

Special Report

**Future of EU agencies –
Potential for more flexibility
and cooperation**



EUROPEAN
COURT
OF AUDITORS

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Replies

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Replies of the European Union Intellectual Property Office (EUIPO)

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Audit team

Timeline

Executive summary

I EU decentralised agencies and other bodies (EU agencies) are bodies governed by European public law and equipped with their own legal personality, making them distinct from the EU institutions. Today, 37 EU agencies are located in 23 Member States and serve a wide range of matters of interest to EU citizens. Most were set up between 2000 and 2010. They include, inter alia, agencies for aviation safety, food safety, vocational training, equal opportunities, stability of the financial and banking sectors, the environment, animal protection, migration and border control. In 2018, their total annual budget amounted to €4.0 billion (equivalent to 2.8 % of the EU general budget) and all the agencies together employed a total of 8 957 staff (13.4 % of all staff working for the EU).

II Having mainly focused in the past on the performance of individual agencies, this is the ECA's first overall assessment of the conditions put in place by the EU to ensure that the agencies are effectively delivering its policies to the benefit of all citizens. EU agencies are characterised by their diverse governance structures, mandates and tasks; and different agencies have been created to meet different kinds of challenges. This makes evaluating the overall performance of agencies difficult. However, their common purpose is to deliver EU policy and European cooperation in the interest of EU citizens.

III We carried out this audit based on the interest expressed by the European Parliament, the European Commission and the EU agencies themselves. This report intends to raise a discussion on the EU's future management of the performance of its agencies. It builds on knowledge we have gathered in our annual financial audits of the agencies and in previous performance audits of individual agencies. We complemented this by an extensive review of key documents from EU institutions and all agencies, interviews with key Commission and agency staff, a large-scale survey of agency stakeholders, two panels of experts and stakeholders, an analysis using big data techniques of agencies' media presence and a comparison of the EU performance framework for agencies with those in the United States and Australia.

IV Our overall audit question is whether the Commission and the agencies have put in place adequate conditions to ensure the performance of EU agencies. We identified two key criteria relevant for all agencies. The first is *flexibility to serve the relevant EU policy and European cooperation*, especially when the scope of the policy is wide and subject to change in a complex global context. This was one of the intentions of the Common Approach signed by the Commission, Council and Parliament in 2012,

requiring all agencies to be regularly evaluated. In practice, however, this has only been partially realised and we identified a lack of flexibility in the set-up, functioning, and possible winding-up of agencies.

V The second performance criterion that we examined was the extent to which agencies acted as *centres of expertise and networking for the implementation of EU policies*. This requires well-organised governance and cooperation. We identified cases of overly complex or weak governance arrangements and found that performance information focused on outputs and activities rather than on their contribution to policy implementation. Furthermore, our audit showed that a lack of cooperation with and/or support from Member States, industry, Commission or other agencies prevents some agencies from fully performing their role.

VI We recommend that the Commission and the agencies:

- (1) ensure the relevance, coherence and flexibility of the set-up of agencies;
- (2) allocate resources in a more flexible manner;
- (3) improve governance, accountability and reporting on performance; and
- (4) strengthen the role of agencies as centres of expertise and networking.

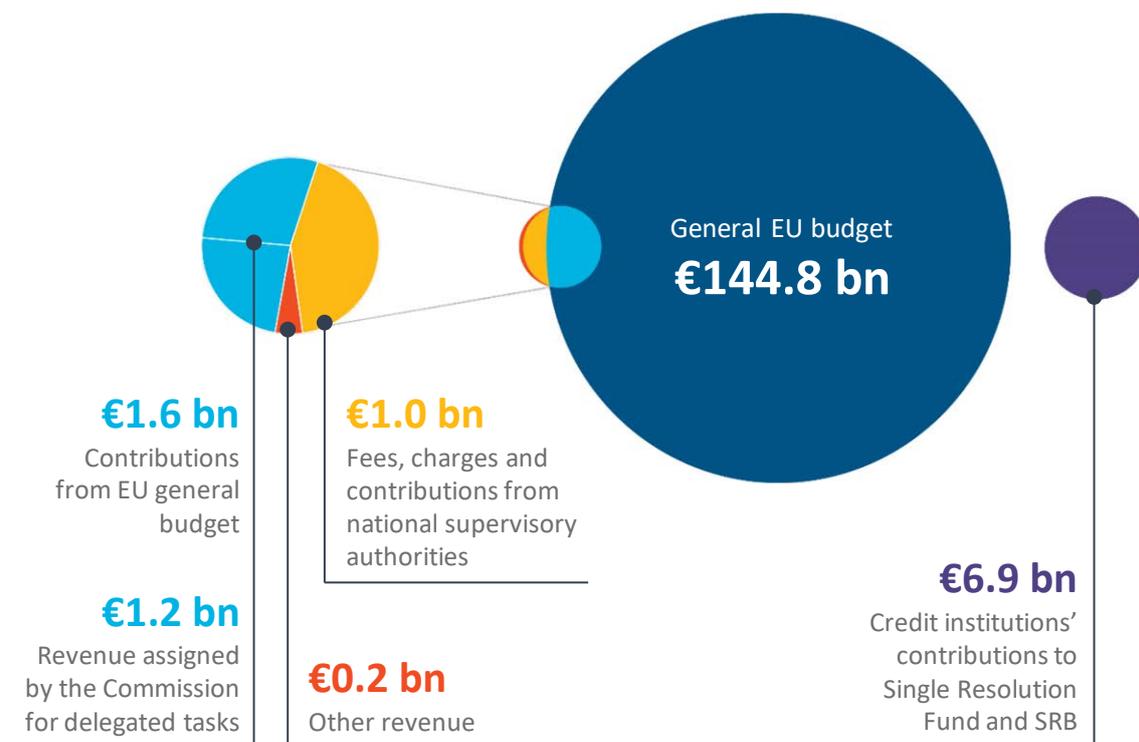
Introduction

Diversity in EU agencies

01 EU decentralised agencies and other bodies (EU agencies) are bodies governed by European public law and equipped with their own legal personality, making them distinct from the EU institutions. They are set up by an act of secondary legislation. There are different legal types of agencies: six Commission executive agencies and 37 EU decentralised agencies. The Commission executive agencies act as extended branches of the Commission to implement specific tasks on behalf of the Commission. In this report, “agencies” means EU decentralised agencies and other bodies, unless specified otherwise.

02 Agencies are set up by the legislator (Council and Parliament), based on a Commission proposal, for an indefinite period. They are led by a management board with, inter alia, representatives from both the Member States and the Commission. They contribute to the implementation of EU policies and support cooperation between the EU and national governments by pooling technical expertise.

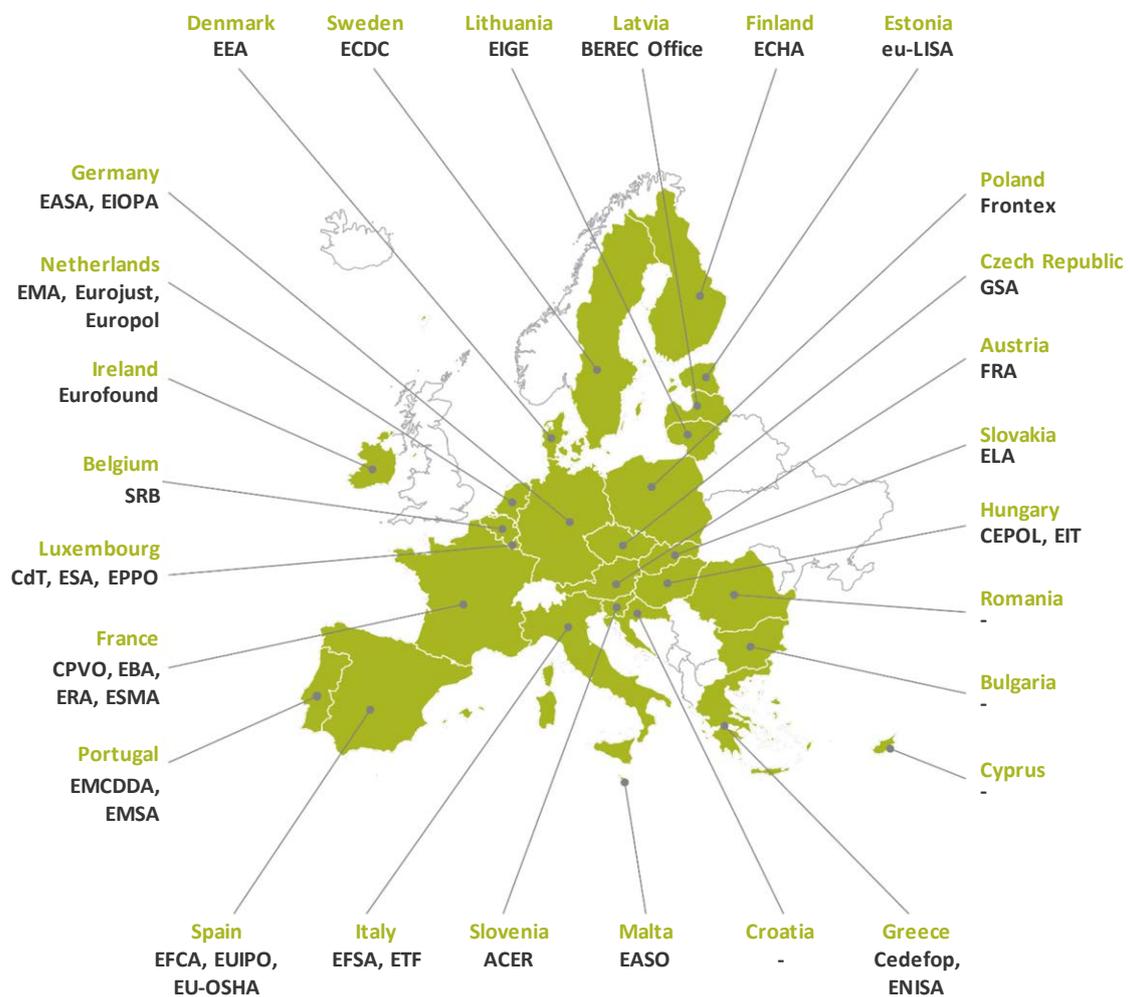
Figure 1 – How are the EU agencies and other bodies financed?



Source: EU general budget 2018 and agencies' budgets 2018, compiled by ECA.

03 In 2018, the total budget of all agencies (excluding the SRB) came to €4.0 billion (2.8 % of the 2018 EU general budget) (see [Figure 1](#)). For the full names of all the agencies referred to in this report, see [Annex I](#). The 2018 budget of the SRB, with its specific mandate to set up a resolution fund financed by credit institutions, was €6.9 billion (€0.1 billion for the administrative budget of the Board and €6.8 billion for the Fund)). In 2018, agencies were located in 23 Member States (see [Figure 2](#)) and employed 8 957 staff¹ (13.4 % of all staff employed by EU institutions and agencies) (see [Figure 3](#)) from all the Member States.

Figure 2 – Where are the EU agencies and other bodies located?

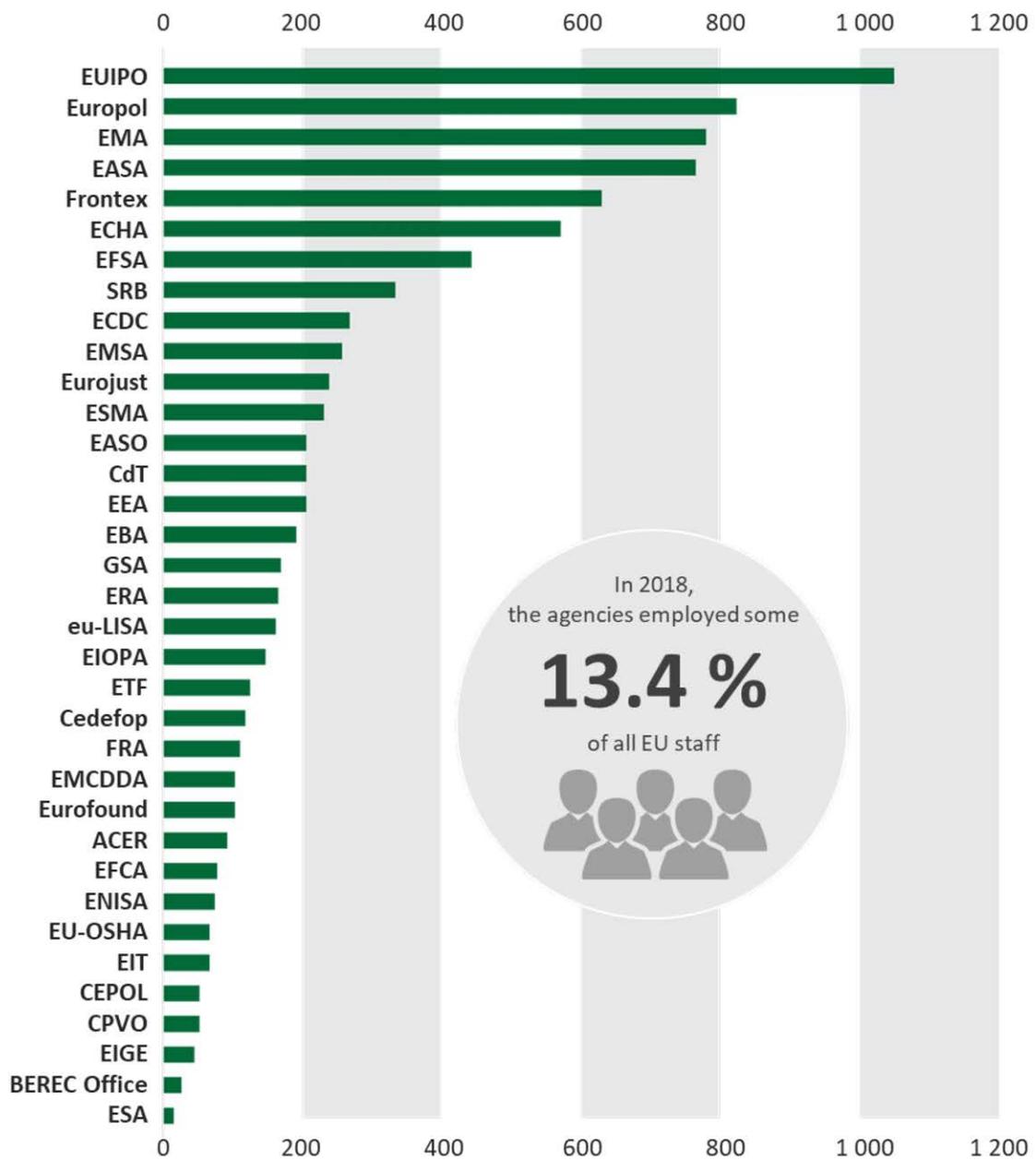


Source: ECA.

¹ These staff figures include officials, temporary and contract staff and seconded national experts.

Figure 3 – Who works for the EU agencies and other bodies?

