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<sup>21</sup> It should be noted that the Commission is expected to put forward a proposal on the future of ENISA in the first quarter of 2010. Whether this proposal will address the critical mass problem remains to be seen..

<sup>22</sup> ETF disagrees with this interpretation



bilateral cases. Action has been taken in the form of a recent Council Decision which gave EUROJUST new powers and forces Member States to refer multi-lateral cases onto the organisation. This may enable EUROJUST to address the needs they were originally set up to address.

GSA was set up for implementing the GALILEO programme in a context of public-private partnership. When the programme faced difficulties and was taken over by the Commission, the context of GSA was dramatically changed and its relevance became highly questionable. The agency has however been kept alive as to develop the highly specialised services which are needed for the future GNS system<sup>23</sup>.

The common feature behind at least three of these cases (EAR, ETF, EUROJUST) is that the solution to major relevance problems was sought in an extension of the agency's mandate<sup>24</sup> rather than in an alternative option involving a devolution of remaining relevant tasks to another body.

***Lack of consistency in the choice of an agency as the policy instrument rather than another instrument***

An interesting approach to the relevance issue would be to compare a series of needs which have been addressed by an agency, whilst other similar needs remain addressed in a more traditional way. This approach would shed a different light on the agency system by questioning the relevance of the agencification process. The following lines exemplify this approach<sup>25</sup>:

- CdT delivers a highly specific service (translation) to EU bodies to enable them to better achieve their policy objectives (e.g. OHIM to ensure safe trademark registration). In comparison, there is no agency specialising in information technology, another kind of highly specific service<sup>26</sup>.
- CEDEFOP provides tailored assistance to policy-makers in the Member States to raise awareness on the issue of lifelong learning, which is a strategic priority of the EU. In comparison, there is no agency providing such assistance in the area of social inclusion, which is also very high on the EU political agenda.
- CEPOL facilitates the soft coordination of Member State senior police managers as to better achieve the objectives of the EU policy in this area. In comparison, the same function is merged into FRONTEX in the case of customs officers.
- ETF provides tailored assistance to policy-makers in third countries in the area of education and continued education. The evaluation team understands that the agency contributes to the objectives of the EU external policy. In comparison, the same kind of assistance remains delivered by internal EC experts, possibly with a contribution of external experts, in all other policy domains such as health, rural development, trade, and so on.

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<sup>23</sup> The agency is currently carrying out marketing activities in relation to EGNOS, the first operational European satellite-navigation system which paves the way to the future GNS system. This type of service is probably a first for a Community body.

<sup>24</sup> Even in the case of EAR which was eventually closed.

<sup>25</sup> This section does not result from a systematic analysis, something which the evaluation team considers as being beyond its mandate and resources

<sup>26</sup> It must be however noted that a recent study of the European Parliament suggests that CdT could have its mandate extended to various kinds of services, including information technology. Moreover, the new IT agency is meant to provide highly specialised information technology services in the area of Justice and Home Affairs. Although not directed at agencies.

It would be more difficult to find similar examples for the so-called internal market agencies (CPVO, ECHA, EMEA, OHIM) since the EU competencies in the areas covered by these agencies seem to be handled through agencies.

What arises from this exercise is that the relevance of the overall structure of the agency system remains questionable even if the establishment of each individual agency is formally justified.

*Contribution to answering evaluation questions*

**Reasons for creating agencies (Aa)**

The addressees of agencies' activities range 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 addressees that the needs that the agencies were set up to address were pertinent at the time.

This opinion is particularly emphasised in the case of "internal market agencies" and agencies addressing problems that transcend national borders.

The relevance of the overall structure of the agency system remains questionable even if the establishment of each individual agency is formally justified.

**Continued relevance (Ac)**

Generally speaking, the needs which the agencies were originally established to address still exist today, and they are obviously 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 agencies mandates tend to be amended once or more per decade.

Severe relevance problems tend to be solved by extending mandates rather than closing agencies.

#### **2.1.4 Rationale and relevance: an overview**

##### ***The agency system***

There is no single legal framework governing the establishment and closure of European decentralised agencies, and there is no “agencification policy” such as in Sweden or the UK. On the contrary, European agencies have been created on a case by case basis through various mixes of political interests.

One of the implicit reasons why agencies are created is that they facilitate the development of EU policies. The assumption that they are created to ease staff constraints cannot be confirmed (cf. also section 2.2.3).

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 applied across agencies.

##### ***Reasons for creating agencies***

The regulations which established the agencies always include justifications, but some of these documents do not disentangle the reasons for establishing new policy instruments from that of having these instruments managed through an agency.

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 stakeholders, and (4) to develop a specific expertise or capacity.

The addresses of agencies’ activities range from policy-makers and public managers at EU and Member State levels to targeted public on the EU market, most often enterprises. There is a broad consensus among these stakeholders that the needs that the agencies were set up to address were pertinent at the time. This opinion is particularly emphasised in the case of “internal market agencies” and agencies addressing problems that transcend national borders.

##### ***Alternatives to the agency option***

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 the agency option used to be paid limited attention but the recent impact assessment practice achieves a better transparency, although not yet fully evidence-based and not covering all relevant issues.

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 a critical mass.

##### ***Adapting agencies to changing needs and context***

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 the 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 agencies mandates tend to be amended once or more per decade.

Tough relevance problems tend to be solved by extending mandates rather than closing agencies.

## **2.2 Agencies' input to the work of the EU institutions**

### ***Main question and sub-questions:***

#### **B To what extent are the activities carried out by EU agencies relevant to the Commission's/Union's work?**

**Ba:** Do the main tasks of the agencies originate from a transfer of competence, and if so, to what extent was this transfer justified?

**Bb:** What is the residual role of the Commission/Union and Member States after transfer of their original competences, and is the sharing of roles satisfactory?

**Bc:** To what extent is the Commission receiving high quality, usable and timely inputs from the agencies?

**Bd:** How does the Commission use, benefit from, and depend on the work of agencies?

**Be:** To what extent have the existence of agencies allowed the Commission to focus more on its core tasks, including through adjusting the number and profile of human resources?

**Bf:** Are agencies making relevant inputs into the inter-institutional decision-making process concerning the preparation or development of policies and in the implementation of established policies? Has the demand (frequency of requests) from European Institutions for agency inputs/contributions changed over time?

**Bg:** To what extent are the agencies doing comparative cross-cutting analyses which are not done anywhere else?

### **2.2.1 Transfer of tasks and residual roles**

#### ***Some transfers of responsibilities, but many tasks are new***

The table below provides an overview of the *main* origin of the agencies' activities.

**Table 10 – Origin of the agencies’ activities**

<b>Main activity</b>	<b>Number of agencies</b>	<b>Names of agencies</b>
<b>... previously under the responsibility of</b>		
Member States	4	CEPOL, OHIM, EUROPOL, EASA
Commission	8	EAR, EEA, ETF, CFCA, ECDC, EFSA, EMSA, GSA
<b>... new</b>	14	CdT, CEDEFOP, CPVO, EMCDDA, ECHA, EIGE, EMEA, ENISA, ERA, EUROFOUND, EUROJUST, FRA, FRONTEX, EU-OSHA
<b>Total</b>	<b>26</b>	
Source: Evaluation team’s interpretation based on interviews and documentary analysis.		

The picture is, however, not as clear-cut as the table would seem to indicate. For many agencies, the data collected for this evaluation shows that their activities are a mix of two or more of the above categories (transferred from Member States, from the Commission, or new).

Activities mainly transferred from Member States

Agencies CEPOL, OHIM, EUROPOL, EASA

Although the nature of their activities is very different, the agencies in this group are all characterised by implementing activities that have a clear European added value, taking over tasks which were previously carried out by Member States and ensuring harmonisation and co-ordination at European level.

In the example of EASA, due to the objective of harmonised European regulations, the tasks (certification) are mostly transferred from the Member States, but a small proportion have been transferred from the Commission as regards parts of the preparatory work for legislation (technical expertise and consultation of stakeholders).

In the case of EUROPOL, it undertakes activities of a cross-border nature (e.g. risk-analysis) that would otherwise not be possible at European-wide level. As a third pillar, inter-governmental agency, the extent to which it has been able to take on Member State tasks to date has been curbed. However as of January 2010, when it becomes a fully-fledged EU Agency and its mandate vis-à-vis Member States change, the transfer of tasks from Member States to the agency is likely to increase. Although EUROPOL can be classified mainly as part of this group, many of the tasks it is responsible for are new which also, to some extent, puts them in the third category of agencies (see below).

Although CEPOL is part of this group, whether it has truly seen competence transferred from Member States in question is not clear. This is not necessarily down to CEPOL itself but the extent to which National Law Enforcement Agencies effectively use the knowledge and expertise of CEPOL to train staff on cross-border issues.

Activities mainly transferred from the Commission

Agencies: EAR, EEA, ETF, CFCA, ECDC, EFSA, EMSA, GSA

The agencies in this category have different kinds of tasks, and they belong to several different policy areas. They were also established during different time periods, both the 2<sup>nd</sup> and the 3<sup>rd</sup> “wave” (see 2.2.1). The reasons for setting up these agencies are varied but include situations where the Commission faced problems in implementing its tasks, e.g.:

- An unsustainable situation of subsidising permanent networks through temporary programmes, e.g. DG SANCO supporting surveillance networks before ECDC;
- The Commission’s tasks involving conflicts of interest, e.g. DG MARE playing both roles of adviser and enforcer before CFCA took over the advisory role;
- The need for politically sensitive expertise, e.g. DG SANCO seeking expert advice in a way which was not sufficiently credible before EFSA was created;
- A costly and unmanageable situation of collecting and processing EU-wide information mainly through contracts with external consultants, e.g. DG ENV before EEA.

In all cases, it is concluded that the transfer of tasks was justified (cf. individual agency reports in Volume III).

In the case of e.g. ECDC, EFSA, and EEA, the main rationale for transferring the tasks to agencies is thus a lack of capacities and resources of the Commission, often combined with the need for working independently with stakeholders, experts and Member States.

A common trait of many of the agencies in this group is 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. For instance, in the case of EEA, the task of collecting and processing environmental data from Member States in certain areas (e.g. on air quality and waste management) was previously undertaken by the Commission through external consultants but was transferred to EEA. Other tasks, such as the co-ordination of the EIONET, were new and one of the reasons for creating the EEA.

#### New activities

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

This group is also mixed in the sense that the agencies have different tasks, and represent different policy areas and different periods in time – the group includes both the two oldest and the newest agencies.

The majority of the tasks are new but in several cases some kind of predecessor activity was incorporated into the agency, as in the following examples:

- ENISA: The stakeholders and agency staff interviewed have slightly different views of how to perceive the tasks of the agency. According to ENISA, half of its tasks have been taken over from the Commission, the other half coming from Member States. However, this is a matter of definition. Some analysis work in the area of network security was carried out before, both in the Commission and in various organisations, but overall there was no comprehensive approach at EU level or Member State level to this area before ENISA.
- FRONTEX: In the years preceding the establishment of the agency (2002-2005), a number of ad hoc co-ordination centres for different

tasks were set up in several Member States. When the agency was established, it took over the tasks of these ad-hoc centres.

- ERA: Before ERA, coordination on railway security was carried out by a network of sector organisations.

### ***Residual roles: clear in principle, but not always in practice***

The residual roles of European Institutions (in practice, the Commission) and Member States depend, by nature, on the fact that responsibilities have been transferred, and from whom (see Table 10).

#### *Sharing of roles with the Commission*

The general principle when agencies take over responsibilities from the Commission is that the agencies carry out tasks of a technical, scientific, or operational character, while the Commission keeps the policy-making role.

The boundaries can however be blurry because the making of policies is both (1) a formal process in which agencies are supposed to play the role of information providers on demand, and (2) an informal process (e.g. agenda setting, policy coalitions, framing policy issues) which is partly shaped by the information, indicators and concepts made available by the agencies.

Such an overlap is behind the fact that, in the beginning of the millennium, several evaluators pointed out interferences between the agencies disseminated information and the Commission's policy-making responsibility (CEDEFOP, EUROFOUND). Subsequent evaluations have shown that the problem has been resolved by the establishing and running appropriate coordination mechanisms.

In the case of FRA's Homophobia Report (see Appendix 1), the agency responded to a demand of the Parliament, and it has fuelled a EU wide debate with a clearly political dimension. The evaluation team has no evidence of any contradiction with the policy-making role or political communication of the Commission, but there was obviously a risk of communication mismatch.

Roles may also be slightly intricate in the case of downstream activities, through which agencies implement EU policies. An example is EMSA, which implements the EU maritime safety policy. In fact, the agency also contributes to policy-making by providing technical input into the Commission's drafting of legislative proposals such as the third maritime safety package and the revision of the marine equipment directive. The inspections in Member States sometimes trigger a revision of existing legislation. However, usually the Member States just react to the comments made by EMSA, and if not, the Commission takes action. EMSA sees a part of its role as an enabler to improve legislation whereas the Commission mainly sees the agency as a "police function" (with regards to the inspection activities of the agency) (see Volume III, section 15.3).

Circumstances are similar with agencies having such a high degree of technical and/or scientific expertise that they might gain a kind of 'de facto' policy-making power (e.g. ECDC, EFSA, EASA, ECHA).

#### *Sharing of roles with Member States*

Taking over tasks from Member States can consist in either a more or less full transfer of competences (EASA, OHIM), or a partial take-over of those tasks that are required at European (cross-border) level, as in the cases of EUROJUST and EUROPOL.

EUROPOL is a special case. Its intelligence data bases are entirely dependent on Member State inputs. Given the sensitive nature of the data, the Member States themselves decide upon which other Member States or third parties

are able to access the data they supply. This puts control over data firmly in the hands of Member States and is generally viewed as a positive by both the Agency and the contributors with the exception of some Member States being barred from access to privileged information by other Member States. However, the view internally as well as externally is that data would not be supplied unless this system was in place.

In other cases, agencies have not as such taken over tasks from the Member States, but there is still a boundary issue in some cases where they work closely with Member States. Some agencies rely on national bodies and agencies for data collection at national level (for example, EEA and EU-OSHA). In these cases, the division of roles is rather clear and relatively unproblematic.

*Contribution to answering evaluation questions:*

#### **Transfer of competences and their justification (Ba)**

For a little less than half of the agencies, their main activities originate from a transfer of competence, either from the Commission or the Member States, while a small majority have been created in response to entirely (or mainly) new tasks. Where tasks are transferred from Member States, the transfer of competencies is justified by the need to ensure harmonisation and co-ordination at European level, and there is a clear European added value.

Transfer of tasks from the Commission are justified by a variety of situations where the Commission faced problems in implementing the task such as efficiency problems, lack of capacity or technical/scientific expertise, conflicts of interest and the need for politically sensitive expertise. The transfer of a responsibility does not necessarily mean a transfer of workload since it is common that the volume of tasks has expanded significantly after the establishment of the agency.

#### **Residual role of the Commission and Member States (Bb)**

Where tasks have been transferred from the Commission, the division of roles is regarded as satisfactory. An issue is the sometimes blurry line between policy-making, which is the residual role of the Commission and the provision of information, expertise and advice by agencies, which tends to play an informal but significant role in the shaping of the political agenda.

In the case of tasks transferred from Member State, there is generally a clear division of work between the national and the European level, except in some areas where the EU agency shares responsibilities with corresponding national bodies.

### **2.2.2 Quality and dependence from the Commission's standpoint**

#### **Satisfaction from the Commission's standpoint**

The first question to be answered in this section relates to the extent to which the Commission receives high quality, usable and timely inputs from the agencies. However, since many agencies do not target the Commission as their (main) users, the issue of quality from the viewpoint of other user groups will also be briefly dealt with.

For all agencies, the quality and usability of their inputs is considered satisfactory or good by Commission users. The evaluators have not come across



instances of assessments of overall quality and usability being unsatisfactory<sup>27</sup>.

There are fewer statements regarding timeliness (about half of the agencies), but in all cases where timeliness is addressed, it is regarded as satisfactory by Commission users.

For a small group of agencies, an assessment of the Commission’s satisfaction is irrelevant, since their services are targeted at other stakeholders or because the agency is new or recently recast (see 2.5.2).

### **Commission’s dependence on agencies**

The Commission’s use of the works of the agencies naturally varies with the types of tasks that the agencies undertake, and so does the Commission’s dependence on these works, as shown in the table below.

**Table 11 –Commission’s dependence on the works of agencies**

<b>Categories</b>	<b>Number of agencies</b>	<b>Names of agencies</b>
Strong dependence for certain functions	7	ECDC, ECHA, EASA, EEA, EFSA, EMEA, ERA
Occasional or significant use by or benefit to the Commission	13	CdT, CEDEFOP, CFCA, EAR, (EIGE*), EMCCDA, EMSA, ENISA, ETF, EU-OSHA, EUROFOUND, FRA, GSA
Not directly used by Commission	6	CEPOL, CPVO, EUROJUST, EUROPOL, FRONTEX, OHIM
Total	<b>26</b>	
Source: Evaluation team’s assessment (cf. agency reports in Volume III)		
* EIGE is not yet operational. However, it must be expected that EIGE will join this group once it is up and running.		

For a little less than a third of the agencies, the Commission can be said to strongly **depend** on the agencies’ works to carry out certain functions. These agencies tend to have a high level of technical/scientific expertise which the Commission does not possess but depends on for drafting legislative proposals and managing specific policies. Among these agencies there is a strong contingent of the “Advice and information” grouping of agencies: EFSA, EMEA, and ERA. The Commission depends on these agencies in the following ways:

- EFSA’s main “customers” are DG SANCO (parent DG), DG ENV and DG AGRI. The agency delivers scientific opinion in response to the Commission’s requests for advice. Based on EFSA’s risk assessment, the Commission takes action to manage the risk by continuing with, amending or repealing existing regulations (cf. Volume III, section 11.3).

<sup>27</sup> In some cases, individual stakeholders may provide examples of outputs that were of lower quality, but overall the quality is assessed as satisfactory/good.

- ERA prepares technical recommendations and the Commission usually transforms them into legislative proposals. For now, several agency outputs have been transformed into technical specifications on interoperability and technical recommendations on railway safety (cf. Volume III, section 17.3).
- ECDC is responsible for risk assessment within its area, while the Commission is responsible for risk management. The European Commission does not have the capacities to carry out the background scientific work for its regulation or action proposals and relies on ECDC's inputs in that regard (cf. Volume III, section 8.3).
- EASA also has (as a secondary task next to its main task of certification) the role of preparing draft legislative measures in the fields covered by Community competence, launching public consultations on them and submitting final drafts (opinions) to the Commission for adoption.
- EEA has a well-established role in several policy areas as a trusted provider of information which is used in the formulation of policies. One of the core areas is climate change where the agency contributes on a number of policy issues, particularly in areas where there is a strong need for reporting, and the Commission relies on the agency (cf. Volume III, section 10.5).

The Commission's dependence on ECHA and EMEA is of a slightly different nature. Both agencies are of the "decision" type. ECHA is responsible for managing the REACH legislation in the field of chemicals – a task that would otherwise probably have to be undertaken by the Commission. EMEA is included in this group since the agency's scientific opinions are usually followed by the Commission in granting marketing authorisations to medicinal products, indicating that the Commission depends on the agency.

The largest group, exactly half of the agencies, are those where the Commission makes **use**, either occasionally or on a more frequent basis, of the agencies' work, most often in the form cross-cutting analyses and other types of advice as (part of) the information basis for the policy-making process. In this group the evaluation team has also placed CFCA, EAR, and GSA which undertake (undertook, in the case of EAR) implementation tasks which, for different reasons, were not suited for being carried out directly by the Commission (cf. section 2.2.1 on the transfer of competences, and the following section on inputs to the inter-institutional policy-making process). Finally, CdT provides translation services which are regularly used by the Commission.

Finally, the last group consists of agencies whose tasks are not targeted at the Commission and who thus provide **little or no direct input** to the Commission's work. This group contains the third-pillar agencies and FRONTEX aiming at Member State co-operation, and the internal market agencies CPVO and OHIM. This being said, it doesn't necessarily mean that, in practice, these agencies have no impact on the Commission's work at all; for instance, DG JLS states that in the field of internal security, the activities of EUROPOL and the policies of the Commission equally influence each other.

*Contribution to answering evaluation questions*

**Quality, usability and timeliness of agency inputs to the Commission (Bc).**

For the overwhelming majority of agencies whose inputs are fully or partially targeted at the Commission, the quality and usability of their inputs is considered satisfactory or good by Commission users. There are no instances of unsatisfactory overall quality and usability. Where the issue of timeliness is

addressed (about half of the agencies), it is regarded as satisfactory by Commission users.

For many agencies, however, the Commission is not an important (or at least not the main) user.

#### ***Use by Commission, and dependence (Bd)***

The agencies can be divided in three groups:

1) Agencies on whose services the Commission depends for certain functions. These tend to be based on technical/scientific expertise which the Commission does not possess but depends on for drafting legislative proposals and managing specific policies (7 agencies)

2) Agencies whose work is used as input to the policy-making process, most often in the form of cross-cutting analyses and other types of advice. In this group are also the agencies implementing tasks which (for various reasons) are not suited for being carried out directly by the Commission (13 agencies)

3) Agencies whose activities are not targeted at the Commission and thus provide little or no direct input to the Commission's work (6 agencies).

### **2.2.3 Commission's focus on core tasks**

The question dealt with in this section is to what extent the existence of agencies has allowed the Commission to focus more on its core tasks, including adjusting the number and profile of human resources. There is very little evidence of this - most likely because the scope and amount of work to be carried out by the Commission is continually rising.

In principle, this question is mainly relevant for those agencies whose tasks have been partly or fully transferred from the Commission. However, almost none of the Commission stakeholders interviewed had much to say on this issue. The only example quoted with any substance was ECHA where, in the past, scientific assessments were made by the Joint Research Centre. The agency has now taken over the work of this Commission service. The added value is the complete independence of scientific assessment from policy development. Part of the JRC staff was moved to ECHA, others moved around in JRC.

The only other evidence available comes from a series of notes complementing the EP study "Agencies: origin of tasks, local conditions and staffing" from 2007. The data contained in these notes does, however, not indicate to any significant extent that the existence of agencies results in reduction or reallocation of staff in the Commission.

An example is EFSA whose tasks were to a large extent transferred from the Commission (DG SANCO). The EP concludes that "While EFSA's budget has increased by 69% between 2004 and 2006, DG SANCO's decreased by more than 10% in the same time. This latter decrease results to a large extent from a fall in the "food safety" activity to which the EFSA's mandate corresponds. This can be seen as an effect of the transfers of tasks from the Commission to the Agency: this latter estimates to 88.5% the tasks that have been taken over from the Commission. The 65% increase in EFSA's staff has not resulted in any reduction in DG SANCO's own staff. Moreover, staff affected within DG SANCO to Food safety activities even increased at a faster pace than the overall operational staff between 2004 and 2006". (EP Notes on EFSA 2008). Thus, there was a reduction in costs in the Commission after the creation of EFSA, but not in staff working in the area covered by EFSA. This seems to indicate that the costs reduced in DG SANCO were mainly external costs (e.g.

contracts with external parties, support to surveillance networks before the creation of EFSA), but in terms of staff in the Commission, there is no indication that the existence of EFSA allowed the Commission to reduce its human resources dedicated to the area.

*Contribution to answering evaluation questions*

**Allowing the Commission to focus more on its core tasks**

The evidence on this issue is limited. There is only one example (ECHA) of Commission staff being made available to do other tasks, while the (few) other examples do not indicate that the existence of an agency has freed resources to concentrate more on the Commission's core tasks. The most likely explanation for this is that the scope and amount of work to be carried out by the Commission is continually rising, meaning that even if some tasks are transferred to agencies, they are replaced by other tasks.

**2.2.4 *Inputs into interinstitutional policy- and decision- making***

This question, and its answer, are closely related to the question of the Commission's dependence on, and use of, the work of the agencies (cf. section 2.2.2, above). For analytical reasons, this section therefore distinguishes between agencies' inputs to the Commission and its role in inter-institutional policy-making, and input to other EU Institutions, notably the European Parliament.

***More than half of the agencies provide input to Commission policy-making***

As demonstrated in section 2.2.2, there are two groups of agencies that deliver work which is directly used by or of direct benefit to the Commission: those that the Commission depends strongly on for certain functions, and those whose work is occasionally or more frequently used by or of benefit to the Commission. Not all of these agencies deliver inputs directly to the policy-making process, however – as outlined above, the benefits of a number of agencies are related to their implementing or service-providing tasks. In the table below, the data from Table 12 above is further detailed, with the purpose of identifying those agencies which deliver relevant input to the Commission's preparation and development of policies.

**Table 12 – Input to Commission’s policy-making work**

<b>Categories</b>	<b>Number of agencies</b>	<b>Names of agencies</b>
Strong dependence by Commission for policy-making	5	ECDC, EASA, EEA, EFSA, ERA
Occasional or significant use by the Commission for policy-making	9	CEDEFOP, (EIGE*), EMCDDA, EMSA, ENISA, ETF, EU-OSHA, EUROFOUND, FRA
Work used by or benefiting Commission but not directly for policy-making	6	ECHA, EMEA CDT, CFCA, EAR, GSA
Not directly used by Commission**	6	CEPOL, CPVO, EUROJUST, EUROPOL, FRONTEX, OHIM
<b>Total</b>	<b>26</b>	

\* EIGE is not yet operational. However, it must be expected that EIGE will join this group once it is up and running. Source: Evaluation team’s assessment (cf. agency reports in Volume III)

From this perspective, it can be seen that more than half of the agencies contribute to a smaller or larger extent with input to the inter-institutional decision-making process concerning the Commission’s preparation or development of policies. A number of examples of how the agencies support the Commission are provided in section 2.2.2.

***Input to other European Institutions is less comprehensive but some agencies provide important inputs***

A number of agencies also provide input of relevance to the other European Institutions, either directly upon request (usually from the Parliament), or indirectly through publishing reports which are used as part of the information base for inter-institutional policy-making. The evidence here is more anecdotal, but for a number of agencies there is direct evidence of input to inter-institutional policy-making:

FRA’s Homophobia report<sup>28</sup> was widely referred to in hearings and debates. The EP adopted on 14<sup>th</sup> January 2009 a resolution on the situation of fundamental rights in the European Union 2004-2008<sup>29</sup>, which included several references to the Agency’s work and proposals in line with the report. Another example is the PNR-opinion<sup>30</sup> issued 28<sup>th</sup> October 2008 on the request of the French Presidency, and which was referred to in the EP resolution of 20 November 2008 on the proposal for a Council framework decision. The Opinion in fact led to several amendments to the proposed Council framework decision on the use of Passenger Name Record for law enforcement purposes.

<sup>28</sup> Report on Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States,

<sup>29</sup> European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI))

<sup>30</sup> Opinion on the Commission's proposal for a Council framework decision on the use of Passenger Name Record (PNR) data for law enforcement purposes the opinion (COM (2007) 654).

EUROFOUND regularly produces publications or resources that inform decision-making between institutions. A recent example is the role of the Foundation in the development of the directive for equal treatment of temporary workers, where the Foundation was consulted as part of the drafting process as well as at the first EP reading.

EEA provides independent scientific technical assessments which are used to show progress on policy, for instance the 6th Environmental Action Plan. The EEA also provides reports and advice to the Parliament and the Council. Examples of contributions to inter-institutional decision-making include feeding into decisions on the voluntary agreement on CO<sub>2</sub> reductions, and the current work on a transport and environment report (cf Volume III, section 10.3).

ECDC, EFSA, and OSHA all report answering questions from the Parliament. As an example, ECDC recently provided advice in response to a question from the Parliament on HIV prevalence.

### ***Some, but limited, evidence of increased demands from European Institutions***

There is only limited anecdotal evidence to shed light on whether the demand, in terms of frequency of requests has changed (increased) over time:

EFSA reports a dramatic increase in the number of requests originating from the Commission and the use of EFSA's scientific opinions to inform EU policy decisions.

ETF has seen a significant increase in requests from the Commission (+18% since 2006), although the demand remained stable throughout 2008.

ECDC, OHIM and CPVO all report significant increases in the demand for their services, but this increase comes from external stakeholders and clients (e.g. industry).

