

## Common Approach

### **I. Role and position of agencies in the EU's institutional landscape**

#### Definition and classification of agencies

1. To avoid confusion among citizens and stakeholders:
  - a standard term should be used for future agencies, "European Union agency for..."
  - aligning the names of existing agencies should be explored; however the costs that this would entail and the already established image of the agency should be taken into account.

#### Establishment and ending of agencies

2. The decision to create a new agency should be based on objective impact assessments of all relevant options. Models for standard provisions to be used in any founding act could be developed by the Commission in order to streamline the process.
3. It is important to manage in the best possible way the start-up phase of agencies, for which the Commission is responsible. To this end, the Commission should be empowered to take management measures, including the appointment, for a limited period, of seconded staff and of the interim Director (in principle a Commission official, although justified exceptions can be made).
4. Agencies' founding acts should contain either a sunset or a review clause. Whether a sunset clause or a review clause is the better solution should be decided on a case-by-case basis, taking into account the specificities of each agency. Any sunset clause must be accompanied by the concomitant provisions for disbanding the agency, addressing in particular issues related to staff contracts and budget arrangements.
5. Common and objective criteria should be used to assess both the opportunity to disband agencies or the possibility to merge them:
  - merging agencies should be considered in cases where their respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure.
  - closing down an agency could be a solution for dealing with underperforming agencies unless the agency is still the most relevant policy option, in which case the Agency should be reformed.

## Agencies' seat and role of the host country

6. Without prejudice to the political decision on an agency's seat taken by common agreement between the representatives of the Member States meeting at Head of State or government level or by the Council, to the desirability of geographical spread, and to the objective set in December 2003 by the representatives of the Member States, meeting at head of State or government level (when deciding the seat of new agencies, priority should be given to new Member States):
  - the decision on the agency's seat should be taken before the end of the legislative process, in order to allow the agency to be set up directly in the location of its seat.
  - objective criteria to be taken into account in order to contribute to the decision making process for choosing an agency's seat may include:
    - the assurance that the agency can be set up on site upon the entry into force of its founding act,
    - the accessibility of the location,
    - the existence of adequate education facilities for the children of staff members,
    - appropriate access to the labour market, social security and medical care for both children and spouses,
  - Member States should address those criteria in a transparent way when presenting their offers to host an agency. The Commission is available to help assess the offers of the Member States, if necessary.
7. Concerning the specific criteria of accessibility:
  - Member States currently hosting an agency could consider if and how accessibility can be improved in order to increase agencies' overall efficiency and ensure an even better interaction with stakeholders
  - during agencies' regular evaluations, the accessibility to the agency could also be assessed.
8. The host State should make a formal commitment at the time of the adoption of the agency's founding act to ensure that all conditions necessary for the operation of the agency are in place by the time the agency starts its operational phase. In addition, it should commit itself to continue to respond to the agency's needs and provide the necessary conditions for the smooth operation of the agency, also after the latter has been set up.
9. All agencies should have headquarters agreements, which should be concluded before the agency starts its operational phase. Agencies still lacking headquarters agreement and the host country in question should reach an agreement in accordance with the legal order of the relevant Member State. The Commission will put together a set of provisions on the basis of existing best practices, to serve as a good orientation tool for future headquarters agreements.

## **II. Structure and governance of agencies**

### **Management Board**

10. To improve the performance of agencies' boards and reinforce their capacity to supervise the administrative, operational and budgetary management of agencies, while guaranteeing full participation of the Member States and of the Commission:
  - the composition of the board should be:
    - one representative from each Member State,
    - two representatives from the Commission without prejudice to the relevant arrangements for existing agencies,
    - where appropriate, one member designated by the European Parliament , without prejudice to the relevant arrangements for existing agencies,
    - where appropriate, a fairly limited number of stakeholders' representatives.
  - members of the boards should be appointed in light of their knowledge of the agency's core business, taking into account relevant managerial, administrative and budgetary skills.
  - the duration of the term of office of board members should be four years (renewable); all parties should increase efforts to limit turnover of their representatives in the boards, in order to ensure continuity of the boards' work.
  - in order to streamline the decision making process in the agency and contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced, when this promises more efficiency: in addition to the Management Board, giving general orientations for the agency's activities, a small-sized Executive Board, with the presence of a Commission representative, should operate and be more closely involved in the monitoring of the agency's activities, with a view to reinforcing supervision of administrative and budgetary management, in particular on audit matters.
11. A coherent policy on preventing and managing conflict of interests concerning members of the Management Board, whether or not they sit in personal capacity, should be developed and applied in all agencies.
12. In order to align it with the situation within the Institutions, the agency's Management Board should be given the powers of the Appointing Authority, not only for the Director but also for the rest of the staff. Except for the appointment of the Director, these competences should, however, be delegated to the Director and the board should only become involved on a case by case basis in exceptional circumstances.
13. For the sake of consistency, agencies' boards should in principle take decisions with the same voting rules:
  - absolute majority voting for current business matters

- 2/3 majority for the appointment and dismissal of the director, the designation of the chairperson of the board, adoption of the annual budget and of the work programme. Exceptions to this approach can be foreseen, if justified in specific cases.