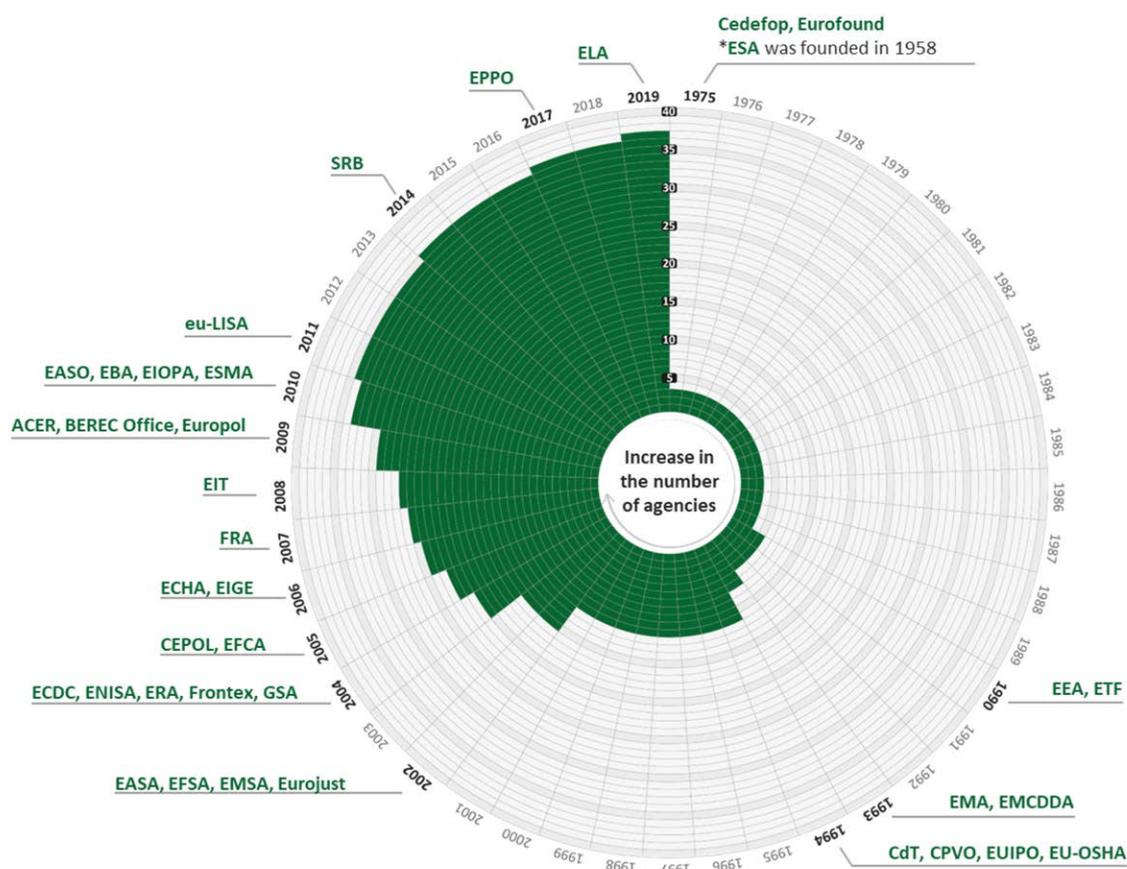
Staff numbers by agency



Source: ECA.

04 The first agencies (Cedefop and Eurofound²) were created in 1975. Following the entry into force in 1987 of the Single European Act, which aimed at completing the internal market by 1992, several more agencies were set up in the nineties, but most were created during the first decade of the new millennium (see [Figure 4](#)).

Figure 4 – How many EU agencies and other bodies are there?



Note: The years mentioned in the figure refer to the year that the founding act of the agency came into force.

Source: ECA Annual Report on EU agencies for the financial year 2018.

05 Agencies were created as specific needs arose. A significant number of them were set up or received additional responsibilities in response to a crisis (e.g. EBA, EIOPA, ESMA and SRB in the financial sector; EASO and Frontex for migration issues and border control; EMSA and EFCA for maritime safety and fisheries control). Most agencies were set up as new bodies to take over responsibilities that were until then exerted by the Commission and/or the Member States. This was justified by the Commission because of the highly technical nature of the tasks concerned or a desire

² For reasons of space we use abbreviations/acronyms to refer to all agencies. The full names are given in [Annex I](#).

for efficiency: a specialised body may fulfil the same tasks in a more efficient or flexible way, and is also better able to attract competent specialised staff and build up expertise. Some agencies (e.g. Europol, EBA, EIOPA and ESMA) were successors to multinational bodies at European level.

06 Agencies can be grouped in different ways, for example according to their main tasks and responsibilities:

- (1) A first group of agencies support internal market, health and environmental objectives related to registrations, certifications and authorisations at EU level (e.g. CPVO, EASA, ECHA, ERA, EUIPO, EFSA and EMA);
- (2) A second group, with mandates in the areas of security and justice have more operational responsibilities and help Member States by coordinating joint activities (e.g. CEPOL, EASO, Eurojust, Europol and Frontex);
- (3) A third group have mainly rule-making and supervisory responsibilities (e.g. ACER, EBA, EIOPA and ESMA, which prepare technical standards for the energy and financial sector and ensure common supervisory practice across the EU);
- (4) A final group are mainly concerned with research, data collection and analysis aimed at supporting EU institutions and Member States develop evidence-based policies (e.g. Cedefop, EIGE and FRA).

Shift from compliance to performance

07 Each agency is set up through a separate and specific founding act. Given the specific activities of each agency, agencies differ in terms of governance model, financing sources, evaluation requirements, etc.

08 In 2012, the Parliament, Council and Commission signed a Joint Statement on a Common Approach for agencies, which was a step to move from a finance and compliance-oriented to a more performance-oriented form of management. The Common Approach emphasised that agencies' directors should be more clearly accountable for performance. It proposed inter alia a two-level governance structure when this promises more efficiency (management boards and executive boards), annual and multiannual work programmes, annual activity reports, performance indicators for agencies and their directors, the introduction of activity-based budgeting/management systems (ABB/ABM), periodic external evaluations, etc.

09 In addition, the Commission has issued different tools to further develop a performance-oriented management and monitoring framework. These include a Framework Financial Regulation for agencies (2013, repealed and replaced in 2019); guidelines for drawing up single programming documents (SPDs), which combine an agency's annual work programme with a rolling three-year work programme, and consolidated annual activity reports (CAARs) (2014 and revised in 2020), setting out the Commission's latest framework for budget, planning, reporting, performance and governance for decentralised agencies; and the Better Regulation Guidelines and Better Regulation "toolbox" (2017).

10 The EU Agencies Network (EUAN), which was set up by the agencies to enhance their visibility and identify possible synergies, also contributed to a more performance-oriented culture. In 2012, the EUAN set up the Performance Development Network (PDN), which actively facilitates the exchange of practices, cooperation on performance issues and, to some extent, service sharing where possible. The PDN has developed tools such as the Evaluation Handbook for Agencies (2018), a "Self-assessment toolbox for implementing performance/results based orientations" (2018) and a KPIs database (ongoing).

11 The above-mentioned performance tools and measures have generated a growing trend in harmonisation and alignment among the growing number of agencies, although there is still a varying degree of implementation. At the same time, the tools and measures have also generated an abundance of information for each individual agency focused on its activities and output.

Audit scope and approach

12 Our overall audit question is whether adequate conditions are in place to ensure the performance of agencies. In times of re-adjusting EU strategic priorities and scarce resources in the delivery of its policies in the interest of citizens, this report intends to raise a discussion of the EU's future management of its agencies' performance. We have focused on the following two criteria:

- (1) The set-up, functioning, and possible winding-up of agencies (i.e. the life cycle of agencies) should be *flexible to help implement EU policy and enhance European cooperation*. This means that:
 - (a) Entrusting tasks to an agency should be the best option, compared to having them done either by the Commission itself or (under the subsidiarity principle) by the Member States.
 - (b) The relevance and coherence of existing agencies should be regularly evaluated in order to achieve possible synergies and economies of scale.
 - (c) Agencies need adequate human and financial resources to fulfil their mandates and accomplish all tasks.
 - (d) The planning process governing each agency's work should be flexible enough to allow them to respond to rapidly changing environments.
- (2) Agencies should fully exploit their potential as *centres of expertise and networking* to promote the sharing of expertise, to bring Member States together to achieve common interests and common policy objectives where possible, and to exercise a network function for enhanced cooperation with other European and international partners. This includes:
 - (a) a fit-for-purpose management structure;
 - (b) adequate accountability arrangements involving stakeholders;
 - (c) good communication with stakeholders and EU citizens;
 - (d) effective cooperation with other bodies at national, EU and international level, both public and private.

13 We derived our set of criteria from the agencies' specific regulations, the Framework Financial Regulation, the Commission's "better regulation" guidelines and toolbox³, the Joint Statement on the Common Approach and the "Roadmap on the follow-up of the Common Approach on EU decentralised agencies", as well as other guidance provided by the EU Agencies Network.

14 The audit was conducted between March and September 2019. It covers EU decentralised agencies and their partner directorates-general (DGs) at the Commission (see [Annex II](#)). We refer to Commission executive agencies only for comparative purposes, where appropriate.

15 We collected audit evidence through:

- A review of key documents for all agencies (basic regulations, annual reports, programming documents, evaluation and audit reports, impact assessments, management board meeting minutes, etc.).
- More than 250 interviews with managers and key staff of 21 agencies and 10 Commission DGs, which are the partner DGs of 32 agencies.
- A survey of 2 500 agency stakeholders (see [Annex III](#)), including management board members, Member State officials, representatives of industry and consumer organisations, NGOs and academics. The list of stakeholders was provided by the agencies themselves, but we made the final selection, ensuring that all main groups of stakeholders were represented. We received 1 000 replies.
- An analysis using big data techniques of agencies' media presence captured by Europe Media Monitor (EMM) between January 2018 and July 2019 (see [Annex IV](#)). The dataset contained more than 200 000 news articles mentioning the agencies from more than 5 000 different news sources in over 160 countries.
- Two roundtable discussions with academics and practitioners from the Commission, the Council and the Parliament. The discussions were organised in June and September 2019, with an open invitation sent to over 40 academics and practitioners with management experience or publications about EU agencies, fifteen of whom attended the discussions. DG Budget also participated as an observer in the first discussion.

³ Commission Staff Working Document (SWD(2017) 350).

Observations

The life cycle of agencies lacks flexibility

The Commission does not always clearly consider alternatives when proposing to set up an agency

16 Before setting up a new agency, the Commission needs to assess whether this is the best option, compared with alternatives such as doing the tasks by itself, using intergovernmental cooperation, outsourcing to private entities or adjusting the mission of an existing agency. The best option should reflect the needs.

17 Under the Commission's "better regulation" policy⁴, an impact assessment is required for initiatives that are likely to have significant economic, environmental or social impacts (see [Box 1](#)). Before proposing to set up a new agency, the Commission should demonstrate the added value of this choice through an impact assessment. The Commission's Regulatory Scrutiny Board (RSB) scrutinises the quality of draft impact assessments; in principle, a positive RSB opinion is needed before an initiative is tabled for adoption by the College of Commissioners.

⁴ European Commission, "White Paper on European governance", COM(2001) 428 final, and Better Regulation Guidelines, 2015.

Box 1**The questions an impact assessment should answer:**

- (1) What is the problem, and why is it a problem?
- (2) Why should the EU act?
- (3) What should be achieved?
- (4) What are the various options for achieving the objectives?
- (5) What are their economic, social and environmental impacts, and who will be affected?
- (6) How do the different options compare (effectiveness, efficiency and coherence)?
- (7) How will monitoring and subsequent retrospective evaluation be organised?

Source: European Commission, Better Regulation Guidelines.

18 Since 2004, all Commission proposals for a new agency and other bodies including those for the most recent ones EPPO (2017) and ELA (2018), have been accompanied by an impact assessment. The RSB gave a positive opinion on EPPO, considering that it was needed and that its objectives and tasks had been clearly established. However, the RSB added a reservation to its positive opinion on the ELA impact assessment as it did not clearly address the coherence between ELA and the other agencies under the remit of DG EMPL (Cedefop, Eurofound, EU-OSHA and ETF), which has already been identified as an overlap by a recent external evaluation⁵.

19 The creation of the SRB was preceded in 2012 by an impact assessment of the Bank Recovery and Resolution Directive. The assessment suggested setting up resolution colleges with the assistance of the EBA, but in the end a new agency was created to ensure effective and consistent functioning of the Single Resolution Mechanism and manage the Single Resolution Fund.

⁵ European Commission, “Evaluation of the EU agencies under the remit of DG Employment: Eurofound, Cedefop, ETF and EU-OSHA”, March 2018.

20 The need for the autonomy and complex governance arrangements associated with an agency is not always obvious. The GSA in particular has very limited autonomy in practice, as its main task is to exploit the Galileo global satellite navigation system under a delegation agreement with the Commission (90 % of the agency's budget). Several survey respondents stressed that the GSA management board's decision-making powers are therefore limited. The GSA implements the delegation agreement through a number of complex contracts with industrial partners and public sector entities.

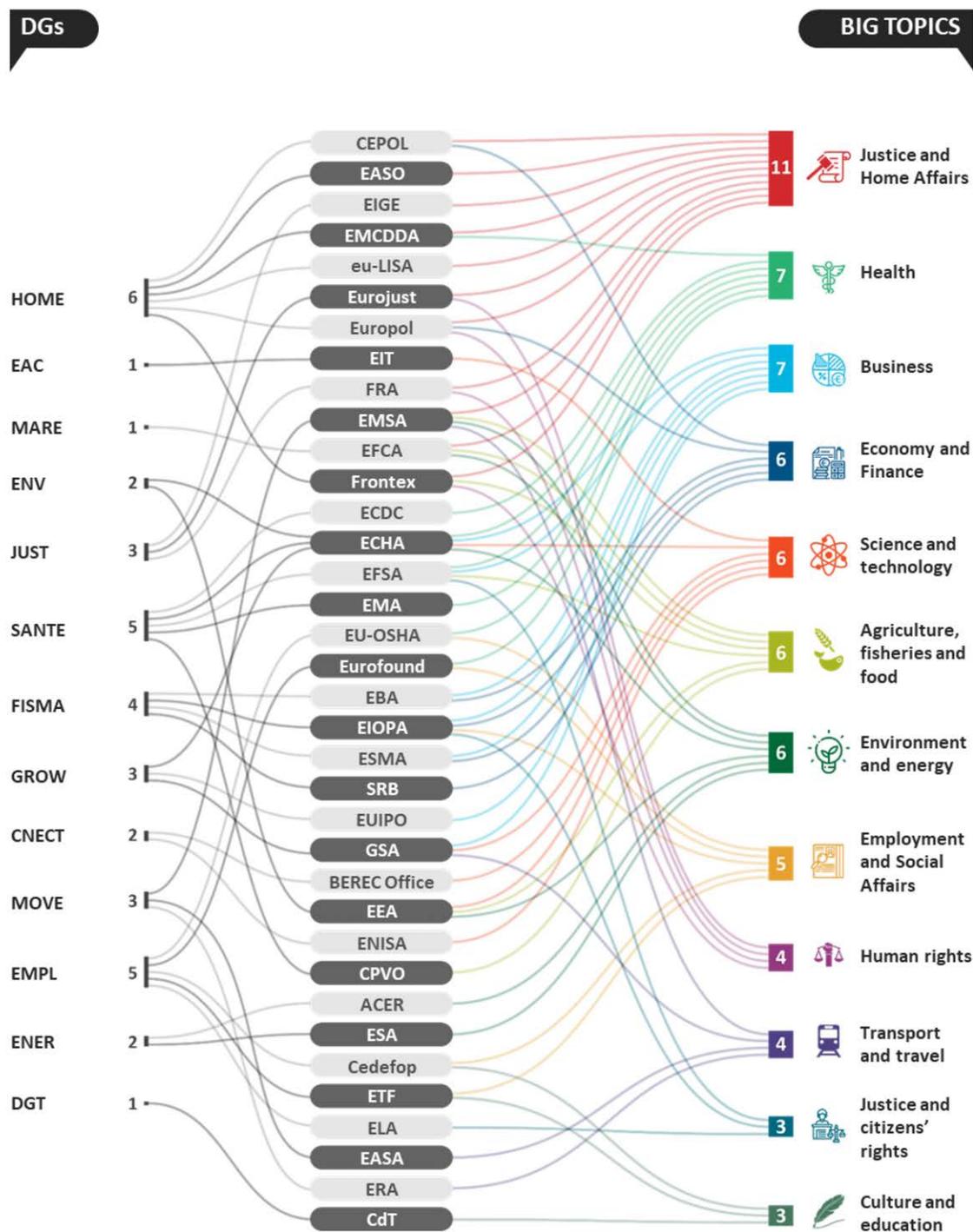
21 Finally, we found examples of the political decision to set up a new agency being taken even before the Commission's proposal and the impact assessment: FRA, EASO and ELA.