#### *Contribution to answering evaluation questions*

##### **Inputs into the inter-institutional decision-making process (Bf)**

More than half of the agencies provide input to the Commission's preparation or development of policies, some in the form of preparing legislative proposals, others through the delivery of reports and other analyses on which policy-making is partially or fully based.

A number of agencies also provide relevant input to the other European Institutions, in particular the Parliament. There is some, anecdotal, evidence of agencies' inputs being directly referred to in legislative proposals and decisions.

The limited evidence regarding changes in the demand for inputs point to an increased demand.

### **2.2.5 Added value of cross-cutting information**

10 of the 26 agencies specifically report undertaking cross-cutting analysis at European level.

#### ***All agencies with "Exploration and Information" as their main task undertake cross-cutting analysis***

Comparative cross-cutting analyses are mainly performed by the agencies undertaking "Exploration and Information" tasks (CEDEFOP, EEA, EIGE, EUROFOUND, FRA, and EMCDDA. EIGE is also expected to also undertake this kind of analysis). Since comparable data from all Member States in many cases do not exist at the outset, many of these agencies also work on developing indicators within their fields in order to enable the collection of comparable data which can then be used in cross-cutting analysis.

For EEA, producing comparative cross-cutting analyses and coordinating the European environment information and observation network through which the national data used in the analyses is collected are its main tasks and its *raison d'être*. A good example of cross-cutting analyses is the work of EEA in the area of greenhouse gas emissions (GHG), which is an important element in gathering, compiling and analysing information from Member States and other EEA member countries on the progress towards achieving the objectives of the UN Framework Convention on Climate Change (UNFCCC) and their emission targets under the Kyoto Protocol. The work on GHG is assessed by key stakeholders as important, useful and of high quality. Experts and other stakeholders see the GHG inventories as the most authoritative reports on GHG emissions in the field. The reports play an important role in international negotiations within the area of climate change. They are published annually and provide an overview of the most updated information available.

The 2007 Evaluation of CEDEFOP points to cross-cutting analysis as one of the areas where Cedefop has been able to have positive effects and bring added value by synthesising material on VET (Vocational Education and Training), pulling together available research and applying it to the situation in Europe in order to interpret what is going on across Member States. (CEDEFOP evaluation 2007)

The 2007 evaluation of EMCDDA concluded that the agency helps "to develop national monitoring systems based on common methodologies and standards, and secondly, by providing the objective, reliable and comparable information that is needed as an evidence base by policy-makers at a national and European level. [...] The development across EU Member States of harmonized data collection mechanisms for information on drugs would not have taken place otherwise". (EMCDDA evaluation 2007)

Likewise, the 2007 External evaluation of EUROFOUND concluded that "By acting at the EU level, the Foundation can provide comparative analysis across all Member States and facilitate the exchange of information and best practice. The Foundation has developed a niche in terms of trend data that offers both long term scientific data together with qualitative depth studies and extensive reporting across key social issues." (EUROFOUND External evaluation 2007)

As mentioned above, collecting comparable data across Member States is not always an easy task. A FRA stakeholder provided the following example: "As far as the data and available statistics in France and UK on ethnic minorities, these are available in the UK but illegal in France. It is difficult to gather data, you cannot just compare facts. FRA then tries to work with proxies in order to establish comparative data. Eurostat could probably do the direct work (meaning gather data when it is directly available), but indirect work (meaning establishing proxy data when data is not directly available) is very time-consuming and Eurostat could probably not do this".

**... but other types of agencies perform cross-cutting analysis as well**

Cross-cutting analysis is not entirely the domain of agencies with the types of tasks discussed above.

For instance, in ECDC, the production of the Surveillance unit is to a large extent focused on comparative cross-cutting analysis. ECDC has integrated networks of competent bodies represented in all countries, feeding ECDC's data base. In addition to ad hoc studies, ECDC publishes the cross-cutting annual epidemiological report (cf. Volume III, section 8.3).

EUROPOL also produces cross-cutting analyses. In 2008, EUROPOL extracted quantitative data on terrorist attacks and activities as well as on arrested suspects from reports on terrorist incidents contributed by the Member States. The processed data was cross-checked and, in case of gaps, complemented by open source data systematically monitored, collected and processed by EUROPOL. After this, EUROPOL requested the member states to validate their national data (EUROPOL annual report 2008). According to an interviewed stakeholder, "making cross-border analysis is the nature of what Europol does, and it could not be done by one Member State. If Europol did not exist, the exchange of info would most likely be bilateral as this is probably what Member States could do with limited time and budget. Without genuine cross-border activity, the Member States would probably miss out on different issues regarding organized crime (the pattern of organized crime across borders) and might end up not catching criminals."

Similarly, FRONTEX' Risk Analysis Unit also carries out cross-cutting analysis, assessing threats, looking at vulnerabilities, and weighing consequences.

The findings above are supported by the survey among Management Board members. When consulted on whether the Agency produces cross-cutting analyses not available from other sources<sup>31</sup>, two thirds of Management Board members agreed or strongly agreed.

*Contribution to answering the evaluation question*

**Agencies doing comparative cross-cutting analyses which are not done anywhere else (Bg)**

European cross-cutting analyses are mainly performed by the agencies carrying out tasks which have as a main objective to provide an information input into the policy-making process. This group includes CEDEFOP, EEA, EU-OSHA, EUROFOUND, FRA, EMCDDA and, in the future, EIGE. With these analyses, the agencies are compiling, analysing and publishing EU-wide information which is not available elsewhere. In the cases where comparable data from the Member States are not (yet) available, several of these agencies contribute to the development of indicators and the establishment of systems and networks for collection of data. For these agencies, cross-cutting analysis is a significant part of their rationale.

There are also a couple of examples of agencies with other types of main tasks which produce different kinds of cross-cutting analyses.

**2.2.6 Agencies and the EU institutions: an overview**

The overall question to be answered in this section is to what extent the activities carried out by EU agencies are relevant to the Commission's/Union's work.

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<sup>31</sup> Respondents were asked to respond to the following statement: 'The agency produces comparative cross-cutting (EUwide) analyses that are not available from any other source'.



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.

It should be noted that there is a certain asymmetry between the agencies in this respect, since 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, which means that they are of more direct use in the Commission's daily work. Other agencies have other tasks such as registration/certification and Member State co-operation, which are not primarily targeted at the Commission but are still highly relevant to the Union's work since they implement EU policies in practice.

### ***Transfer of competences, their justification and the residual role of the Commission and Member States***

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

The transfer of tasks is justified. In the case of the Commission, tasks are generally transferred where the Commission faces problems in implementing the task such as efficiency problems, lack of capacity or technical/scientific expertise, conflicts of interest and the need for politically sensitive expertise. Transfer of tasks from the Member States is fully justified by the need to ensure harmonisation and co-ordination at European level, and there is a clear European added value.

The division of work after the transfer of tasks is in principle clear: Where tasks are transferred from the Commission, the agencies carry out tasks mainly of a technical/scientific nature, while the Commission keeps the policy-making role. The boundaries between the Commission and agencies providing expertise as a basis for policy-making are mainly managed through coordination on work programmes and planned activities. The division of work where tasks are transferred from Member States lies is defined by the distinction between the national and the European level.

### ***Usefulness (including quality) of agencies' work to that of the Commission***

The quality and usability of the agencies' inputs is generally good. The 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 the constraint on Commission resources and allowed them to focus more on their 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 rising.

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 activities.

About a third of the agencies provide European cross-cutting analyses which are not available from elsewhere. These analyses also form a significant part of the outputs which are useful in the preparation of policies by European Institutions.

## 2.3 Governance of the agency system

### ***Overall question and sub-questions:***

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

**Ca:** To what extent is the actual process of creating / reforming agencies in accordance with the principles of good governance?

To what extent would the process proposed in the Inter-Institutional Agreement have been in accordance with the principles of good governance?

**Cb:** To what extent are the supervision mechanisms, the budgetary process, the regulatory framework, the management boards, and the consultation procedures in accordance with the principles of good governance?

### **2.3.1 The process of setting up agencies**

#### ***Decision-making process in relation to the creation of agencies***

The initiative for creating a new agency lies formally with the Commission, although other institutions (notably the Parliament) may send an early signal in favour of creating a new agency in the form of a "position". Regardless of the origin of the idea of the agency, it is the role of the Commission to prepare the detailed proposal for a new agency. The proposal is then adopted (or rejected) by the Council, or the Council and the European Parliament.

The proposal is accompanied by an Impact Assessment, but this has only become standard practice in recent years, meaning that the establishment of most of the older agencies was not subjected to a formal and comprehensive Impact Assessment<sup>32</sup>. Recently established agencies such as FRA and EIGE, as well as the agencies for which proposals are currently on the table (ACER, BEREC, EASO, IT Agency) have been subjected to a proper Impact Assessment (see 2.1.2).

Impact assessments are done by the parent DG of the future agency. The quality of the assessment is verified by a high-level group of internal experts in the Commission.

An analysis of the above-mentioned recent Impact Assessments has shown that, in particular, two issues are not always sufficiently covered: Alternatives to the creation of a new agency, and the issue of size ("critical mass", see 2.1.2).

The most recent impact assessments do address the issue of alternative options in a substantial way. However, it is the assessment of the evaluation team that some limitations remain in the recent and current practice:

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<sup>32</sup> Systematic Impact Assessment of all major Commission proposals involving expenditure was only initiated in the Commission following a Commission Communication from 2002 (COM(2002) 276 final)

- Assessment criteria are sometimes questionable; one of the criteria determining the best alternative 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 non political information;
- 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 DG<sup>33</sup>;
- Governance arrangements tend to be of a one-size-fits-all nature and alternatives are not considered;
- The critical mass issue is not yet assessed in sufficient depth, in particular when it comes to comparing the option of a new agency vs extending the mandate of an existing agency.

The decision on the location of the agency is not currently made in connection with the decision to establish an agency. In fact, in many cases the decision has taken years to make<sup>34</sup> and has often involved a certain amount of “horse-trading” at Council meetings, a practice which has not always led to efficient seating conditions (see 2.6.1 on the effects of location and seating conditions).

Established agencies are almost never reconsidered, except some agencies which have been established for a limited duration (five-year mandates in the cases of EAR and ENISA). Overall agency evaluations are meant to create the opportunity of reconsidering the agencies but they are not managed in a way which could result in reform or the closure of an agency.

In some instances (e.g. ECDC, EFSA, ENISA, EIGE) there is also an obligation to evaluate new agencies after three years, a requirement which is questionable. 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. For this reason, a three year period is by far too short for making an evaluation valuable.

### ***Setting up newly created agencies***

Another issue is that of the practical and administrative aspects of setting up new agencies and reaching cruise speed. Both during the focus group meetings held with agency representatives in the context of this evaluation and in individual interviews with agency and Commission staff, the apparent lack of clear guidelines, “templates”, and practical administrative assistance during the set-up process has been pointed to repeatedly. It appears that there may not be sufficient learning about the practicalities of setting up an agency, and little practical help, at least from the point of view of the agencies.

For instance, an interviewee related to EIGE pointed to the fact that the responsibility for administrative and practical issues, such as inspection of the

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<sup>33</sup> 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

<sup>34</sup> According to the Commission’s proposal for a Draft Interinstitutional Agreement on the operating framework for the European regulatory agencies, COM(2005)59 final, p. 4, “almost all the decisions concerning the seats of the agencies have been taken en bloc, at ten year intervals, by the Heads of State and Government at the occasion of European Council meetings. Negotiations of this kind on “packages” of issues have led to serious delays in the effective establishment of a number of agencies, which have been set up temporarily in Brussels for an a priori indefinite period.”

potential location, signing of Service Level Agreements with the Office for Infrastructure and logistics (OIB), etc. was split among several units within the parent DG (EMPL), which made it difficult to achieve an overview of the process. Furthermore, staff mobility and a large number of coordinators meant that the institutional memory of the parent DG was split among too many people, which did not foster efficient co-ordination. A more streamlined administrative support structure, giving assistance with respect to setting-up the Institute, would have been needed in order to improve the efficiency of the set-up process.

In several cases, interviewees have pointed to the need for a better administrative support structure – perhaps some kind of dedicated task force - to provide assistance with respect to setting up the new agency.

An exception to the rule has been mentioned and cross-checked in the course of this evaluation, namely the establishment of ECHA, which reportedly went very smoothly. The process of setting up the agency and its administrative functions was prepared long in advance by the parent DG with a dedicated transition team, and by the host country which provided substantial support. This meant, for instance, that the appropriate staff was immediately recruited. Such an apparent good practice case could provide input to guidelines on how to prepare and execute the setting-up of a new agency.

It should however be mentioned that there are a number of guidelines available to the agencies already, including guidance on Staff Policy Plans and templates concerning the recruitment of different categories of staff. In addition, a detailed Roadmap for Setting up Regulatory Agencies has recently been prepared by the Secretariat-General. This roadmap is precisely aimed at helping the parent DGs with the set-up of their new agencies.

### ***Consequences of the involvement of the Commission as de facto manager for setting up new agencies***

The parent DG is, as discussed above, in practice held responsible for setting up new agencies. Important elements in the set-up process of a new agency are, however, influenced by external factors. As already mentioned, the seating decision is taken by the Council, sometimes years after the decision to establish the agency. Furthermore, the conditions offered by the host country do not seem to be subject to detailed negotiations involving the Commission. Thus, some of the key conditions which may have a significant impact on the efficiency of the process and on the effectiveness of the agency once it is set up, are outside the control of the Commission who is managing the process. In other words, the Commission risks being held responsible for the outcome of a process over which it does not have full control.

### ***Instalment arrangements in the host countries***

One Member State has three agencies (Spain), six have two agencies (France, Greece, Italy, Netherlands, Portugal, UK), nine have one agency (Austria, Denmark, Finland, Germany, Ireland, Lithuania, Luxembourg, Poland, Sweden). Ten new Member States have no agency (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Malta, Romania, Slovakia, and Slovenia).

Once the host country is selected, the remaining options are taken through bilateral discussions, with quite uneven outcomes. The evaluation team has strived to improve the transparency of the costs and benefits associated with these options. The efficiency of the "location package" of the agencies has been scored on a five level scale. The main dimensions of this issue are (1)

remoteness of headquarters, (2) attractiveness for staff, (3) cost of premises, and (4) VAT exemption. An overview of the assessment is provided in Table 14 below.

*Remoteness* is a matter of travel cost and travel time<sup>35</sup>, the latter depending on the frequency and geographical connectedness of flights (which may cause the need to stay one or two nights in the agency headquarter city even for a one-day meeting), and the sometimes long taxi drive to the airport<sup>36</sup>. Accessibility is not an absolute need for European agencies. In fact, it is mainly desirable where the agency has an intense networking activity, something which occurs where its main tasks 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 assessments combine all these elements and indicate that two agencies have major remoteness problems (CFCA, and ENISA), while four have significant problems (EFSA, EIGE, EMCDDA, EMSA).

*Attractiveness* is assessed on the basis of three items: accessibility (in terms of both travel cost and time), presence of an international school, and tax exemptions benefiting staff<sup>37</sup>. The weights of the four elements are 1/3, 1/3, 1/6 and 1/6 respectively. 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). Several agencies have suggested that further studies in this area should cover other elements such as exchange rates, purchasing power, job and career opportunities for spouses<sup>38</sup>, and quality of life and environment. The evaluation team has strived to approach the same issue in another way, by asking agencies to provide information on their annual staff turn-over. Unfortunately, this has not been successful.

The evaluation team has calculated the *cost of premises* per actual staff member, less the host country support (the latter is significant in the case of CFCA<sup>39</sup>, ENISA, EU-OSHA, EUROFOUND, EUROPOL, FRA, and FRONTEx). Overall the highest costs are that of ECHA, EMCDDA, EU-OSHA, and EMEA which are 50% above the average.

Finally, all agencies are exempted from VAT in principle, but some agencies mention limitations (CPVO, EMCDDA, EMSA, ERA, FRONTEx)<sup>40</sup>. In certain cases, the absence of a proper seat agreement leads to the fact that the Agency is not only deprived from the exemption, but also from the reimbursement of VAT amounts paid (OHIM).

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<sup>35</sup> Both elements have been equally weighed.

<sup>36</sup> 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

<sup>37</sup> The first element has been weighed twice the other ones. Tax exemptions may apply to income tax or specific tax for certain items (i. e. car purchases). They are granted to agency staff in a few cases (i.e. Portugal).

<sup>38</sup> This factor is mentioned e.g. in the case of ENISA which is located in Heraklion, a small provincial town. Reportedly, no spouses of ENISA staff have succeeded in obtaining a meaningful job in the area.

<sup>39</sup> From 2010 onwards the rent of CFCA premises will be paid by the Spanish authorities

<sup>40</sup> By VAT Directive, certain Member States do not grant VAT exemption below a certain threshold, and other ones do not grant the exemption directly, but they reimburse it upon presentation of relevant documentation. These are the cases in Portugal and France, respectively.

The detailed assessment of agencies is explained and displayed in Table 13 and Table 14 respectively. Overall, the location packages are assessed as particularly inefficient in the cases of CPVO, CFCA, EMCDDA, ENISA and OHIM.

**Table 13 - Elements of the assessment of the location package**

<i>Item</i>	<i>Definition</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:
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 <sup>41</sup> . 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.
Inefficiency rate	The four above elements weighed 1/3, 1/3, 1/6 and 1/6 respectively

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<sup>41</sup>. Several agencies have suggested that further studies in this area cover other elements such as exchange rates, purchasing power, and the quality of life and environment.

**Table 14 - Assessment of efficiency/inefficiency of location package**

Agency	Problem with ...				Inefficiency rate
	Remote-ness	Attrative-ness	Cost of premises	VAT ex-emption	
CdT					
CEDEFOP					
CEPOL		X			X
CFCA	XX	XX			XXXX
CPVO		XX		X	XXX
EASA			?		
ECDC					
ECHA			X		X
EEA					
EFSA	X				X
EIGE	X		?		X
EMCDDA	X		X	X	XXX
EMEA			X		X
EMSA	X			X	XX
ENISA	XX	X			XXX
ERA		X		X	XX
ETF					
EU-OSHA		X	X		XX
EUROFOUND					
EUROJUST					
EUROPOL					
FRA					
FRONTEX				X	X
OHIM		XX	?	X	XXX
<b>Sources</b>					
- Evaluation team's own calculations and declarations of agencies in the framework of the evaluation. Full explanation in CD-Rom					

These new indicators can be seen as a first step towards assessing the efficiency of seating conditions on the basis of evidence. There are however several limitations in the proposed approach – for instance, travel cost and travel time are weighted equally in the assessment of accessibility / remoteness although both factors may not constrain the functioning of agencies to the same extent. Furthermore, the perception of attractiveness for agencies' staff is surely more complex than just the three dimensions covered in this report, as already discussed above.

***The Commission's proposal for an Interinstitutional Agreement***

In 2005, the Commission proposed a general framework for regulatory agencies (Draft Interinstitutional Agreement)<sup>42</sup>. However, little progress has been made in adopting the proposal, and in 2008 the Commission announced that

<sup>42</sup> Commission of the European Communities (2005): Draft Interinstitutional Agreement on the operating framework for the European regulatory agencies

it would withdraw the proposal and try to reopen the debate. Work is now on-going (including this evaluation) to form the basis for a common approach.

The 2005 proposal focused on the *tasks of the regulatory agencies*, where the Commission listed three tasks of which the agencies should perform one or more:

- a) adopting individual decisions which are legally binding on third parties;
- b) providing direct assistance to the Commission and, where necessary, to the Member States in the interests of the Community, in the form of technical or scientific advice and/or inspection reports;
- c) creating a network of national competent authorities and organising cooperation between them in the interests of the Community with a view to gathering, exchanging and comparing information and good practice.

Secondly, the Commission suggested three provisions regarding the *creation of an agency*, namely that

- a new agency would be subject to an impact assessment,
- that an agency would be based on a specific provision of the EC treaty,
- and that the decision regarding the seat of the agency should be integrated into the basic act.

Thirdly, regarding the *internal organisation and structure*, the Commission acknowledged that there could be no one size fits all-approach, but that an agency should have an administrative board and a smaller executive board, and be subject to three general principles:

- The principles of accountability and coherence demand that the composition of the board reflects the agency's position with regard to the distribution of powers between the executives at Community and national levels.
- The principle of effectiveness and cost reduction calls for a board with a limited number of members.
- The principles of participation and openness require the involvement of interested parties.

It is specified in the proposal that the tasks devolved on the agency do not, in principle, mean that all the Member States should be represented on the boards.

Lastly, with respect to *accountability*, the Commission proposed that both ex ante and ex post evaluations as well as control mechanisms should be put in place due to the autonomous nature of agencies. In particular, rigorous impact assessment should be carried out to justify any proposal to set up an agency, exploring all possible alternatives.

It is the overall opinion of the evaluation team that the procedures outlined in the proposal are in accordance with the principles of good governance. However, one aspect has not been dealt with in sufficient detail, namely the location package. As regards the location decision, the requirement that the seat of the agency must be decided in connection with the decision to establish the agency is highly relevant. However, given the uneven and sometimes ineffective arrangements in place for the existing agencies and their impacts on the agencies' efficiency (cf. the analysis above), it is the opinion of the evaluator that there should be minimum requirements to the seat as regards location (accessibility from international destinations), and the conditions pro-



vided by the host country in terms of the premises provided, taxes, provision of international schooling, etc., in order to create efficient conditions for the agencies and provide clarity from the start.

*Contribution to answering the evaluation question:*

***The procedures for creating and setting up agencies (Ca)***

The procedures for creating and setting up agencies have over time not been very transparent, although the situation is improving with the recent practice of carrying out thorough Impact Assessments before the decision is made (see also 2.1.2). One aspect which still lacks transparency is the choice of location. The decision on the location of the agency is usually made long after the creation of the new body and 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.

The evaluation team has strived to improve the transparency of the costs and benefits associated with seating conditions. The main dimensions of this issue are remoteness, attractiveness for staff, cost of premises, and VAT exemption. Based on an assessment of these factors, the overall location packages are assessed as particularly inefficient in the cases of CFCA, CPVO, EMCDDA, ENISA, and OHIM.

Established agencies are almost never reconsidered, except some agencies which have been established for a limited duration. Overall agency evaluations are meant to create the opportunity of reconsidering the agencies but they are not managed in a way which could result in reform or the closure of an agency.

As regards the practical setting up of new agencies, little learning seems so far to have taken place and the practice seems, with one possible exception (ECHA), not to be managed very efficiently. Although a number of guidelines exist on specific issues, recently created agencies express that they do not feel that assistance and guidance was sufficient. 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.

***The Inter-Institutional Agreement and the principles of good governance (Ca)***

Overall, the procedure proposed in the 2005 proposal is in accordance with the principles of good governance, except that the issue of transparency of location conditions was not addressed.

### 2.3.2 *Institutional arrangements*

#### ***Committee-like boards are the rule***

The management board has an important role in the governance of the agency. In principle at least, the management board represents the key stakeholders (in the broadest sense of the word) – which may be Member States, the Commission, the Parliament, users, and other relevant stakeholders such as social partners.

The “standard” model for agency management boards is usually composed of all Member State<sup>43</sup> and Commission, reflecting the practice of EU committees. Experts and/or other stakeholders are sometimes involved. They may or may not have a voting right. They may be nominated by the Parliament.

Other types of boards include:

- “Tri-partite”<sup>44</sup> type of governance, with representatives of social partners from each Member State, resulting in extremely large management boards;
- Expert management boards consisting (mainly) of professionals within the agency’s area;
- Member State boards with no representation from the European Institutions
- One agency (CdT) has a board made up of users (other EU Agencies and EU institutions) and Member States.

The table below provides an overview of the different types of agencies.

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<sup>43</sup> In the case of EEA the board includes several non-EU countries. EIGE has rotating Member State representatives (see below).

<sup>44</sup> Tri-partite representation means that each Member State has a representative from both government, employers and employees’ organisations (i.e. 3 members from each MS)

**Table 15 – Overview of different types of Governance**

<i>Type</i>	<i>Average number of board members</i>	<i>Number of agencies</i>	<i>Number of agencies with bureau</i>	<i>Names of agencies</i>
<b>Standard</b>	31 <sup>45</sup>	17	4	CFCA, CPVO, EAR, EASA, ECDC, ECHA, EEA, EIGE, EMCDDA, EMEA, EMSA, ENISA, ERA, ETF, FRONTEX, GSA, OHIM
<b>Stakeholder (tri-partite)</b>	86	3	3	CEDEFOP, EU-OSHA, EUROFOUND
<b>Expert</b>	23 <sup>46</sup>	2	1	EFSA, FRA
<b>Member State</b>	27	3	0	CEPOL, EUROJUST, EUROPOL <sup>47</sup>
<b>Users + Member States</b>	64	1	0	CdT
<b>Total</b>		<b>26</b>	<b>8</b>	

Source: Agency visits and documentary studies, see Volume III, Appendix 1, table 7

Some agencies, especially those with large management boards (with the exception of CdT), operate with a smaller bureau which is more closely involved in the running of the agency, while the full board meets less frequently.

***Balance of powers may not be in line with the needs***

The evaluation team has done a systematic analysis of governance arrangements across all agencies by looking at the various needs that have to be addressed and how these needs are reflected in the *balance of powers* of the management board. The results of this analysis are shown in the following table.

<sup>45</sup> 18 cases varying from 19 to 38 board members.

<sup>46</sup> The two agencies have respectively 15 (EFSA) and 30 (FRA) board members.

<sup>47</sup> EUROPOL will move to the “standard” category in 2010 since the representative of the Commission will be granted a voting right.

**Table 16 – Governance**

Agency	Board members (with voting rights)				Professional board	Needs to be addressed	Unbalanced interests
	Individual Member States	European Institutions	Users	Other stakeholders			
<b>CdT</b>	X	X	X			EU, MS, users	
<b>CEDEFOP</b>	X	X		X		EU, MS, other interest groups	
<b>CEPOL</b>	X						EU
<b>CFCA</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>CPVO</b>	X	X				EU, MS, users	EU, users
<b>EASA</b>	X	X				EU, MS, users, stake-holders	Other interest groups
<b>ECDC</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>ECHA</b>	X	X				EU, MS, users, other interest groups	Users, other interest groups
<b>EEA</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>EFSA</b>	X	X		X	X	EU, MS, other interest groups	
<b>EIGE</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>EMCDDA</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>EMEA</b>	X	X		X		EU, MS, other interest groups	
<b>EMSA</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>ENISA</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>ERA</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>ETF</b>	X	X				EU, MS, other interest groups	Other interest groups
<b>EU-OSHA</b>	X	X		X		EU, MS, other interest groups	
<b>EURO-FOUND</b>	X	X		X		EU, MS, other interest groups	
<b>EUROJUST</b>	X					EU, MS	EU
<b>EUROPOL</b>	X	X				EU, MS	
<b>FRA</b>	X	X			X	EU, MS, other interest groups	
<b>FRONTEX</b>	X	X				EU, MS	
<b>GSA</b>	X	X				EU, MS, users	Users
<b>OHIM</b>	X	X				EU, MS, users	EU, users
<b>Comments</b>							
- Balance of powers takes stock of votes in the board, nomination of director, budgetary power, background of professional members. Unbalanced interests = needs that should be addressed and which are not allocated significant power							
<b>Sources:</b> Evaluation team's assessment on the basis of agency chapters in Volume III							

The analysis in the table above shows that in a majority of agencies (15), the composition of the management board does not reflect the target groups whose needs the agency addresses:

- None of the EU institutions are represented in two cases;
- Direct users have no voting members in the board although their interests would deserve to be voiced in 4 cases;
- Other stakeholders are represented in the tripartite agencies and in two other cases, although their interests would deserve to be voiced in a majority of agencies.

Among the agencies where discrepancies have been found in the form of "*un-balanced powers*", i.e. target groups under- or overrepresented in the management board are the following examples:

- CEPOL contributes to achieving objectives at EU and Member State levels but, due to its inter-governmental origin, the EU interests are not voiced in a powerful enough way<sup>48</sup>.
- For ECHA, the primary need to be addressed is to help implementing the EU policy. Beyond that, it has to address the contradictory needs of two categories of stakeholders (consumers / workers and industry). These four categories of interests are not balanced in the agency's governance where Member States have a considerable weight in comparison to other stakeholders<sup>49</sup>.
- CPVO contributes to achieving objectives at EU level. It serves the interests of plant breeders, and it cooperates with national agencies in the Member States. These three categories of interests are not balanced in the agency governance which is inter-governmental supplemented with one Commission representative.