## Director

14. Given the wide tasks attributed to Agencies' Directors by agencies' constituent acts, their role is crucial for agencies' governance, notably as regards the overall agencies' management and relationship towards EU institutions. They are responsible for the administrative management of the agencies, and for the implementation of the duties assigned to the agencies. In this framework, they are in particular in charge of the implementation of work programmes, budget and decisions taken by the Management Board and are a full management power concerning financial and staff matters. They are the legal representatives of the agencies.
15. Agencies' Directors are, first and foremost, accountable to their Management Board, to which they submit an annual report, including accounts. They are also accountable to the European Parliament and the Council for the use of the EU contribution through the annual discharge procedure. However, the discharge procedure focuses on accountability and regulatory compliance, rather than on performance per se. This is due, inter alia, to the lack of performance indicators. Agencies' Directors should therefore be more clearly accountable for performance. To this end, tailored performance indicators should be introduced allowing for effective assessment of the results achieved in terms of objectives.
16. To respect the autonomy of the agencies, it is up to the Management Board to appoint Directors on the basis of a shortlist drawn up by the Commission following an open and transparent selection procedure that guarantees a rigorous evaluation of candidates and a high level of independence. Exceptions to this approach can be foreseen if justified in specific cases.
17. Directors' terms of office are defined in Agencies' constituent acts. In those cases where the Director has performed well, the Management Board, acting as appointing authority, may decide to extend once his/her mandate. The opportunity is assessed against the evaluation of the Director's first mandate which takes into account both annual appraisal reports and foreseen requirements of the Agency for the next years. A director whose term of office has been extended should not participate in another selection procedure for the same post at the end of the overall period.
18. A coherent policy on preventing and managing conflict of interests concerning the Director should be developed and applied in all agencies. The Commission should examine, together with the agencies, whether there is scope for a harmonised approach.
19. A procedure should be foreseen for dismissing the Director in the event of misconduct, unsatisfactory performance or recurring / serious irregularities; it should mirror the appointment procedure.

### Other internal bodies:

20. The functioning of scientific committees should be improved:

- Agencies should exchange information on their experience with scientific committees and possibly contribute to developing a coordinated approach to common problems in this area. The Commission will provide support, as appropriate.
- Selection procedures should be periodically reviewed, notably in the context of the agency's evaluations. The following elements should be assessed: their degree of transparency, their cost-effectiveness, and their suitability to ensure independence and competence of members of scientific committees and to prevent conflicts of interests.
- The independence of the scientific experts should be fully ensured, inter alia by promoting the highest standards, setting sound selection criteria and promoting best practices. The Commission will provide guidelines on standards, criteria and best practice, including on how EU agencies' national counterparts should be involved. In addition, this issue should also be covered by the regular external evaluations of the agencies.

21. For Boards of appeal, the same measures as for scientific committees, notably in terms of exchange of best practice and assessment of selection procedures, should apply. The impartiality and independence of their members should continue to be guaranteed, on the basis of transparent and objectively verifiable criteria to be defined by agencies. In this context, recruitment of Board of Appeal's members from among the staff of the agency and/or the agency's Management Board should be taken with great care and should not put into question the above-mentioned principles of impartiality and independence.

22. Taking into account the importance of their contributions to the work of agencies' internal bodies, it is advisable that Member States regularly review the adequacy of resources/staff they assign for this purpose and take appropriate actions to remedy possible weaknesses. In addition, it is important that they ensure information flows between the different authorities concerned at national level in relation to agencies' activities, inter alia by appointing contact points in their national administrations for relations with the given agency. This contact point should be in principle the representative of the Member State sitting in the management board.

### **III. Operation of agencies**

23. In order to deliver the administrative support that agencies need to operate in the most efficient manner, the following three options can be envisaged:

- improving or extending the services provided by the Commission
- merging smaller agencies to achieve economies of scale based on an impact assessment
- sharing services between agencies, either by proximity of locations or by policy area.