The relevance and coherence of existing agencies is insufficiently reassessed

22 The rationale for an agency needs to be reassessed at different stages during its life in order to verify whether it is still necessary (relevant) and whether its actions are coherent vis-à-vis the actions of the other agencies and their partner DGs. *Figure 5* illustrates the multiple relations between agencies and DGs. The reassessment can be done in different ways:

- (1) through an independent evaluation of its performance;
- (2) as part of a wider "fitness check" covering the entire policy area (see paragraph 27);
- (3) through a fresh impact assessment when recasting an agency's founding regulation or assigning it new tasks through a separate regulation.

Figure 5 – EU agencies and other bodies, partner DGs and topics



Note: DG DEFIS is the partner DG of GSA from 1 January 2020.

Source: ECA compiled data based on the classification provided by the Commission’s website.

23 According to the Common Approach, the founding regulation of an agency should include either a “sunset clause” or a “review clause” mandating the Commission to propose amending or repealing the regulation when it considers that the agency is no longer justified with regard to its assigned objectives (see **Box 2**). Seven years after the Joint Statement on the Common Approach, only seven out of 37 agencies have a “sunset clause”, and 13 a “review clause”, in their founding regulations.

Box 2

The Common Approach on setting up and dissolving an agency

Paragraphs 2-5 of the Joint Statement stipulate that:

- (1) “The decision to create a new agency should be based on objective impact assessment of all relevant options”.
- (2) “Agencies’ founding acts should contain either a sunset or a review clause”.
- (3) “Common and objective criteria should be used to assess both the opportunity to disband or, the possibility to merge them:
 - merging agencies should be considered in cases where their respective tasks are overlapping, synergies can be contemplated or the 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.”

24 The founding regulations of 13 agencies were recast between 2015 and 2019, but only five proposals were accompanied by an impact assessment (BEREC Office, CEPOL, EASA, ENISA and ERA). In all five cases, the RSB finally gave a positive opinion, but added one or more reservations. Three other proposals were based on another recent impact assessment or fitness check (ACER, EFCA and EFSA). The five remaining proposals were not based on any impact assessment: four were considered technical reviews (Cedefop, Eurofound, EU-OSHA and Eurojust) and one was considered urgent (Frontex) which meant that there was not enough time to carry out an impact assessment.

25 The founding regulations of three agencies under the remit of DG EMPL (Cedefop, Eurofound and EU-OSHA) were recently recast; in all cases the Commission submitted the recast proposals before receiving the final report of a joint evaluation of the agencies. Despite Parliament's criticism concerning the absence of specific proposals to merge or co-locate agencies in related policy fields, the legislator adopted the recasts. Moreover, a new agency (ELA) was legally established in 2019.

26 Over the years, none of the agencies were closed, merged or significantly changed in scope, except for the European Agency for Reconstruction, which was set up in 1999 and wound up in 2008. During the last ten years, the Commission has proposed on two occasions to merge agencies for reasons of coherence, but failed to obtain Parliament's agreement (see [Box 3](#)). The situation for EU agencies stands in sharp contrast with the Commission executive agencies. When the Commission considers that an executive agency is no longer justified with a view to sound financial management, it can decide to wind it up. The Commission has periodically reshuffled the responsibilities of executive agencies in the past, most recently in 2013.

Box 3

Parliament rejected Commission proposals to integrate BEREC Office in ENISA and to merge CEPOL with Europol

In 2007, the Commission's impact assessment accompanying the proposal for an Electronic Communications Market Authority (which became BEREC Office in 2009) suggested merging ENISA with the new authority, but the legislator opted instead to create a new separate body to co-exist with ENISA.

CEPOL provides online and classroom training sessions for police officers and is closely affiliated to Europol, the EU Agency for Law Enforcement Cooperation. In 2013, the Commission submitted a legislative package, based on an impact assessment, in which it proposed merging Europol and CEPOL for efficiency reasons. Parliament rejected the proposal.

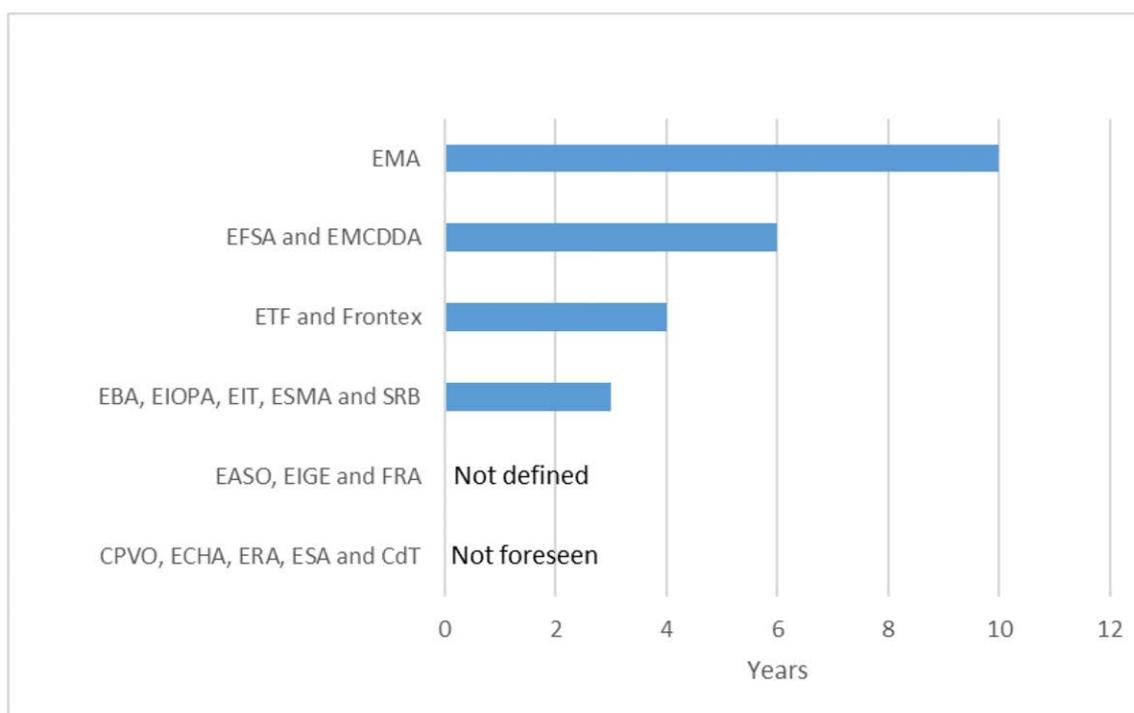
27 The activities of an EU agency are sometimes also assessed as part of a wider fitness check covering the entire policy area. Between 2014 and 2019, the Commission carried out several fitness checks in areas such as chemicals, fisheries control and general food law. This led to the codification of the EFCA founding regulation and the amendment of the EFSA founding regulation.

28 The Common Approach states that every EU agency should be evaluated every five years. The Commission should be responsible for organising the evaluation and for every second evaluation the sunset/review clause should be applied.

29 The founding regulations of several agencies have not yet been aligned with the Common Approach (see [Figure 6](#)):

- The founding regulations of CPVO and CdT do not contain an evaluation requirement, whereas the latest recasts of the ACER, ERA, EUIPO and Europol regulations require these agencies to be evaluated for the first time as of 2020 (ERA), 2021 (EUIPO), 2022 (Europol) and 2024 (ACER).
- Although the Common Approach requires evaluation every five years, evaluation frequency ranges from three years (SRB) to 10 years (EMA). In some cases (EIGE, EASO and FRA) evaluation frequency is a matter for the management board. FRA's management board has decided on an evaluation frequency of five years. EIGE's management board decided in 2019 to postpone the planned evaluation by two years, and to use the corresponding budget for other purposes.
- Some agencies (EIGE and FRA) or their management boards (EASO, ECDC and EFCA) still organise their own evaluations rather than having them steered by the Commission as prescribed by the Common Approach.

Figure 6 – EU agencies and other bodies where the frequency of external evaluations is not five years



Source: ECA.

30 Plans to change an agency’s mandate are sometimes used to justify postponing an evaluation, reducing its scope or simply replacing it with a Commission impact assessment. EASA, for instance, limited the scope of its 2018 evaluation to the planning process, arguing that the Commission’s revision of its founding regulation included an impact assessment, although the founding regulation clearly stipulated a full evaluation.

31 With the exception of the agencies under the remit of DG EMPL and the European supervisory authorities, the performance of each agency is evaluated individually. Where several agencies work in the same policy area, an alternative approach would be to use cross-cutting performance evaluations (or fitness checks) to assess the coherence and relevance of their activities and their contributions to policy implementation. The USA and Australia follow this practice (see [Annex V](#)).

32 In the area of research, the Commission has never comprehensively assessed the coherence of the EIT with the executive agencies operating under Horizon 2020, which provide research grants. The executive agencies are evaluated separately and more frequently (every three years).

Agencies are exposed to risks of inadequate human and financial resources

33 Adequate human and financial resourcing is indispensable for any entity to achieve its objectives. Most agencies are mainly financed from the EU budget. Eight agencies (EUIPO, CPVO, CdT, EMA, EASA, ECHA, ESMA and, since 2019, ERA) are fully or partially financed by fees or prices charged for the services they provide. The SRB is fully financed by contributions from industry, while the EBA, EIOPA and ESMA are partially financed by contributions from national competent authorities. **Box 4** explains the decision-making on the annual budget and the establishment plan of the agencies.

Box 4

Agency budgets and establishment plans

- For all agencies except the three fully self-financed agencies (EUIPO, CPVO and SRB):

The Commission subsidy to the agency is part of the general budget of the EU, and is therefore proposed by the Commission and adopted by the budgetary authority (the European Parliament and the Council). The Commission also proposes, and the budgetary authority (i.e. the European Parliament and the Council) adopts, the establishment plan of each agency for the coming year.

In addition, each agency's management board (or its equivalent) adopts both the agency's budget (statement of expenditure and revenue) and its establishment plan.

- The budgets and establishment plans of the three fully self-financed agencies are approved by the management board (or its equivalent) or the budget committee of the respective agency, on a proposal of the Executive Director or the President/Chair.

34 During the last decade, many agencies have received additional tasks from the legislator or the Commission through a variety of instruments:

- a revision of their founding regulations;
- the adoption of new legislation (e.g. ACER, ECHA, EMA, eu-LISA, Frontex);
- signature by the agency of service-level agreements or delegation agreements with the Commission (EEA, Frontex, Europol, EASO, etc.).

35 We found that, when the Commission assigns new tasks to agencies, it usually proposes only limited additional human resources. Exceptions are Frontex and, to a lesser extent, EASO, which are operating in priority areas. Moreover, a 2013 interinstitutional agreement brought in a generally applicable 5 % staff reduction for all EU institutions and agencies over five years. As newly created agencies were not affected and existing agencies were permitted to receive additional posts for new tasks, the total number of posts in agencies nevertheless increased by 13.7% between 2013 and 2017⁶.

36 The revenue of most partially self-financing agencies (EMA, EASA, etc.) will usually grow in proportion to their workload, but their staff numbers are controlled by the Commission and do not necessarily follow. For instance, EMA's fee-related workload increased by 31 % from 2014 to 2018, but its staff numbers decreased⁷. ECHA faces particular challenges because it has no recurrent revenue and its fee income is difficult to forecast.

37 Even where posts are available, several agencies have had problems recruiting and retaining staff. Frontex recently received a large number of new posts, but has been struggling to recruit all the necessary personnel and recorded high vacancy rates in 2018 and 2019. EASO has always had difficulty attracting staff, and its vacancy rates are consistently high. GSA is struggling to recruit staff with the necessary technical expertise. Lower remuneration packages in certain Member States are a particular obstacle to recruitment.

38 Our survey of stakeholders showed a clear link between adequate resources and the performance of agencies. Almost half of the respondents disagreed with the statement "The agency has sufficient human resources", but we noted big differences between agencies. More than 75 % of ACER and ENISA stakeholders disagreed or strongly disagreed, versus less than 25 % of SRB, EUIPO, Frontex and EFCA stakeholders. While a majority of respondents think that most agencies have successfully fulfilled their mandate, the opinions were clearly split for four agencies where we identified resource shortages (ACER and ENISA) or recruitment difficulties (EASO and Frontex) (see the detailed survey results in [Annex III](#)).

⁶ ECA, Rapid Case Review on the implementation of the 5 % reduction of staff costs, 2017.

⁷ EMA, CAAR 2018, emphasis of matter paragraph.

39 To compensate for a shortage of posts or national experts, the agencies are increasingly outsourcing core tasks to private contractors, on whom they may then become dependent. All in all, the agencies employed some 1 500 IT consultants and interim staff in 2018. This involves risk if there are too few qualified staff to supervise the work of contractors. Examples are EASO, eu-LISA, EMA and GSA. Given the complex legal framework for the use of external staff, which varies to some degree between different Member States, there are also risks in terms of litigation and reputational damage. We noted these risks at BEREC Office, CPVO, EASO, ESMA, EUIPO, the EBA, EIOPA, EIGE, EMCDDA and the SRB⁸.

Box 5

Examples of agencies that are dependent on external contractors for critical functions

EASO depends on the cooperation of Member States and the secondment of national experts. As few national experts are made available, interim staff accounted for 43 % of all experts deployed in Greece in 2018, and 59 % of those in Italy.

eu-LISA outsources most work on sensitive IT projects that are part of its core business to a limited number of contractors.

EMA was tasked by Parliament and the Council with implementing two new regulations requiring the development and roll-out of two pan-European IT systems. Because of a shortage of internal experts, the agency used consultants, thus forfeiting full control over project development and implementation.

Following a call for competitive dialogue, in 2016 **GSA** awarded the contract for Galileo operations and services to the same private joint venture which had been providing them since 2010 under an agreement with the European Space Agency. The current contract could run until as late as 2026.

⁸ See also ECA's 2018 annual report on agencies.

40 In recent years, the management boards of some agencies have highlighted the risks of limited resources. For example, in 2019 the Europol board reported that the estimated annual budget of €123.7 million per year until 2027 “[...] is insufficient for Europol to fully perform its mission, in particular with regards to the necessary information management developments and the provision of continued high quality operational support to Member States”⁹. Other examples include ACER, EEA and EMA (see [Box 6](#)).

Box 6

Resource shortages at ACER lead to a restrictive interpretation of its mandate

In its consolidated annual activity report (CAAR) for 2018, ACER published a long list of tasks that it had deprioritised owing to employee shortages. The agency stressed that it had insufficient market surveillance staff to properly discharge its mandate (in particular monitoring of the wholesale market under REMIT).

Our stakeholder survey confirmed that ACER had lowered the bar in its surveillance of energy markets.

The annual planning process is long and does not suit rapidly changing environments

41 In line with Commission instructions, the agencies produce annual single programming documents (SPDs), which combine an annual work programme with a three-year rolling plan. Each SPD is prepared under the responsibility of the agency executive director and adopted by the management board, account being taken of comments received from the Commission. In addition, many agencies still plan strategically for a longer (often five-year) period, as required by their basic regulation.