In some instances, an imbalance in the forces of some players creates a *self-blocking or counter-productive system*, as in the case of OHIM. The process of setting up OHIM established an uncommon double governance system<sup>50</sup>: an Administrative Board (to advise the President and to prepare lists of candidates for President, Vice-Presidents and members of the Boards of Appeal), and a Budget Committee (to adopt the budget and the financial regulation, grant discharge to the President, determine the cost of search reports and set fees). A conflict of interest issue appears as the Member State representatives in the Budget committee are generally the heads of the national Intellectual Property (IP) office as these could be in competition with OHIM. The conflict of interest was particularly visible in the last few years when OHIM proposed to reduce its fees (lower OHIM fees could render the national TM less attractive). Long negotiations took place, which finally led to an agreement in September 2008 on a 40% fee reduction but also on a €50 m amount to be invested by OHIM in a Cooperation Fund aimed at the national IP offices, and on a share of future trade mark renewal fees. The evaluation team assesses this compromise as far from efficient, and as a direct conse-

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<sup>48</sup> European Institutions have no power except in case of significant changes in the budget, something which has not occurred. Commission, General Secretary of the Council, and EUROPOL are non-voting observers in the board.

<sup>49</sup> Three NGOs sit on the board with an observer status.

<sup>50</sup> Both bodies are composed of one representative of each Member State and one representative (only advisory) of the Commission.

quence of a governance system in which the balance of powers does not reflect that of the needs which have to be addressed. In fact, the agency contributes to achieving objectives at EU level (internal market), it serves the interests of enterprises, and it cooperates with national agencies in the Member States. These three categories of interests are not properly balanced in the agency governance which is almost exclusively inter-governmental<sup>51</sup>.

On the other hand, there are examples of management boards where the *balance of powers has been carefully adjusted to the needs*, contributing to strengthening the links with various stakeholders.

EUROFOUND is an example of a management board which balances the interests according to the needs for stakeholder involvement. When established, the purpose of the foundation was to respond to a need for inter-disciplinary scientific data as a basis for Community action in the field of living and working conditions<sup>52</sup>. The Foundation was also set to challenge the lack of social partnership involvement in common actions at Community level. Hence, the management board gathers the European social partners, Member States and the European Commission. The evaluation team understands that an alternative would have been some kind of expert network involving specialists from national agencies and the academic world. The agency option is however regarded as much more effective in terms of exploring the future information needs of all stakeholders in the EU policy-making process. In this respect, the relevance of EUROFOUND's work owes a lot to its governance system (in addition to its close ties with EU policy-makers through the liaison office in Brussels, and monitoring of the political agenda). However, at the same time, the tri-partite membership makes EUROFOUND's board among the largest of all the agencies, which contributes to significant costs in terms of participation in Management Board meetings. Although this is being counteracted by the existence of a Bureau which reduces the need for meetings of the full management board, it might be relevant to question whether it is really necessary to have representatives of all social partners from each Member State, or whether the need to involve stakeholders could be just as well achieved through smaller numbers, for instance with the three types of stakeholders from each Member State being represented one at a time on a rotating basis (Cf. Vol. III, section 20.2). CEDEFOP and EU-OSHA are in the same situation as EUROFOUND, and a similar reasoning applies.

FRA is governed by a Management Board of 27 independent persons appointed by Member States (plus 2 representatives of the Commission and 1 of the Council of Europe<sup>53</sup>). The Executive Board consists of 5 members and the Council of Europe takes part in these meetings to avoid the two institutions overlapping, which was one of the major concerns from the MS when creating FRA. With a view to overcome some of the difficulties encountered by the EUMC<sup>54</sup>, a Scientific Committee has also been established to enhance credibility and reliability of the agency's work. The evaluation team understands that in the absence of the agency, the pre-existing expert network could have been strengthened. The agency, and its well-thought out governance ar-

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<sup>51</sup> The Commission has one voting board member out of 28, and it has no budgetary power since OHIM is totally funded by fees.

<sup>52</sup> Council Regulation 1365/75 of 26 May 1975

<sup>53</sup> The Council of Europe representative has only limited voting rights, restricted to specific issues such as adoption of annual work programmes and annual reports, and appointment of members of the Scientific Committee.

<sup>54</sup> FRA was built upon the former EUMC, which operated between 1997 and February 2007, working with issues such racism, xenophobia and anti-Semitism in the EU. The EUMC was closed down and replaced by the Fundamental Rights Agency in 2007.

rangements, is however much more likely to produce the kind of public trust which is particularly needed in the politically challenging context where information is produced on disputed issues.

EIGE represents an interesting case where the “standard” model for management board membership has been given an update. The final composition of the Management Board, as agreed by the EU institutions, includes a restricted Board, where 18 Member States are represented together with one representative of the Commission. The membership of the Board will rotate following the rotating Presidency of the Council and the term of the members is three years. Originally, the Commission proposed a Management Board that would be even more restricted, with only six representatives of the Member States, six representatives of the Commission, plus an appropriate NGO, an employers’ organisation and a workers’ organisation, the three latter having an observer status<sup>55</sup>. This proposal was however not approved by the other institutions (presumably because of the unusually strong Commission representation on the board). The expert members of the Board have instead been gathered in an Experts’ Forum to ensure excellence and independence of activities of the institute<sup>56</sup>. Since EIGE is not yet operational, it remains to be seen whether this model turns out to be efficient. (Cf. Volume III, section 12.6).

### ***Large boards are inefficient***

Overall, the evaluation team assesses that the standard committee-like approach is not always necessary, poorly effective, and costly:

- *Not necessary*, for instance in the cases of Malta having a voice in ERA’s board and no railways, Hungary as passive member of the Maritime Safety Agency, just to quote two typical examples;
- *Poorly effective*: Some board members state that they do not attend meetings because their voice has no chance to be heard in such a context;
- *Costly*: The evaluation team’s estimate is that an overall €2,5m cost is generated every year by the attendance of national members in all agency boards in terms of both travel cost and working time (see Table 17).

An indicator has been developed by the evaluation team in order to assess the cost of having representatives of all Member States attending board meetings. The assumptions, calculation, and findings are displayed in the next table.

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<sup>55</sup> Proposal for a regulation of the European Parliament and of the Council establishing a European Institute for Gender Equality. COM (2005) 81 final, 8.3.2005, art. 10.

<sup>56</sup> Regulation 1922/2006, art. 11.

**Table 17 – Cost of management board meetings**

Agency	Number of national members	Travel duration (day)	Travel cost (EUR)	Cost of meetings (K€)	Budget 2008 (K€)	Share of agency budget (%)
CFCA	27	1,13	1766	187	9000	2,08
CEDEFOP	81	0,68	808	348	18000	1,94
ENISA	27	1,10	1693	120	8000	1,50
EU-OSHA	81	0,42	891	217	15000	1,45
CEPOL	27	0,40	665	96	9000	1,07
EIGE	18	0,98	1254	67	7000	0,96
EUROFOUND	81	0,43	630	190	21000	0,90
CPVO	27	0,95	1234	99	13000	0,77
EMCDDA	27	0,72	1067	87	14000	0,62
FRA	27	0,48	818	71	15000	0,48
ETF	27	0,72	1010	85	19000	0,45
ERA	27	0,48	788	70	18000	0,39
EUROJUST	27	0,43	630	63	20000	0,32
CdT	27	0,61	614	103	42500	0,24
EEA	27	0,40	799	68	37000	0,18
EMSA	27	0,72	1067	87	50000	0,17
ECDC	27	0,42	694	65	40000	0,16
FRONTEX	27	0,95	1654	115	70000	0,16
ECHA	27	0,47	1333	89	66000	0,14
EUROPOL	27	0,54	855	74	65000	0,11
EASA	27	0,65	788	75	85000	0,09
EFSA	14	0,63	1343	49	66000	0,07
EMEA	27	0,38	585	60	183000	0,03
OHIM	27	0,48	1095	81	318000	0,03
<b>Total</b>				<b>2571</b>	<b>1208500</b>	<b>0,21</b>

"National" members include Member State representatives, plus social partners in the case of tripartite boards

Travel cost and travel time data collected by the evaluation team for the "location cost" indicator, cf.

Table 25 below

Cost of national representative attendance to board meetings assuming that:

- Attendance rate is 2/3
- There are two meetings a year
- Meeting duration is one day
- Work time of representatives is valued 800 € per day

The average cost amounts to 0,22% of the agencies' budget and can be considered as negligible, but the indicator has an order of magnitude of 1-2% in the case of seven agencies which combine all or part of the following factors: involvement of social partners on a national basis, remoteness, small size.



## **Directors**

Agency directors are typically appointed by the board from a list proposed by the Commission after an open competition. They usually have a five year renewable term.

There are however exceptions to this standard model as some directors are appointed by the Commission (CEDEFOP, EUROFOUND) or by the Council (CPVO, EUROPOL, OHIM). In the case of FRA, the Council and the Parliament state their preferences in the list prepared by the Commission. Before being appointed the director is sometimes required to make a statement to answer questions within the Parliament (ECDC, ECHA, EFSA, EIGE, EMEA, ENISA, FRA). In only two agencies (CEPOL, EUROJUST) the director is appointed without any input from the European Institutions.

The reasons why some agencies depart from the standard model may be easily understandable in the case of CEPOL, EUROJUST, and EUROPOL, which have an inter-governmental character. However, there seem to be no rationale behind the exceptions of CEDEFOP, CPVO, EUROFOUND, FRA, and OHIM. The question has been raised of the consequences from the involvement of the Parliament in the nomination of the agency's director. The same question could be raised about the Council. How far does such practices affect transparency, accountability and/or the discharge procedures? The evaluation team has no evidence base for answering this question. In the FRA case study (see Appendix), it seems that the legitimacy of the agency's works has benefited from its closeness to the Parliament, but this may be explained by the fact that the agency addresses questions raised by the Parliament (similar observation in EUROFOUND), at least as much as by the procedure through which the director was appointed.

In nearly half of the agencies, the director's mandate can be renewed once (CEPOL, CFCA, ECDC, ECHA, EIGE, EMEA, EMSA, ERA, EUROPOL, FRA, FRONTEX, GSA). CEPOL's director has a four year mandate.

Agency directors are 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.

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 quoted<sup>57</sup> where directors were not re-appointed at the end of their mandate because of such problems.

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

## **Rules applying to budgeting and financial management**

### The process for budget allocation to agencies

Most of the agencies are largely financed through the Community budget<sup>58</sup>. The level of the Community contribution to the agency budget (if any) is decided by The budgetary authority, comprised of the Council and the

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<sup>57</sup> Conditional to confidentiality

<sup>58</sup> With the exceptions of agencies partly or fully financed by fees (cf. Table 28)

Parliament. The current overall (2007-2013) multi-annual programming includes an indicative financial programming for agencies which is constant in real terms for cruise speed agencies, growing for new agencies, and changing in case of amended mandate.

Agency budgets are submitted to the Budgetary Authority as part of the Commission's preliminary draft budget. In broad terms, the budgetary process is the following:

- The agency submits its budgetary request to the parent DG
- The parent DG's request is submitted to DG Budget
- The Commission establishes the Preliminary Draft Budget (with individual agencies in appendix)
- The Preliminary Draft Budget is submitted to the Budgetary Authority (Council and Parliament)
  - First reading in Council
  - First reading in Parliament
  - Second reading in Council
  - Compromise between Parliament and Council if necessary
  - Second reading in Parliament, where Parliament has the final say on the level of Community contributions and the agency establishment plans, which contain the authorised numbers and categories of staff for each agency.

According to interviewees in both Commission and Parliament services, when budget cuts happen (which is quite often), these are usually introduced by the Council. Justifications for budget cuts are often found in under-spending by agencies in previous years, and/or because agencies are not seen as sufficiently justifying their budget requests. At that point in the process, the agencies are no longer directly involved (i.e. there is no dialogue on the cuts), and budget cuts are thus largely dissociated from the process of work planning and from performance information (which is admittedly scarce). The evaluation team understands that the relatively frequent occurrence of under-spending entailing budget cuts creates an indirect but powerful incentive for spending.

#### *The roles of the different actors in supervising the performance of EU agencies*

Agencies (directors) are accountable for their performance at two levels:

- Directors are accountable to their management board, and submits (at least) an annual report, including accounts, to the management board
- Directors are accountable to the Parliament and the Council through the annual discharge procedure<sup>59</sup>. 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, and to the extent necessary (3) hearing<sup>60</sup> of the director and director's answer to written questions. The Parliament can either grant discharge immediately (with or without comments), or delay the discharge pending further investigations or actions.

The legality and regularity of procedures is audited by the Court of Auditors, which submits its annual report to the Parliament, as mentioned above. Furthermore, through its assurance work, the Commission's Internal Audit

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<sup>59</sup> Except in the case of CPVO and OHIM which are fully resourced by invoiced services.

<sup>60</sup> Typically four instances a year

Service (IAS) provides an independent evaluation on risk management, control and governance processes and submits its reports directly to the agency (Executive Director and Board) and to the Court of Auditors. The IAS also provides the Agency with an annual report summarising the findings and recommendations issued and the action taken on recommendations resulting from audits. This information has to be communicated by the Agency to the Parliament (Article 72(5) of the Framework Financial Regulation) (cf. section 2.7.2 for more details on the audit procedures).

As regards financial management and performance reporting, this will be discussed later in this report (see 2.6.3 and 2.7). As will be shown, 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)<sup>61</sup>, but the evaluation team's analysis of the main activities of the agencies shows that there remain substantial difficulties in connecting them to human and financial resources. Moreover, almost none of the activities are expressed in 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. Thus, the possibilities for monitoring performance by both the management boards and by the Parliament are very limited.

Two agencies (CPVO and OHIM) are totally funded by their users who are invoiced in the agency's services. These agencies are therefore not involved in the budgetary and discharge processes, but the level of fees results from a decision of the European Institutions through a specialised committee. These agencies are subjected to external audits by the European Court of Auditors, but not to the "internal audits" of the Commission's Internal Audit Service. The financial framework regulation applies to these agencies as well as the staff framework regulation.

#### Financial regulations and implementing rules

In the course of this evaluation, interviews with agencies have repeatedly pointed to the regulations as not being properly adapted to smaller organisations which have fewer resources for administration, thus posing a significant administrative burden on agencies (although the perceived problem seems to be more pronounced for the Staff Regulations, cf. the following section on human resource management). The issue is closely linked to the perceived heavy burden of auditing which we shall deal with later in this report (see 2.7.2).

The agencies are required to set up their own financial regulations which must comply with the general Financial Regulation of the European Institutions, and with the Framework Financial Regulation applying to agencies<sup>62</sup>. Agencies' financial rules "may depart from [the Framework Financial Regulation] only where their specific operating needs so require and with the Commission's prior consent".

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<sup>61</sup> See Vol III, Appendix 1

<sup>62</sup> Article 185 of the Council Regulation No 1605/2002 and Article 99 of the Commission Regulation (EC, Euratom) No 2343/2002

There are basic principles that cannot be changed, e.g. the control of fraud by OLAF, but some flexibility is allowed in the secondary provisions for e.g. procurement. DG Budget provides support (e.g. helpdesk) for interpretation and other assistance in relation to the financial regulations. Interviews mention that the requests from agencies for clarification and other support regarding the financial regulations constitute a significant workload.

According to interviewees in the Commission, agencies often strive to adapt the "model" framework regulation to their own situation, but this often results in complicating their financial management.

Especially newer agencies are said to struggle with the implementation of the framework financial regulations, whereas the older agencies are said to have fewer problems. This would appear to be to a large extent explained by the fact that most administrative staff in agencies do not have a Commission background and are thus not familiar with the intricacies of implementing EU financial regulations. Thus, there seems to be a learning curve for new agencies – and their new administrative staff. There is however little prospect of the agencies being able to recruit administrators with EU background as a general rule.

Interviewees suggest that the problem be addressed by strengthening the Commission's administrative support to agencies during the start-up phase, and by providing clearer and more detailed guidance to agency administrative staff.

### ***Rules applying to human resource management***

#### ***Types of staff employed by agencies***

In general terms, agencies employ three types of personnel: permanent staff (officials / functionaries), temporary staff, and contract agents. The number of permanent and temporary posts in different pay grades are defined in the establishment plan (authorised staff). In addition, the agencies can employ as many contract agents as they see fit, within the limits of their overall budget. Contract agents are not assigned in the establishment plan, and are thus not approved by the Budgetary Authority, even though they are financed from the Community budget whilst employed<sup>63</sup>.

The rules surrounding the employment of temporary agents and contract agents are set down in Conditions of Employment of Other Servants of the European Communities (CEOS)<sup>64</sup>. Regarding temporary agents, the agencies can hire temporary staff for either a fixed or an indefinite period. Pay and allowances of both categories of temporary agent are identical.

Contract agents can be employed for an indefinite period after renewal of an initial fixed-term contract. They are sometimes used to cover short-term needs such as maternity leave, sick leave etc. but are mostly employed in functions of a more permanent nature and in many agencies they constitute a significant part of the total staff.

#### ***Agencies rely mainly on temporary, rather than permanent, staff***

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<sup>63</sup> Agencies: Origin of tasks, local conditions and staffing, European Parliament, Directorate General Internal Policies of the Union, Budgetary Support Unit, 17 October 2007.

<sup>64</sup> Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, OJ L 124 of 27.4.2004

A general feature of the agencies is that, unlike the European Institutions, the large majority of staff have a temporary, rather than permanent status. OHIM is the only agency in which the majority of staff are officials on permanent employment. In all other agencies, the majority of staff are temporary agents. A number of agencies also have a significant number of contract (often local) and seconded staff (mainly from Member States or third countries). According to a Parliament study from 2007, OHIM and EMEA also use significant numbers of trainees, and EMEA uses a substantial number of interims.<sup>65</sup>

The reason for the general reliance on temporary rather than permanent posts is the need for flexibility, in particular with a view to possible closure or other major structural changes.

As mentioned above, OHIM is in a special situation which is not found in any other agency. As the need for human resources grew very rapidly from the beginning, recruitments had to be quick and numerous and attractive conditions were offered, amongst these permanent rather than temporary posts. This has led to a paradoxical situation. Because of significant (and successful) efforts to increase productivity, OHIM now needs less numerous and different staff but lacks flexibility, since 70 to 80% of the staff is permanent officials and the staff turnover is very low. Attempts to solve the issue have led to significant tension with the staff (cf. Volume III, section 26.5).

Several agencies point to staff regulations as a problem in terms of creating sufficiently attractive conditions to recruit the most qualified staff (cf. also below). One of the issues seems to be the reliance on temporary posts and short-term contracts which offer less attractive conditions in terms of career development than permanent posts. Furthermore, the agencies point to too little flexibility in their possibilities for recruitment because they are not free to decide for themselves the composition of their staffing (in terms of number of staff, grades and types of contracts) – this is subject to approval by the Budgetary Authority (it must be defined in their establishment plans). Examples of issues quoted by agencies include CdT, which claims in its Staff Policy Plan that the main reason for its difficulties in attracting sufficient numbers of qualified staff is that it is not, like the other European Institutions based in Luxembourg, able to offer permanent posts (this is, however, gainsaid by the Commission which states that recruitment in Luxembourg is a general problem which is not specific to the agency). Another issue, raised by the 2008 evaluation of EEA, is that the reliance on a high number of seconded national experts, in particular among the technical staff, means that there is a relatively high turn-over in this group (although turn-over in other staff groups is low). Related to this is the issue of the relatively limited training offered to the short-term staff (cf. Volume III, section 10.6).

Given that agencies are not necessarily permanent institutions and that the need may arise for e.g. closure, down-scaling or organisational restructuring which requires different types of personnel, it is clear that there is a need for flexibility in the agencies' staffing which justifies that the majority of staff are employed as temporaries. The example of OHIM illustrates very well the problems that a too large dependence on permanent posts can entail.

#### Staff regulation and human resource management

In 2005, a new personnel policy was adopted with the aim to harmonise and standardise such issues as selection, career development, and staff evaluation. The situation before this reform is qualified by several interviewees as

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<sup>65</sup> Agencies: Origin of tasks, local conditions and staffing, European Parliament, Directorate General Internal Policies of the Union, Budgetary Support Unit, 17 October 2007.

one of "disorder", which challenged the human resource management standards which Community bodies need to match.

According to article 110 of the Staff Regulations<sup>66</sup>, "the agencies shall adopt the appropriate implementing rules for giving effect to the Staff Regulations, after consultation of the relevant Staff Committee and in agreement with the Commission". The purpose of this is to ensure compliance with a minimum common core of principles and rules with a view to provide equal treatment of staff across Community bodies.

The 2005 reform also aimed to create better conditions for the temporary staff (i.e. similar to permanent staff) – for instance in terms of a standardised selection procedure etc. Also introduced was the "Staff Policy Plan" which has now been developed in most agencies. The objective of the staff policy plan is to improve (clarify) the personnel policy and justify the creation of new authorised posts.

In the process of elaboration of templates of implementing rules, the agencies have been involved as part of a working group, together with DG ADMIN. The template for implementing rules is structured in three parts: (1) mandatory rules, (2) rules which can be adapted to a certain extent, and (3) flexibly adaptable rules. Some of the implementing rules (such as for instance the ones related to the recruitment and employment of temporary and contract agents, the selection procedures, the length of contracts, career prospects and opportunities for mobility...) have been tailored according to the agencies' needs.

The agencies' directors may also derogate from the established implementing rules (but not from the Staff Regulation) in the case of individual decisions, provided that this is mentioned and duly justified in a special register which has to be reviewed by the board.

Through its own investigations (i.e. a series of 14 case studies of actual results and impacts – see 2.6.2) 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 flexibly. There are instances where the necessary flexibility was enabled by the existing rules and their usual margins of manoeuvre, but there are opposite cases in which flexibility was constrained by staff and financial rules. Together with several interviews, these analyses suggest that agencies do not use, or do not dare to use, or cannot use the margins of manoeuvre which are available to them.

Overall, there is a widespread dissatisfaction among the agencies. Concerns related to a perceived lack of flexibility and heavy administrative burdens came up repeatedly during the evaluator's visits to the agencies. One commonly stated opinion was that the staff regulations cannot be implemented in a way that matches the needs of the agencies.

This is, for instance, formulated in a paper providing input to the debate on the future of the agencies<sup>67</sup> which says that "the Agencies experience shows also that in spite of the fact that they have been entrusted with management and administrative autonomy, namely for the implementation of the Staff regulations, they have 'de facto' very limited capacity for taking the measures required to ensure that the positions in the agency are always sufficiently at-

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<sup>66</sup> Staff Regulations of officials and the conditions of employment of other servants of the European Communities. Consolidated version  
[http://ec.europa.eu/dgs/personnel\\_administration/statut/tocen100.pdf](http://ec.europa.eu/dgs/personnel_administration/statut/tocen100.pdf)

<sup>67</sup> The experience of the agencies: a contribution to the debate on the future of the agency model, undated paper.

tractive and to recruit and keep highly qualified and specialised staff". The paper proposes adapting the regulatory framework to allow a "proper use" of temporary agents for carrying out the agencies' long-term tasks in order to create stable and appropriate conditions for managing agencies effectively in the mid to long term.

It is the assessment of the evaluator 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. The issue seems rather to be that the agencies, as mentioned above, do not have the sufficient flexibility for managing their human and financial resources efficiently, e.g. number and types of staff, careers, conditions for attracting appropriate internal experts, reallocation of financial resources. The lack of flexibility derives from (1) actual difficulties in using the available freedom, (2) agencies' reluctance to do so in a context where regulatory compliance is emphasized, and (3) lack of capacity on the part of agencies' heads of administration.

Finally, it is not clear to the evaluator why there is a need for the Budgetary Authority to control in detail the composition of the staff or budget, and why there is a need to constrain the application of the framework regulations as long as agencies match sound management standards, fulfil their tasks, and achieve results.

### ***Transparency and access to documents***

Transparency is one of the important elements of good governance. The rules on access to documents are based on Article 255 of the treaty establishing the European Community, implemented through Regulation 1049/2001 of 30 May 2001. The Regulation grants a right of access to European Parliament, Council and Commission documents to any Union citizen and to any natural or legal person residing, or having its registered office, in a Member State. The preamble to Regulation 1049/2001 states that "In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation."

All agencies have applied these principles through their founding regulations or through decisions adopted by the management boards, or (in most cases) both. An overview is shown in the table below.

**Table 18 - Transparency rules**

Agency	Reference to Regulation EC 1049/2001 in founding regulation	Implementing decision
CdT	Amendment to founding regulation (EC No 1645/2003) inserts article 18(a)	Management Board Decision adopted 13 April 2004.
CEDEFOP	Amendment to founding regulation (EC No 1655/2003) inserts article 14(a)	Management Board Decision adopted 12 November 1998.
CEPOL	Founding regulation (Council Decision 2005/681/JHA of 20 September 2005), article 20	Governing Board Decision adopted 10 May 2006.
CFCA	Founding regulation ((EC) No 768/2005 of April 2005), article 32	Administrative Board Decision adopted 27 September 2006
CPVO	Amendment to founding regulation (EC No 1650/2003 of 18 June 2003) inserts article 33(a)	Administrative Board Decision adopted 25 March 2004
EAR	Amendment to founding regulation (EC No 1646/2003 of 18 June 2003) inserts article 13(a)	Implementing rules adopted (no date)
EASA	Founding regulation ((EC) No 1592/2002 of 15 July 2002, article 47	Management Board Decision adopted 3 February 2004
ECDC	Founding regulation (EC) No 851/2004 of 21 April 2004, article 20	Management Board Decision adopted 12 October 2004.
ECHA	Founding regulation ((EC) No 1907/2006 of 18 December 2006), article 118	Management Board Decision adopted 23 April 2008, amended 25 March 2009.
EEA	Not mentioned in founding regulation (EEC) No 1210/90 of 7 May 1990.	Management Board decision adopted 22 June 2004
EFSA	Regulation EC 1049/2001 not mentioned in founding regulation (EC) No 178/2002 of 28 January 2002, although does have references to access to public documents	Management Board decision adopted 16 September 2003.
EIGE	Founding regulation (EC) No 1922/2006, article 7	No decision yet
EMCDDA	Amendment (EC) No 1651/2003 of 18 June 2003) inserts article 6(a)	Management Board decision adopted on 24 February 2006.
EMEA	Founding regulation (EC) No 726/2004 of 31 March 2004, article 73	Management Board Decision adopted on 7 October 2004. New draft transparency policy (June 2009) in public hearing.
EMSA	Founding regulation (EC) No 1406/2002 of 27 June 2002, article 4	Administrative Board decision adopted 25 June 2004.
ENISA	Founding regulation (EC) No 460/2004 of 10 March 2004, article 12	Management Board decision adopted 15 September 2004.
ERA	Founding regulation (EC) No 881/2004 of 29 April 2004, article 37	Administrative Board Decision adopted 28 October 2004
ETF	Not mentioned in founding regulation (EEC) No 1360/90 of 7 May 1990	Governing Board decision adopted 13 April 2004
EU-OSHA	Not mentioned in founding regulation (EC) No 2062/94	Administrative Board decision adopted May 2004
EUROFOUND	Not mentioned in founding regulation (EEC) No 1365/75	Administrative Board decision adopted 26 March 2004
EUROJUST	Council Decision (2002/187/JHA) of 28 February 2002, art. 39: the College shall adopt rules for access to Eurojust documents, taking account of the principles and limits stated in Reg. 1049/2001	College decision adopted 13 July 2004
EUROPOL	Europol convention, art. 32a inserted on 27 November 2003. Council Decision of 6 April 2009, replaces the convention from 2010, art. 45.	Management Board decision adopted 19 April 2007
FRA	Founding regulation (EC) No 168/2007 of 15 February 2007, article 17	Management Board decision adopted 23 October 2007
FRONTEX	Founding regulation (EC) No 2007/2004 of 26 October 2004, art. 28	Management Board decision adopted 21 September 2006
GSA	Founding Regulation (EC) No 1321/2004 of 12 July 2004, art. 19	N/A
OHIM	Not mentioned in Founding regulation (EC) No 40/94 of 20 December 1993	Administrative Board decision adopted 24 November 2003



All agencies publish a substantial amount of documentation on their websites, giving access to management (official) documents as well as outputs in the form of reports, scientific papers, data, etc. There are obviously differences in the volume of publishable information depending on the nature of the agency's tasks. For instance, EUROJUST, dealing with issues of a highly sensitive nature, publishes only official documents (applicable rules and regulations etc.), press releases, annual reports and other documents of general interest, whereas information-type agencies such as EEA or EU-OSHA publish a vast amount of data, reports, guidelines etc. on their websites.