24. Concerning the creation or handling of EU classified information, agencies should apply a level of protection equivalent to that afforded by the security rules of the Council or the Commission, as appropriate:

- relevant provisions should be introduced in the founding acts. For existing agencies, agencies' Management Boards should adopt appropriate decisions as soon as possible, even before the founding acts are formally amended.
- the introduction of any new provisions on classified information should not be detrimental to the European Parliament's current right of access to agencies' information, nor imply the multiplication of bilateral agreements between the EP and EU bodies and agencies

25. Agencies' international relations should be streamlined:

- Agencies whose mandate or work programme foresees cooperation with third countries and/or international organisations should have a clear strategy for those activities. This strategy should, in principle, be embedded in the annual and/or multi-annual work programme(s), with a specification of associated resources, and should lay down a number of principles and modalities for international cooperation.
- This strategy and appropriate working arrangements with partner DGs in the Commission should ensure that the agencies operate within their mandate and the existing institutional framework, and that they are not seen as representing the EU position to an outside audience or as committing the EU to international obligations.
- The strategy and specific initiatives with an international dimension (e.g. administrative arrangements with third countries) should be subject to approval by the Management Board.
- An early exchange of information should take place on respective international activities between agencies, the Commission and the relevant EU Delegations, to ensure the consistency of EU policy.

26. Agencies should be entitled to engage in communication activities, within the following framework:

- the content and implementation of an agency's communication strategy should be coherent, relevant and coordinated with the strategies and activities of the Commission and the other institutions in order to take into consideration the broader EU image.
- ground rules for agencies' communication strategies will be developed by the Commission, in cooperation with the agencies.
- Communication activities should not be detrimental to agencies' core tasks.
- Agencies' access to central communication tools and coordination structures should be facilitated. Agencies should also be able to make use of Commission's framework contracts.

#### **IV. Programming of activities and resources**

##### **Annual and multiannual work programmes**

27. As far as possible, annual work programmes could be based on a template, in order to ease comparisons.
28. In addition to annual work programmes, agencies should draw up multiannual strategic programmes or guidelines, tailored to the specificities of their activities. Such multiannual activity planning should be linked with multiannual resource planning (budget and staff in particular).
29. The Commission should always be consulted and issue a formal advice on both documents. The European Parliament should be consulted on the multiannual work programmes of agencies, provided that the purpose of the consultations is an exchange of views and the outcome is not binding on the agency. For the annual work programme, the actual practice of the agency's Director presenting it to the relevant EP committee should continue.
30. Multi-annual work programmes should include the actions necessary to respond to the outcome of overall evaluations.
31. Key performance indicators should be developed by the agencies and the Commission and be adapted to agencies' specificities. Furthermore, the link between financial and human resources and each specific action to be carried out should be reinforced and become systematic. The link between successive annual work programmes and the multiannual programme should be enhanced.
32. The Director should report to the Management Board on the agency's progress in implementing the multiannual work programme. This reporting should take place prior to setting the objectives of the following annual work programme and be integrated in the reporting cycle on the annual work programme.

##### **Human resources**

33. While fully guaranteeing the respect of the principles of accountability and transparency, an effort should be made to simplify Agencies' human resources procedures and to better take into account their specificities in this field, to the extent necessary for ensuring their smooth functioning.
34. Agencies' Staff Policy Plans (SPP) should provide a full picture of their staff needs and therefore include comprehensive and detailed information on the number of all types of external staff, including interim staff and service providers; information on promotions, as well as gender and geographical balance should continue to be reflected. The smallest agencies should not be requested to provide the number of estimated promotions per grade, but only an overall figure, so as to avoid the early identification of individual promotions. The Commission, in cooperation with agencies, should make the necessary adjustments to the SPP template and consider potential other improvements to the SPP format.

35. Agencies' human resources programming as presented in the SPP and the preparation of the Draft Budget of the Union need to be consistent. The respective calendars of the presentation of the establishment plans and SPPs should therefore be aligned. The agencies should submit their draft SPPs and establishment plans to the Commission (and for information to the Management Board) by 31 January. Taking into account the Commission's reasoned opinion on the draft SPPs, agencies should adopt their final SPPs and submit them to the budgetary authority and the Commission by end May. For transparency purposes, agencies need to provide adequate explanations if they decide not to fully take into account the Commission's opinion on their draft SPP.