⁹ Analysis and assessment of the Europol 2018 Consolidated Annual Activity Report.

Box 7

Frontex faces a recurrently low implementation of budget for return operations

More than 10 % of Frontex's budget is earmarked for migrant return operations (€53.8 million in 2018). From 2016 to 2018, the planned budget was consistently more than was needed. The number of actual returns (200 000) has constantly lagged behind the number of return decisions (500 000). Member States also have the option of implementing returns at national level with financial support from the Asylum, Migration and Integration Fund (AMIF), which is managed by Frontex's partner DG HOME.

The difference between Frontex's total initial budget and actual spending was 10.3 % in 2016, 8.9 % in 2017 and 11.3 % in 2018.

42 The annual planning cycle leading to adoption of the SPD is very long, with the first version drafted some 18 months before the start of the planning period. It is particularly challenging for agencies operating in a very volatile environment (such as EASO, Frontex and the SRB) (**Box 7**) to plan their budget and operations so far ahead. Certain other agencies (such as eu-LISA) face similar problems owing to legal uncertainties when new legislation grants them additional tasks (**Box 8**). Despite these particular cases, all agencies can benefit from a shorter planning cycle.

Box 8

eu-LISA: a case study on the challenges of a new agency

In 2011, eu-LISA was created and made responsible for the operational management of large-scale IT systems in the area of freedom, security and justice. In the ensuing years, eu-LISA has been entrusted with an ever-increasing number of large-scale IT systems, under the objective of exploiting synergies between the various systems.

As the regulations set short deadlines for systems to become operational, eu-LISA needs to start preparing well before their adoption. As adoption is often delayed, however, some budgets have been made available even before finalisation of the corresponding legal basis. This complicates eu-LISA's planning, particularly because the Commission requires all agencies to submit their draft SPDs in January of the year before the start of the planning period, and necessitates creative budgetary solutions.

43 The annual and multiannual planning and budget cycles usually take each agency's previous year's tasks, budget and resources as a starting point. Traditionally, there has been only a limited reassessment of the annual needs and potential savings. Agencies have not been obliged to re-justify thoroughly the resources needed for each of the planned activities. The Commission expects that use of the SPD as set out in the new Framework Financial Regulation and a related Commission communication from April 2020 will allow a more thorough review of evolving needs. This should then also feed into the needs assessment (increase/decrease and/or redeployment of resources) in preparation for a future multiannual financial framework (MFF). As these developments partly occurred after the completion of our audit work and the likely impact will only become evident as from 2021, we have not assessed whether the new framework has already improved and strengthened the assessment of the agencies' annual budgetary needs.

The potential of agencies as centres for sharing expertise and networking is not fully exploited

The composition of management boards does not always allow efficient decision-making

44 Whereas executive agencies are led by a leaner steering committee, usually consisting of five members representing Commission DGs, agencies have many management board members representing a variety of interests – often including, inter alia, Member States, the Commission, civil society and industry. Their more complex governance structure is aimed at bringing together different interests and finding common ground for an “EU” solution. In this sense, agencies can act like centres of expertise and networking.

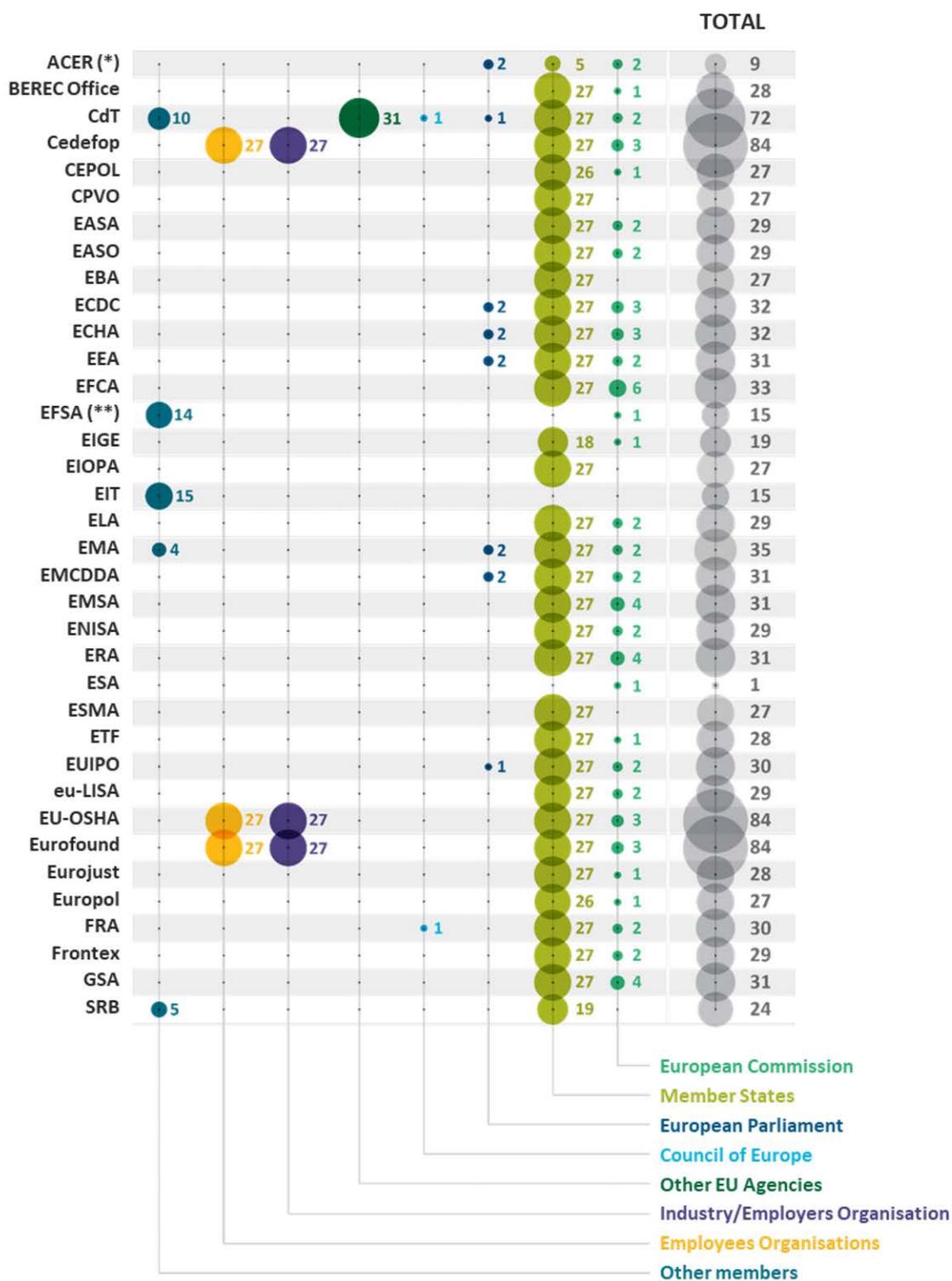
45 An agency’s management board is its highest internal governance body (although the exact term – “board of supervisors”, “administrative committee”, etc. – may vary from one agency to another). It has a supervisory role with general responsibility for strategy, budgetary and planning matters, the appointment of an executive director and monitoring of the agency's performance.

46 Member States can considerably influence the strategy and operations of an agency through their majority on the management board. In particular, if operational and political needs require Member States to cooperate closely in politically sensitive areas, there is some incentive for the Council to transfer competence to an EU agency rather than to the Commission. The board members representing the Member States in the management board do not have a mandate to commit their governments and therefore cannot guarantee the cooperation of their Member States in implementing the decisions taken by the agencies (see also paragraphs [71-74](#)).

47 The management boards of most agencies consist of one representative per Member State plus one or more members from the Commission. Seven management boards also include voting members appointed by the Parliament: ACER, ECDC, ECHA, EEA, EMA, EMCDDA and EUIPO.

48 Most management boards therefore have 30-35 members, as illustrated in [Figure 7](#). The agencies under the remit of DG EMPL (Cedefop, Eurofound and EU-OSHA) are “tripartite” – each Member State sends one representative of an employers’ organisation, one of a workers’ organisation and one government official. They and the CdT have up to 90 members, making decision-taking difficult and generating considerable administrative costs. EIGE, EIT and (until 2021) EFSA have fewer management board members. The degree of involvement of individual board members at most agencies also varies widely.

Figure 7 – Voting members of management boards.



(*) ACER's Administrative Board.

(**) EFSA. The new Management Board (2021) will compose of 35 voting members representing: 27 Member States, 2 European Commission, 2 European Parliament, 1 consumer organisations, 1 environmental non-governmental organisations, 1 farmers organisation and 1 industry organisations.

Source: ECA.

49 As we have pointed out in previous special reports¹⁰, while the composition of management boards ensures national views are taken into account, it can also hamper an EU-wide perspective in the agencies' decision-making (**Box 9**). However, the Commission's influence goes in practice far beyond its voting rights, as it is responsible for proposing the budgets and staffing plans of all agencies except those which are fully financed from fees.

Box 9

The Board of Supervisors of the EBA, EIOPA and ESMA

The highest decision-making body of the three European supervisory authorities (ESAs) is the Board of Supervisors. It is composed of the heads of the national competent authorities supervising the financial institutions in each Member State, plus one non-voting representative each from the ECB (for the EBA), the two other ESAs, the Commission and the ESRB.

This composition stimulates cooperation between the European and national supervisors and therefore seems appropriate to deal with the ESAs' rulemaking responsibilities, but less so for their supervisory roles. The ESAs also have to ensure the consistent application of legally binding EU acts and, where necessary, trigger a breach of Union law procedure (Article 17 EBA Regulation). This mechanism is in practice very rarely used due to national supervisors' reluctance to sanction their peers. Several survey respondents pointed out that the failure of the breach of law procedure was clearly illustrated by the EBA's non-adoption of a recommendation in the Danish-Estonian money laundering case.

Budgetary authorities hold agencies accountable for finance and compliance matters, but performance is a secondary concern

50 The EU's budgetary authority (Parliament and Council) is responsible for granting most agencies annual discharge for their accounts. It traditionally focuses on financial and compliance issues and pays only limited attention to the agencies' performance.

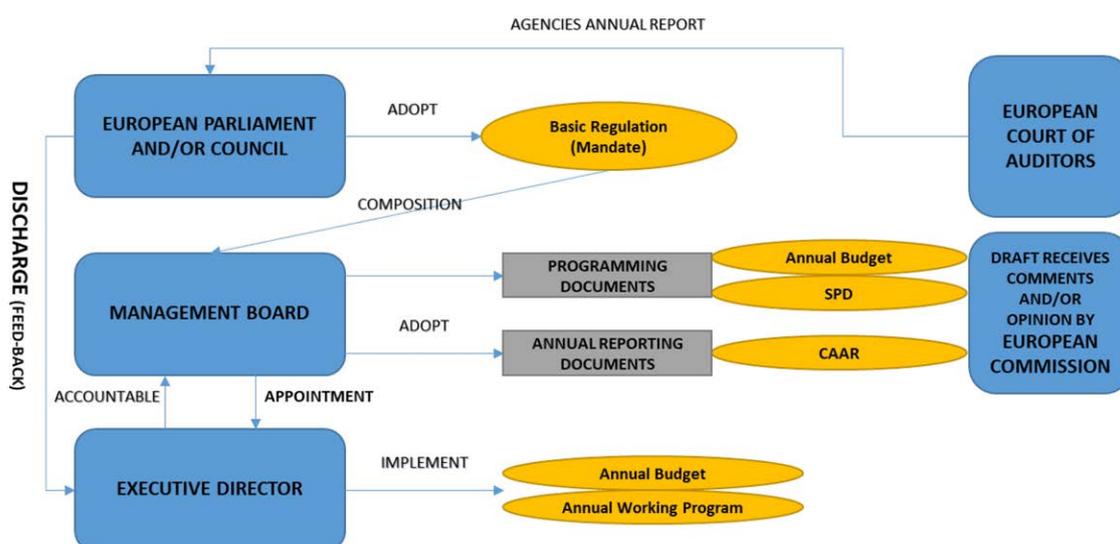
51 The Parliament's sectoral policy committees supervise the operations of the agencies at a high level, mainly through hearings of their executive directors and discussion of their annual reports. The sectoral policy committees also send short opinions to the Budgetary Control Committee as input for the discharge procedure,

¹⁰ E.g. special report 10/2019: "EU-wide stress tests for banks: unparalleled amount of information on banks provided but greater coordination and focus on risks needed".

but the actual collection and analysis of performance information is very limited and concerns only individual agencies.

52 The Council and its working parties mainly hold the partner DGs accountable for the agencies' performance.

Figure 8 – Main actors and key documents in the annual performance cycle



Source: ECA.

53 Public control over the fully self-financed agencies (EUIPO, CPVO and SRB – the SRB also manages the Single Resolution Fund, which received €7.8 billion in contributions raising its total assets to €33 billion at the end of 2019) is even more limited. Although they discharge a public mandate entrusted to them by EU legislation, these agencies are mainly accountable towards their own members¹¹, who grant them annual discharge, and only informally towards the European Parliament. Moreover, EUIPO in particular has accumulated large surpluses, as its revenue from fees and charges has frequently exceeded its expenditure. We commented on these aspects in opinions we issued in 2019 on the proposals for the financial regulations of CPVO and EUIPO¹². Other jurisdictions operate differently to the EU (see [Figure 8](#)). For example, the US Congress is the discharge authority for all US self-financing agencies.

¹¹ The Budget Committee in the EUIPO; the Board in its plenary session for the SRB; the Administrative Council for the CPVO.

¹² ECA opinions 1/2019 and 3/2019.

Agencies report more on performance aspects, but their contribution to EU policy and cooperation is not clearly measured and communicated to citizens

Agencies regularly provide performance information, but this information is not always relevant

54 Agency stakeholders need both qualitative and quantitative performance information, and receive this through the consolidated annual activity report (CAAR) and other documents. As well as reporting annually, many agencies (e.g. EUIPO, ETF, EFSA) produce more regular information in the form of dashboards, quarterly reports, etc. Some of these are for internal use only, but others are published.

55 Most agencies have introduced activity-based budgeting, meaning that they allocate resources and/or costs by activity, and a few (EASA, ESMA, ETF, EUIPO, eu-LISA) have made significant progress towards activity-based management, which entails regularly updating scoreboards combining budgetary and performance information (see [Annex VI](#)). While EASA and ESMA have fully calculated the cost of the services underlying the fees they charge, the fees of other agencies are laid down in their regulations.

56 Agencies also measure performance through key performance indicators (KPIs). In 2015, the Commission issued guidelines on KPIs for directors of agencies¹³. The indicators used in practice mainly relate to the implementation of an agency's annual work programme and budget and its human resources management, but they do not allow usually for the assessment of results or of the agency's efficiency and effectiveness in discharging its mandate.

57 Most agencies have also developed operational objectives and associated performance indicators and targets. Most of these indicators measure output rather than results or impact. Several agencies (EASO, EMSA, EFSA, Frontex, etc.) report on more than 100 indicators, many of which are very detailed and specific and give no information about overall performance. The link with policy objectives is often not clearly established in either the SPD or the CAAR.

58 A number of more operational and/or business-oriented agencies have more useful indicators, measuring their contribution to the implementation of EU policies. eu-LISA, for example, has result indicators for the availability and response time of its

¹³ SWD(2015) 62 final, 13.3.2015.

large-scale IT systems. EASA is one of the few agencies with a clear impact indicator: the number of deaths in plane crashes in the EU. EUIPO has indicators assessing the timeliness, quality, and accessibility of the services provided.

59 Comparison between years is often difficult, as indicators may change from one year to another and few CAARs mention previous years' results. At best, output is compared against the agency's own target in the SPD.