Summing up, agency documents are – within the limits defined by the nature of each agency's activities – generally available and easily accessible to the public. Access to documents is guided by the same principles that apply to the European Institutions. Thus, the assessment of the evaluator is that this aspect is in accordance with the principles of good governance.

*Contribution to answering the question:*

### **Composition of management boards (Cb)**

The "standard" model for agency governance is a "committee-like" board composed of Member State and Commission representative(s). Users and other stakeholders are sometimes represented, exceptionally with voting right. In several instances there are professional members designated by the Parliament. Other forms of governance include the tri-partite boards including three representatives from each Member State (government and social partners), resulting in extremely large management boards. A few boards are mainly composed of professionals and experts. Two agencies have an inter-governmental board with Member State representatives only. One agency (CdT) has a board made up of both users (other agencies and EU institutions) and Member States (MS).

The analysis shows, however, that in a majority of cases, the composition of the boards does not fully reflect the balance of interests which have to be taken into account. In particular, there is a tendency to almost automatically include full representation of all Member States, although this may not be relevant, and often at the expense of representation of the other, relevant stakeholders. In some instances, an imbalance in the forces of some players entails blockages or inefficiencies.

In a few cases, there are departures from the widespread practice of having all Member States represented in the board. These cases may to some extent represent good practice and as a minimum deserve consideration. Overall, the evaluation team assesses that the standard committee-like approach with full representation of all Member States is unnecessary, costly, and ineffective.

An indicator has been developed by the evaluation team in order to assess the cost of having representatives of all Member States attending board meetings. The average calculated cost amounts to 0,22% of the agencies' budget and can thus be considered as overall negligible, but the indicator has an order of magnitude of 1-2% in the case of a number of agencies which combine all or part of the following factors: involvement of social partners on a national basis, remoteness, and small size.

### **Budgeting, management and supervision of performance**

#### **Budget and financial management**

The overall budgetary process for the agencies is part of the budgetary process of the Commission, which submits its draft budget to the Budgetary

Authority (Council and Parliament). Among the decisions of the Budgetary Authority, budget cuts are particularly sensitive ones. This is sometimes due to under-spending in previous years or lack of proper justification for the budget on the part of the agency. Such decisions tend to be disconnected from performance information (which is itself scarce). The evaluation team understands that the current process creates an indirect but powerful incentive for spending.

Agencies must comply with the framework financial regulations. They may adopt their own implementing rules with some room for flexibility (for instance, in the case of procurement). However, interviews in the agencies show that there is a perceived difficulty in implementing the regulations. This is especially the case for newer agencies because their administrative staff tends to have limited experience with implementing EU financial procedures, and the administrative support provided by the Commission in the start-up phase is concluded to be insufficient.

#### Human resources

Agencies employ a majority of temporary and contract agents rather than permanent agents (officials) and are thus in the opposite situation to the other European Institutions. The reason for this is the need for flexibility – a need which is strikingly illustrated by the situation of OHIM which, as the only agency, employs mainly permanent staff and now faces severe problems because productivity has increased and there is a need for downsizing and a different composition of staff which cannot be fully implemented due of the large number of permanent employees. On the other hand, some agencies point to recruitment problems because they are not able to offer permanent posts.

#### Administrative burdens

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

It is the assessment of the evaluator 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. The issue seems rather to be that the agencies, as mentioned above, have not the sufficient flexibility for managing their human and financial resources efficiently, e.g. number and types of staff, careers, conditions for attracting appropriate internal experts, reallocation of financial resources. It is not clear to the evaluator why there is a need for the Budgetary Authority to control in detail the composition of the staff or budget, and 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.

#### ***Transparency and access to documents***

All agencies have adopted the rules and principles related to transparency and access that apply to the European Institutions. Agency documents are generally available and easily accessible to the public, and many agencies publish a vast amount of information. Thus, the assessment of the evaluator is that this aspect is in accordance with the principles of good governance.

### 2.3.3 Governance: an overview

#### ***The process of setting up new agencies***

The overall question to be answered in this section is to what extent the process of creating, setting up and supervising EU agencies is in accordance with the principles of good governance.

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. This important issue was simply not addressed in the previous waves of agency creation.

The main remaining concern is 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 two years after that of creating the agency and this has over time 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 concluded by the evaluation team to be inefficient, particularly in the cases of CPVO, CFCA, EMCDDA, ENISA, and OHIM.

Concerning the practical setting up of new agencies, little learning seems to take place and the practice seems, with one notable exception (ECHA) not to be managed very efficiently. There is a need for further and more effective support in the process, for instance through establishing dedicated tasks forces to prepare the set-up and provide administrative assistance throughout the set-up process.

A connected issue is the fact that established agencies are almost never re-considered, except some agencies which have been established for a limited duration, and periodic overall agency evaluations do not in practice provide the opportunity of reconsidering the agencies since they are not managed in a way which could result in reform or closure of an agency.

Many of the problems identified in this report were already addressed in the Commission's *proposal for an Inter-Institutional Agreement* (in 2005). In many respects, this proposal is regarded by the evaluation team as being in accordance with the principles of good governance. The proposal had however not fully addressed the above quoted issue of transparent and efficient location conditions.

#### ***Supervision mechanisms and other institutional arrangements***

##### ***Management boards<sup>68</sup>***

In a majority of cases, the composition of the management boards does not fully balance the interests which need to be taken into account. In particular, there is a tendency to almost automatically include full representation of all Member States, although this may not in fact be relevant, and often at the expense of the representation of other, relevant stakeholders. In some instances, an imbalance in the forces of some players entails blockages or inefficiencies.

In a few cases, there are departures from the widespread practice of having all Member States represented in the board. These cases may to some extent

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<sup>68</sup> Conclusions of the section 2.3.2

be considered as pilots for future reforms and as a minimum deserve consideration. Overall, the evaluation team concluded that the standard committee-like approach is unnecessary, costly, and not effective.

*Budget, financial management and human resources management*

The overall budgetary process for the agencies is part of the budgetary process of the Commission, which submits its draft budget to the Budgetary Authority (Council and Parliament). Among the decisions of the Budgetary Authority, budget cuts are particularly sensitive ones. They are sometimes due to under-spending in previous years or lack of proper justification for the budget on the part of the agency. Such decisions tend to be disconnected from performance information (which in itself is scarce). The evaluation team understands that the current process creates an indirect but powerful incentive for spending.

Agencies employ a majority of temporary and contract agents rather than permanent agents (officials) and are thus in the opposite situation to the other European Institutions.

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

It is the assessment of the evaluator 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. The issue seems rather to be that the agencies, as mentioned above, have not the sufficient flexibility for managing their human and financial resources efficiently, e.g. number and types of staff, careers, conditions for attracting appropriate internal experts, reallocation of financial resources. The lack of flexibility derives from (1) actual difficulties in using the available freedom, (2) agencies' reluctance to do so in a context where regulatory compliance is emphasized, and (3) lack of capacity on the part of agencies' heads of administration.

Finally, it is not clear to the evaluator why there is a need for the Budgetary Authority to control in detail the composition of the staff or budget, and 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.

## 2.4 Coherence

### **Overall question and sub-questions:**

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

**Da:** To what extent are the agency activities coherent with the objectives set out in their mandates/constituent acts?

**Db:** To what extent are the agency's tasks complementary and coherent with that of other neighbouring agencies?

**Dc:** To what extent are the agencies' activities complementary and coherent with that of the nearest EU policies, and other policies?

**Dd:** To what extent are the agency's main tasks complementary and coherent with that of other key operators?

**De:** To what extent have the agencies' objectives been continuously aligned with relevant EU strategic priorities?

**Df:** To what extent are the agencies' communication strategies coherent with the EU overall communication approach in relevant policy areas?

### **2.4.1 Activities vs mandate**

The mandates of the agencies are set out in their founding regulations. For the large majority of agencies, both interviews and documents point to the activities being well in line with the agencies' mandates. This is supported by the survey among management board members, where around 90% of Management board members agreed or strongly agreed that their agencies' activities were coherent with their constituent acts, with little variation between different types of agencies<sup>69</sup>.

In some cases, the mandate is reflected directly in the organisational structure of the agency which helps keeping the activities in line with the original mandate. Examples of this include:

- EFSA: the main divisions and related activities reflect its mandate: the risk assessment directorate leading on risk; Scientific Cooperation and assistance directorate, collecting and analysing existing evidence in support of the risk assessment directorate; the communication directorate conveying the results of EFSA scientific opinions and risk assessments.
- ECDC: the mandate is clear as regards the main tasks: identify, assess, and communicate. This was the starting point for developing functions and activities. Thus, the internal organisation of the agency was developed directly along the mandate in order to ensure coherence.

Often, the founding regulation is quite detailed in prescribing the activities of the agency. However, some flexibility of the mandate (i.e. a certain "looseness" in the formulation) can enable the agency to keep up with developments in its field while still adhering to the mandate. For EMSA, stakeholders and agency staff state that the agency's activities are fully aligned with its mandate, not least because the founding regulation was

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<sup>69</sup> Respondents were asked to respond to the following statement: 'The activities of the agency are consistent with its constituent act'.

drafted very carefully and opens up for including tasks that emerge along the way. The broad mandate also has to do with the fact that the agency often has to respond to accidents and revise its focus accordingly.

Stakeholders and agency staff also point to situations where the mandate is slightly 'off' in relation to the real needs or requirements the agency are set up to address:

- FRONTEX: Even though the sea area takes most of the resources, it is not designated in the founding regulation as the main area. It is however more expensive to secure sea borders than it is to secure land borders, because many migrants are entering the EU from international territory via the sea without documents which require substantial resources to investigate. Thus, the agency has to struggle to balance the budget assigned to these two areas. Moreover, the agency's lack of 'initiative' within its current mandate means that border issues it discovers through its risk analysis system cannot be addressed quickly enough through direct intervention by Frontex since it is down to the Member States to act and by which time the window of opportunity may be lost.
- For EIGE, the budget available and the common understanding reached with the Commission differ somewhat from the Constituent Act. Whereas it could be derived (from the Constituent Act) that information dissemination and awareness-raising are the main tasks of the agency, the discussions and finances available direct the main task of the Institute towards the provision and development of methods and methodologies, as well as support to the Community institutions in implementing gender equality and gender mainstreaming in their work.

These examples of activities (based on the actual needs and requirements of users) not being entirely coherent with the mandate are especially poignant since both FRONTEX and EIGE are among the newer agencies (FRONTEX from 2005 and EIGE still in the process of being set up). This could point to unresolved problems in the establishment process.

There are also instances of changing policy environments and activities resulting in a change of mandate in order to align the two. A good example of this is Europol's transition from an Inter-Governmental Agency to an EU Agency. In line with its activities becoming more focussed on responding to European level needs – in line with Commission and Council policy – it became apparent that it needed a European mandate in order to perform these. The expectation is that Europol as a result of the alignment between activities and mandate will be able to add considerable European Added Value.

*Contribution to answering the question:*

***Coherence of agency activities with the objectives set out in their mandates/constituent acts (Da)***

The activities of the majority of agencies are coherent with their mandate. In some agencies, this is reflected directly in their organisation, which takes the tasks prescribed in the mandate as the basis for the organisational structure.

In some instances, a relatively flexible mandate enables the agency to keep up with developments within its area.

There are a couple of examples of mandates not in line with the actual needs, leading to budget allocations and activities which are not quite coherent with the mandate. Surprisingly, the examples of this are found among the newest agencies.

## 2.4.2 Coherence between agencies

With many agencies working in related areas there are naturally a significant number of interfaces between agencies that may be complementary or overlapping, coherent (even synergetic) or counterproductive. On average, each agency has 2-3 linkages with other agencies, although some seem to have none (e.g. OHIM, ENISA) while others have 5-6 or more (e.g. EMCDDA, EEA). These linkages are especially prolific for agencies working mainly with information and data collection tasks but are also present in other types of agencies, cf. table below.

**Table 19 - Overview of related policies, DGs, and other agencies**

Agency	Main related EU policy	Parent DG	Other related EU policies	Other related DGs and services	Other related agencies
<b>CdT</b>	Multilingualism	DGT	None	None	All EU agencies, including executive agencies
<b>CEDEFOP</b>	VET and life-long learning	EAC	Social and employment policy	EMPL, ENTR, ENLARG, TAXUD, EAC, COMM, ES-TAT	Cooperation with EUROFOUND in industrial relations in VET; MoU with ETF on coordination
<b>CEPOL</b>	Justice, freedom, security	JLS	None	None	Strategic cooperation agreement with EUROFOUND, contacts with EUROJUST, FRONTEX
<b>CFCA</b>	Common Fishery Policy	MARE	None	RTD, TRADE, TAXUD	FRONTEX, EMSA
<b>CPVO</b>	Internal market	SANCO	Agriculture	DG ADMIN, AGRI, OPOCE	MoU with OHIM on functioning and organisation
<b>EAR</b>	Enlargement	ELARG	Wide range of policies	AIDCO, JLS, AGRI	CEDEFOP
<b>EASA</b>	Transport and energy	TREN	Environment	ENVI	ERA, EU-OSHA, GSA
<b>ECDC</b>	Health and consumer protection	SANCO	Research, Environment	RTD, SANCO, ELARG	MoU with EFSA, EEA, EMCDDA, EMEA
<b>ECHA</b>	Internal market	ENTR	REACH and CLP Regulations chemicals		MoUs in discussion with EFSA and EU-OSHA; EMEA; ECDC
<b>EEA</b>	Environment	ENV	Agriculture, transport, energy, regional planning, maritime, health, sustainable development, green taxation (etc.)	TREN, AGRI, ENTR, SANCO, REGIO, MARE, TAXUD, JRC,	ECDC, ECHA, EFSA, EMSA, CFCA, ENISA
<b>EFSA</b>	Health and consumer protection	SANCO	consumer protection, internal market, environment	ENVI, RTD, ENTR, JRC, AGRI	EMEA, ECDC, ECHA
<b>EIGE</b>	Equality between women and men	EMPL	Non-discrimination and equal opportunities for all; Health and consumer protection	None	Potential : EU-OSHA, FRA, EUROFOUND, CEDEFOP

<b>Agency</b>	<b>Main related EU policy</b>	<b>Parent DG</b>	<b>Other related EU policies</b>	<b>Other related DGs and services</b>	<b>Other related agencies</b>
<b>EMCDDA</b>	Justice, freedom, security	JLS	Health and consumer protection relating to drugs	SANCO, RTD	EUROPOL, EMEA, ECDC, Eurostat, FRA (Planned)
<b>EMEA</b>	Internal market	ENTR	Health and consumer protection	SANCO	EFSA, ECDC, ECHA
<b>EMSA</b>	Maritime Transport Safety	TREN	Environment, security	ENV, ENTR, ELARG	Cooperation agreement with CFCA, FRONTEX. Other related agencies EEA, EU-OSHA
<b>ENISA</b>	Innovation and SMEs	INFSO	Research, ICT	None	None
<b>ERA</b>	Transport and energy	TREN	Research	DG Research, ESTAT	EASA, EU-OSHA
<b>ETF</b>	External policy	EAC	Education and training, Employment	ELARG, RELEX, EMPL, AIDCO, ENTR, ECFIN, JLS	CEDEFOP, to a lesser extent EUROFOUND, EU-OSHA
<b>EU-OSHA</b>	Social policy and employment	EMPL	Health and consumer protection, environment, industry and maritime regulation.	SANCO, EUROSTAT, ENTR, RTD	EUROFOUND, EMSA, ERA, EASA
<b>EUROFOUND</b>	Working conditions, social dialogue, labour market trends, quality of life, social inclusion	EMPL	Health and consumer protection, Social sciences research, Enterprises, migration policies	Eurobarometer, ESTAT	EU-OSHA, CEDEFOP, ETF
<b>EUROJUST</b>	Justice, freedom, security	JLS	-	OLAF	FRONTEX, common framework with EUROPOL
<b>EUROPOL</b>	Justice, freedom, security	JLS	Prevention of serious forms of international crime and terrorism	INFSO	EUROJUST, CEPOL, FRONTEX
<b>FRA</b>	Justice, freedom, security	JLS	Social and employment policy, educational policy, gender equality	EMPL, ELARG, STAT	MoU underway with FRONTEX and EUROFOUND, EIGE
<b>FRONTEX</b>	Justice, freedom, security - Integrated Border Management	JLS	International cooperation	RELEX, OLAF	EUROPOL, agreement with CEPOL on exchange of experience, CFCA, EMSA
<b>GSA</b>	European Space Policy	TREN	European Transport Policy, Framework Programmes for Research and Technical Development (FPs),	RTD, ENTR, AGRI, MARE, JLS, RELEX	EASA, CFCA, EMSA
<b>OHIM</b>	Internal market	MARKT	Unification Geographical Indications (Regulation 1992)	TRADE, MARKT	CdT

Source: Agency documents and interviews. Cf. agency chapters in Volume III.



*Complementarity* is to a large degree decided by the mandates of the agencies, but where there are potential (and real) overlaps, an active effort is required on the part of the involved agencies.

*Coherence*, or even the creation of synergy effects, requires an even greater degree of co-operation.

Examples of policy areas where there are potential complementarity and coherence issues include:

- Diseases – EFSA and ECDC. The dividing line is between animal health (EFSA) and human health (ECDC), but in particular on the issue of zoonoses<sup>70</sup> there is a risk of overlapping
- Employment/working life – CEDEFOP, ETF, EUROFOUND
- Drugs – EMCDDA with EMEA (new drugs), EUROPOL (cross-border crime), ECDC (diseases resulting from drug abuse)
- Environment – EEA with ECHA, EFSA (on GMOs), EMSA (on the use of oilspill data), CFCA
- Security/crime/asylum issues: FRONTEX, EUROPOL, CEPOL, also FRA and EMSA.

As can be seen from the examples mentioned, complementarity and coherence issues are found both within the same overall policy area (same parent DG – e.g. ECDC and EFSA), but to a very large degree also across policy areas and parent DGs.

Ensuring coherence and complementarity with other agencies is a challenge which is for the most part well-managed. It is addressed by implementing co-ordination mechanisms such as exchange of draft work programmes, agreements on distribution of responsibilities, common projects etc., increasingly under a Memorandum of Understanding (MoU). Although co-operation may sometimes be a formal requirement contained in the founding regulation (such as a requirement for ETF to work with CEDEFOP), it is more commonly a matter of goodwill, and the existence of a formal agreement (MoU) does not necessarily ensure real co-operation in practice. Coherence is also a challenge because multiple coordination mechanisms tend to be resource consuming, and because potential synergies are both large and not fully realised. In some cases, co-operation between agencies seems relatively fruitful (common projects and clear agreements on distribution of responsibilities, as between EFSA and ECDC), while in others there are barriers. For instance, a staff member at FRONTEX said: "From a legal point of view there are no overlaps with the other agencies. We work in the same environment but with different tasks. We should find all synergies that are possible in this environment, this is the challenge. I do not have the feeling that the agencies are doing exactly that."

Co-operation difficulties seem to be most common between the JLS agencies of the "Member State co-operation" type (especially between EUROPOL and other agencies), where issues of security and data protection/data sharing sometimes stand in the way of optimal co-operation. There are also overlaps which have not been resolved - a EUROPOL stakeholder said: "Different agencies have grown historically but the need for several agencies which are working with intelligence data is not fully understandable (Eurojust, Europol, Frontex). If they cannot merge, their activities might complement each other."

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<sup>70</sup> Infectious animal diseases that can be transferred to humans – e.g. SARS

Putting them under one roof might bring more added value, less expenses and less confusion - a "One stop shop".

*Contribution to answering the question:*

**Complementarity and coherence of the agency's tasks with those of other neighbouring agencies (Db)**

There is a large number of interfaces and linkages between the agencies working within neighbouring areas – most agencies have several connections to other agencies, sometimes on a very wide range of issues, while a few (usually in "isolated" areas) have none.

Co-operation is increasingly being formalised through Memoranda of Understanding between agencies, but the degree to which such MoUs entail significant co-operation in practice varies, and there are still potential synergy effects to be realised in several areas. Nevertheless, the existence of a large number of MoUs provides evidence that an effort is made on the part of agencies towards eliminating overlaps and ensuring coherence.

**2.4.3 Coherence with EU policies**

For the large majority of agencies, there is a high degree of coherence and complementarity between the activities of the agencies and EU policies.

Coherence and complementarity with EU policies is in the first instance – at least in principle – ensured through the founding regulations of the agencies which describe their overall objectives and tasks. Since most agencies are set up to implement or support EU policies, their founding regulations usually reflect this.

Once an agency is established, the main instrument for ensuring continuous coherence and complementarity is the Work Programme (annual and/or multiannual) which is generally submitted to a process of consultation with, at least, the parent DG and usually also other DGs with stakes in the activities of the agency. In addition, many agencies maintain a continuous dialogue with their parent DG and sometimes other relevant DGs (for an overview of relevant policies and DGs, cf. Table 19 above).

In the box below is described the example of ECDC which illustrates a number of different ways in which the agency endeavours to align its activities with the relevant EU policies.

**Box 1 - Co-ordination with EU policies - ECDC**

In order to ensure complementarity, and despite a lack of clear (formal) procedures, ECDC works closely with DG SANCO:

- Work Programmes are developed in close cooperation with the Commission, and priorities are also discussed at the annual technical coordination meetings
- There are regular contacts between ECDC and the Commission (weekly video conference meeting with all Heads of Units in DG SANCO)
- ECDC tries to be responsive and support the EC's initiatives (Childhood vaccination, Tuberculosis, Cancer Vaccine, Seasons Vaccines etc.)

In terms of priorities, ECDC defines its priorities together with the advisory forum, but the EU institutions can interfere. For instance, zoonosis is a priority defined by a Directive of the Council and the Parliament. On the other hand, ECDC's Director participates in the steering committee for communicable diseases and so has a role in defining policy priorities.

In the beginning, coherence was more difficult to achieve. For instance it was common that DG SANCO and DG RTD launched calls for proposals without ECDC being informed. Now ECDC is consulted and is invited to participate in the call evaluations. The ECDC Director takes part in the meetings of the DG Research Advisory Board.

ECDC has less direct contacts with other DGs but would like to establish better complementarity with DG RTD's funding schemes in order to better focus research projects on needs identified by ECDC.

(Source: Interviews with agency staff)

Some more examples illustrate how coherence is achieved:

- EU-OSHA has aligned its work programme on the objectives of the corresponding EU policy. The fact that this policy is described in a clear strategy document has facilitated the process considerably (interview);
- EEA's strategy has been designed specifically to be coherent with European policies. Its strategy and activities are currently structured in accordance with the EU's 6<sup>th</sup> Environmental Action Plan 2002-2012 (EAP). DG Environment's input to EEA's strategy and programme is substantial. Although DG Environment is the main "client", the agency also co-operates with other DGs and receives funding for specific issues, one example being DG TREN on transport policies. Other DGs with which the agency cooperates include DG Agriculture, DG Transport and Energy, DG Enterprise and DG Regional Policy (cf. Volume III, section 10.4)
- EMCDDA's approach to defining priorities has been closely aligned with wider EU policy aims. During the earlier part of the period under review, its Work Programme and organisation were structured around the priorities set out in the 2000-04 Action Plan on Drugs. More recently, the emphasis has switched to a more integrated approach to drugs issues with stronger horizontal functions which reflects the EU's Drugs Strategy for 2005-2012. This involves focussing on promoting an integrated, multidisciplinary and balanced approach to the drugs problem by combining and concentrating on the two policy fields of demand and supply reduction (EMCDA Evaluation 2007).
- For EFSA, coherence with EU policy and objectives is achieved through the alignment of the agency's annual and multiannual work programmes with those of the Commission; 95% of EFSA work comes from the Commission (cf. Volume III, section 11.4).
- ERA's work programme is decided in consultation with the Commission which provides little room for incoherence with the Common Transport Policy. The agency also works under various mandates delivered, from time to time, by the Commission (cf. Volume III, sections 17.3 and 17.4).

As the examples of EMCDDA and EEA show, their activities are aligned with Community Action Plans within their field, but the coherence in this case is actually a two-way process, since both agencies also supported the formulation of these action plans through providing information and technical expertise. The 2008 Meta-study found a similar situation for CEDEFOP, which also played

an active role in the process that led to the improvement of EU policy objectives<sup>71</sup>. This is not surprising, as all three agencies provide “upstream” input (information, expertise) to the policy-making process.

However, as pointed out in the 2008 Meta-study: “Real and timely coherence may however be a problem in the instances where an agency is meant to feed the policy-making process. In such a case the agency explores future policy issues, and disseminates information that shape the making of EU policies. In doing so, the agency cannot be entirely coherent with the objectives of a policy that it is expected to affect”<sup>72</sup>. In other words, the work of this type of agency may in some cases be ahead of the policy development and thus not in a formal sense entirely coherent (but perhaps complementary to the work of the Commission). However, this should not be seen as negative since it is part of the reason why these agencies were created in the first place. A typical example is that of EUROFOUND which carries out “anticipatory” work on issues that are relevant for the future of the EU political agenda such as telework (EUROFOUND/ External Evaluation 2001, p.49). Throughout the policy-making process, stakeholders may use or misuse the information released by agencies which are sometimes in a grey area between providing information and taking political stands. In a now outdated example, an agency was found to be “trying to push the boundaries of what it considered to be its role ... by making explicit policy recommendations” (CEDEFOP/ Evaluation 2001, pp. 19, 23). A focus group organised in the framework of the meta-study in 2008 confirmed that there is still a risk of overlap during the sensitive process of raising new issues on the political agenda, and that such a risk can only be managed through a close and trustful dialogue. Recent evaluation reports (CEDEFOP, EUROFOUND) show that the necessary coordination mechanisms have been put in place and are effective.

In the cases where the agency’s role is to implement an EU policy, coherence is almost tautological, as also pointed out in the 2008 Meta-study. This applies for instance to CPVO (promoting the Community Plant Variety Right), and ECHA (implementing the REACH policy).

Thus, generally, there is a high degree of coherence and complementarity between the activities of the agencies and EU policies. There are few exceptions to this, but the following deserves to be mentioned:

For EMSA, the 2008 Meta-study found that coherence with EU policy was good in the sense that the agency focuses on enforcing safety legislation and combating pollution. However, coherence was found to be less clear when it comes to the agency’s support function in the adoption of new legislation. The 2008 EMSA evaluation pointed out that there was some concern among Member States that EMSA overstepped its role (as a technical body) by taking up issues of a policy-oriented nature. This illustrates well the difficult position that some agencies (EEA is another example) may find themselves in: there is a fine line between providing information and expertise and taking on a more policy-oriented role. This can be exacerbated when the agency is or can be seen as creating EU policy in relation to external, third parties.

Finally, whereas the connection with the parent DG often comes naturally, several agencies express concern that it is more difficult to maintain a close working relationship (including division of work) with other DGs. The 2003 evaluation of the EEA pointed to overlaps and a difficult working relationship with EUROSTAT. This problem was, however, subsequently addressed through the creation of the so-called “Group of Four” (DG ENVI, EUROSTAT, JRC and

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<sup>71</sup> Meta-study, p. 36.

<sup>72</sup> 2008 Meta-study, p. 36.

EEA) which now co-ordinates activities to create synergies and avoid duplication of effort. This has meant some redistribution of tasks and currently seems to be working well. For EUROJUST, there is some competition and overlap with OLAF even though the two organisations in principle have a very different set of tasks. For instance, there seems to be a lack of clarity and common understanding around whether OLAF's investigations should or should not go through EUROJUST. The same could be applied, in varying degrees to other agencies carrying out co-operation tasks where their activities compare to those of OLAF.

In the case of Europol, one of the drivers for changing its status from an inter-governmental to an EU agency is to allow it to more quickly and effectively align its activities in response to EU policies in the Justice, Security and Home Affairs domain.