#### Funding, management of budgetary resources and budgetary procedure

36. Agencies should improve their internal planning and general revenue forecasting in order to reduce their high carry over and cancellation rates. The Commission will provide guidance in this regard. In addition, agencies should improve their management of commitments in order to align them with real needs.
37. For agencies fully financed from the EU budget, the surplus should continue to be recovered in the usual manner, i.e. unused funds from year n are deducted from the EU subsidy for year n+2, after recovery in year n+1.
38. For self-financed agencies, fees should be set at a realistic level to avoid the accumulation of significant surpluses.
39. For partially self-financed agencies, the clients should pay for the full cost of the services provided to them by those agencies, including the employer's prorata contribution to the pension scheme. Concerning the issue of how to deal with a possible shortfall against forecast of fee revenue from the clients and the need to ensure the availability of necessary funding to agencies, the Commission will investigate the necessity and possible modalities of creating a limited ring-fenced reserve fund to be operated in a transparent way.
40. All agencies should apply, more systematically than at present, a system of activity based budgeting / activity based management (ABB/ABM). The available ABB/ABM tools (i.e. to plan, monitor, report and evaluate activities) should be adapted to the reality of agencies. In this context, agencies should be encouraged to exchange best practice and their idea to develop an ABB/ABM toolbox is to be welcomed. The Commission will provide assistance in this regard, for instance by giving a general ABB training to agencies.
41. In order to avoid automatisms, all relevant actors should respect their duty, within the budgetary procedure, to provide adequate justification for their requests with regard to each agency's budget (initial budget request, increases, decreases).
42. In order to justify the need for additional (financial and/or human) resources in the case of agencies being in their "start-up phase" or agencies being entrusted with new tasks, a legislative financial statement should be presented to the legislative and budgetary authorities.



43. Should the legislative authority decide to assign additional tasks to agencies as compared to the initial Commission proposal, the reprioritization of their activities should always be considered as an alternative besides granting additional resources. In the latter case, the Commission will update previous legislative financial statements, so as to clarify the additional resources required by the agency in question to carry out such additional tasks. Subsequently, the revised legislative financial statement would be presented to a budgetary trilogue. The same procedure should apply to new agency's tasks which do not derive from a modification of the basic act of the agency.
44. Any modification to agencies' budgets which does not require the budget authority's approval should be communicated to the latter, together with adequate justification.
45. While respecting the principles of transparency, accountability and sound financial management, an effort should be made to simplify the implementation of the Financial Regulation rules by the Agencies, to the extent necessary for ensuring their smooth functioning.

## **V. Accountability, controls and transparency and relations with stakeholders**

### **Reporting requirements**

46. Agencies reporting obligations need to be streamlined and harmonized. In principle, agencies should produce one single Annual Report; exceptions should however be possible.
47. The single Annual Report should include information on the implementation of their annual work programme, budget and staff policy plan, management and internal control systems, internal /external audit findings, the follow-up to the audit recommendations and to the discharge recommendation, as well as the statement of assurance of the Executive Director. The single Annual Report could also include the information resulting from the Financial Statements and from the report on budgetary and financial management foreseen in the context of the discharge procedure, provided the time constraints of the preparation of the EU annual consolidated accounts are respected.
48. As far as possible, the structure of the single Annual Report should include a number of common elements based on best practice across agencies, with a view to easing comparison. The Commission should develop an indicative template in cooperation with agencies.
49. This single Annual Report should be drawn by the agency's Director, who should present it to the agency's Management Board for assessment. The Director or the Board itself should then transmit the Report and the assessment of the Management Board to the Court of Auditors, to the Parliament and Council and to the Commission by 1st July.

### **Internal audit**

50. The costs of basic Internal Audit Service (IAS) work should remain to be covered by the Commission. As basic audit work, IAS will undertake a risk assessment to maximise its coverage of major risks over a three-year cycle, maintaining, as far as possible, the current practice of one audit per year in each agency.

51. Internal audits have a clear added value and agencies need to accept the burden associated to them. To facilitate this acceptance, IAS should discuss its audit planning with agencies' management, in order to avoid an overlap of audit topics or calendar with audits from the Internal Audit Capabilities (IACs), when they exist, or from the European Court of Auditors (ECA).
52. The internal auditor shall continue to report to the executive director and to the management board. The appropriate follow-up of IAS audit conclusions should be organised at board level, possibly by the Executive Board if there is one. This should not increase administrative expenses.
53. Concerning the internal audit architecture of agencies, agencies should have the possibility to set up internal audit services to complement the work of the IAS. Therefore, Agencies (Executive Directors and Boards) may decide to set up an Internal Audit Capability (IAC) that follows internationally recognised standards of internal auditing and coordinate audit work and exchange information with IAS. If this is not cost-effective or possible, agencies may decide to contribute resources and share a full-fledged IAC with another agency. IACs should also be required to coordinate audit plans with the IAS.