60 As the agencies' activities are so diverse, it is not possible to compare their performance and KPIs. It is also very difficult to compare dissimilar agencies by efficiency. None of the agencies' reports includes a comparison with similar national or international bodies.

61 In our 2019 review¹⁴, we found that some agencies also collect information on sustainability, but this information is often piecemeal and incomplete. Sustainability reporting is the practice of measuring, disclosing and being accountable to internal and external stakeholders for organisational performance towards the goal of sustainable development. We found that only one agency, EUIPO, publishes a report of this kind.

There is limited awareness and follow-up in the media about the contribution of agencies to policy and cooperation

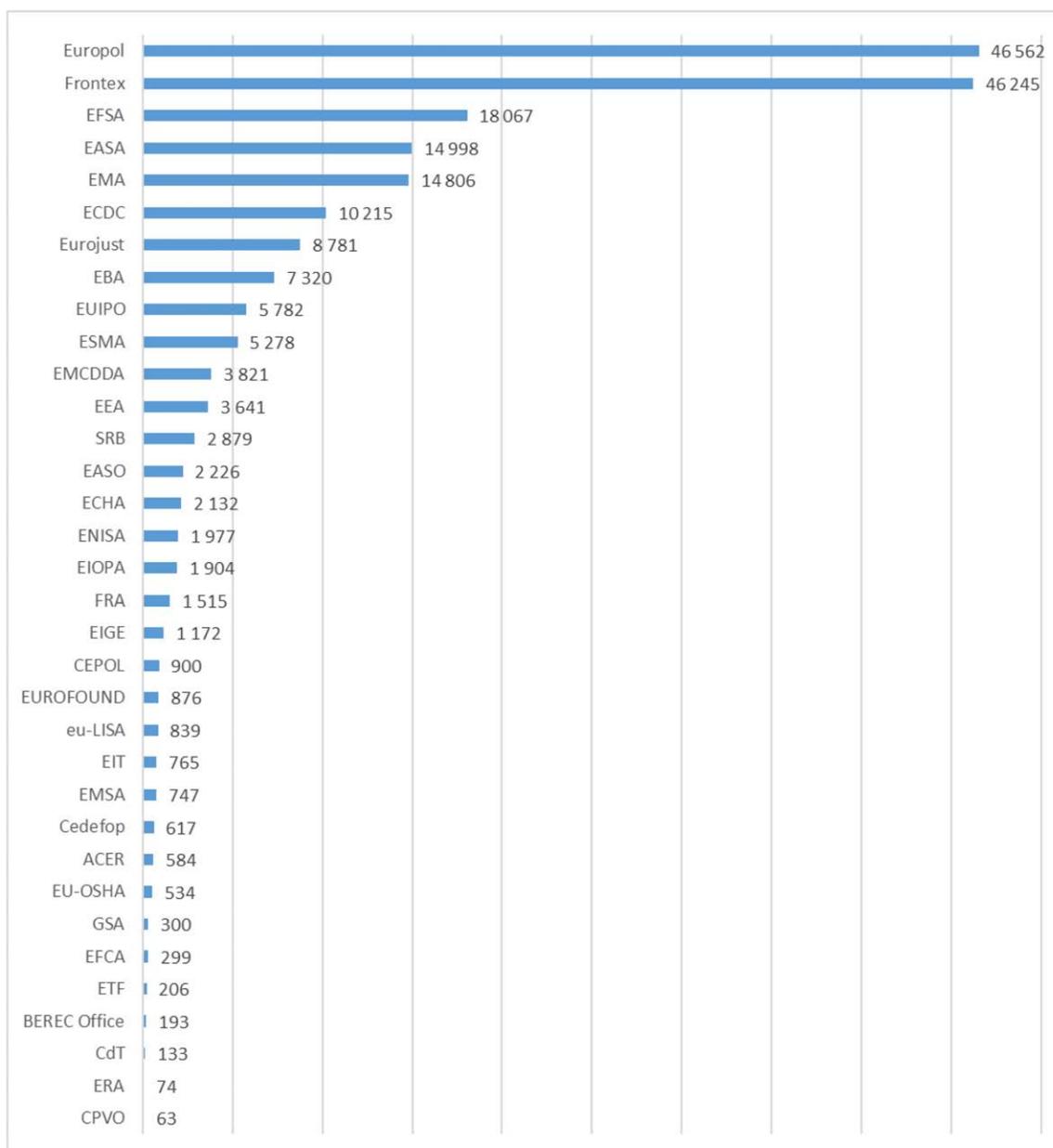
62 EU agencies have a significant influence on policy and decision-making in areas of vital importance to EU citizens' daily life. They can also act as frontrunners to solve crisis situations or long-term societal challenges. Apart from agencies' own limited reporting on performance, the media visibility of agencies' contribution – positive or negative – is also limited. Very few of the news articles in our data analysis contained any qualitative information on the contribution of agencies to EU policy and cooperation, or their influence on decision-making on behalf of the Member States, industry and the citizens.

63 Between January 2018 and July 2019, the main agencies in the news were Europol and Frontex, which featured in more than 40 % of all the articles we analysed (*Figure 9*). They were followed by EFSA, EASA, EMA and ECDC. Together, these six agencies accounted for two thirds of the articles. They all deal with issues of security and/or safety, which attract most public attention. Some agencies (such as EMA) appeared more or less constantly over the period, while coverage of others was more concentrated and linked to specific incidents and events (see *Figure 3* and *Figure 4* in

¹⁴ Review 07/2019: Reporting on sustainability – A stocktake of EU institutions and agencies.

Annex IV). For example, the Boeing 737 MAX crashes exponentially increased media exposure of EASA, the glyphosate crisis increased coverage of EFSA, and EUIPO received attention following the Adidas trademark judgment.

Figure 9 – News articles grouped by EU agency or other body



Source: Compiled by ECA based on aggregated data in EMM, January 2018 to July 2019.

64 ECDC published the largest number of news articles about its own activities, followed by EMA and EMSA. The tasks of these three agencies include disseminating public health and safety information. Most other agencies were rarely in the news, even where awareness-raising is part of their mandate. Unlike the agencies dealing with security and border protection (Frontex, Europol), EASO which supports Member states on asylum had a lower presence in the news articles covered by the EMM.

Cooperation between agencies and other national, EU and international bodies generally works well, with some exceptions

The survey results show that some agencies need to improve cooperation

65 A majority (80 %) of the stakeholders we surveyed consider that cooperation between agencies and their partners at national, EU or international level generally works well. However, there are clear differences between individual agencies. One third of the respondents think that significant improvements are needed, for example in the following agencies' relations with some of their partners:

- ENISA and GSA with Member States, other agencies and internationally,
- ERA with the Commission and Member States,
- EMA with the Commission,
- EASA with Member States.

Agencies work closely with Commission partner DGs but have limited involvement in budget negotiations and the revision of legislation

66 Most agencies do not have decision-making powers (see [Box 10](#)), but some (such as ECDC, ECHA, EFSA, EMA and ERA) produce scientific opinions, which are the basis for Commission decisions. A small number of agencies (e.g. ACER, CPVO, EASA, EUIPO and, in some areas, ECHA) are empowered to take decisions.

Box 10

The Meroni doctrine and the delegation of powers to agencies

The Meroni case-law¹⁵ limits the EU's delegation of powers to an EU agency to clearly defined executive powers which must be entirely supervised by the delegating authority. Furthermore, delegation must be by an "express decision" and necessary for the performance of tasks set out under the Treaties. It cannot involve "discretionary" powers to such an extent as to allow the execution of actual economic policy implying a wide margin of discretion, which brings about an actual transfer of responsibility.

Most agencies do not have discretionary decision-making powers. In the area of health, for instance, the agencies (such as EMA and EFSA) assess risk but risk management is a matter for the Commission, which usually takes formal authorisation decisions.

In recent years, the Meroni doctrine has been clarified, allowing the delegation of some precisely delineated regulatory or intervention powers that are amenable to judicial review. Some agencies with a role in regulating the single market, such as EASA, EUIPO and ESMA, are empowered to take certain decisions based on technical assessments and criteria (specified in legislative, delegated and regulatory acts) without formal approval by the Commission¹⁶.

67 The Commission supervises the activities of the agencies through its presence on management boards, its involvement in the programming and planning cycle (it issues formal opinions on the draft SPDs) and a large number of more regular contacts between partner DGs and "their" agencies. The Commission's Internal Audit Service (IAS) is the statutory internal auditor of all agencies, except those that are self-financed¹⁷. The IAS audits selected topics relevant to these agencies based on individual, multiannual and risk-based strategic audit plans, and reports to the respective executive directors and management boards.

68 The involvement of the agencies in the revision of their founding regulations and other key legislation in their area of operation is generally limited. As a result, the

¹⁵ Cases 9/56 and 10/56, *Meroni & Co, Industrie Metallurgiche v High Authority*, 1957-58, ECR 133.

¹⁶ Case C-270/12, *United Kingdom v Parliament and Council*, 2014.

¹⁷ CPVO, EUIPO, and SRB.

Commission does not always make the best use of their knowledge when drafting new legislative proposals.

69 The partner DGs negotiate their agencies' staffing plans and EU contributions with DG BUDG before they are included in the Commission's draft budget proposal to Parliament and the Council. Agencies do not tend to have direct contact with DG BUDG and receive scant information about the progress of budget negotiations, which can hinder their operational planning.

70 Some agencies are chronically under-resourced, whilst others are unable to absorb their budget under the annual programming cycle. For example, based on a political agreement, Frontex received considerable additional resources as from 2017. We found no evidence showing how Frontex's additional budget and staff needs were established. In the case of EU-OSHA, we outlined previously a tendency of recurring carry overs of a significant percentage of the budget from one financial year to the next¹⁸. We note that, in the case of EU-OSHA, cancellation rates for carryovers have been low so far. However, high carryovers in general entail risks in the sound financial management of resources.

Cooperation with Member States is crucial, but does not always run smoothly

71 Member States play an active role in the implementation of most agencies' work programmes. For example:

- Frontex, EASO and eu-LISA provide active support to the Member States which are the main entry points for migrants and asylum seekers into the EU.
- eu-LISA operates the central component of a series of large-scale IT systems in the area of freedom, security and justice, which are connected to national systems¹⁹.
- Many agencies, such as EEA, EFSA, EMCDDA, EUIPO and EU-OSHA, work closely with EU expert networks and/or national focal points, which help to implement their work programmes.
- Many agencies (such as CPVO, ECHA (see [Box 11](#)), EMA, EFSA and, to a lesser extent, EASA) undertake their scientific tasks in cooperation with Member States.

¹⁸ ECA 2018 Annual Report on EU agencies, para 3.14.8.

¹⁹ See also ECA special report 20/2019: "EU information systems supporting border control - a strong tool, but more focus needed on timely and complete data".

Box 11

After more than a decade, ECHA is still operating in a context of limited powers

ECHA has faced a number of challenges to fulfil its mandate to promote the use of safe chemicals.

- The registration system is based on industry submissions (see [Box 14](#)).
- During the first decade of its existence (2008-2017), ECHA prioritised registration over analysis of the data provided about the declared chemical substances. As many substances have not yet been evaluated in detail, it is still unclear whether they are harmful or not. ECHA's strategic plan for 2019-2023 offers a new and more ambitious approach to identifying substances that need to be regulated.
- A recent judgment by the CJEU General Court²⁰ annulled a Commission decision authorising the use of a certain substance on the basis of an opinion from ECHA's scientific committees, on the grounds that there had been insufficient analysis of less harmful alternatives.
- Member States have exclusive competence for enforcing the obligation on companies to register chemicals with ECHA under the REACH Regulation. ECHA has only a coordinating role.
- ECHA's annual targets for opinions on the approval of active substances in biocides are missed year after year because Member States delay the delivery of their assessment reports.
- The financial and administrative framework in which ECHA operates is more complex than for other agencies, as ECHA has three separate budgets (and staffing plans) under three different regulations, each with a different partner DG. This further limits ECHA's flexibility to deal with fluctuations in workload.

72 By assigning responsibilities to an EU agency, Member States retain most control over decision-making while reinforcing European cooperation (see [Box 12](#)). In many areas, therefore, agencies play more of a “soft” coordination role, leaving considerable discretionary power to the Member States.

²⁰ Judgment of 7 March 2019, in case T-837/16.

Box 12

Border control and asylum: a tale of two stories²¹

Frontex and EASO depend heavily on the provision of human (and, for Frontex, technical) resources by Member States. Both agencies struggle to obtain these resources, but Frontex seems to be relatively more successful in this respect.

We showed in our special report 6/2017: “EU response to the refugee crisis: the ‘hotspot’ approach” that EASO needs Member State personnel²² (mainly asylum experts and interpreters), as well as contract staff, to meet its sensitive core function of providing support to Member States. One major obstacle to operational efficiency is the very short deployment period (six to eight weeks) of Member State experts. In 2018, EASO managed two major support operations (in Greece and Italy) involving 478 experts from Member States and associate countries, and 464 contract staff.

In reaction to the unexpected increase in migration flows in 2015, the Commission submitted a proposal to amend the EASO and Frontex regulations in order to increase and better coordinate the support available to front-line Member States. The legislative package for Frontex was adopted in less than a year (and a second package once again expanding Frontex’s responsibilities was adopted in 2019), but there is still no agreement on the Commission proposal to establish an EU asylum authority.

73 In some areas, Member State bodies continue to function in parallel. For example, companies can choose between applying to protect a trademark or design with national offices (for national protection only) or EUIPO (EU-wide protection). In the health field, Member State authorities may carry out their own risk assessments in areas where the agencies operate (ECDC for disease prevention and control, EFSA for food safety), with no obligation to coordinate their work with the agencies. Legislation has been brought to mitigate this risk by means of information-exchange mechanisms.

74 When Member States hold discussions in the Council that involve the expertise of agencies, the agencies themselves generally do not participate but are represented by the Commission.

²¹ See also ECA special report 24/2019, Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results.

²² Article 15 of the EASO Regulation (EU) No 439/2010.

Potential for closer cooperation between agencies in the same policy area

75 Several agencies are active in the same policy area. We identified some overlap between the mandates and/or activities of the following agencies:

- EIGE and FRA (both active in the area of women's rights);
- EASO and Frontex (both provide cultural mediators to support Member States confronted with large inflows of migrants);
- the agencies under the remit of DG EMPL (Cedefop, Eurofound, EU-OSHA and ELA).

76 Inter-agency cooperation is especially close in the area of migration. EASO, Frontex, Europol and FRA work together at the “hotspots” in Italy and Greece. In the field of Justice and Home Affairs (JHA), there are regular meetings between nine agencies (CEPOL, EASO, Frontex, EIGE, EMCDDA, eu-LISA, Eurojust, Europol and FRA) and their two partner DGs (HOME and JUST) in the framework of the JHA Agencies Network. Two other agencies, EFCA and EMSA, cooperate with Frontex on coast guard matters. DG SANTE has held regular inter-agency meetings since 2019. As provided in their founding regulations, EBA, EIOPA and ESMA work together within the Joint Committee of the European Supervisory Authorities. In other areas, cooperation is more ad hoc.

77 Cooperation between agencies is often formalised in a bilateral “working arrangement” or “memorandum of understanding” (see [Box 13](#)). It may also be facilitated by the presence of representatives of other agencies (often as observers) on the management board. For example, the three European supervisory authorities have a seat on each other's management boards – though they do not always attend. EUIPO and CPVO are also represented on each other's boards as observers. The Translation Centre has concluded an arrangement with all EU agencies, joint undertakings and EU institutions, all of which are entitled to be represented on the Centre's Management Board.