*Contribution to answering the question:*

***Complementarity and coherence of the agencies' activities with that of the nearest EU policies and other policies***

Complementarity and coherence with EU policies is generally established in the first instance through the founding regulations of the agencies and on a more continuous basis through the agencies' Work Programmes which are usually subjected to extensive consultation with parent DGs and often also other relevant DGs. Thus, at least on a formal level, complementarity and coherence is generally good.

Some agencies – mainly those providing “upstream” input into the policy-making process – find themselves in a double role, both helping to shape the policy and subsequently aligning their activities to the policy once it is established. To some extent, these agencies may thus work ahead of the policies, which means that strictly and formally speaking, all their activities may not be strictly coherent with existing policies. However, this double role is not necessarily negative.

In other cases, coherence is almost tautological, with agencies directly implementing EU policies, such as in the cases of plant varieties (CPVO) and the REACH directive (ECHA).

Finally, there are some instances where the coherence with other policies (working relationship with other DGs and Commission entities) does not run as smoothly.

#### **2.4.4 Coherence with other key operators**

Many agencies maintain relations with international and Member State organisations, often in much the same way as they co-operate with other agencies within their respective fields. Many have signed multiple MoUs with key international organisations, and contacts are maintained through meetings, and sometimes concrete co-operation at the operational level. An overview of linkages between agencies and other key operators is shown in the table below.

**Table 20 – Relations with other key operators**

Agency	Other related bodies
<b>CdT</b>	EU Institutions/ non agency bodies: EP, Council of ministers, Court of Justice, Court of Auditors, Ombudsman, Committee of the Regions, ECB, EIB
<b>CEDEFOP</b>	CRELL, Eurostat, OECD, ILO, ETUC, Business Europe and UEAP, formal committees of EC or Council
<b>CEPOL</b>	EU Task Force of Chiefs of Police, Interpol, OSCE, UNODC, CIA, FBI, ILEA
<b>CFCA</b>	FAO, international fisheries organisation, Regional Advisory Council
<b>CPVO</b>	UPOV ; national examination offices; the European Breeders' Associations ESA and CIO-PORA
<b>EAR</b>	UNDP, UNMIK, OSCE, WHO, IFI, EBR, Third countries donors, World Bank
<b>EASA</b>	None
<b>ECDC</b>	WHO; MoU with agencies in US, Canada and China
<b>ECHA</b>	OECD; the United Nations Economic Commission for Europe, the UN Economic Social Council; Stockholm Convention on Persistent Organic Pollutants
<b>EEA</b>	Eurostat, OECD, UNEP
<b>EFSA</b>	US FDA, WHO, FAO, National agencies
<b>EIGE</b>	None
<b>EMCDDA</b>	Pompidou Group, UNODC, UNAIDS, WHO, CICAD
<b>EMEA</b>	US Food and Drug administration, Canadian, Japanese regulatory authorities.
<b>EMSA</b>	Members States (ministries, agencies), Port authorities, MoU with ESA on exchange of information and expertise and JRC for operational support.
<b>ENISA</b>	OECD, International Telecommunication Union (ITU)
<b>ERA</b>	National railway agencies
<b>ETF</b>	GTZ, Agence française de développement, The Asian development Bank, World Bank, OECD, Italian ministry of foreign affairs
<b>EU-OSHA</b>	ILO, WHO
<b>EUROFOUND</b>	EESC, ILO, OECD
<b>EUROJUST</b>	European Judicial Network (EJN)
<b>EUROPOL</b>	OLAF, Interpol, WCO, UNODC, other third countries (e.g Russia)
<b>FRA</b>	Office of the high commissioner for Human Right, IOM, UNHCR, UNESCO, MoU with Council of Europe, ECRI, OSCE
<b>FRONTEX</b>	JRC, General Secretariat of the Council,
<b>GSA</b>	2 cooperation agreements with the European space agency on GALILEAO and EGNOS
<b>OHIM</b>	WIPO, International IP offices

Source: Data collected by the evaluation team from the agencies

Examples of the multiple relationships that agencies have with other key operators at international and Member State level include for instance:

- CEDEFOP: The agency's main tasks are complementary with that of other key operators such as OECD (work on adult competence assessment), EUROSTAT, CRELL (Centre for Research on Lifelong Learning based on indicators and benchmarks), similar agencies in Member States (cooperation through the ReferNet), Business Europe and UEAPME (employers' organisation and SME European union), formal committees of the EC or of the Council, etc. (Cf. Volume III, section 2.4).
- CEPOL is in contact with the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations Office on Drugs and Crime (UNODC) but no joint activities have been undertaken so

far. A first cooperation has been initiated with Russia. Working relations with the US and Canada are about to be discussed at a conference in Europe in 2009 and in the US in 2010 (cf. Volume III, section 3.4).

- ECDC: The World Health Organisation (WHO) is one of the most important counterparts for ECDC. The two organisations are rooted in different backgrounds but carry out similar activities. The ECDC founding regulation explicitly requires the Agency to coordinate with WHO. In order to ease cooperation, a MoU was signed in 2005 and WHO maintains a liaison officer at ECDC. In order to avoid duplication of work, ECDC and WHO are harmonizing reporting requests and coordinating networks of contact points in the Member States. ECDC also has MoUs with agencies in 3<sup>rd</sup> countries such as the US, Canada and China (cf. Volume III, section 8.4).
- OHIM: The agency takes part in a wide range of cooperation activities with the national trademarks and design offices of EU member states. An important underlying thread for many of these activities is the desire to harmonize practice in order to make things easier for users. However, the relationship between OHIM and the national organisations has at times been strained since the national organisations tend to regard OHIM as a competitor (cf. section 2.3.2 regarding the relationship with national trademark authorities on the management board). OHIM also co-operates with international intellectual property (IP) offices (WIPO, IPO, US, Japan, China, etc.). International collaboration is inevitable because of the structure of the trademark system. There is a need for access to all the databases – in order to give a trademark a name for instance, it must be verified that the name is unique on an international level.

There are examples of relationships with international institutions being under strain. FRA is a case in point. Several of the interviewed stakeholders reported that the Council of Europe was reticent towards FRA's creation because of potential overlaps and competition. According to stakeholders, there was a *potential* overlap, but none in practice, as the Council of Europe focuses on individual Member States and FRA deals with EU issues (different mandates, different angles). The Commission was surprised by this reticence with respect to FRA, especially since the Council of Europe used to co-operate with FRA's predecessor, EUMC. The relationship seems now to be improving - there is cooperation, sharing of data, etc. The Council of Europe takes part in FRA's Executive Board meetings<sup>73</sup> and an MoU has been signed. FRA also cooperates on various issues with OSCE, UN's High commissioner for Human Rights, UNHCR, UNESCO, and IOM.

It is not possible on the basis of the data available to determine whether the many contacts between agencies and other key institutions lead to actual coherence and complementarity between their activities. Given the differences between the agencies' tasks and remits and those of other key institutions, full coherence and complementarity is probably not possible. However, it can be established that at least formally, there is a basis for assuming that some alignment takes place through these exchanges.

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<sup>73</sup> The participation is limited to preparation of issues on which Council of Europe has voting rights (work programme, annual report and Scientific Committee).

*Contribution to answering the question:*

***Complementarity and coherence of the agency's main tasks with that of other key operators (Dd)***

Most agencies maintain multiple relations with other key operators, especially UN and other international organisations, sister agencies in third countries, and Member State agencies. As in the case of relationships between agencies, co-operation with other key institutions take place at different levels, often within the framework of a MoU. In some cases, there is co-operation at the operational level through joint action programmes and projects. While the extent to which there is actual coherence and complementarity between the tasks of the agencies and their international and Member 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 overlaps.

#### **2.4.5 Alignment with EU strategic objectives**

The degree to which the agencies' objectives have been continuously aligned with relevant EU strategic priorities has already been extensively covered above, in the section on coherence with EU policies. As already mentioned, the agencies' operational objectives are usually formulated in annual and/or multi-annual work programmes, which are prepared in close consultation with the Commission – both parent DGs and to some extent other DGs. Many agencies report that the Commission has a strong influence on the contents of the Work Programmes.

This is supported by the survey with Management Board members among which 87% overall agreed or strongly agreed that the agencies' activities align with the strategic priorities of the European Union.

*Contribution to answering the question:*

***Alignment of the agencies' objectives with relevant EU strategic priorities (De)***

Continuous alignment with EU strategic priorities generally takes place through the preparation of the agencies' work programmes on which the Commission, especially parent DGs, often exert a strong influence.

#### **2.4.6 Coherence on communication strategies**

The overall communication strategy of the European Commission is contained in a number of plans and documents developed over several years (2005-2008). They comprise: *The Communication Action Plan*<sup>74</sup>, which is internally oriented, introducing concrete measures to be taken within the Commission; *Plan D – Democracy, Dialogue and Debate*<sup>75</sup>, designed after the referendums

<sup>74</sup> SEC(2005) 985

<sup>75</sup> COM(2005) 494



on the EU treaty to spark debate and dialogue between EU citizens and decision-makers; the *White Paper on European Communication*<sup>76</sup>, which followed on from the Action Plan and Plan D, introducing a new approach to communication between the EU and its citizens; and finally, the 2007 document *Communicating Europe in Partnership*<sup>77</sup>, which further developed some of the ideas presented in the White Paper.

The main elements of the Commission's communication strategy are:

- *Dialogue*: moving away from one-way information streams, allowing citizens to be heard and influence debates and decision-making.
- *Citizen-centred communication*: moving away from institution-centred communication to provide more information to and communication with citizens in an understandable and relatable manner.
- *De-centralised approach*: moving away from a Brussels-Based approach, trying to reach citizens at their local levels and in their preferred language, especially through the use of partnerships in communication – cooperation with national and local politicians, governments, and institutions, NGOs, professional associations, and relevant enterprises.

A main goal of the strategy is to create a European public sphere through the use of new technologies, the empowerment of citizens, and understanding (and 'measuring') European public opinion.

Whereas the overall communication strategy of the Commission is very citizen-oriented, the specific communication needs, including the extent to which there is a need for agencies to create their own independent image, and the target groups of agencies' communication, depend very much on the tasks which they undertake. External visibility through active communication can be said to be a precondition for achieving the intended impacts in cases where the agency:

- produces politically challenging information or advice on disputed issues,
- produces information on which future policies or international negotiations are to be based, or
- deals with opposite interests of different categories of stakeholders.

This is mainly 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 just be counter-productive to try to identify one more body in a landscape which most EU citizens do not understand clearly enough.

Not all of the agencies mentioned above have an explicit communication strategy. Among those that do are EEA and ECHA:

- For EEA, the primary target groups are defined as policy-makers at European and national level and European citizens, while a secondary target group is NGOs. Key principles include dialogue, proactive communication, and improving the corporate profile through consistency and clarity. For institutional target groups (policy-makers etc), the key goal is to ensure that they use the agency's work, whereas the

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<sup>76</sup> COM(2006) 35

<sup>77</sup> COM(2007) 568 final

goal in relation to citizens is to provide them with environmental information and contributing to transparency between the EU and its citizens<sup>78</sup>.

- For ECHA, target groups are very broad: EU industry and importers, Member States authorities, other EU institutions, non-governmental organisations, including trade unions and workers, universities and research institutions, international organisations, third countries, media and the general public. The overall objective of the strategy is to ensure that the agency's role, values and work are well known, and that the communication activities are supporting the agency's overall operational objectives<sup>79</sup>.

Thus, in both of these examples, the need to ensure/increase the visibility of the agency is explicitly acknowledged. They are both overall consistent with the Commission's overall communication approach, although the two examples illustrate well the differences in target groups – for EEA, the general public (citizens) is a key target group alongside policy-makers, whereas ECHA's strategy, although it includes the general public, is more focused on other target groups which are more direct users of the agency's outputs.

As mentioned above, it was not possible to identify a specific communication strategy for all of the agencies identified by the evaluator as needing one, taking into consideration the work that they do.

The 2008 Commission communication "European agencies – the way forward"<sup>80</sup> identified the need for "ground rules for the communication strategy to be followed by agencies", in order to help improving public understanding of their role, and ensure that agencies' communication policies are consistent with the Union's overall approach. It is the assessment of the evaluator that such ground rules would indeed be beneficial for all agencies, in particular as regards clarifying the role of individual agencies' external communication: is there, for instance, a need to communicate to the general public, or should the focus be on other target groups; and how should these target groups be reached. Such common principles or ground rules could help focus the communication strategy, align it with relevant Commission strategies (whether overall and/or sectoral), and also ensure optimal use of resources for communication.

*Contribution to answering the question:*

***Coherence of the agencies' communication strategies with the EU overall communication approach in relevant policy areas (Df)***

For a number of agencies, external visibility through active communication is a precondition for achieving the intended impacts, whereas for others, trying to enhance visibility, especially towards the general public, may not be a good use of resources.

Not all agencies, which are found by the evaluator to be in need of an explicit communication strategy, have one. The examples analysed are, however, in accordance with the overall communication strategy of the European Commission.

It is the assessment of the evaluator that common principles or "ground rules"

<sup>78</sup> EEA Communication Strategy, 2007

<sup>79</sup> ECHA Communication Strategy, 2008

<sup>80</sup> COM(2008) 135 final

for agency communication, taking proper account of the tasks and target groups that require external communication, would help agencies focus their communication strategies, align them with relevant Commission strategies, and focus their use of resources devoted to external Communication.

#### 2.4.7 **Coherence: an overview**

The overall question to be answered in this section is to what extent the objectives and activities of agencies are coherent with their mandate, with related EU policies and with other EU agencies.

Two main points can be made: Firstly, 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. Secondly, a considerable effort is made to develop coherence and co-ordination between agencies and in many cases also with non-EU bodies.

The activities of the majority of agencies are **coherent with their mandate**. In some agencies, this is reflected directly in their organisational structure. There are, however, a couple of examples of mandates not in line with the actual needs, leading to budget allocations and activities which are not quite coherent with the mandate. Surprisingly, these examples are found among the newest agencies.

There is a large number of interfaces and linkages between the agencies working within neighbouring areas – most agencies have several **connections to other agencies**, sometimes on a very wide range of issues, while a few have none. Co-operation is increasingly being formalised through Memoranda of Understanding between agencies, but the degree to which such MoUs entail significant co-operation in practice varies, and there are still potential synergy effects to be realised in several areas.

Complementarity and coherence with **EU policies** is generally established in the first instance through the founding regulations of the agencies and on a more continuous basis through the agencies' Work Programmes which are usually subjected to extensive consultation with parent DGs and often also other relevant DGs. Thus, at least on a formal level, complementarity and coherence is generally good, although there are some instances where the coherence with other policies (working relationship with other DGs and Commission entities) does not run as smoothly.

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 the extent to which there is actual 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 overlaps, and there is at least one example of unclear division of tasks between the Commission and an agency, which may create some confusion as to the role of the agency vis-à-vis international counterparts.

Not all agencies have a **communication** strategy. The analysed examples are, however, in accordance with the overall communication strategy of the European Commission. The evaluator assesses that a number of agencies need to develop an image of independence as a precondition for achieving their intended impacts. For other agencies, trying to enhance visibility, especially towards the general public, may not be a good use of resources.

## 2.5 Effectiveness

### ***Main question and sub-questions:***

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

**Ea:** To what extent have the EU agencies achieved the outputs which were planned in their work programmes?

**Eb:** To what extent are the addressees of the agency's outputs satisfied?

**Ec:** To what extent have agencies achieved the intended results of their activities?

**Ed:** In which circumstances are agencies achieving particularly good results, and why?

The first two sections of this chapter provide the main answer to the overall question, looking at achievement of outputs and user satisfaction. This is followed by two sections analysing how, and under which circumstances, agencies achieve (good) results.

### **2.5.1 Effectiveness of implementation (achievement of outputs)**

Table 21 below provides an overview of the extent to which outputs planned in the agencies' work programmes have been achieved.

Overall, the agencies seem to largely achieve the objectives set in their work programmes, with a few minor exceptions. For about half 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, although the impression gained through interviews with agency staff and stakeholders was that objectives (to the extent that such were formulated) were generally met. This is supported by the survey among Management Board members, where a large majority (85%) agreed or strongly agreed that Agencies meet their Work Programme objectives<sup>81</sup>.

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<sup>81</sup> Respondents were asked to respond to the following statement: 'The Agency consistently meets the objectives of its Work Programme'.

**Table 21 - Achievement of planned outputs**

Agency	Outputs achieved?
CdT	No specific output targets as volume of output is decided by client's demands; forecasts (based on client forecasts) exceeded. Respect of deadlines in 2008 was 98.37%, slightly lower than target of 99% <sup>82</sup> .
CEDEFOP	Planned outputs largely achieved
CEPOL	Not clear; some indication that volume of agreed courses is not fully delivered
CFCA	Planned outputs achieved
CPVO	N/A (Work programme only introduced in 2009).
EAR	Objectives met
EASA	No specific info
ECDC	Targets not defined in start-up phase (main objective setting up agency, achieved)
ECHA	Main REACH regulation related targets by end of 2008 met.
EEA	95% of the objectives from the previous EEA strategy (2004-2008) met
EFSA	2007 work plan: 67% of requests addressed, 2008: over 95% achieved. Backlog reduced by 33% in 2008.
EIGE	N/A (agency not yet operational)
EMCDDA	Planned outputs achieved
EMEA	No specific targets
EMSA	Planned outputs achieved
ENISA	Outputs of the multi-annual work programme achieved or in good progress, with the exception of one activity (due to problem with recruiting specific expertise).
ERA	Planned outputs achieved
ETF	More outputs achieved in 2008 than in 2007, but targets have not yet been set, due to the recent recast of the agency
EU-OSHA	Planned outputs achieved
EUROFOUND	Planned outputs achieved
EUROJUST	Seem to be achieved, but few quantified targets.
EUROPOL	No specific info
FRA	Work included in the 2008 work programme (the agency's first work programme) has been started but not completely finalised at the time of data collection for this evaluation.
FRONTEX	Planned outputs largely achieved.
GSA	N/A (no full year of operation due to recast)
OHIM	Objectives are considered to be met, except for the time necessary to take decision on opposition

In some cases, this lack of clarity with regards to achievement of outputs is due to the agency not yet having reached full cruise speed, and thus still being in a state of flux as regards the setting and monitoring of output targets (EIGE, ECHA, GSA, to some extent FRA). For a number of more established agencies, however, measurable indicators or objectives have still not been defined or are not monitored systematically, making the assessment very difficult. Some examples include:

<sup>82</sup> According to CdT's 2008 Activity Report, this is mainly due to the increase in the volume of urgent translations.

- For CPVO, no quantitative objectives were set when the agency was created, and no work programme until now because work is linked to the number of applications. However, an internal work programme has been prepared for 2009;
- In ECDC, there is a lack of objectives and indicators in the work programme – but the overall assessment is that the agency is working well and delivering on its promises.

We shall revert to the issue of indicators and monitoring in relation to evaluation question 7 which deals specifically with these issues.

*Contribution to answering the question:*

#### **Achieving the planned outputs (Ea)**

Overall, the agencies largely achieve the objectives set in their work programmes. For about half 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 hard evidence, due to a lack of indicators and monitoring, although the impression gained through interviews and the questionnaire survey is that objectives are largely met in most of these agencies as well.

### **2.5.2 User satisfaction**

#### Users of agencies' services outside European Institutions

The issue of satisfying the needs of European Institutions is addressed in 2.2.2. This section pertains to the satisfaction of other users, mainly businesses, consumers, and Member States.

In the survey, over four fifths of the Management Boards (as representatives of various stakeholder groups and Member States in particular) either strongly agreed or agreed that outputs were of high quality and timely. This rose to nearly 90% for usefulness.

Although anecdotal, interviews with external stakeholders/users of agencies that are targeting user groups outside the EU institutions generally point to users being satisfied. Agencies where the Commission plays a very small role as a user include those whose activities are mainly directed at industry, and those whose activities are directed at Member States.

Among the agencies who have industry as a main (or only) user group are OHIM, CPVO, and EASA:

- For OHIM, customers are in general satisfied with the quality of service, transparency and swiftness of the Office's work. In particular, the examination phase is considered by professionals as of high quality level and transparent and decisions are deemed as very detailed and consistent by the users. Major progress has been registered in terms of quality and rapidity in the last years. In spite of increased volumes, processing times have fallen steadily (cf. Volume III, section 26.5).
- CPVOs users (customers) also seem generally satisfied with the agency's services; results of a user survey from 2004 indicated that the level of satisfaction of interviewees was high, including on service prices (cf. Volume III, section 5.5 - no newer data available).

- EASA has certification as its main task, for which the aviation industries and the national authorities are users. The quality of aircraft certification is assessed very positively. However, in producing *continued airworthiness certification*<sup>83</sup> (CAW), as in standardisation (control), EASA's outputs are considered quantitatively insufficient so far. The quality of "service" to the small and medium enterprises (SME) is reported to be relatively low, though in progress (cf. Volume III, section 7.5).

Agencies whose main users are found in the Member States also report a reasonable level of satisfaction: For CEPOL, the 2008 course evaluations show good satisfaction from the participant perspective. For EUROPOL, a 2008 user survey found that customer satisfaction reached 63% of surveyed users. For FRONTEX, no user surveys are available, but the overarching view of the stakeholders interviewed is that of satisfied customers, who get from FRONTEX what they expect.

The overall results with regards to user (addressee) satisfaction are very similar to the statements made above on effectiveness with regards to achieving the planned outputs. Generally, user satisfaction seems to be good, but only some agencies actively measure user satisfaction (through surveys), while for a large group of agencies the evidence is mainly anecdotal, from interviews with individual users carried out for this evaluation or for other recent evaluations.

Given that there appears to be general satisfaction with the agencies' services across the board, the main difference between groups of agencies lies rather in the extent to which user satisfaction can be easily surveyed, and here the agencies who have paying customers and those who provide other kinds of services to individual users, such as training, generally have an advantage over other agencies. Their addressees can be identified and their feedback collected with relative ease. Available surveys from four agencies illustrate this:

- CdT measures client satisfaction through forms sent out with each translation returned to the client and through regular client satisfaction surveys, but feedback remains low (return rate in 2008: 2.18%; return rate in 2009 first half: 3.92%). However, ad-hoc user surveys have shown client satisfaction with its services.
- CEPOL systematically collects feedback from training course participants. The 2008 course evaluations show good satisfaction from the participant perspective.
- CPVO implemented a user survey in 2004. The level of satisfaction of interviewees was high.
- EMEA has carried out user surveys among their industry users which showed satisfaction with the agency's services.

Other agencies which have carried out user surveys of different kinds include EEA, ETF, EU-OSHA, EUROFOUND, and EUROPOL. The latter carries out annual client satisfaction surveys. In the 2008 survey, customer satisfaction reached 63 %.

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<sup>83</sup> Certification of aircraft during its exploitation by continuous checking, and new certification when a modification of the aircraft occurs.

*Contribution to answering the question:*

**Satisfaction of the addressees of the agency's outputs (Eb)**

Only some agencies actively measure user satisfaction through various kinds of surveys. Both user surveys and interviews with individual stakeholders point to overall satisfaction with the services provided.

**2.5.3 Effectiveness in achieving results**

The first main source for this section is the set of recent agency evaluation reports which conclude on effectiveness, generally in positive whilst rather general terms as can be seen in the following box.

**Box 2 – Agency evaluators are positive about effectiveness**

With regards to the objectives of information, communication and dissemination the story that emerged is one of general overall effectiveness (CEDEFOP, Agency evaluation 2007).

The needs of the Commission seem to be met, on the whole, although this is more the case in DG Environment than in some of the other DGs (EEA, Agency evaluation 2008).

EMCDDA information is rated as 'very' or 'quite' useful in understanding the drugs situation by 90% of the target audiences and stakeholders (EMCDDA, Agency evaluation 2007).

EMSA's work provides an important input to the Commission in monitoring the implementation of EU maritime legislation. It plays an important role in ensuring that legislative proposals are technically feasible and acceptable to Member States from a technical point of view. EMSA's activities related to visits, training, provision of tools and exchanging of best practices has led to a greater degree of harmonisation in the implementation of the EU Maritime Law (EMSA, Agency valuation 2008).

The Agency is respecting its work programme, but its achievements, while adequate or even good so far, appear insufficient to achieve the high level of impacts and value added hoped for. More worrying is the lack of consensus about how the Agency is going to ultimately achieve its expected impacts, which are at present [i.e., at the time of the evaluation] considered low (ENISA, Agency evaluation 2007).

According to end users the Agency is achieving positive impacts and demonstrating a high degree of European added value (EU-OSHA, Agency evaluation 2007).

In general terms, the Agency's awareness raising campaigns performed well on all the key evaluation criteria (EU-OSHA, specific evaluation).

Another evidence base has been created in the framework of this evaluation through a series of case studies and sub-cases of noteworthy successes or failures in achieving results and impacts. This material cannot tell much about the average effectiveness of agencies since the investigation is biased towards remarkable successes (less often failures). Nevertheless, it does provide valuable lessons about the factors, driving forces and mechanisms which lead to (in)effectiveness.



In-depth case studies were carried out in selected agencies to test a series of standard assumptions applying to five typical activities. Case studies included one or two investigations into the achievement of specific impacts (most often success stories). The analysis of cases and sub-cases shows that the impact of a given activity may be explained by (1) some effectiveness factors which are part of the assumptions under test, or (2) other effectiveness factors which are identified through the study incidentally. A cross analysis of all cases and sub-cases (see Table 27, Appendix 1, and CD-Rom) enables the evaluation team to identify the factors which are constant in various contexts, and which are therefore regarded as the most important ones.

This in-depth investigation firstly shows that the achieved impacts can be clustered in a limited number of homogeneous categories:

- Better EU policy-making through providing relevant research and information to...
  - ... policy-designers and policy-makers in the European Institutions
  - ... other stakeholders
- Raising stakeholder awareness by disseminating relevant research and information so as to ...
  - encourage public debates on emerging policy issues
  - prevent specific risks
- Better policy-making at Member State level through providing advice and information to policy-designers
- Better management of safety crises through rapid delivery of scientifically grounded opinions on demand
- Improved and harmonised law enforcement across borders through facilitating joint activities
- Improving security in the functioning of the internal market by taking protective decisions applying to individual firms

Our cross sectional analysis of all cases and sub-cases shows that the achievement of intended impacts (i.e. effectiveness) is most often combined with a series of other merits such as relevance to users' needs, European added value, and user satisfaction. This means that these evaluation criteria are not independent from one another.

The data collection covered 14 agencies and 22 "impact stories" within these agencies. It was eventually possible to analyse 19 stories, of which 16 show a success in achieving the desired impacts, whilst three are less successful or even failures.

As shown in Table 22, the merit of successes (or the responsibility for failures) must always be shared with other contributors than solely the agency. The main other contributors are, by order of importance: Member States and national agencies, Commission, International Institutions, scientific networks, other European bodies (Parliament, agencies), and Civil Society Organisations.

This finding applies to the impact stories under in-depth investigation, which are typically agencies' successes identified by the interviewees. In the case of average agency activities, the role of other contributors is probably even more important.