#### External audit

54. Without prejudice to the competences of the European Court of Auditors (ECA), private sector auditors might have to be involved in the external audit of agencies accounts in order to remedy the lack of resources of the ECA. Should this be the case, the appointment of those private sector auditors should be done in conformity with the applicable rules and appropriate control mechanisms should be put in place, in order to ensure that work on the legality and regularity of revenue and expenditure and the reliability of an agency's accounts is carried out in accordance with the required standards. All aspects of such outsourced external audits, including the reported audit findings, remain under the full responsibility of the ECA, which manages all administrative and procurement procedures required and finances these, as well as any other costs associated with outsourced external audits, from its own budget.
55. Cooperation should continue to be promoted between all audit bodies involved, bearing in mind their respective mandate, purposes as well as their legal or regulatory bases.

#### Discharge

56. Agencies should systematically inform their partner Directorate General and the Directorate General for the Budget within the Commission of the results of the audit of the European Court of Auditors (at the earliest stage possible), as well as of the measures taken to meet the recommendations of the discharge authority and those of the Court.
57. A more rigorous differentiation between the responsibilities of the Commission and those of the agencies would be appropriate in discharge decisions and resolutions. Council's recommendations on the discharge of each agency should be fully taken into consideration.

58. The possibilities for securing democratic accountability for fully self-financed agencies (i.e. financed by their clients) should be explored, as they are Union bodies in charge of implementing EU policies but not subject to a discharge within the meaning of the TFUE. A possibility could be that the agencies in question, submit to the European Parliament, to the Council and to the Commission an annual report on the execution of their budget and consider requests or recommendations issued by the Parliament and Council.

#### Alert/warning system

59. An alert/warning system will be activated by the Commission if it has serious reasons for concern that an agency's Management Board is about to take decisions which may not comply with the mandate of the agency, may violate EU law or be in manifest contradiction with EU policy objectives. In these cases, the Commission will raise formally the question in the Management Board and request it to refrain from adopting the relevant decision. Should the Management Board set aside the request, the Commission will formally inform the European Parliament and the Council, with a view to allow the three institutions to react quickly. The Commission may request the Management Board to refrain from implementing the contentious decision while the representatives of the three institutions are still discussing the issue.

#### Evaluation of the agencies

60. Each agency's founding act should provide for a periodic overall evaluation, to be commissioned by the Commission. The first evaluation should take place five years after the agency has started its operational phase. Subsequent evaluations should be conducted every five years and on the occasion of every second evaluation the sunset/review clause should be applied. Evaluations should be conducted in a manner that provides solid grounds for a decision to continue or discontinue the agency's mandate. The feasibility of a common template for agencies' evaluation should be explored.
61. Ex-ante evaluation of agencies' activities/programmes should be either made mandatory for programmes/activities of a significant budget, or done at the request of the Management board or the executive board, if deemed necessary. Ex-post evaluation should be mandatory for all programmes/activities.
62. Agencies should prepare a roadmap with a follow-up action plan regarding the conclusions of retrospective evaluations, and report on progress bi-annually to the Commission. Follow-up to evaluations should be a task of the Management Board, and of the Executive Board if there is one.
63. In addition to the performance information presented in agencies' annual reports, the Commission should provide Parliament and Council with any other information on the evaluation of agencies if requested.

### Transparency and relations with stakeholders

64. Agencies' websites should be made as multilingual as possible, in order to facilitate their consultation by citizens of all Member States. Agencies should provide, via their websites, information necessary to ensure transparency, including financial transparency.
65. Agencies' relations with stakeholders should be coherent with their mandate, the institutional division of tasks in international relations, EU policies and priorities and Commission's actions. Agencies should exercise their functions in coordination with the different actors charged with the definition and implementation of the given policy. Agencies should also clarify the sharing of roles between them and their national counterparts. When relevant stakeholders are not represented in management boards, they should be involved in agencies' internal bodies and/or advisory groups/working groups, if appropriate.

### Prevention, detection and investigation of fraud, corruption, irregularities and other illegal activities

66. OLAF's role vis-à-vis agencies should be formalised, enhanced and made more visible. In order to preserve evidence and/or to avoid inadvertently alerting persons concerned, agencies should refrain from carrying out investigations on facts liable to lead to an investigation by OLAF, in conformity with relevant EU legislation. In addition, agencies should be more active in relation to fraud prevention and should also better communicate on those activities.