Box 13**ECHA and EFSA – similar work, not enough cooperation**

ECHA and EFSA often deal with the same substances, but there is little information exchange between the two agencies. The systems used by companies to register chemicals with ECHA and submit information electronically are not linked or connected with the EFSA systems.

At EFSA, the procedures for submitting applications and the required information vary widely. There are specific rules in each area for drawing up applications. EFSA has developed guidance documents to help with applications, but there is little cooperation with ECHA in this regard.

In 2017, the two agencies signed a new memorandum of understanding (replacing the previous one, from 2009) on closer cooperation between them.

78 The agencies also cooperate closely through the EU Agencies Network (EUAN), which was set up to enhance their visibility and identify and promote possible efficiency gains. Its priorities are agreed by the agencies in the form of a five-year strategy and annual work programmes. One important role it has is to ensure efficient communication between agencies and their stakeholders, mainly the EU institutions. Nine sub-networks give shape to its members' action and interaction and result in tangible deliverables that benefit the EU and its citizens. However, the EUAN does not have any executive power, not all agencies participate in all sub-networks, and cooperation focuses mainly on administrative rather than operational matters.

79 One agency, the Translation Centre for the Bodies of the European Union (CdT), has inter-agency cooperation as its rationale. However, not all agencies are obliged by their founding regulations to make use of CdT's services. There also is some confusion as to the type of services for which the other agencies must or can use CdT. One agency has even developed its own system for dealing with linguistic matters in-house (translation memories), while others may use private external translation providers. In our 2017 annual report on the agencies, we gave our view that CdT's capacity is not being used to the full, that systems development and running costs are being duplicated and that CdT's business model and continuity could be at risk.

Some agencies depend on cooperation with industry

80 Some agencies also depend on the cooperation of the industry they are supposed to regulate. ECHA's chemicals registration task, for instance, relies on industry submissions (see [Box 14](#)). The regulatory framework provides only limited incentives to ensure that the information provided is reliable and regularly updated.

Box 14

ECHA's experience shows the weaknesses of a system based on industry submissions

- ECHA is responsible for the mandatory registration or authorisation of chemicals in the EU, based on submissions by industry²³. After ECHA staff have made formal completeness checks of the information provided in a self-declaration, the company receives a REACH registration number allowing it to market its chemicals. It can keep this registration number even if it is subsequently shown to have provided incorrect or incomplete information. This arrangement reduces the company's incentive to provide updates or additional information. A recent study²⁴ has shown that at least 30 % of all registrations could be non-compliant.
- A Commission staff working document on the REACH evaluation stated that "the lack of compliance of companies with their registration obligations is hampering the identification of substances of concern and the consequent ability of authorities to protect the public and the environment". ECHA and the Commission have adopted a joint action plan to address the lack of compliance in registration files. Content checks will be stepped up and the focus will be shifted towards substance analysis.

²³ Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1).

²⁴ Bund für Umwelt und Naturschutz Deutschland e.V., *Hintergrund und Erläuterungen zur REACH-Registrierung: Großunternehmen verstoßen gegen das EU-Chemikalienrecht und gefährden damit Mensch und Umwelt*, 20 May 2019.

Agencies' outreach efforts at international level remain limited

81 Under the Treaty, agencies cannot enter into international agreements that bind the EU (Article 218 TFEU). However, they can enter into cooperation agreements with international counterparts when (1) this is explicitly foreseen in their establishing act, (2) the cooperation agreement does not create binding obligations and (3) they have (*de facto* or *de jure*) the approval of their partner DGs²⁵.

82 By the nature of their activities, many agencies need to interact with international partners, and their activities have international repercussions. Many agencies also have counterparts in non-EU countries, with similar roles. The Commission, in collaboration with the European External Action Service, establishes “working arrangements” with the agencies to organise their relations with non-EU bodies or countries.

83 Agencies working in the area of Justice and Home Affairs (particularly Europol, Eurojust and Frontex) are fully integrated in the external dimension of the Area of Freedom, Security and Justice (AFSJ) and are amongst the internationally most active agencies, having also concluded a series of cooperation agreements with non-EU countries. As examples for other policy areas, EFSA and EMA have established an important international role. Their opinions are crucial for health safety inside and outside the EU. In the aviation sector, EASA is also regularly active in this domain. However, there is no evidence that, overall, the agencies' potential to support the Commission internationally, particularly on technical matters and the exchange of information, is fully exploited.

²⁵ See also Merijn Chamon and Valerie Demedts, *Constitutional limits to the EU agencies' external relations in The External Dimension of EU Agencies and Bodies* (2019).

Conclusions and recommendations

84 We conclude that agencies are playing an increasingly important role in the delivery of EU policies and that the conditions in place have supported their performance. Nevertheless, while acknowledging the responsibility of the legislator, we consider that there is not sufficient flexibility in the set-up and operation of agencies and that the potential for them to cooperate for common policy objectives in the interest of citizens could be further exploited.

85 The flexibility of agencies to meet changing policy needs is reflected in their life cycle: their creation, evolution, and potential winding-up. We observe that when the Commission proposes to set up a new agency, it does not always clearly consider the alternatives, including the option of the Commission carrying out the tasks envisaged, the option of intergovernmental cooperation or the option of adjusting the mission of an existing EU agency. Once an agency is operational, its coherence vis-à-vis the other agencies and partner DGs, particularly in the same policy area, is insufficiently assessed over time to allow for adjustment (paragraphs [16-32](#)).

Recommendation 1 – Ensure the relevance, coherence and flexibility of the set-up of agencies

The Commission should:

- (a) increase the use of cross-cutting evaluations of agencies in the context of the Commission's fitness checks of the different policy areas. Evaluation results should be used to identify synergies and possible changes, including mergers, and, where appropriate, to prepare legislative proposals in response to changing needs;
- (b) prepare any proposals for new agencies in line with the Better Regulation Agenda, including the consultations provided for therein. The Commission should demonstrate the relevance and coherence of proposed new bodies vis-à-vis existing bodies, taking into account any reservations expressed by the Regulatory Scrutiny Board.

Timeframe for recommendation 1(a): by 2024 in order to feed into the next legislative proposals for the post-2027 MFF.

Timeframe for recommendation 1(b): for any new proposals from September 2020.

86 Being flexible also entails that agencies receive adequate resources according to their changing needs. We observe that the agencies especially suffer from limited flexibility in resources, in part because their planning cycle is strictly attached to the EU budgetary procedures. Traditionally, agencies have planned their resources incrementally, based on previous years, even when the environment and the policy require a more thorough review of certain activities (paragraphs [33-43](#)).

Recommendation 2 – Allocate resources to agencies in a more flexible manner

The agencies should:

- (a) more thoroughly justify their need for resources before each new MFF period, making effective use of their single programming documents and taking account of priorities, possible synergies and economies of scale.

The Commission should:

- (b) assess and compare, before each MFF period the requests for resources from all agencies, and propose to allocate resources (increase, decrease and/or redeploy) to agencies by focusing on the priorities and the most pressing needs;
- (c) timely review agencies' requests to align resources with evolving needs to allow greater flexibility in budgetary planning.

Timeframe: by 2024.

87 EU agencies play an important role in bringing together different interests from Member States to reach common policy solutions for the EU. However, the size of their management boards and discrepancies in the understanding of the role of management board members may hamper efficient decision-making (paragraphs [45-49](#)).

88 Agencies' performance information has, in practice, not been sufficiently linked to their contribution to policy, making it difficult to hold the decision-makers accountable. The new Framework Financial Regulation introduces this link, but its impact is yet to be seen (paragraphs [50-53](#)). Overall, citizens receive little information about the benefits of the agencies (paragraphs [54-64](#)).

Recommendation 3 – Improve governance and reporting on performance

The agencies should:

- (a) improve the way they report on performance in practice by linking more clearly their performance with their contribution to EU policies.

The Commission should:

- (b) monitor the implementation of the revised Commission guidelines (C (2020)2297) on the performance information to be provided by agencies for external scrutiny by the European Parliament, the Council and EU citizens, thereby shifting the focus from reporting on output and activities to contributions to EU policy;
- (c) propose that the legislator review the size of management boards where needed to improve the efficiency of the decision-making process.

Timeframe for recommendations 3(a) and (b): from 2021.

Timeframe for recommendation 3(c): from September 2020 for new proposals.

89 The EU agencies have a network function to share expertise and build up cooperation with national, European and international partners. However, agencies have not yet explored all the possibilities for achieving synergies and economies of scale where they have similar activities (paragraphs [76-80](#)). Moreover, the agencies depend on the necessary support from Member States (paragraphs [72-75](#)). Besides, some agencies operate in policy areas with a strong international dimension, but they sometimes lack support from the Commission to share expertise with non-EU partners in a more flexible way (paragraphs [81-83](#)).

Recommendation 4 – Strengthen the role of agencies as centres for sharing expertise and networking

The agencies should:

- (a) cooperate more closely with each other to identify good practices on performance, synergies and economies of scale, particularly in shared policy areas.

The Commission should:

- (b) monitor that Member States deliver on their legal and political commitments to provide EU agencies with the necessary information, experts and support for the enforcement of agency decisions and policy implementation; and where these commitments are not sufficiently covered by the legal framework, propose that the legislator clearly spell out Member States' obligations;
- (c) ensure that the technical expertise and other potential of agencies are consistently used to support policy preparation and implementation also at international level and with non-EU partners.

Timeframe: from 2021.

This Report was adopted by Chamber IV, headed by Mr Alex BRENNINKMEIJER, Member of the Court of Auditors, in Luxembourg on 28 July 2020.

For the Court of Auditors

Klaus-Heiner LEHNE
President

Annexes

Annex I – List of EU agencies and other bodies covered by this report

Acronym	Full name	Location
ACER	European Union Agency for the Cooperation of Energy Regulators	Ljubljana, Slovenia
BEREC Office	Agency for Support for the Body of European Regulators for Electronic Communications	Riga, Latvia
CdT	Translation Centre for the Bodies of the European Union	Luxembourg, Luxembourg
Cedefop	European Centre for the Development of Vocational Training	Thessaloniki, Greece
CEPOL	European Union Agency for Law Enforcement Training	Budapest, Hungary
CPVO	Community Plant Variety Office	Angers, France
EASA	European Aviation Safety Agency	Cologne, Germany
EASO	European Asylum Support Office	Valletta, Malta
EBA	European Banking Authority	Paris, France
ECDC	European Centre for Disease Prevention and Control	Stockholm, Sweden
ECHA	European Chemicals Agency	Helsinki, Finland
EEA	European Environment Agency	Copenhagen, Denmark
EFCA	European Fisheries Control Agency	Vigo, Spain
EFSA	European Food Safety Authority	Parma, Italy
EIGE	European Institute for Gender Equality	Vilnius, Lithuania
EIOPA	European Insurance and Occupational Pensions Authority	Frankfurt, Germany
EIT	European Institute of Innovation and Technology	Budapest, Hungary
ELA	European Labour Authority	Bratislava, Slovakia
EMA	European Medicines Agency	Amsterdam, The Netherlands
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction	Lisbon, Portugal

EMSA	European Maritime Safety Agency	Lisbon, Portugal
ENISA	European Union Agency for Cybersecurity	Athens and Heraklion, Greece
EPPO	European Public Prosecutor's Office	Luxembourg
ERA	European Union Agency for Railways	Valenciennes, France
ESA	Euratom Supply Agency	Luxembourg, Luxembourg
ESMA	European Securities and Markets Authority	Paris, France
ETF	European Training Foundation	Turin, Italy
EUIPO	European Union Intellectual Property Office	Alicante, Spain
eu-LISA	European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	Tallinn, Estonia, Strasbourg, France and Sankt Johann im Pongau, Austria
EU-OSHA	European Agency for Safety and Health at Work	Bilbao, Spain
Eurofound	European Foundation for the Improvement of Living and Working Conditions	Dublin, Ireland
Eurojust	The European Union's Judicial Cooperation Unit	The Hague, The Netherlands
Europol	European Union Agency for Law Enforcement Cooperation	The Hague, The Netherlands
FRA	European Union Agency for Fundamental Rights	Vienna, Austria
Frontex	European Border and Coast Guard Agency	Warsaw, Poland
GSA	European Global Navigation Satellite Systems Agency	Prague, Czech Republic
SRB	Single Resolution Board	Brussels, Belgium

Annex II – List of Commission partner DGs of EU agencies and other bodies

DG	Full name	Agencies
CNECT	Communications Networks, Information and Technology	BEREC Office, ENISA
DEFIS	Defence Industry and Space	GSA (from 1 January 2020)
DGT	Translation	CdT
EAC	Education, Youth, Sport and Culture	EIT
EMPL	Employment, Social Affairs and Inclusion	Cedefop, ELA, ETF, EU-OSHA, Eurofound
ENER	Energy	ACER
ENV	Environment	EEA, ECHA
FISMA	Financial Stability, Financial Markets and Capital Markets Union	EBA, EIOPA, ESMA, SRB
GROW	Internal Market, Industry, Entrepreneurship and SMEs	ECHA, EUIPO, GSA (until 31 December 2019)
HOME	Migration and Home Affairs	CEPOL, EASO, Frontex, EMCDDA, eu-LISA, Europol
JUST	Justice and Consumers	EIGE, Eurojust, FRA
MARE	Maritime Affairs and Fisheries	EFCA
MOVE	Mobility and Transport	EASA, EMSA, ERA
SANTE	Health and Food Safety	CPVO, ECDC, EFSA, EMA, ECHA (biocides only)

Annex III – Key data and results of the stakeholder survey

We asked 34 agencies to provide us with a list of stakeholders and made a representative selection including the main categories of stakeholders (national public bodies, industry, EU institutions, NGOs, academics etc.). We invited 2 500 stakeholders to participate in the survey and received around 1 000 replies (response rate 40 %). Almost half the respondents were management board members.