**Table 22 – Impact stories: agencies’ contribution to successes**

<b>Title</b>		<b>Agency's contribution</b>	<b>Other contributors</b>
1 CEDEFOP	Promoting and advising on National Qualification Frameworks	Same as the first main other contributor	Member State qualification authorities; Commission
2 CEDEFOP	Quantitative forecast on skills.	More than the first other contributor	Commission
3 CFCA	Joint fisheries inspections focused on bluefin tuna in Mediterranean sea	More than the first main other contributor	Concerned Member States (PO, ES, FR, IT, MT,CY,GR); ICCAT (International organisation)
4 CFCA	Joint fisheries inspections focused on cod in Baltic sea	More than the first main other contributor	Concerned Member States (SE, FI, EE, LT, LV, PL, DE, DK)
5 EASA	Continued airworthiness activities	More than the first main other contributor	National Aviation Authorities
6 ECDC	Information and advices during the Influenza A(H1N1) crisis	One among many contributors	WHO; EC; Scientific networks
7 ECDC	Guidance for the introduction of human papillomavirus vaccines in EU countries	One among many contributors	Member States; Scientific networks; Commission
8 EEA	Report on bioenergy and bio-fuels	More than the first main other contributor	Networks of Member State agencies (ETCACC, EIONET); JRC
9 EEA	Greenhouse gas emission trends	Less than the first main other contributor	Networks of Member State agencies (ETCACC, EIONET) ; Multilateral Institution (UNFCCC); Commission
10 EFSA	Rapid crisis statements on EC's demand	More than the first other contributor	Expert networks; Commission
11 EUROFOUND	The European Restructuring Monitor	More than the first other contributor	Commission
12 EUROFOUND	European city network on integration of migrants	More than the first other contributor	The 30 cities (which would not have gathered without the agency's support); Private Foundation; Council of Europe
13 EUROPOL	Dismantling a worldwide network of child sex offenders	Same as the first main other contributor	INTERPOL; Member States; Eurojust
14 EUROPOL	Attempt to set up a joint investigation to combat trafficking of human beings	Same as the first main other contributor	Council (Dutch presidency); Four other Member States
15 EU-OSHA	The European campaign 'Lighten the Load'	More than the main other contributor	National Agencies in charge of Occupational Safety and Health
16 EU-OSHA	The expert forecast on new and emerging risks	More than the main other contributor	Expert networks
17 FRA	The Report on Homophobia and Discrimination on Grounds of Sexual Orientation	More than the main other contributor	European Parliament; Civil Society Organisations; European Commission
18 FRA	The Annual Report on racism and xenophobia in the EU	More than the main other contributor	European Parliament; Civil Society Organisations; European Commission
19 OHIM	Registration of Community Trade Marks or Designs for SMEs	Less than the main other contributor	Community legislation on Internal Market; National trade mark agencies

In the examples under investigation, the agency is most often the first main contributor to the success. It is however possible that an investigation into less successful stories would show a different picture with a relatively more modest contribution of the agencies.

*Contribution to answering the question:*

***Achievement of the intended results of the agencies' activities (Ec)***

Recent agency evaluation reports often conclude positively regarding the effectiveness of agencies albeit in rather general terms.

In-depth investigations into specific agency examples confirms that the successful effects of agencies' activities follow at least six different paths, and sometimes two or three paths in the same example.

The merit of successes (or the responsibility for failure) has always to be shared with other contributors than the agency alone. The other main contributors are, by order of importance: 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 effectiveness.

**2.5.4 Key factors determining effectiveness**

The analysis of factors determining effectiveness (effectiveness drivers) relies primarily on in-depth study of cases and sub-cases, with some cross-checking with recent agency evaluations. At a first glance, factors appear numerous and diverse as shown in the text box below.

### **Box 3 – A comprehensive list of effectiveness drivers**

#### **Availability of internal experts e.g.:**

- having the right specific background
- capable of anticipating research themes
- closely connected to the appropriate networks
- sharing the culture of the users
- capable of contracting out and to assure quality

#### **Permanent connection with:**

- extensive network(s) of independent experts
- accessible data sets or scientific evidence-bases

#### **Dialogue, consultation (either direct or indirectly) with:**

- policy-designers in the European Commission
- policy-makers in European Institutions
- Member State authorities and agencies
- Civil Society or private sector organisations with stakes in the agency's activities

#### **Clear sharing of responsibilities with:**

- other EU agencies
- international agencies

#### **Management capacity enabling to:**

- take rapid decisions
- mobilise internal resources flexibly

#### **Professional communication capacity enabling to:**

- choose effective dissemination channels
- reach specific interest groups and opinion-makers

#### **Closeness to Member State authorities enabling to:**

- establish mutual trust
- create virtuous mutual pressure
- coordinate action rapidly
- access Member State level data

#### **Harmonised and consistent methods and processes**

#### **User-friendly and oriented processes**

Source: Analysis of nineteen impact stories carried out for this evaluation.

Some of the above factors are of special importance in achieving certain types of effects:

- Impact on policy-making heavily depends on (1) dialogue and consultation with policy-designers, policy-makers and other stakeholders in the policy-making process, and (2) proactive and professional communication.

- Impact on law enforcement across borders has much to do with (1) closeness to Member State agencies, and (2) clear division of responsibilities.

On the other hand, some factors seem to be of common value in achieving quite different types of effects:

- *Adequate and flexible internal expertise.* This factor is quoted in all investigated examples, but the adequate expertise is not the same in all cases. Depending on the context, the strength of internal experts lie in their high level of specialisation, in their capacity to anticipate and enter new research areas, in their close ties with a wide range of external experts, in their connections with policy designers and interest groups, and in their cultural proximity to national partner agencies.
- *Organisational learning* through harmonisation of tasks that lend themselves to standardisation (quoted in a few but quite different examples).

A specific issue is that of working in 27 Member States. This can be a matter of (1) collecting information in a bottom-up manner, or (2) disseminating research results or communication material in a way which is adapted to national contexts (top-down) or (3) both ways.

- Where the relationship with Member States is bottom-up, some agencies (EUROFOUND, FRA) have been quite successful in setting up their own field work processes through international calls for tenders and framework contracts with national information providers.
- Where the relationship with Member States is top-down or two-way, the success is achieved by setting a network of focal points, and attracting their contribution through incentives which may be either financial (grants) or non-financial (conferences, seminars, exchanges of good practices).
- Crucial for maximising the results of Member State engagement, as described above, involves agencies being able to communicate and make clear their added value to the Member States.

*Contribution to answering the question:*

***Circumstances in which agencies achieve particularly good results (Ed)***

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 determines effectiveness in quite different cases, i.e. harmonisation of the tasks which lend themselves to standardisation. It is however far from being quoted in all examples.

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. Where the relationship with Member States is bottom-up, some agencies have been quite successful in setting up their own field work processes through international calls for tenders and framework contracts with national information providers. Where the relationship with Member States is top-down or two-way, the success is achieved by setting a network of focal points and attracting their

contribution through various kinds of incentives.

What is clear is that agencies achieve better results where key stakeholders, such as Member States, see the added value of the Agency and thus become more willing to engage in supplying information, participating in joint activities, etc.

### **2.5.5 Effectiveness: an overview**

The overall question to be answered in this section is to what extent the EU agencies have met their objectives, in particular those set out in their work programmes.

Overall, the agencies largely achieve the objectives set in their work programmes, with minor exceptions. For about half 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 hard evidence, due to a lack of indicators and monitoring, although the impression gained through interviews and the questionnaire survey is that planned outputs are generally achieved in these agencies as well.

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 provided.

Given that most objectives are met, and that user satisfaction is generally good, no patterns of variation can be identified between different types of agencies, for instance with regards to, size, type of tasks, policy areas, or other typologies. Rather, the main difference found between agencies is the extent to which they 1) set specific targets and objectives, and 2) measure user satisfaction. Here, the picture is considerably more varied, with a substantial number of agencies not setting specific targets and objectives, and not measuring users' satisfaction with the outputs.

Recent agency evaluation reports often conclude positively regarding the effectiveness of agencies albeit in rather general terms. In-depth investigations into specific agency examples confirms that the successful effects of agencies' activities follow at least six different paths, and sometimes two or three paths in the same example. The merit of successes (or the responsibility for failure) has to always be shared with other contributors 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 often the primary contributors in the cases of successful effectiveness.

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 determines effectiveness in quite different cases, i.e. harmonisation of the tasks which lend themselves to standardisation. It is however far from being quoted in all examples.

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. Successes have been achieved by agencies by setting up their own field work processes through in-

ternational 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, 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.

## 2.6 Efficiency

### **Overall question and sub-questions:**

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

**Fa:** To what extent are the institutional and organisational arrangements contributing to achieving good results at low cost?

**Fb:** In which circumstances are agencies achieving particularly good results at low cost, and why?

**Fc:** To what extent is the agency's internal organisation contributing to a sound management of resources including the execution of the budgets?

**Fe:** Is budgetary efficiency achieved without (through) transferring costs or other burdens to other public or private actors?

**Fd &** Which agencies' outputs and results are comparable, and how do

**Ff:** agencies perform in producing them?

### **2.6.1 Effects of institutional and organisational arrangements**

The evaluator's analysis of the agencies (cf. Volume III) has revealed some factors that are particular to EU agencies due to their location and institutional set up. These particular circumstances introduce additional costs which affect the efficiency (cost-effectiveness) of these organisations in relation to, for instance, the EU institutions located in Brussels, or national agencies:

- Administrative costs – the agencies are relatively small organisations which nevertheless have to comply with a significant number of regulations, control mechanisms and procedural requirements which pose a relatively heavy administrative burden
- Location costs – being located all over Europe, a number of agencies are affected by additional costs imposed by their location

These two types of costs and their significance are discussed below.

#### Administrative costs

An important indicator of efficiency is the amount of resources allocated by agencies to cope with administrative and other support functions, as opposed to operational functions dealing mainly or exclusively with delivery of the services which the agency was set up to provide.

The table below provides an overview of the agencies and the resources devoted to these activities, in the form of allocation of staff to the different main functions. The data relates to 2006 and 2007 and was compiled by the European Court of Auditors<sup>84</sup>. It should be noted that the evaluation team attempted to gather similar data, on numbers of staff and financial resources devoted to administrative tasks. However, the figures provided by the agencies in the context of this evaluation were clearly calculated using very

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<sup>84</sup> Source: Overview provided to the evaluation team by the European Parliament, based on the European Court of Auditors' annual specific reports on individual agencies.



different methods and were thus regarded by the evaluation team as not comparable. For that reason it was decided to use the Court of Auditors data in this analysis instead, even though some agencies are not covered.

**Table 23 – Administrative staff**

Agency	Est. year	2006				2007			
		Operational	Admin.	Mixed	Admin staff share	Operational	Admin.	Mixed	Admin staff share
CdT	1994	80	89	-	<b>53%</b>	88	88	-	<b>50%</b>
CEDEFOP	1975	84	34	5	<b>30%</b>	89	39	-	<b>30%</b>
CPVO	1994	19	20	6	<b>51%</b>	17,5	21	6	<b>54%</b>
EAR	2000	171	102	-	<b>37%</b>	163	101	-	<b>38%</b>
EASA	2002	227	57	25	<b>22%</b>	277	57	28	<b>20%</b>
ECDC	2004	49	35	-	<b>42%</b>	75	47	-	<b>39%</b>
EEA	1990	72	42	1	<b>37%</b>	73	42	1	<b>37%</b>
EFSA	2002	150	80	-	<b>35%</b>	218	92	-	<b>30%</b>
EMCDDA	1993	53,5	30	7,5	<b>37%</b>	60	29	9	<b>34%</b>
EMEA	1993	406	66	-	<b>14%</b>	444	74	-	<b>14%</b>
EMSA	2002	83	41	7	<b>34%</b>	N/A	N/A	N/A	N/A
ENISA	2004	24	22	-	<b>48%</b>	31	25	-	<b>45%</b>
ERA	2004	N/A	N/A	N/A	N/A	66	33	-	<b>33%</b>
ETF	1990	73	34	19	<b>35%</b>	72	40	19	<b>38%</b>
EU-OSHA	1994	42	9	8	<b>22%</b>	47	9	7	<b>20%</b>
EUROFOUND	1975	58	32	4	<b>36%</b>	55	30	4	<b>36%</b>
EUROJUST	2002	56	49	9	<b>47%</b>	95	65	19	<b>42%</b>
FRA	1997	28	15	4	<b>36%</b>	31	21	5	<b>41%</b>
FRONTEX	2005	43	29	-	<b>40%</b>	103	29	-	<b>22%</b>
GSA	2005	9	9	5	<b>50%</b>	30	11	8	<b>31%</b>
OHIM	1993	480	195	-	<b>29%</b>	N/A	N/A	N/A	N/A
<b>Total</b>		<b>2208</b>	<b>990</b>	<b>101</b>	<b>32%</b>	<b>2035</b>	<b>853</b>	<b>106</b>	<b>30%</b>

Source: European Court of Auditors' annual specific reports on individual agencies. Mixed posts are assumed to be 50% administrative  
Note: Data not available for CEPOL, CFCA, ECHA, EIGE, EUROPOL

As seen by the table above, the share of administrative staff varies considerably between agencies, from 14% to 50%. Of the total number of staff employed at EU agencies in 2007, 30% were allocated to administrative tasks. The average share of administrative staff for all agencies was 30% in 2007, down from 32% in 2006.

A strong explanatory factor for the variation in the share of administrative staff is the size of the agency. The table below shows the average share of administrative staff for three size groups of agencies.

**Table 24 - Administrative staff per size of agency**

<b>Size (number of staff)</b>	<b>Share of administrative staff</b>	<b>No. of agencies</b>	<b>Names of agencies</b>
Large (>150)	28%	7	CdT, EASA, EAR, EFSA, EMEA, EUROJUST, OHIM
Medium (75-150)	33%	9	CEDEFOP, ECDC, EEA, EMCDDA, EMSA, ERA, ETF, EUROFOUND, FRONTEX
Small (<75)	37%	5	CPVO, ENISA, EU-OSHA, FRA, GSA
<b>Overall</b>	<b>30%</b>	<b>2</b>	
Source: European Court of Auditors' annual specific reports on individual agencies – Year 2007 (except EMSA and OHIM: 2006) – Categories and calculation (weighed average) by evaluation team. See Table 22 for full data and CD-Rom for detailed calculation.			

Overall, there is a clear tendency for the share of administrative staff to be in reverse proportionality to the size of the agency. Thus, the largest agencies tend to have the lowest share of administrative staff, and vice-versa.

This finding is supported by a recent study for the European Parliament which found that, generally, 1) the more staff an agency has, the more administrative staff it employs, but 2) the higher the total staff numbers, the smaller the share of administrative staff related to its total staff, i.e. larger agencies benefit from scale effects<sup>85</sup>.

The above-mentioned study found that, in particular, the budgetary process, the audits, and the procurement procedures weigh heavily in the administrative tasks of the agencies, and that smaller agencies are over-averagely burdened. This was particularly striking in the area of procurement where the study found that smaller EU agencies<sup>86</sup> spend a mean of 90.93 working hours per procurement procedure as compared to medium-sized (mean = 43.79 working hours) and large agencies with a mean of only 25.00 working hours. Furthermore, the analysis showed that the less staff an agency employs within its procurement unit, the longer it needs to draft the tender documents, which might hint at the economies of scale effects through specialisation<sup>87</sup>.

Two examples of agencies in the growth phase lend some support this conclusion (cf.

Table 23):

- FRONTEX, which was established in 2005, grew from a total staff of 72 in 2006 to 132 in 2007 while maintaining the number of administrative staff at 29, meaning that the share of administrative staff was almost halved, from 40% in 2006 to 22% in 2007.

<sup>85</sup> Opportunity and feasibility of establishing common support services for EU agencies, European Parliament, Directorate General for Internal Affairs, Policy Department D: Budgetary Affairs, April 2009, p. 20.

<sup>86</sup> Smaller agencies are in the EP study defined as those with less than 100 total staff.

<sup>87</sup> Op.cit. p. 88.

- GSA, also established in 2005, grew from a total staff of 23 in 2006 to 51 in 2007, while the share of administrative staff fell from 51% to 31%.

Given that there are clear scale benefits associated with administrative tasks, it may be assumed that in order to operate efficiently, an agency needs to reach a certain critical size. It has been suggested that this minimum size is around 100 staff<sup>88</sup>. The available evidence does not however justify that any specific threshold be established.

It might also be presumed that administrative efficiency increases with time (i.e. that there is a learning curve which means that less administrative staff is needed to carry out the same tasks as they gain experience). An analysis of the share of administrative staff per wave of agency creation (see Table 1) does not show any significant difference or trend. It is however interesting to look at the four most recent agencies for which relevant data are available in Table 23 (ECDC, ENISA, FRONTEX, and GSA). They all show a diminishing share of administrative staff between 2006 and 2007. Two explanations can be suggested: (1) there is a steep learning curve in the first years of the agency, or (2) new agencies recruit their administrative staff first, and their operational staff later on. The evaluation team does not opt for one or the other explanation.

The type of tasks carried out by the agencies does not seem to have any effect on the share of staff allocated to administrative tasks. Looking at both the agencies with the highest share (CdT, CPVO, ENISA, EUROJUST, FRA – all above 40% in 2007) and the lowest share (CEDEFOP, EFSA, FRONTEX, EU-OSHA, EASA, EMEA – 30% or less in 2007), there are no identifiable patterns as regards the agencies' types of tasks, or of their policy area.

#### Location costs

In order to analyse the costs of location of agencies, two new indicators have been developed by the evaluation team: Travel Cost Index and Premise Cost Index, which when combined, determine the agency's global location cost. For the purposes of this analysis, the two indicators are presented separately to better distinguish the contribution of each variable to the final cost of location.

The Travel Cost index is based on transportation cost (flight and/or train) from 5 possible points of departure (Brussels, Dublin, Riga, Lisbon and Athens)<sup>89</sup>. This cost was then weighted on the expected frequency of travelling from each city, in order to calculate the Total Travel Cost for each agency. This exercise resulted in the Travel Cost Index shown in the table below.

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<sup>88</sup> Evaluation of the European Network and Information Security Agency, Final Report by the Experts Panel IDC EMEA, 8th January 2007.

<sup>89</sup> Calculations are based on data acquired from a travel agency which was asked to provide costs and travel times on a specific date in September 2009. These data replace data on actual costs collected by the evaluation team directly from the agencies, as these were assessed as not being comparable.

**Table 25 – Travel Cost Index**

Agency	Location (airport)*	Travel cost (index)
CFCA	Vigo	176
ENISA	Heraklion	169
OHIM	Alicante	165
EFSA <sup>90</sup>	Parma (Milano)	134
ECHA	Helsinki	133
EIGE	Vilnius	125
CPVO	Angers (Nantes)	123
EU-OSHA	Bilbao	109
EMCDDA	Lisboa	106
EMSA	Lisboa	106
ETF	Torino	101
EUROFOUND	Dublin	89
FRA	Vienna	85
FRONTEX	Warszawa	82
CEDEFOP	Thessaloniki	81
EEA	Copenhagen	80
EASA	Koeln	79
ERA	Valenciennes (Lille)	79
ECDC	Stockholm	69
CEPOL	Bramshill (London)	66
EUROJUST	The Hague (Amsterdam)	63
EUROPOL	The Hague (Amsterdam)	63
CdT	Luxembourg	61
EMA	London	58
<p>*Location of agency's headquarters and closest international airport (in parenthesis) if different from city of location.  Index 100=average  Source: Own calculations based on a systematic research by a travel agency (see full explanation in CD-Rom)</p>		

The Premise Cost Index was calculated by dividing the Total Annual Cost of Premises of each agency by the number of actual staff.

<sup>90</sup> EFSA has established a shuttle system compensating for the absence of an international airport in Parma. The cost of the system is approx. € 1 m per year. Travel times are significantly increased.

**Table 26 – Premise Cost Index**

Agency	Premise cost/staff EUR/person	Premise cost (index)
ECHA	49333	376
EMCDDA	24758	189
EU-OSHA	22230	169
EMEA	21572	164
EMSA	15978	122
EEA	14907	114
FRONTEX	14308	109
EUROJUST	14223	108
ECDC	13846	105
FRA	8873	68
EFSA	6987	53
CdT	6724	51
ERA	5310	40
CEPOL	2945	22
CFCA	1064	8
CEDEFOP	owner	
CPVO	owner	
EUROFOUND	owner	
ENISA	country support > cost	
EUROPOL	country support > cost	
EASA	?	
EIGE	?	
ETF	?	
OHIM	?	

Notes to the table:  
Premise cost = Annual cost less host country support, per actual staff 2008  
Index 100=average  
Source: Own calculations based on data collected by the evaluation team from the agencies

Comparing the travel cost and premises cost indexes provides interesting results. Although ENISA has the highest travel cost, it has a negative premise cost due to the fact that the Greek Government contributes substantially, providing the premises free of rent, precisely in order to offset the geographically remote location. EMEA presents a contrasted situation since it has a high premise cost but the lowest travel costs due to its central location in London. Seen across all agencies, the differences are significant, meaning that some of their basic conditions have very different impacts on their costs.

*Contribution to answering the question:*

**To what extent are the institutional and organisational arrangements contributing to achieving good results at low cost? (Fa)**

The evaluation has identified cost elements which are particular in their significance to the EU agencies due to their institutional set-up and their location: Administrative costs and location costs.

The **administrative costs** are particularly important to the agencies as they constitute a significant part of their budget. On average, 30% of staff resources are devoted to administration. However, variations between agencies are substantial, with figures ranging from 14% (EMEA) to 54% (CPVO). The most significant explanatory factor for the differences between agencies is their size. There is a clear tendency towards a reverse proportionality between the size of the agency and the share of staff devoted to administrative tasks: generally, the larger the agency, the smaller the share of administrative staff. It has been suggested that in order to operate efficiently, an agency needs to reach a minimum size of 100 staff. The available data do not however suggest any specific threshold between 50 and 100.

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 cost** is also a significant cost element. In order to analyse the costs of location of agencies, two new indicators have been developed by the evaluation team: Travel Cost Index and Premises Cost Index, which when combined, determine the agency's global location cost. Again, the situation varies considerably between agencies. CFCA has the highest travel cost index but one of the lowest premises cost index. On the other hand, EMEA has a high premise cost, but the lowest travel cost due to its central location in London.

Although the three cost factors analysed in this section are obviously not the only cost factors affecting the agencies, they point to some important specificities of the agencies' institutional and organisational arrangements. For some agencies this has a strong effect on the costs related to non-operational activities, and thus their ability to achieve good results with the resources that remain for their operational activities. Three main factors are important (in descending order of importance):

1. The size of the agency - smaller agencies have considerably higher relative non-operational costs).
2. The location of the agency - distant locations generally mean high travel costs, and some agencies have relatively high premise costs. In some cases these off-set each other, but there are agencies which score high on both indexes.
3. The size of the management board - large management boards represent a significant cost element (up to 2% of the agency's budget) when combined with the other two factors above.

### **2.6.2 Key factors determining external efficiency**

In this section, the key factors that determine the agencies' external efficiency (i.e. the capability to achieve results and impacts at low cost) are discussed.

It should be noted that this does not cover *internal efficiency* (i.e. delivering services at low cost) or economy (i.e. running activities at low cost).

If we consider the investigated impact stories<sup>91</sup>, it is clear that impressive results and far reaching benefits have been achieved, often at surprisingly low cost (see next table, column "associated cost").

It is not always easy to relate a given impact and the cost of achieving it, but acceptable estimates have been proposed by our interviewees in many instances. The main problem occurs in the case of rapid advice (e.g. EFSA's emergency crisis opinions) where the marginal cost of issuing a statement may be very low in comparison with the heavy cost of building and maintaining expert networks which enable the agency to respond quickly.

As regards the cost of achieving successful impacts, various expenditures are quoted, e.g.

- Internal staff (always)
- Coordination time and travel cost (often)
- Publishing (often)
- Managers' time (sometimes)
- External contractors (sometimes)
- Grants to focal points (sometimes)

In terms of the magnitude of the costs, the analysis of the impact stories shows that large EU wide benefits have been achieved at surprisingly low cost: typically 3 man-years, exceptionally 12 man-years in the case of ECDC dealing with H1N1 Influenza. Of course these figures are direct costs (excluding overheads) and marginal costs (excluding network building).

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<sup>91</sup> See section 2.5.3 - It should however be kept in mind that most of the investigated cases are success stories rather than the average case.

**Table 27– Impact stories: external efficiency**

<b>Story</b>		<b>Main associated costs</b>	<b>Main associated burdens</b>	<b>Main driver of external efficiency</b>
1 CEDEFOP	Promoting and advising on National Qualification Frameworks	Staff (~ 4 FTE <sup>92</sup> )	Leveraging EC and MS funds	Staff expertise and connections (+)
2 CEDEFOP	Quantitative forecast on skills.	Staff; Workshops; Dissemination	Leveraging funds and connections within the EC and other agencies; Joint research works with ILO and OECD	Staff expertise (+) Staff connections (-)
3 CFCA	Joint fisheries inspections focused on bluefin tuna in Mediterranean sea	Staff (~4 FTE); Operational cost of coordination meetings (46KE);	National coordination officers in Vigo (6)	Staff professionalism and cultural proximity with MSs agencies (+) Accessibility (-)
4 CFCA	Joint fisheries inspections focused on cod in Baltic sea	Staff (~4 FTE); Operational cost of coordination meetings (93KE);	Participation in coordination meetings	Staff professionalism and cultural proximity with MSs agencies (+)
5 EASA	Continued airworthiness activities	Inspectors (~ 18 FTE)	Contribution of National Aviation Agencies (25%)	Responsive allocation of scarce resources through a daily coordination with NAAs (+/-)
6 ECDC	Information and advices during the Influenza A(H1N1) crisis	Staff (~12 FTE); Crisis manager; Strategic team and operational groups	Reinforced coordination and exchanges of information with MS Health Authorities	Staff expertise and connections (+) Flexible human and financial management (+) Good preparedness to crisis (+)
7 ECDC	Guidance for the introduction of human papillomavirus vaccines in EU countries	Staff (?) - Experts (8 not paid) - Two consultants hired for supporting the experts	Limited	Staff expertise and connections (+)
8 EEA	Report on bioenergy and biofuels	Staff (~3 FTE); Support to expert networks (ETCACC);	Limited	Staff expertise and connections (+) Free initiatives of internal experts (+)
9 EEA	Greenhouse gas emission trends	Staff (~3 FTE)	Data production by Member State agencies; Network meetings	Staff expertise and connections (+) Sound sharing of tasks with Member States (+)
10 EFSA	Rapid crisis statements on EC's demand	Marginal cost is quite limited. The main cost is that of maintaining	No	Staff expertise and connections (+)

<sup>92</sup> Full Time Equivalent



<b>Story</b>		<b>Main associated costs</b>	<b>Main associated burdens</b>	<b>Main driver of external efficiency</b>
		internal expertise and connection to external expertise; ;		
11 EUROFOUND	The European Re-structuring Monitor	Staff (~ 2 FTE) Contracts with national partners;	No	Balancing internal staff and outsourcing (+) Well targeted dissemination channels (+)
12 EUROFOUND	European city network on integration of migrants	Staff (1,5 FTE) + € 325 000 ; ;	Participation of volunteering cities (~2 FTE) and private foundation (1 FTE)	Staff expertise and connections (+) Volunteering (+)
13 EUROPOL	Dismantling a worldwide network of child sex offenders	Several specialised investigators over more than one year	Coordination meetings	Connections and mutual confidence between national, EU and international levels (+)
14 EUROPOL	Attempt to set up a joint investigation to combat trafficking of human beings	Coordination meetings	MS participation	No (failure)
15 EU-OSHA	The European campaign 'Lighten the Load'	Staff (~ 2 FTE) plus € 2 139 000	Contribution of Focal Points in MSs on their own resources: € 530 000	Incentives to mobilise national partners (+) Well targeted dissemination channels (+)
16 EU-OSHA	The expert forecast on new and emerging risks	Staff (~ 2 FTE) plus € 300 000	Limited	Staff expertise and connections (+)
17 FRA	The Report on Homophobia and Discrimination on Grounds of Sexual Orientation	Staff (?); Contracts with contractors	No	Value for money in contracting out with national experts (+) Staff expertise and connections (+)
18 FRA	The Annual Report on racism and xenophobia in the EU	Staff (?); Contracts with national experts	No	Value for money in contracting out with national experts (+) Staff expertise and connections (+)
19 OHIM	Registration of Community Trade Marks or Designs for SMEs	Staff + outsourcing	Limited, when compared to similar agencies	Standardisation (+); E-business tools (+)
<p>Source: Evaluation team's interpretation of its own case studies (available on CD-Rom)</p> <p>In various circumstances, a given 'drivers of external efficiency' may have facilitated (+) or impeded (-) the achievement of impacts at low cost.</p>				

The broad picture would be less positive if average activities were considered instead of impact stories. To quote one example, EU-OSHA's information campaign "Lighten the Load" has been evaluated as "the best the agency has

ever implemented”, which means that an investigation into all other campaigns would probably have shown a lower degree of cost-effectiveness.

When analysing cost-effectiveness, it must be recalled that only effective (i.e. successful) activities should be considered. If no results or impacts have been achieved there is little point in asking the question “at which cost?”<sup>93</sup>. Conversely, this means that all key factors determining effectiveness also determine cost-effectiveness. What is of particular interest in this section is to focus on the fact that some effectiveness factors are more resource intensive than others.

In the examples subjected to in-depth investigation, the key factor determining cost-effectiveness (last column on the right of the above table) is by far:

- Highly specialised and connected internal experts. This factor affects both costs (human resources mainly) and impact through relevance, credibility and quality).

Other factors have been identified in the context of one or two impact stories only:

- Location, which affects both travel costs and impact through networking and connections with scientific experts and national agencies, (cf. also section 2.6.1 above);
- Communication which involves costs (communication material and dissemination) and affects impact through reaching the appropriate targets;
- Mobilisation of national partners which involves costs (financial support to focal points) and affects impacts through reaching the appropriate targets;
- Outsourcing data collection which involves costs (selecting and managing contractors, contracting out), and affects impact through quality, rapidity and independence;
- Standardisation, which enables the reduction of costs through economies of scale and greater impact through higher quality;
- Flexible allocation of scarce resources (no cost / impact through fast and responsive adaptation to needs);
- Sound sharing of tasks with Member States and International bodies (no cost / impact through an optimal balance of the respective contributions).

The most resource intensive effectiveness factors include internal expertise, mobilisation of external experts, delegated field research in the Member States, and communication. In these areas, the main challenge is to achieve high levels of quality at low cost.

On the contrary, a number of factors may entail major consequences on effectiveness while involving limited or no costs. These include:

- Standardisation, e.g. OHIM having considerably reduced its costs while securing quality in a context of highly standardised tasks and quality management;
- Flexible reallocation of key resources, e.g. ECDC quickly setting up a team of internal and external experts as to deal with the H1N1 flu;
- Closeness to and mutual trust with users, e.g. CFCA being successful in establishing mutual confidence with national fisheries inspectors.

It is therefore of importance to develop such factors as far as possible.

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<sup>93</sup> Although agencies must of course also be ready to account for resources spent on failures, but that is not the issue here.

*Contribution to answering the evaluation question:*

***Circumstances in which agencies achieve particularly good results at low cost (Fb)***

If we consider the investigated impact stories, it is clear that impressive results and far reaching benefits have been achieved at a surprisingly low cost, but this finding says little about the average cost-effectiveness of agencies.

However, through the analysis a series of factors have been identified which determine 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. These factors should be managed carefully with a view to reducing costs while maintaining the same level of effectiveness.

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 users. These factors should be managed carefully with a view to increasing effectiveness with no or limited additional cost.

**2.6.3 Agencies' resources and management**

The methods used for management of resources and accountability vary significantly between agencies. As can be seen in the table on management methods below, about half the agencies have fully implemented an activity-based management system linking budget and actual expenditures with outputs and (to some extent) objectives, whereas about one third have implemented a less than fully-fledged ABM system. Three agencies have not implemented such a system. As for the next level of accountability and transparency in the shape of a results-based management system, only one third of the agencies have implemented such a system. Precisely half of the agencies have implemented a quality management system.

Size does not seem to be a key determining factor when it comes to management methods. Several of the smallest agencies (CPVO, FRA, OSHA) have full ABM systems in place, although for results-based management only CPVO has a full system, and only OSHA has an advanced quality management system.

**Table 28 - Origin of resources**

<b>Categories</b>	<b>Number of agencies</b>	<b>Names of agencies</b>
Revenue from invoicing services only	3	CVPO, CdT, OHIM
Mixed	3	EASA, EMEA, ECHA (since 2008)
EU subsidy mainly	20	All other agencies
Total	<b>26</b>	

With regards to origin of financial resources (cf. the table above), the agencies whose resources originate fully or partly from fees are strong in terms of

quality management – all agencies except CVPVO belong to the group with a full quality management system (CPVO is in the middle group so has some quality management). This was to be expected given that services of a relatively standardised nature (compared to many other agencies) are delivered to paying customers. When it comes to activity-based management and results-based management, the picture is more mixed, with the agencies spread over the different categories.

**Table 29 - Management methods**

<b>Y/N</b>	<b>Definitions</b>	<b>No. of agencies</b>	<b>Names of agencies</b>
<b>Activity-based management</b>			
Yes	Annual report structured per activity, including objectives, budget, actual outputs and expenditures	12	CEDEFOP, CPVO, EAR, EEA, EFSA, EMEA, ERA, ETF, EUROFOUND, EUROPOL, FRA, OSHA
Rather yes	In between	9	CEPOL, CFCA, ECDC, ECHA, EMCDDA, EMSA, ENISA, GSA, OHIM
No	Reporting with no connection between outputs and expenditures	3	CdT, EUROJUST, FRONTEX
n/a	Information not available	2	EASA, EIGE
<b>Results-based management</b>			
Yes	Annual report contains substantial information originating from the addressees, e.g. satisfaction, behavioural change	9	CEDEFOP, CPVO, EAR, EFSA, EMCDDA, EMEA, EUROFOUND, EUROPOL, OHIM
Rather yes	In between	7	CEPOL, ECHA, ENISA, ETF, FRA, FRONTEX, OSHA
No	Reporting on outputs and/or expenditures only	9	CdT, CFCA, EASA, ECDC, EEA, EMSA, ERA, EUROJUST, GSA
n/a	Information not available	1	EIGE
<b>Quality management</b>			
Yes	Quality management system in place. Precise annual reporting on quality management, e.g. problems addressed, improvements achieved	13	CdT, CEDEFOP, EAR, EASA, ECHA, EEA, EFSA, EMEA, ETF, EUROFOUND, EUROPOL, OHIM, OSHA
Rather yes	In between	6	CFCA, CPVO, ECDC, ENISA, FRA, FRONTEX
No	No quality management system	5	CEPOL, EMCDDA, EMSA, ERA, GSA
n/a	Information not available	2	EUROJUST, EIGE
Agencies: N=26			

Thus, the majority of agencies have sound systems for the management of resources in place. EEA and CEDEFOP should be noted as good examples:

EEA has set up an integrated management control system which combines various management IT applications, including financial applications, time-tracking (recording time worked), a 'career development cycle' application,

and a system for monitoring publications, which links each product to a work programme measure. The system enables management to track the progress of the agency's projects and the use of resources in real time. The system is also transparent to the staff, where each person has time planned against projects and tasks. The management system has been highlighted by the European Court of Auditors as good practice with potential for transfer to other agencies<sup>94</sup>. Since the introduction of the management system, an improvement in efficiency has been reported, and the 2008 evaluation of EEA<sup>95</sup> concluded that EEA demonstrates a reasonable level of efficiency and a commitment to improve, as evidenced by the implementation of the management system. The agency has also developed and implemented a quality management system based on the ISO 9000 standard.

CEDEFOP has previously had management problems (OLAF case led to a number of strict procedures and replacement of management staff). Recently, the agency has made an effort to increase efficiency, in particular by improving administrative services and applying good administration principles. The implementation of Activity Based Budgeting (developed in 2008 and fully operational in 2009) has helped to improve efficiency and transparency. Better cost-effectiveness has been achieved through<sup>96</sup>:

- Automation of procedure (invoices payment automated system: decrease of over 40% of invoices paid after 30 days – 52% of invoices now paid within 15 days; on line procurement, e-recruitment)
- Better cost estimates
- Well prioritised management planning (including administrative activities)
- Tight financial monitoring (92% (2007) to 97% (2008) of overall budget implementation (99% implementation of the EU subsidy)
- Cuts in costs (publication, printing and translation used to be expensive activities. Efforts have been made to cut the costs and find alternative solutions.)

The key success factor for CEDEFOP's management of resources lies in very detailed planning and monitoring, which requires a lot of ex-ante work. The annual management plan integrates the different planning steps and provides overviews to facilitate planning, implementation and reporting on activities. Monthly monitoring has improved internal efficiency by identifying problem areas and solutions early.

In contrast, serious management issues are reported for CEPOL. This appears to be the most serious example of management and organisation not functioning neither in terms of complying with rules, nor in terms of executing the budget. Compliance with e.g. staff and financial regulations has been a problem for CEPOL since the inception, and has been assessed as problematic in reports from both the Court of Auditors and the IAS. The Court of Auditors pointed to serious weaknesses in the organisation of CEPOL's Secretariat. The European Parliament has delayed the discharge for the financial year 2007, and there is an ongoing OLAF investigation. CEPOL's budget has never been entirely spent. Due to this recurring problem, the Commission proposed to cut

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<sup>94</sup> European Court of Auditors: The European Union's Agencies: Getting Results, Special Report No. 5, 2008, p. 21.

<sup>95</sup> Technopolis Effectiveness Evaluation of the European Environment Agency, October 2008.

<sup>96</sup> Cf. Volume III, section 2.6.

off €1 million in the budget for 2010<sup>97</sup>. The main reason for the problems seems to be a considerable lack of staff with key competencies. The agency had difficulties with both recruiting and maintaining key administrative (incl. management) staff over a period of several years from the agency's establishment. In addition, the agency is very small (22.5 staff in the establishment plan for 2006, 28 in 2009) which means that resources – even if the right staff had been available – for fulfilling administrative requirements remain limited.

*Contribution to answering the question:*

**Agencies' internal organisation and their contribution to a sound management of resources including the execution of the budgets (Fc)**

The methods and the quality of systems used for the 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.

Size does not seem to be a key determining factor when it comes to choice of management methods. With regards to the *origin of financial resources*, almost all of the agencies whose resources originate fully or partly from fees have implemented a full quality management system. This was to be expected given that services of a relatively standardised nature are delivered to paying customers.

Examples of agencies that have implemented ABM systems in recent years show that these agencies experience improvements in both efficiency and transparency (accountability). There are, however, also examples of agencies where there is insufficient planning and management of resources.

#### **2.6.4 Budgetary costs and burdens**

This section looks into the issue of transferring costs from the EU budget to agencies' customers or partners, and also to that of imposing administrative burdens upon users of the agencies' services.

The issue is mainly a problem where private enterprises have to apply and pay for a 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. This is the case even where other options seem to be available as in the case of EASA's certificates (the equivalent US Agency provides the service for free thanks to a tax based on ticket selling) or in the case of ECHA (pre-registration is paid by the EU budget whereas registration will be charged to companies).

Rather than the *principle* of charging users for agency services, what is discussed is rather the level of fees. Essentially, this is a matter of aligning fees on costs and of reducing costs. In the cases of CdT, CPVO, EASA, EMEA and OHIM there have been instances where the fees exceeded the costs (or the contrary in one instance), because user demand for the agencies' services, and thus the revenue from user fees, was larger than forecast. Surpluses

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<sup>97</sup> Cf. Volume III, section 3.6.

have accumulated, and the necessary adjustments were generally made through a long and complex process. It has already been noted (cf. section 0) that the adjustment was particularly difficult in the case of OHIM for governance reasons<sup>98</sup>.

As regards the administrative burden, our interviews with stakeholders reflect a mixture of positive and negative assessments which are exemplified by the following opinions:

- “You don’t feel as if you were in the hands of a tax authority. There is a willingness to cooperate and discuss things prior to decision-making” (CPVO user).
- “The pre-registration process owes more to a regulatory perspective than a customer one. For instance, the IT system only allows for pre-registration in office hours, to protect the system from hacking. This restricts flexibility for industry and the agency has never really communicated to industry why it was the case” (ECHA user).
- Administrative burden is “limited, when compared to other national systems” (OHIM user).

In the above statements, it must be noted that positive assessments correspond to old agencies which primarily serve the interests of the business community (CPVO and OHIM). The negative assessment of the ECHA user should be seen in the context of a new agency primarily serving interests other than those of the businesses. The criticism is however grounded in hard facts.

In principle, cost transfers and burdens are not an issue where the agency meets its target by disseminating information, providing advice, or offering coordination facilities for free. In such cases, it is however frequent that a successful impact is achieved through the contributions of several public actors, and therefore by combining their respective resources. Examples include:

- Contribution of national agencies and focal points to collecting data (e.g. EEA).
- Sharing of operational costs with national law enforcement bodies.
- Full time national coordination officers working in agencies such as EUROPOL or CFCA.

In such cases, the issue is not so much one of “transferring costs”, but rather a matter of fair sharing of costs and benefits. Having reviewed the examples under investigation in this respect, the evaluation team considers that national contributions are generally not assessed as a “transfer” or a “burden” by our informants. The example of EASA is rather exceptional in our information base:

One of EASA’s tasks is to control the airworthiness of aircrafts across Europe. In principle, this task should be shared with Member State Authorities on a 75-25 basis. In practice, our case study has shown that some Member State representatives feel that they take on more than their fair share, which is consistent with the fact that the agency does not meet its targets in terms of the resources to be devoted to these controls.

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<sup>98</sup> As described in more detail in section 2.3.3, the MS representatives in OHIM’s Budget committee are generally the heads of the national Intellectual Property (IP) office which are in competition with OHIM. Thus, there was resistance to lowering the OHIM fees.

*Contribution to answering the evaluation question:*

***Transferring costs or other burdens to other public or private actors (Fe)***

Cost transfers and administrative burdens are primarily a problem where private enterprises are required 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. Rather, what is discussed is the level of fees. There have been instances where the fees exceeded the costs (or the contrary in just one instance). Surpluses have accumulated, and the necessary adjustments were generally made, although the process is long and complex. In one instance (OHIM) the adjustment was particularly difficult for governance reasons.

With regards to the transferred burdens, there is a mixture of positive and negative opinions; the latter occurring in the context of businesses dealing with ECHA. This agency is primarily serving interests other than those of businesses. It may therefore be deduced that private enterprises are somewhat critical in such contexts, especially since ECHA is a new agency, and that it has taken time for other similar agencies to raise their level of user-friendliness to a good standard.

In cases where the agency meets its targets by disseminating information, providing advice, or offering coordination facilities for free, the main remaining issue is that of drawing on Member State resources for achieving the agency's results. The evaluation team concludes that national contributions are generally perceived as "joint contributions" rather than "transfers" or "burdens".

### **2.6.5 Comparisons of outputs, results, and performance**

The approach to comparisons between agencies has been threefold. First, the evaluation team gathered a substantial amount of existing comparable information and developed additional comparable data through a series of interactions with the agencies (cf. the overview tables in the Appendix to Volume III, as well as the tables on specific issues included throughout this report).

In the case of accessibility, the information was first gathered by questioning the agencies, but the results were not reliable enough. A second step has therefore been taken, which consisted of reconstructing the indicator on the basis of a more precise definition and with the help of a travel agency. Indicators of governance cost and staff attractiveness have also been developed through the same centralised approach (see 2.6.1 and full details in CD-Rom).

Considering these two first steps, it became clear that easily available comparisons only applied to the structures, resources and activities of agencies, not to performance.

A third step in the approach has therefore been taken. It included a systematic review of two information sources: (1) latest annual activity report, and (2) evaluation team's agency visit reports. The reviewed documents have been searched for quantitative performance information and 65 indicators have been recorded in a database mentioning their name, definition, logical level (output, result, impact), latest available value, target if available (35 instances out of 65), change in comparison with previous year (9 instances out of 65).



The evaluation team has attributed 16 distinct meanings to the identified indicators, as displayed in the next table. This categorisation is meant to suggest comparisons across agencies. For this reasons, the categories are expressed in a rather abstract way.

The table displays the evaluation team's assessment of the extent to which inter-agency comparisons could be undertaken within the next few years (See detailed explanation in CD-Rom).

It was found that there is some potential for future comparisons in the following areas:

- Dissemination of information: 8 output indicators identified in 4 agencies typically dealing with information. One indicator lends itself to inter-agency comparisons: "Presentations of agency's works in conferences and workshops organised by institutions other than the agency". In order for this indicator to enable comparisons, three issues should be addressed: (1) audience of the event (attendance), (2) quality of the event (peer review), and (3) novelty of the presentation.
- Gathering harmonised information: 3 activity indicators identified in 3 agencies typically dealing with information. One indicator may lend itself to inter-agency comparisons: "Annual cost of maintaining an information network". In order for this indicator to enable comparisons, four issues should be addressed: (1) creating vs. maintaining a network, (2) coverage of the network (all Member States, or less, or more), (3) co-funding by Member States or not, (4) information requests addressed to network members (heavy / light).
- Public interest in information: 9 result indicators identified in 5 agencies typically dealing with information. There is a prospect for harmonising and comparing the following indicators: "Website visits and downloads". In order for this indicator to enable comparisons, two issues should be addressed: (1) differentiating "single visits" from repeated visits of the same user, (2) distinguishing visits to (download of) newly released pieces of information (= performance) from old information or general information about the agency.
- Quality of service: 6 output indicators identified in 3 agencies in diverse areas. Interagency comparisons are not easy in this area. For instance, comparing "timeliness of services" may mean that performance is compared, but also that agencies set their own timeliness targets in more or less demanding way.
- User satisfaction: 2 result indicators in 2 agencies in various areas. If such comparisons are to be undertaken, the following caveats should be considered: (1) are the users free of choosing the agency's services or not? (2) are there comparable services available at Member State level or on the market?
- Service delivered: 6 output indicators identified in 6 agencies in diverse areas. Overall, the evaluation team assessed interagency comparisons in this area as impossible, even in the future.

- Use of service: 6 impact indicators identified in 3 agencies typically dealing with information. There is a prospect for harmonising and comparing the indicator of: "Citations of agency's works". Collecting the corresponding information is a heavy task which needs to be sub-contracted to external firms. There could be considerable economies of scales if several agencies launched a joint public procurement in this respect. In order for this indicator to enable comparisons, two issues should be addressed: (1) distinguishing citations in EU policy making documents, academic literature, and media, and (2) distinguishing citations of newly released pieces of information (= performance) from old information or general information about the agency.

These findings are summarised in the table below which shows that:

- Nine items are monitored in less than three agencies, which does not allow the evaluation team to comment about comparability;
- One issue does not offer any prospect for inter-agency comparison (delivery of specialised services);
- Three issues might be subjected to comparisons in the future, although it would be difficult or rather difficult;
- There is a reasonable prospect for inter-agency comparison in two areas: dissemination and utilisation of information.

**Table 30 – Meaning of the identified performance indicators**

<i>What is measured</i>	<i>Number of indicators / agencies</i>	<i>Typical level</i>	<i>Types of agency activity</i>	<i>Future inter-agency comparison<sup>99</sup></i>
Audience of agency's works	3 / 2	Impact	Information, communication	/
Contribution to multilinguism	2 / 2	Output	Information	/
Demand for agency's services	1 / 1	Activity	Service	/
Dissemination of information	8 / 4	Output	Information, service	Possible
Effective soft cooperation	7 / 2	Activity	Information, soft coordination	/
Efficiency	3 / 3	Output	Information, soft coordination	Difficult
Expert contribution to activities	2 / 1	Activity	Information	/
New clients	1 / 1	Result	Service	/
Public interest in information	9 / 5	Result	Information, communication, service	Possible
Quality of service	8 / 3	Output	Expert advice, operational coordination, individual applications, service	Difficult
Reliability of information	1 / 1	Output	Information	/
Service delivered	6 / 6	Output	Expert advice, soft coordination, operational coordination, individual applications, service	Null
Use of service	6 / 3	Impact	Information, soft coordination	Rather difficult
Value for money	1 / 1	Result	Operational coordination	/
Volume of activity	3 / 1	Activity	Service	/

The overall finding is that the prospect of performance comparisons is limited except in agencies collecting and disseminating harmonised information, where the following items are actually measured in a way which could be harmonised within the next years:

- Effective soft cooperation orchestrated by agencies collecting harmonised information (activities);
- Products of the agencies delivering harmonised information at three logical levels: dissemination (outputs), public interest (results), and use (impacts).

These findings were confirmed through the series of focus groups and benchmarking exercises that were conducted during the evaluation. These exercises clearly show that performance comparisons could be only be envisaged in the

<sup>99</sup> Not assessed if less than three agencies are covered

future, and only between agencies which implement similar activities. Such a prospect seems to be:

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

Building upon the findings of this evaluation, it seems that comparability is feasible within six groups of agencies focusing on the following activities respectively:

**Table 31 – Agencies having comparable activities**

Comparable activity	Agency's first main activity	Agency's second or third main activity	Performance criteria <sup>100</sup>
Collecting and disseminating harmonised <b>information</b> as to feed policy-making at EU and Member State level	ECDC, EEA, EMCDDA, ENISA, EUROFOUND, FRA	CEDEFOP, EFSA, EIGE, EU-OSHA	Dissemination of information Acknowledgement of information Inputs in policy-making
<b>Communicating</b> 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 <b>soft coordination</b> between Member States and European Institutions as to better achieve EU objectives	CEDEFOP, CEPOL, EIGE	CFCA, ECDC, EMSA, ENISA, ERA, EU-OSHA, EUROPOL, FRONTEX	Participation of Member States Member States' commitments to take action Actual changes in Member States' agenda
Providing <b>expert advice</b> to policy-makers in EU & MS as to support an evidence-based decision-making process	EFSA, ERA	EASA, ECDC, ECHA, EMEA, ERA, FRA	Responsiveness to decision-makers' demands Credibility of delivered advices Inputs in decision-making
Facilitating <b>operational coordination</b> 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 <b>individual applications</b> of firms as to ensure a secure functioning of the EU market	CPVO, EASA, ECHA, EMEA, OHIM		Responsiveness to users' needs Users' satisfaction Absence of contested decisions / assessments
<b>Service and support</b> to targeted institutions inside or outside Europe, as to better achieve the objectives of a EU policy	CdT, ETF, GSA	CEPOL	Satisfaction of targeted institutions

<sup>100</sup> Only the first cell has been tested with concerned agencies. All other cells are just derived from the logic of the corresponding activities.

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

Each of the six above categories have a single logic in terms of tasks, addressees, intended results and impacts, and should offer good prospects for developing common criteria and indicators through some kind of work group arrangements.

It must be however mentioned that the evaluation team has encountered a strong resistance against the idea of clustering agencies per categories of activity. One of the reasons for this resistance was 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.

*Contribution to answering the evaluation question:*

#### **Comparability of agencies' results and outputs**

Comparing performance of agencies has proven to be difficult. The evaluation team has compiled a substantial amount of **comparable information** on a series of key aspects of agencies, including their governance and management systems, resources, oversight activities etc.

New **indicators** have been developed regarding location costs, costs of management board meetings, and information on a number of other factors affecting efficiency, including the sharing of administrative staff and factors relating to attractiveness for staff.

Progress is being made in inter-agency comparisons but the regular updating of existing comparisons is not secured. Furthermore, it relies upon questionnaires which add to the agencies' administrative burden. A considerable amount of coordination work would be required in order to harmonise these three indicators across the concerned agencies, and there is currently no arena where such work can be undertaken.

**Performance comparisons** can only apply to activities which aim at achieving similar results for comparable target groups. Some activities of this type have been presented in this section. 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.

#### **2.6.6 Efficiency: An overview**

The overall question to be answered in this section is to what extent the agencies have conducted their activities efficiently and achieved their objectives in a cost-effective manner.

The evaluation has identified three important cost elements related to the **institutional and organisational set-up** which are specific in their significance to the EU agencies due to their institutional set-up and their location: Administrative costs, costs of management board meetings, and location costs. Each of these three cost factors impact the agencies' ability to achieve good results at low cost, since they consume resources which cannot be spent directly on achieving results through operational activities.

Of these, administrative costs are by far the most significant, as they consume, on average, about a third of the agencies' staff resources - however, variations between agencies are substantial, with figures ranging from 14% to 54% of staff resources devoted to administration. There is a clear tendency towards a reverse proportionality between the size of the agency and the share of staff devoted to administrative tasks: generally, the larger the agency, the smaller the share of administrative staff. This also means that 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. Given that there are clear scale benefits associated with administrative tasks, 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 members. In order to categorise "small agencies", the evaluation team has arbitrarily chosen a 0-75 range.

The location cost is another significant cost element. Again, the situation varies considerably between agencies. Agencies in remote locations (and in particular those located away from capital cities) tend to have high travel costs, and the closer the agency is to the geographical centre of the EU (in terms of distance and travel time), the lower the travel costs tend to be. The other part of the location cost, namely the cost of premises, is not dependent on the "distance" factor and varies widely depending on local conditions, including the size and nature of the support provided by the host country (which ranges from practically zero to almost full coverage of all costs).

Two main factors are important:

- The size of the agency - smaller agencies have considerably higher relative non-operational costs;
- The location of the agency - distant locations generally mean high travel costs, and some agencies have relatively high premise costs. In some cases these off-set each other, but there are agencies which score high on both indexes;

In fact, these factors are more or less given; with the possible exception of premise cost (part of the location cost), they are part of the conditions under which the agency must operate and has little or no influence on.

Thus, the **internal management** of the agencies' available resources come into play, as a factor which is within the control of the agencies themselves (internal efficiency). 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). There are, however, also examples of agencies where there is insufficient planning and management of resources is not sufficiently sound.

A number of key factors influence the **cost-effectiveness** (external efficiency) of the agencies. In the investigated impact stories, impressive results and far reaching benefits have been achieved at surprisingly low cost. A series of factors have been identified which determine 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. These factors should be managed carefully in the perspective of reducing costs while maintaining the same level of effectiveness.

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 users. They should be managed carefully in the perspective of increasing effectiveness with no or limited additional cost.

Do the agencies achieve cost-effectiveness through **transferring costs** and administrative burdens to users or other stakeholders? This does not generally seem to be the case. 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. Rather, what is discussed is the level of fees. There have been instances where the fees exceeded the costs (or the contrary in just one instance). Surpluses have accumulated, and the necessary adjustments were generally made, although the process is long and complex. With regards to the administrative burden there is a mixture of positive and negative assessments. In cases where the agency serves its target audience by disseminating information, providing advice, or offering coordination facilities for free, the main remaining issue is that of drawing on Member State resources to achieve the agency's results. The evaluation team concludes that national contributions are generally perceived as "joint contributions", rather than "transfers" or "burdens".

**Comparing** performance of agencies has proven to be difficult. The evaluation team has compiled a substantial amount of comparable information on a series of key aspects of agencies, including their governance and management systems, resources, oversight activities etc. New indicators have been developed regarding location costs, costs of management board meetings (cf. section 2.6.1), and information on a number of other factors affecting efficiency have been compiled, including share of administrative staff (cf. section 2.6.1) and factors relating to attractiveness for staff (cf. section 2.3.1).

However, the regular updating of existing comparisons is not secured and it would require collecting data via questionnaires which add to the agencies' administrative burden. Furthermore, a considerable amount of coordination work would be needed as to harmonise the indicators across the concerned agencies.

Performance comparisons may only apply to activities which aim at achieving similar results for comparable publics. Some activities of this type have been presented in this section. 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.



## 2.7 Oversight activities

### ***Evaluation question:***

**G:** ***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?***

This section will be divided into four subsections covering, respectively, evaluation, audit, monitoring, and reporting. Each section will focus on the extent to which the oversight activity is adequate for ensuring the accountability and performance of the agencies.

### **2.7.1 Evaluation**

There are two main types of evaluation carried out of agencies:

- Overall evaluation
- Evaluation of specific activities/programmes

Periodic overall evaluation is usually, but not always, required by the agency's constituent act. Only five agencies are not subjected to such a requirement (CdT, EMEA, EU-OSHA, GSA, OHIM<sup>101</sup>). These evaluations are typically required to be carried out every four to six years.

Evaluation of specific activities or programmes (task evaluation) is a general requirement of the Framework Financial Regulation, specifying that "in order to improve decision-making, the Community body shall regularly carry out ex ante and ex post evaluations of programmes or activities. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be sent to the management board."<sup>102</sup> There is no requirement as to the frequency and contents of these activity evaluations. About half of the agencies state that they carry out activity evaluations. For the others, this type of evaluation seems to mainly take place in connection with the periodic overall evaluations.

26 overall evaluations have already been undertaken, in all cases by external consultants. They fall under the responsibility of either the agency or the parent DG, or both, but are usually managed in close cooperation.

The table below provides an overview of the requirements of the founding regulations and the actual practice for overall evaluations (it should be noted that in terms of responsibility and dissemination, actual practice generally follows the requirements so we have not distinguished between the two).

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<sup>101</sup> EUROPOL has not had an evaluation requirement until now but will have with the new founding regulation entering into force in January 2010.

<sup>102</sup> Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, Art. 27.