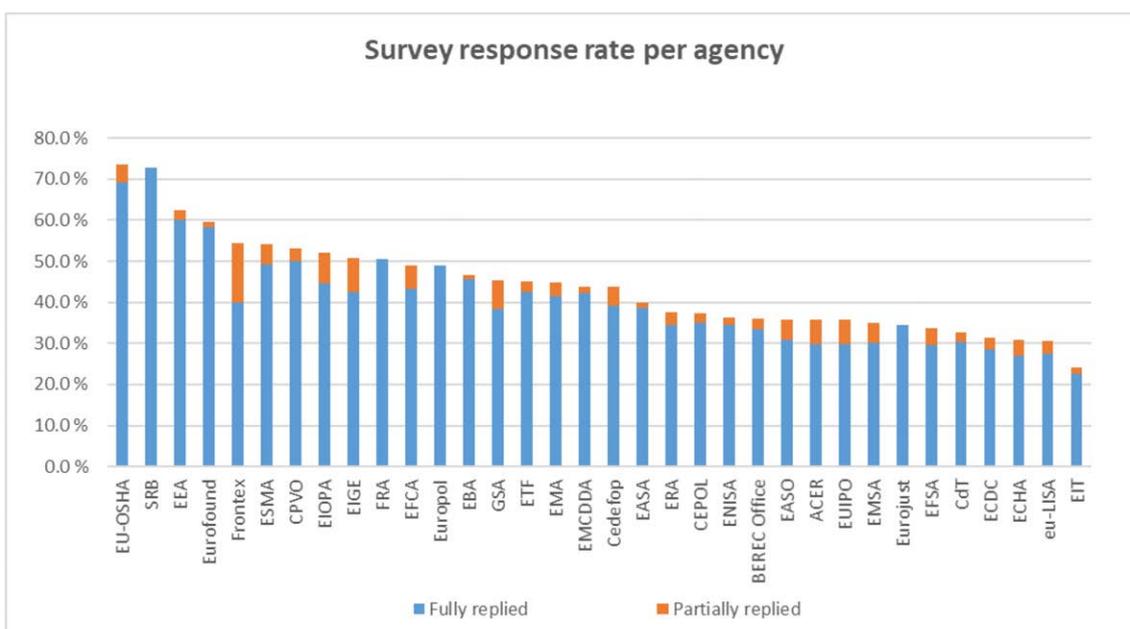
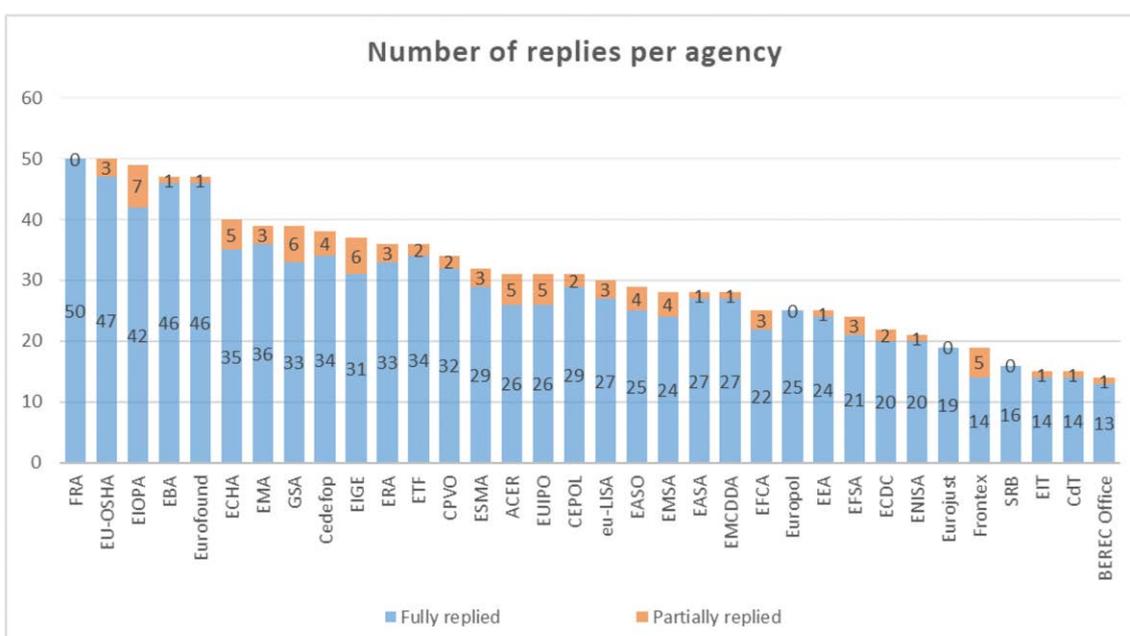
Table 1 – Overall results of the stakeholder survey

	Very positive	Positive	Negative	Very negative	No opinion
1. The composition of the management board is adequate	25 %	51 %	8 %	1 %	14 %
2. The Agency effectively involves stakeholders and experts	30 %	59 %	6 %	1 %	4 %
3. The accountability arrangements are fit-for-purpose	20 %	56 %	4 %	0 %	19 %
4. The Agency has sufficient human resources	10 %	37 %	32 %	8 %	13 %
5. The Agency has sufficient financial resources (budget)	11 %	33 %	32 %	8 %	16 %
6. The Agency has SMART objectives	38 %	42 %	7 %	0 %	12 %
7. The Agency adequately reports on its performance	53 %	36 %	5 %	1 %	5 %
8. The evaluation requirements are adequate	36 %	40 %	6 %	1 %	17 %
9. Cooperation with the Commission	29 %	41 %	11 %	0 %	19 %
10. Cooperation with other Agencies	28 %	36 %	11 %	1 %	24 %
11. Cooperation with Member States / national bodies	34 %	40 %	14 %	0 %	12 %

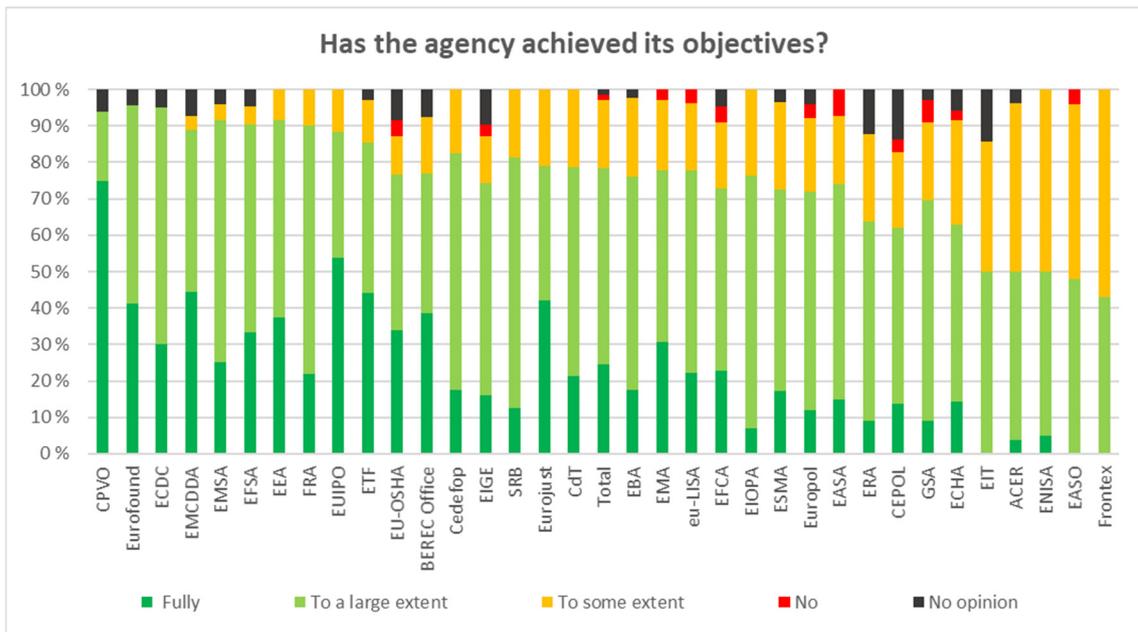
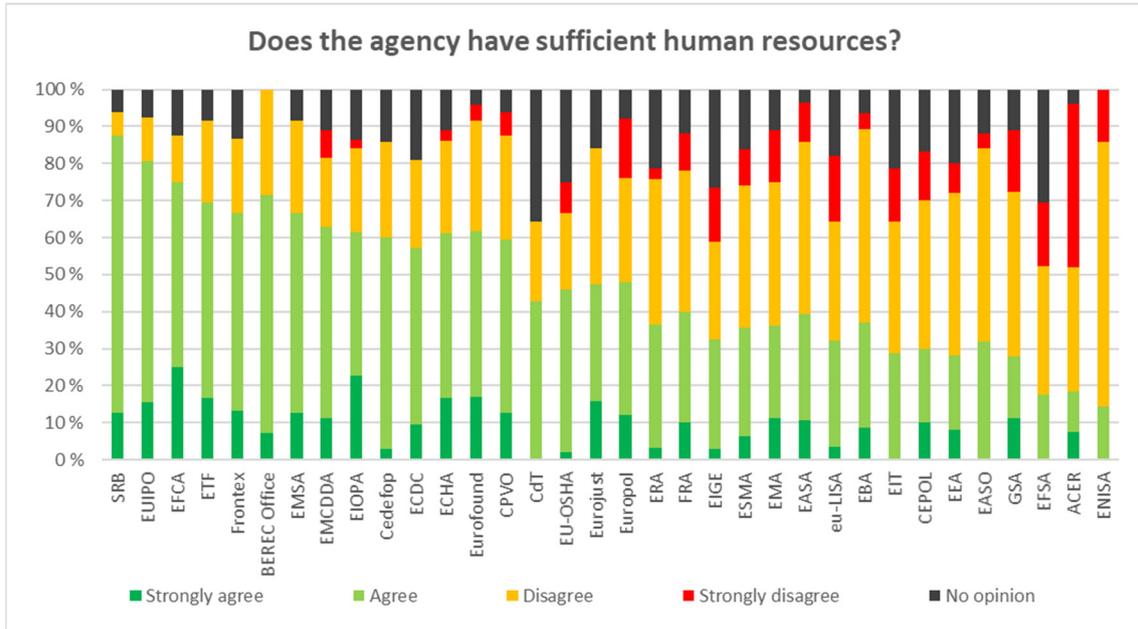
12. Cooperation with non-EU bodies	28 %	29 %	8 %	2 %	33 %
13. The Agency's founding regulation is fit-for-purpose	23 %	48 %	17 %	2 %	12 %
14. The Agency has reached its operational objectives / fulfils its mission	24 %	52 %	18 %	1 %	4 %

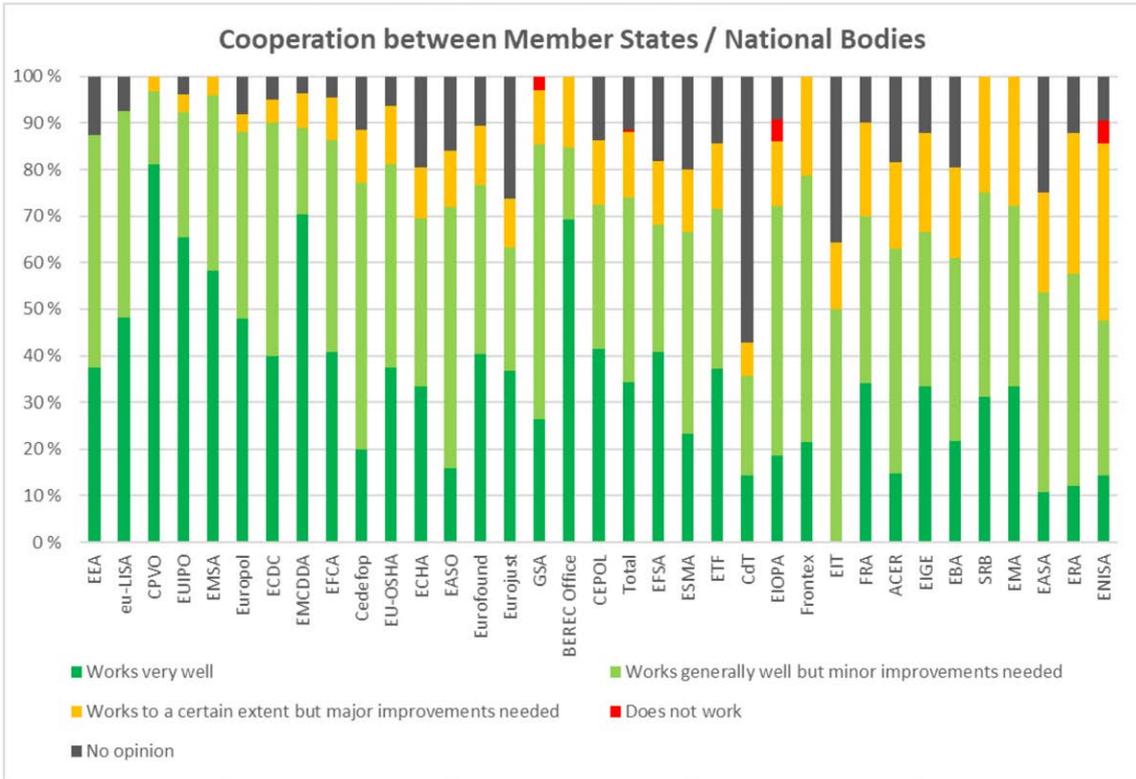
Source: ECA; Sample size = 1 000 replies from stakeholders of 34 agencies and other bodies.