**Table 32 – Overview of evaluation requirements and practice**

<b>Agency</b>	<b>Requirement</b>	<b>Actual practice</b>	<b>Responsibility</b>	<b>Coverage (re-requirement)</b>	<b>Dissemination</b>
<b>CdT</b>	None	2001	Agency, Commission	Actual results and external efficiency	Internal
<b>CEDEFOP</b>	Every five to six years	1992, 1995, 2001, 2007	Commission	Actual results and external efficiency	External
<b>CEPOL</b>	Every 5 years	2010	Agency	Satisfaction	COM and Council
<b>CFCA</b>	Every 5 years	2012	Agency	Actual results and external efficiency	External
<b>CPVO</b>	Every 6 years	2001, 2004, 2009	Agency	Satisfaction	Internal
<b>EAR</b>	N/A	2004	Commission	Actual results and external efficiency	External
<b>EASA</b>	Every 5 years	2008	Agency	Actual results and external efficiency	External
<b>ECDC</b>	Every 5 years	2008	Agency	Coherence	External
<b>ECHA</b>	2012	N/A	N/A	N/A	N/A
<b>EEA</b>	Every 5 years	2003, 2008	Agency	Internal efficiency	External
<b>EFSA</b>	Every 6 years	2005	Agency	Internal efficiency	External
<b>EIGE</b>	2010	N/A	Agency	Actual results and external efficiency, scope of tasks	Not specified
<b>EMCDDA</b>	Every 6 years	2000, 2007	Commission	Coherence	EP and Council
<b>EMEA</b>	None	2009	Commission	Actual results and external efficiency	External
<b>EMSA</b>	After 5 years	2008	Agency	Internal efficiency	External
<b>ENISA</b>	After 3 years	2007	Commission	Extension of mandate*	External
<b>ERA</b>	After 5 years	N/A	Commission	Actual results and external efficiency	External
<b>ETF</b>	Every 4 years	1997, 2002, 2006	Commission	Coherence	External
<b>EU-OSHA</b>	None**	2001, 2007	N/A	N/A	External
<b>EURO-FOUND</b>	Every 4 years	2007, 2010	Agency	Actual results and external efficiency	External
<b>EUROJUST</b>	Every 5 years, first one 2014	2014	Agency, Commission	Impacts and external efficiency	External
<b>EUROPOL</b>	None (from 2010 : every 4 years)	2013	Agency	impacts and external efficiency (from 2010)	EP, Council and COM
<b>FRA</b>	Not specified	2002, 2008***	Management board and Commission	Achievements	Not specified
<b>FRONTEX</b>	Every 5 years	2009	Agency	Actual results and external efficiency	External
<b>GSA</b>	None	2008	N/A	N/A	N/A
<b>OHIM</b>	None	N/A	N/A	N/A	N/A

\*ENISA's original mandate was limited to 5 years, thus the founding regulation required an evaluation after 3 years to help determine whether the mandate should be extended

\*\* For OSHA, there is a requirement for a Commission report to the Parliament after 5 years, but no formal requirement for an actual evaluation.

\*\*\*Previous evaluations of predecessor EUMC

As is evident from the table above, both the requirements and the practice of overall evaluations differ considerably between agencies, both in terms of frequency, responsibility, coverage, and dissemination. There seems to be no logical explanation, or justification, for these variations. The only justified exception would seem to be agencies which are 100% financed by user fees, since public (EU) funds are not used to subsidise the agencies, and thus the need for accountability through evaluation is (slightly) smaller. It is the opinion of the evaluator that the transparency of the agency system would be improved if all agencies were subject to similar requirements. In terms of frequency, a comprehensive overall evaluation of all agencies every 4-5 years seems reasonable (and is also, as mentioned, the most widespread practice).

With regards to follow-up, about half of the agencies<sup>103</sup> state that they follow up in a structured way on evaluations, in many cases in the form of a formal action plan. Investigations in agencies also show that a common way of following up on evaluations is to address the key recommendations, to the extent possible, in the next annual work plan or multi-annual strategy/work plan. There is less evidence on follow-up on task (activity) evaluation but, generally, follow-up seems to be less formalised than for overall evaluations.

In five cases, only the first evaluation is specified - ECHA, EMSA, and ERA after 5 years, ENISA and EIGE after 3 years.

There is a general understanding that there is a need to evaluate the agencies every few years with an aim to reconsider their mandate or even their very existence. However, the practice of evaluating some agencies already after three years is assessed as not very effective, in particular from a "reconsideration" perspective. Three years is too short for a new organisation to be set up, become fully operational and produce results, especially since the three years are counted from the date of the founding regulation, and not from the time when the agency is actually operational. With regards to the EIGE evaluation this seems particularly pointless, as the evaluation is foreseen for 2010, but the agency will only become operational by the end of 2009 (the founding regulation was passed in December 2006). The ENISA evaluation took place in 2006-2007, at a time when the institute had only been operational for a little over a year. However, given ENISA's time-limited mandate, there was a need to evaluate progress. The evaluation did indeed produce a series of conclusions and recommendations of relevance to the decision of whether or not to extend the mandate beyond the original 5 years. One of the conclusions was that there was a need for the agency but that a number of changes e.g. to the agency's mandate, governance, size, and other key aspects were necessary in order to increase impact. However, it was finally decided to extend the agency's mandate for another limited period (3 years), but without any changes to the mandate or other aspects of the founding regulation (cf. Volume II, section 16.2 for more details).

In fact, as shown by the 2008 Meta-study of agency evaluations, 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)<sup>104</sup>.

There are three reasons for these findings: (1) the political profile of these evaluations is too low<sup>105</sup> for the evaluations to go beyond management issues, (2) a serious reconsideration cannot be put on the political agenda

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<sup>103</sup> Cf. Vol III, appendix I.

<sup>104</sup> 2008 Meta-study, section 5.2

<sup>105</sup> They typically involve administrative staff in the agency and Commission

every five years<sup>106</sup>, and (3) evaluators have difficulty in assessing many results and impacts at the same time, meaning that they can conclude on a specific task, but not as well on the whole range of tasks, which is typically wide.

*Contribution to the evaluation question:*

### **Evaluation**

Two types of evaluation are undertaken by agencies: overall evaluations, and evaluation of specific activities/tasks. The majority of agencies have a requirement for periodic overall evaluation in their constituent act, while the requirement for the evaluation of specific activities is contained in the Framework Financial Regulation, but without any requirement as to the frequency.

Requirements and practices regarding frequency, responsibility, contents, and dissemination vary, and the evaluator concludes that more streamlined requirements, in particular for periodic overall evaluations, would contribute to improving the transparency of the agency system.

The assessment of the evaluation team is that much of the evaluation effort, in terms of periodic evaluations, do not satisfy the needs of accountability of the agencies, in particular regarding 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 required.

### **2.7.2 Audit**

Until 2003, all agencies were responsible for their internal audit function, something which still applies to CPVO and OHIM. The recasting of the General Financial Regulation of December 2002 involved the dismantling of the ex ante controls by the Financial Control service and the creation of the Internal Audit Service of the Commission (IAS). As a result, the IAS became internal auditor of Agencies. The new system was progressively implemented and it reached its cruise speed in 2008. All agencies are now audited every year by people having a much better knowledge of risks.

A significant share<sup>107</sup> 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 established 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.

In addition, agencies are audited by the European Court of Auditors (CoA), usually twice a year.

A very high number of interviewees inside the agencies express the opinion that there is an audit overload, with typically 1-2 audits carried out by the IAS

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<sup>106</sup> This would mean that the existence and mandate of five agencies would be reconsidered every year in average.

<sup>107</sup> 9 out of 43.

and 1 by the CoA every year. An explanation may be that "internal audit" is carried out by a body which is perceived as external. Another explanation may be that 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 risks<sup>108</sup> 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 is, with a few exceptions, not systematically implemented in the case of the agencies<sup>109</sup>. It is therefore the joint 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 necessarily have competence and/or interest in the area of management and administration. Moreover, it seems that audit conclusions may not even be discussed in board meetings<sup>110</sup>.

Finally the evaluation team understands that the boards counterweigh 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 two serious problems.

*Contribution to answering the evaluation question:*

#### **Audit**

Since 2008, the Commission's Internal Audit Service (IAS) has been fully responsible for the internal audit function in the majority of agencies, thus ensuring a professional and harmonised approach to the auditing of 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 two serious problems.

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<sup>108</sup> One person overuses his/her power or the system is open to fraud in areas such as procurement and recruitment.

<sup>109</sup> Except EFSA where there is a three-member audit committee, 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, EMCCDA, EMSA, EU-OSHA, EUROFOUND, FRA).

<sup>110</sup> Based on a review of the proceedings of a typical agency board.

### 2.7.3 **Monitoring**<sup>111</sup>

There are few concrete requirements for monitoring in the agencies' founding regulations but the "agencies' framework financial regulation requires (Article 25, paragraph 3) that the director report to the management board on the achievement of the objectives set for all the sectors of activity covered by the budget and that the achievement of the objectives set for all the sectors of activity covered by the budget be monitored by performance indicators"<sup>112</sup>.

The agencies are slowly progressing towards Activity Based Reporting and Budgeting. Most agencies have implemented an Activity Based Management system either totally (12 agencies) or in part (9 agencies), cf. section 2.6.4 above, but the evaluation team's analysis of the agencies' main tasks shows that almost none of them are expressed in verifiable objectives and performance indicators. For their annual planning, the agencies use indicators for the deployment of resources (inputs) and to some extent for the outputs, but measurable outcome or impact indicators are extremely rare.

There are examples of good practices in terms of monitoring outputs. For instance, EEA runs an integrated management system which enables the agency to monitor its performance as regards achieving outputs and tracking resources (including staff time) used for carrying out the tasks in the work programme<sup>113</sup>, and EUROPOL has a very elaborated and systematic monitoring of users' satisfaction.

An example of outcome/impact indicators being applied is that of ENISA which, since the introduction of a new Work Programme approach in 2008, has used "SMART goals" and has tried to apply them systematically, including reporting on the indicators in the 2008 Annual Report.<sup>114</sup> Although the system can be further developed it is a good start and may be considered good practice.

According to the Court of Auditors' report, EU-OSHA, EEA, and EFSA have also given consideration to introducing results-based performance indicators but have not yet implemented such a system<sup>115</sup>.

*Contribution to answering the evaluation question:*

#### **Monitoring**

The current state of play for the large majority of agencies is that monitoring is not very well developed in terms of the use of quantifiable objectives and indicators. Output is monitored in most agencies, Several agencies are making an effort to develop results-based performance indicators, usually connected to their activity-based management systems, but actual use of such indicators is still rare, meaning that monitoring of results and impacts is almost non-existent. Thus, the monitoring activities share the basic flaw of

<sup>111</sup> Compare also section 2.6.5 regarding indicators.

<sup>112</sup> European Court of Auditors: The European Union's agencies: Getting results, Special Report No. 5, 2008.

<sup>113</sup> European Court of Auditors, above quoted report, Box 7.

<sup>114</sup> Although many of ENISA's SMART goals are in fact output indicators, there are a number of measurable outcome/impact indicators, for instance "ENISA's recommendations of innovative actions are applied in at least 10 Member States by 2010", and "By 2010, service providers covering at least 50 million users use ENISA recommendations to improve resilience". Cf. ENISA Work Programmes 2008 and 2009, and 2008 General Report.

<sup>115</sup> European Court of Auditors, above quoted report, p. 22.

the evaluation practice: that real effectiveness cannot be (is not) determined, meaning that the contribution of monitoring activities to improving performance is, at best, only applied to outputs and internal efficiency, not results.

#### 2.7.4 Reporting

Given the low degree of development of monitoring systems, as discussed above, it follows that reporting (which is based on monitoring) by the agencies does not go beyond the use of resources and production of outputs, either.

As many agencies have now partly or fully introduced activity-based management systems (cf. section 2.6.3), this extends into their reporting. As shown in the table below, almost all agencies have to some extent implemented activity-based annual reporting.

**Table 33 – Activity-based annual reporting**

<i>Activity-based annual report</i>	<i>Number of agencies</i>	<i>Names of agencies</i>
<b>Yes</b>	11	CEDEFOP , CPVO , EEA , EFSA , EMEA , EMSA , ENISA , EU-OSHA , EUROFOUND , EUROPOL , FRONTEX
<b>Rather yes</b>	9	CEPOL, CFCA, ECDC, ECHA, EM-CDDA, ERA, ETF, EUROJUST, GSA, OHIM
<b>No</b>	2	FRA
<b>N/A</b>	4	CdT, EAR, EASA, EIGE
<b>Total</b>	<b>26</b>	

Sources: Based on Volume 3, Appendix 1, table 17. Original source: Agency visits and documentary studies

The agencies' framework for financial regulation stipulates (Article 40) that the director must report to the management board on the performance of his duties in the form of an annual activity report, together with financial and management information. The report must relate the results of the agency's operations to performance against objectives<sup>116</sup>. In their report, the Court of Auditors concluded that the requirements were often only partially fulfilled, and that it was not possible to precisely identify either the outcome or the impact of the agencies' work, although the reports did provide a reasonably reliable measure of the level of activity<sup>117</sup>. In other words, the annual reports cannot report on data that they do not have, because monitoring systems are not capable of producing these data.

<sup>116</sup> Court of Auditors report, p. 24.

<sup>117</sup> Court of Auditors report, as quoted above.

*Contribution to answering the evaluation question:*

### **Reporting**

Although reporting (annual reports and annual activity reports) are increasingly activity-based, reporting almost never goes beyond outputs and the use of resources. This is a natural result of inadequate monitoring systems which cannot (and do not) track performance and results/impacts. Thus, they do not produce the full range of data required to live up to the requirements of the financial regulation.

## **2.7.5 Oversight activities: an overview**

The overall question to be answered in this section is: to what extent the mechanisms for monitoring, reporting and evaluating EU agencies are adequate for ensuring accountability and for an appropriate assessment of performance in the context of the agency system?

The formal requirements about audit, monitoring, and reporting are generally rather *coherent across the agencies*. They stem mostly from the agencies' framework for financial regulation – the requirement for an annual activity report which leads to the need for monitoring, and from the now fully implemented practice of the IAS being responsible for internal audit in most agencies (except CPVO and OHIM). The formal requirements for evaluation vary more. Five agencies do not have a requirement for evaluation. For the remaining agencies, the requirements vary in frequency, with every 5 years as the most common requirement. For some agencies, only the first evaluation is formally required in their founding regulations.

The agencies comply with the requirements in terms of carrying out the oversight activities with the required timing and frequency, but the main problem is the extent to which the oversight activities are carried out in a way that satisfies the need for holding agencies accountable and which promotes performance.

### **Evaluation**

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

Much of the evaluation effort, in terms of periodic evaluations, does not fully satisfy the needs of accountability of the agencies, in particular regarding 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 required.

### **Audit**

Since 2008, the Commission's Internal Audit Service (IAS) has been fully responsible for the internal audit function in the majority of agencies, thus



ensuring a professional and harmonised approach to auditing of 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 two serious problems.

### ***Monitoring and reporting***

Adequate monitoring is the basic requirement for being able to carry out the other oversight activities in a way that realises 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 or other. Several agencies are making an effort to develop results-based performance indicators, usually connected to their activity-based management systems. Actual use of such indicators is however still extremely rare, meaning that 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 (and is not) assessed, meaning that the contribution of monitoring activities towards improving performance is, at best, only applied to outputs and internal efficiency, 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 financial regulation.

## **Appendix 1 - Narratives of the sub-cases**

In-depth case studies were carried out in fourteen agencies in order to test a series of standard assumptions applying to typical activities. The case studies included one or two investigations into the achievement of specific impacts (most often success stories). This appendix briefly recaps the sub-cases studied. More information can be found in the attached CD-Rom.

### ***CEDEFOP - Promoting and advising on National Qualification Frameworks***

CEDEFOP played a key role in developing the European Qualification Framework (EQF). This new approach defines the reference levels for qualification in terms of educational outcomes instead of specific institutions and certificates. It makes qualifications more readable and understandable across national educational systems. The EQF was adopted by the European Institutions in 2006. The "story" begins in 2007 when CEDEFOP started to advise and assist national qualifications authorities and social partners in bringing national systems of Vocational Education and Training in line with the Bologna framework and EQF. This is done in the context of an open coordination process.

### ***CEDEFOP – SKILLSNET***

CEDEFOP produced the first EU wide quantitative forecast on skills. This compilation of research works provides policy makers, social partners and other stakeholders with an early identification on new skills and an anticipation of skill needs and supply. It is meant to strengthen the links between the design of training systems and the knowledge economy's requirements in terms of workforce.

### ***CFCA - Joint Deployment Plan Bluefin Tuna***

Soon after its establishment in 2007, the agency launched several Joint Deployment Plans of fishery inspection, including one focused on Bluefin Tuna in Mediterranean (started in 2008). This plan involves two-monthly coordination meetings in Vigo (ES), and joint inspection campaigns which are coordinated on a daily basis by a technical group composed of national inspectors and an Agency staff. These activities have rapidly created a feeling of mutual trust and a virtuous mutual pressure on national inspectorates. Joint inspection vessels are now able to inspect any boat from EU and non EU countries under an agreement with the International Commission for the Conservation of Atlantic Tunas. Most "inspection gaps" are now bridged.

### ***EASA - Continued airworthiness activities***

The agency is responsible for controlling airworthiness of aircrafts across Europe, and it aims to devote 25% of its "security" human resources to this task (in fact only 21% in 2008). This task is shared by the Agency and the Member State Authorities on a 75-25 basis. A number of interviewed stakeholders report that the task is not yet properly fulfilled by the agency and that airworthiness controls are partly undertaken by National Authorities at their expense. Two significant 'incidents' are quoted where National Authorities decided or threatened to "ground" aircrafts for security reasons, although this is EASA's responsibility, because the agency was not fast enough in dealing with the problem. Both problems were quickly and effectively solved through an interaction between national and European levels. In those examples, the limitations of the agency are its distance to the field and its relative youth.

These limitations are increasingly counterbalanced by its acknowledged expertise. EASA explains this inadequacy by claiming insufficient budget resources and staffing constraints, which receives support from the industry and NAA interviewees, but is denied by the Commission. Some say also that EASA's authority would be better founded if the accident investigation Bureaus were also grouped and centralised in one parallel European organisation (interviews with industrialists).

#### ***ECDC - Information and advice during the Influenza A(H1N1) crisis***

In the case of H1N1, ECDC's epidemic intelligence system enabled the identification of the threat well in advance, and as soon as some information was received from the US, where two cases were identified with no direct link to swine. One of the difficulties encountered was the division of work with WHO. It was agreed that WHO would be directly notified of cases through the agency. The agency issued daily risk assessments including figures, locations, clinical characteristics of cases, and technical guidelines targeted at MS. This information was deemed to be highly credible because ECDC has some of the best European specialists in influenza working permanently in the Centre, holds daily video conferences with WHO, and has strong connections with expert networks (one ECDC expert was sent to CDC in Atlanta during 5 weeks). Guidance documents are discussed with national competent bodies through an advisory forum. One of the issues thoroughly discussed was how to define infected geographical areas, an issue which is quite political, since it can have a significant impact on tourism, travel, business etc. The autonomy and independence of ECDC enabled it to work without political interference and contributed to timely advice. The information provided on the H1N1 development has supported evidence based decisions without a need to duplicate epidemic intelligence activities in all the MS. In some cases (e.g. Cyprus), ECDC guidance helped the country to better react to potential risks of contamination through the air-conditioning system in a hospital. As regards information for travellers, ECDC guidance is "competing" with other guidance provided by other organisation at national and international levels.

#### ***EEA - Greenhouse gas emission trends***

Since the late 90's, greenhouse gas emissions are monitored by a network of Member State agencies led by the Netherlands. Since its creation in 2003, the EEA is progressively taking a share of the responsibilities, e.g. production of the annual report. The report plays an important role in international negotiations within the area of climate change. Member States use it to compare their progress to that of other countries. NGOs take further actions based on the report. The report is also widely quoted by the media.

#### ***EFSA - Rapid crisis statements on EC's demand***

EFSA releases rapid scientific opinions (or statements) when the Commission requests a rapid scientific assessment in case of crisis. Emergency statements are rather exceptional but important with regard to food safety. In 2008 EFSA issued four such statements within 48 hours on respectively: the presence of dioxins in pork from Ireland, the presence of melamine in infant milk and other milk products from China, the contamination of sunflower oil with mineral oil exported from Ukraine and association of bisphenol A with medical disorders. The process relies on EFSA expert groups and internal scientific staff who quickly identify and access the right dataset. EFSA may consult the Scientific Committee, a Scientific Panel, or an EFSA network during the process. The communication department also plays a key role by ensuring that media are reached and interest groups are briefed. In the case of Melanin, EFSA's opinion led to import control. In the case of dioxin contamination of

pork in Ireland, an interviewed stakeholder stated that “without EFSA, the situation could have been similar as in Belgium in 1999, which brought down the food industry in Belgium and had an impact in Europe as a whole”.

### ***Eurofound - European Restructuring Monitor***

The European Restructuring Monitor (ERM) provides information on company restructuring in Europe and their employment consequences since 2002. Data are collected by a network of national sources following detailed task descriptions that are based on EUROFOUND’s annual work programme. Partners are recruited through an open tendering process for a 4 year period. The ERM method is based on media monitoring rather than primary data collection. Interviewed stakeholders consider that the value of the achievements outweighs the weakness of this approach. ERM information is disseminated through quarterly reports and monthly updates / short analysis of trends. There is also an annual overall report that focuses on specific topics, e.g. recession in 2008. ERM case studies are available online for more detailed outlooks. The agency also facilitates company network seminars (last one in October 2008). Other outputs include seminars targeting MEPs, think tanks, and experts (e.g. presentation in October 2008 to 30 MEPs). The agency’s performance management system shows that ERM has been used in a number of EU policy documents and reports, e.g. “EC Staff Working Document - Restructuring in Europe 2008 - A review of EU action to anticipate and manage employment change”. A Commission representative recently highlighted how they have used ERM data extensively for an impact assessment on the revised European Globalisation Adjustment Fund regulation. ERM results have particularly high consultation scores on the agency’s web site.

### ***Europol –Koala Operation***

Operation Koala achieved the dismantlement of a worldwide network of child sex offenders in 2007-2008. Australia came across a child abuse movie file but could not recognise the language. The material was sent to Interpol who within hours sent the material to EU Member States. The Belgian authorities forwarded the file to their regional police officers, a Flemish authority recognised the perpetrator and the child victim whereupon the Belgian law enforcement authorities arrested the perpetrator and discovered that the illegal movie file had been produced by an Italian national. After the arrest of the producer by the Italian Police, both Belgium and Italy asked for analytical support from Europol. Crime analysis was carried out over more than a year by EUROPOL specialists in dealing with online child sex abuse cases. Once Europol had notified the Member States and countries with a Europol cooperation agreement about the child abuse cases, they reacted within a short time and the judicial dimension of the operation was coordinated by EUROJUST. The operation led to the arrest of the perpetrator, the video producer and a significant number of child abuse material producers, distributors and customers. As well as the arrests, around 40 under-aged victims as well as 650 child sex offenders in 26 countries were identified. Numerous computers, videos and photographs were seized. Beyond this individual success story, the learning experience was that the sharing of information can lead to joint success. This intensified cross-border contacts between national policing staff and built trust among the participating countries and EU bodies.

### ***FRA - Homophobia Report***

The Homophobia Report (Report on Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States) was requested by the EP to assist in the deliberations concerning the need for a Directive covering all grounds of discrimination. It contains a comparative legal analysis of

the situation in the EU Member States, based on research carried out by the FRA's legal expert network FRALEX, established through an international Call for Tender and a series of framework contracts. FRA's report was released in 22 languages to 900 media contacts, a press conference at the EP, individual advance contact with journalists, and embargoed advance copies to over 20 selected media (including all major news agencies). The publication was coordinated with the EP, national and EU civil society organisations, and other stakeholders. According to several interviewees the report was a great success in the sense it covered new ground, and it created debate. The report was quoted by more than 150 articles in various media and some TV and radio interviews. According to a key interviewed stakeholder, the report was particularly important to their advocacy work in three Member States. Besides assisting the European Parliament when discussing the need for a specific Directive, the report also contributed to the impact assessment carried out by the European Commission, with the aim of preparing such a directive. This directive being subjected to the rule of unanimity, it was important to create a wide debate about the issue, in particular in those countries in which sexual orientation remains a taboo. Moreover, the European Parliament adopted in January 2009 a resolution which included several references to the Agency's work and proposals in line with the report. The resolution urged Member States to guarantee the right of free movement to same-sex couples under conditions equal to those applicable to heterosexual couples. The resolution also called on the EU institutions to involve the agency in the legislative process.

#### ***OHIM - Registration of Community Trade Marks for SMEs***

Interviewed stakeholders consider the examination phase for trademark registration as high quality. Real efforts have been conducted to provide "user friendly" services, accurate information and e-business tools. Positive decisions reach the same security standards as the best national systems and negative decisions are very detailed, when compared to practices at national level. The examining staff is seen as accessible and the senior staff easy to communicate with. The "complaint unit" is said to deal with problems rapidly. If no specific problems appear, registration can be achieved in less than a year, which is really correct when compared to national systems. However, the delays when oppositions occur are too long and strong progress is expected in that field. The Community registration is cheaper than the national ones when more than 3 countries are considered. An advantage is that a single renewal procedure is necessary for Community trademarks, whereas a series of national trade marks has to be renewed at different points in time from one country to the other. Community trademarks are protected even in countries where the product is not sold, contrary to national trade marks which are "lost" after 5 years of non exploitation. This can be of particular interest for SMEs which do not intend (at first or at all) to cover the 27 markets. Community trademarks ensure a strong right to fight against piracy. The custom authorities can detect infringing products in every EU country and a better protection is provided at the EU borders. Security reinforced as a single court judgement in one EU country will be respected in all other EU Member states.

#### ***EU-OSHA - European campaign 'Lighten the Load'***

The EU-OSHA campaign, 'Lighten the Load', promoted an integrated management approach to prevention and rehabilitation of workers exposed to musculoskeletal disorders. The objectives of the campaign were to increase awareness of risks and to promote good practice solutions. The agency coordinated the activities of the campaign with 40 partners and provided information in 22 languages via a special website. Focal Points in the 27

Member States implemented the campaign at national level and identified good practices. The campaign culminated during a European Week with a broad range of activities and events across Europe. The closing conference awarded 9 Good Practice winners from six EU countries. It was attended by over 550 participants and 21 media representatives. The agency also published a report setting out the latest scientific evidence on the issue, including 20 examples of how companies and organisations have taken action against musculoskeletal disorders. About 200 000 participants took part in campaign activities and events, 207.000 nationally produced publications and other materials were disseminated, and thousands of downloads were recorded. The campaign created 112 press clippings potentially achieving 24 million contacts. The external evaluation of the campaign shows that 66% of the target groups claimed to be aware of the campaign and that some material (e.g. DVD) has been particularly effective, although some interviewed stakeholders at national level considered it as very European and generic in nature. In comparison with the Agency's previous campaigns, this one was considered to have been one of the most successful. A survey of targeted organisations shows that approximately 30% did carry out some activities related to musculoskeletal disorders, which suggests that the campaign has had an impact.

## Appendix 2 - List of general documents used

*For specific references to documents pertaining to individual agencies, please refer to Volume III of this report.*

Andoura and Timmerman: Governance of the EU: The reform debate on European agencies reignited, EPIN Working Paper no. 19, October 2008

Commission of the European Communities: "European Agencies - the way forward", COM(2008) 135 final, 11 March 2008

Commission of the European Communities: Draft Interinstitutional Agreement on the operating framework for the European regulatory agencies, COM(2005)59 final

Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 (Framework Financial Regulation)

Euréal: Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings, Final Report, European Commission, DG Budget, September 2008

European Court of Auditors: The European Union's Agencies: Getting Results, Special Report No. 5, 2008

European Parliament, Directorate-General Internal Policies, Policy Department on Budgetary Affairs: Agencies' buildings, 2009

European Parliament, Directorate-General Internal Policies, Policy Department on Budgetary Affairs: Opportunity and feasibility of establishing common support services for EU Agencies, 2009

European Parliament, Directorate-General Internal Policies of the Union, Budgetary Support Unit: Agencies: Origin of tasks, local conditions and staffing, 17 October 2007