Survey participation

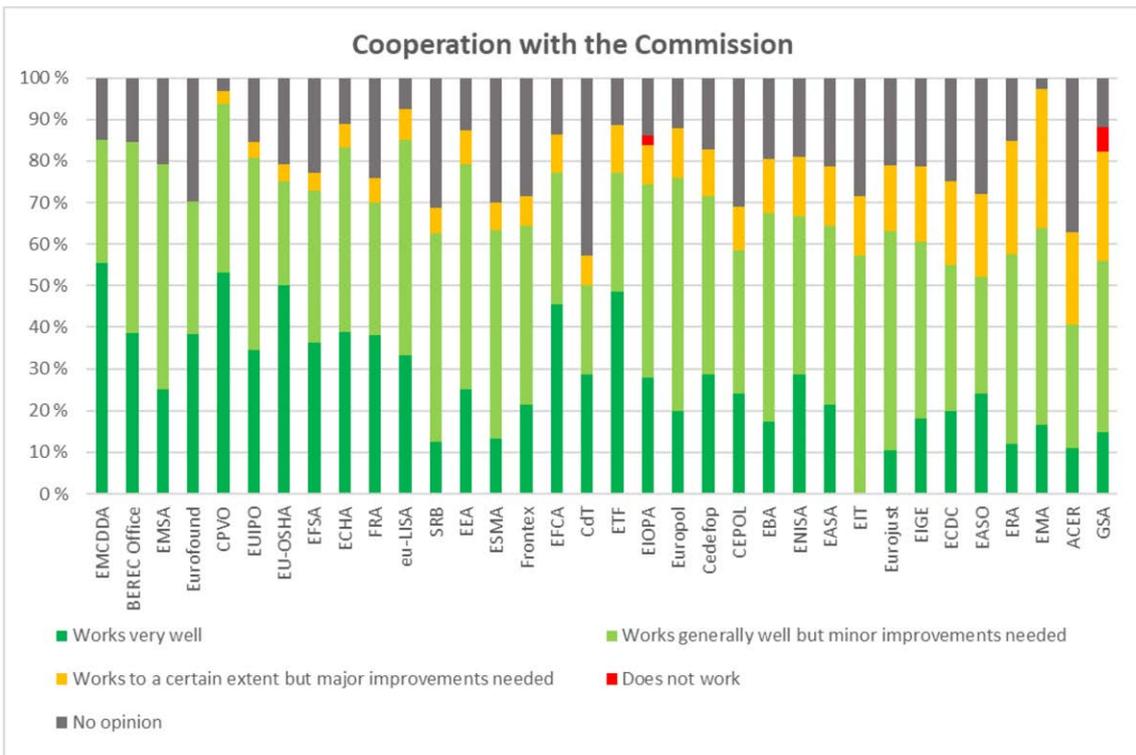


Most relevant survey results





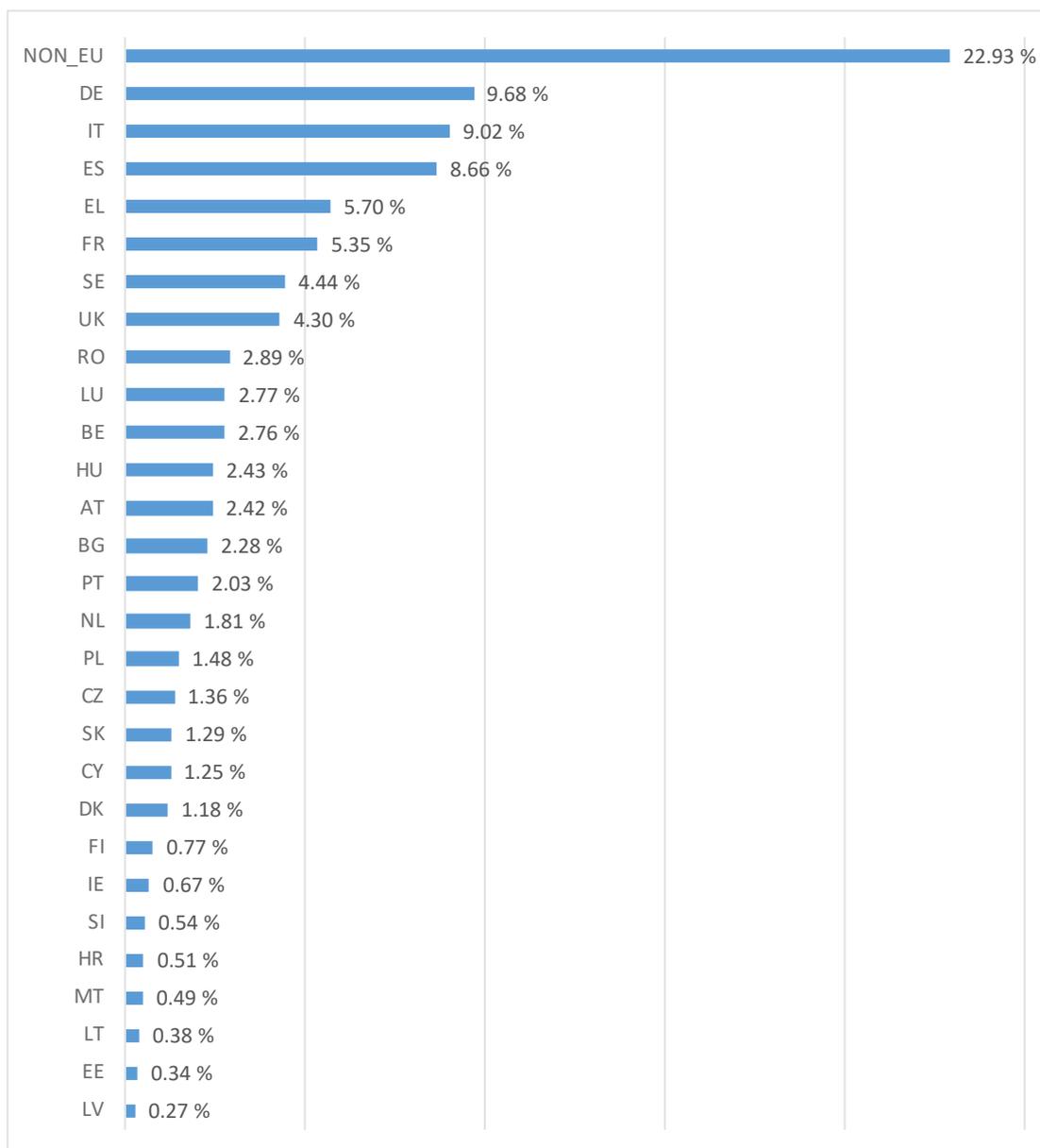
Source: ECA stakeholders survey; sample size = 1 000 replies from stakeholders of 35 agencies and other bodies.



Annex IV – News distribution identified in an analysis using big data techniques

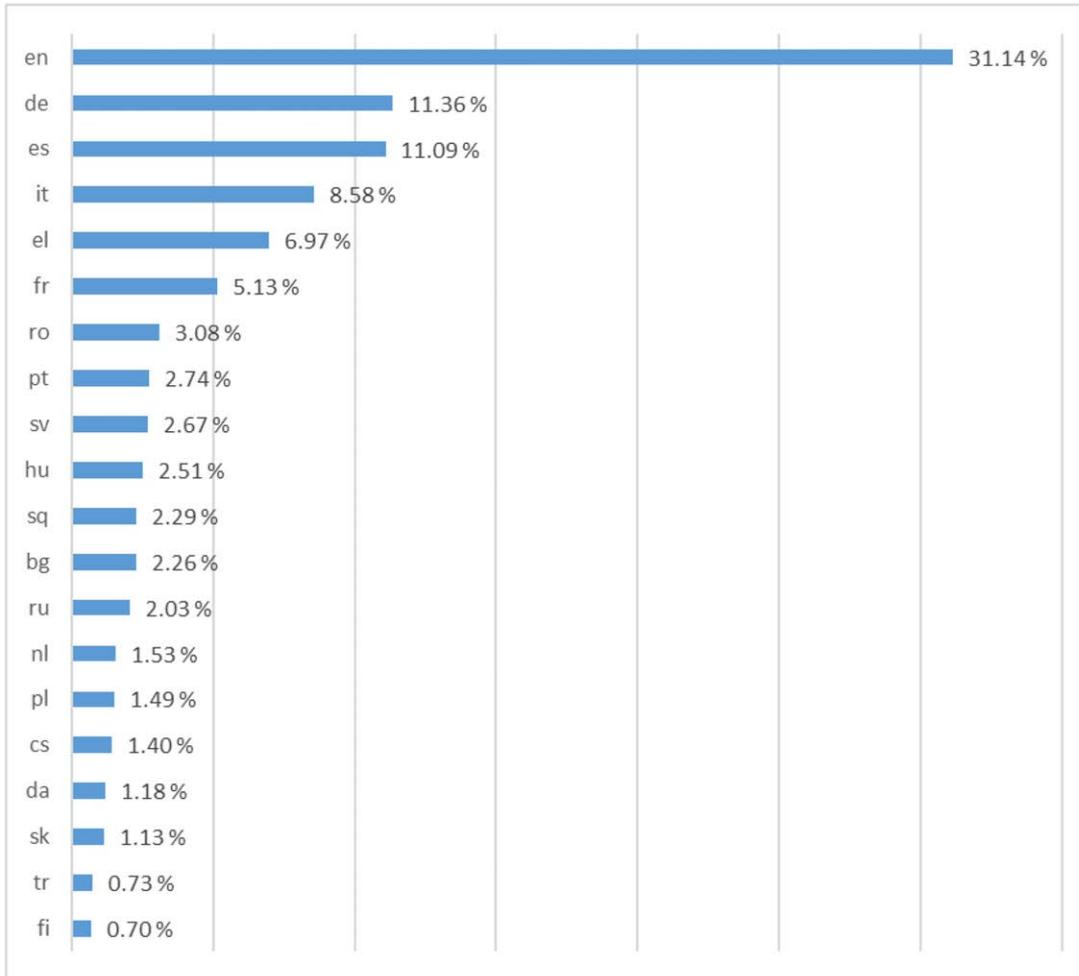
The Europe Media Monitor (EMM) is a fully automatic system operated by the Joint Research Centre (JRC) of the European Commission to analyse publicly accessible online media. It gathers and aggregates about 300 000 news articles per day from a selection of news portals worldwide in up to 70 languages. In cooperation with the JRC, we further analysed the data aggregated in the EMM²⁶ for information on the frequency, geographical distribution and time pattern of news articles relating to all agencies, as well as the network of relationships among agencies and other EU and national entities. This was the ECA's first exercise in applying big-data techniques to analyse unstructured exogenous data outside EU official documents and databases as supplementary evidence in a performance audit.

²⁶ For a more detailed description of the Europe Media Monitor (EMM) service see: <https://ec.europa.eu/jrc/en/scientific-tool/europe-media-monitor-newsbrief>.

Figure 1 – Geographical distribution of news articles

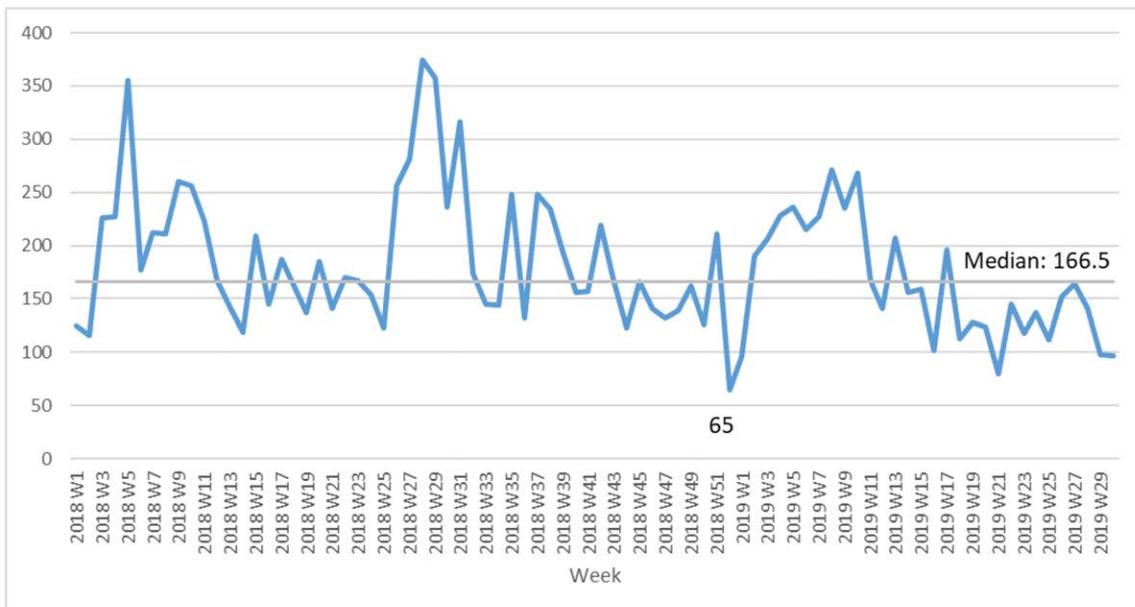
Source: Compiled by ECA, based on aggregated data in EMM, January 2018 to July 2019.

Figure 2 – Top 20 languages of news articles



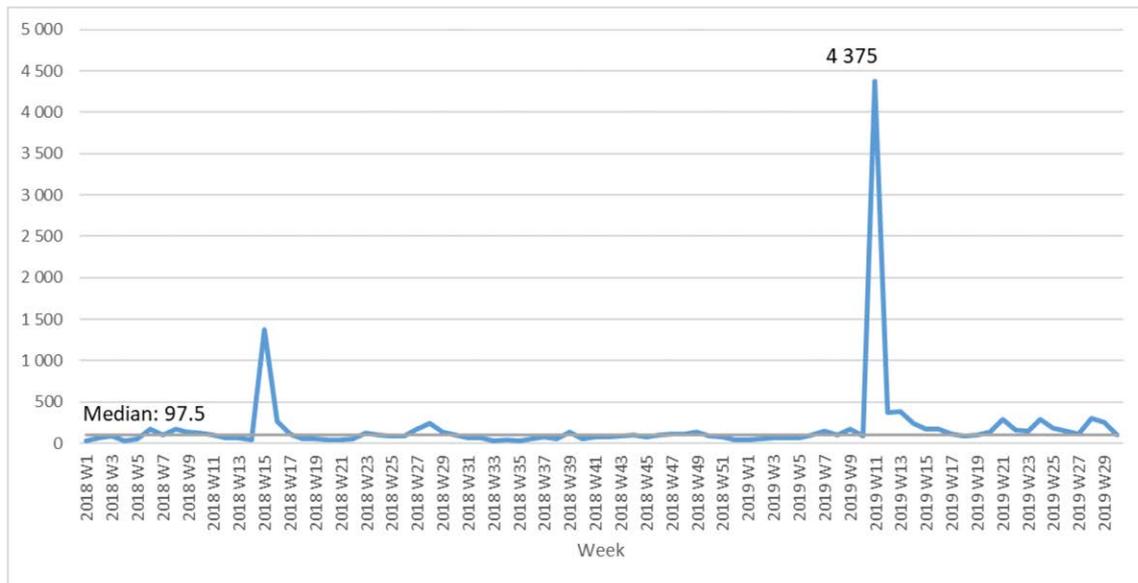
Source: Compiled by ECA, based on aggregated data in EMM, January 2018 to July 2019.

Figure 3 – Weekly news distribution for EMA



Source: Compiled by ECA, based on aggregated data in EMM, January 2018 to July 2019.

Figure 4 – Weekly news distribution for EASA



Source: Compiled by ECA, based on aggregated data in EMM, January 2018 to July 2019.

Annex V – The regulatory framework for federal agencies in the United States and Australia

United States

- **Common regulation for all agencies.** There is **(1)** a framework regulation: Government Performance and Results Act (GPRA) in 1993 and last GPRA Modernization Act in 2010, and **(2)** annually updated by June: Circular N° A-11. Preparation, Submission and Execution of the Budget. Part 6. Federal Performance Framework: Strategic Planning, Annual Performance Plans and Reports.
- **Agencies have to report on three different goals/objectives:** **(1)** cross-agency priority goals which are long-term and require inter-agency coordination, **(2)** agency priority goals, meaning 4 or 5 goals to be achieved over the next two years, and **(3)** strategic objectives, meaning long-term objectives, outcomes and impacts.
- **Three GPRA reporting elements:** **(1)** five-year strategic plans that must contain a mission statement for the agency as well as long-term, results-oriented goals, **(2)** annual performance plans that establish the performance goals for the fiscal year and describe how these goals are to be met and how they can be verified, and **(3)** annual performance reports that review the agency's success or failure in meeting its targeted performance goals (results are offered by programme).
- Regarding performance information, the **discharge procedure** by the Congress is based on: **(1)** the annual report of the Government Accountability Office (GAO); **(2)** the annual report submitted by the Office of Management and Budget (OMB)²⁷ to the Senate, the House of Representatives and the GAO. This report determines whether the agency programmes or activities meet performance goals and objectives, and identifies unmet goals (an action plan is then designed to correct the deviations); and **(3)** the consolidation by the agency of the annual performance plan and annual performance report as part of the Congressional Budget Justification.

²⁷ The Office of Management and Budget (OMB) is the business division of the Executive Office of the President of the United States that administers the United States federal budget and oversees the performance of federal agencies.

Australia

- **Common regulation for all agencies:** Public Governance, Performance and Accountability Act 2013 (PGPA Act), Chapter 2. Commonwealth entities and the Commonwealth, Part 2-3. Planning, performance and accountability, Division 3. Performance of Commonwealth entities.
- **Explain and report differences in the achievement of objectives.** The accountable authority must: **(1)** cause records to be kept that properly record and explain the entity's performance in achieving its purposes; **(2)** measure and assess the performance of the entity; **(3)** prepare annual performance statements for the entity as soon as practicable after the end of each reporting period for the entity; and **(4)** include the annual performance statements in the annual report that is tabled in the Parliament.
- **Audit of the performance statements.** The Auditor-General has the possibility to examine and report on the entity's annual performance statements. The report must be submitted to the Parliament for discussion.

Annex VI – Activity-based budgeting/costing/management

Activity-based budgeting (ABB) means the “organisation of the budget appropriations and resources by purpose so as to allow people to see what policies are pursued, and within them, what activities make up the policies, how much money is spent on each of them, and how many people work on them” (European Commission, EU Budget Glossary).

The activity-based costing (ABC) method means the definition of costs, the cost allocation method and the allocation to different activities. ABC is a costing methodology that identifies activities in an organisation and assigns the cost of each activity with resources to all products and services according to actual consumption.

The ABC system implies the calculation of full cost not only by activity but also by “specific service”. Partly and fully self-financing agencies charge fees to their clients to recover the cost of the different services provided.

ABB is the budget element and ABC the economic element of the broader activity-based management (ABM) concept, which relates mainly to operational activities. ABM should provide the agencies with the tools to plan, monitor, report on and evaluate their activities. In this regard, objectives, indicators, inputs (in terms of human and financial resources) and key actions need to be defined, ex ante, to set out how the intended results are to be achieved, how progress towards these intended results can be measured, and what resources are required to produce these results (European Commission, Analytical Fiche No 21).

In addition to objectives, activities and budgetary and output indicators, implementation of the ABM system depends on: (a) a clear correspondence between objectives, activities and indicators, (b) the definition of results and impact indicators, and (c) the continuous monitoring of actual values for the decision-making process.

The application of systematic ABB and ABM systems by the agencies to plan, monitor and evaluate activities is required by the Common Approach (see paragraph 40).

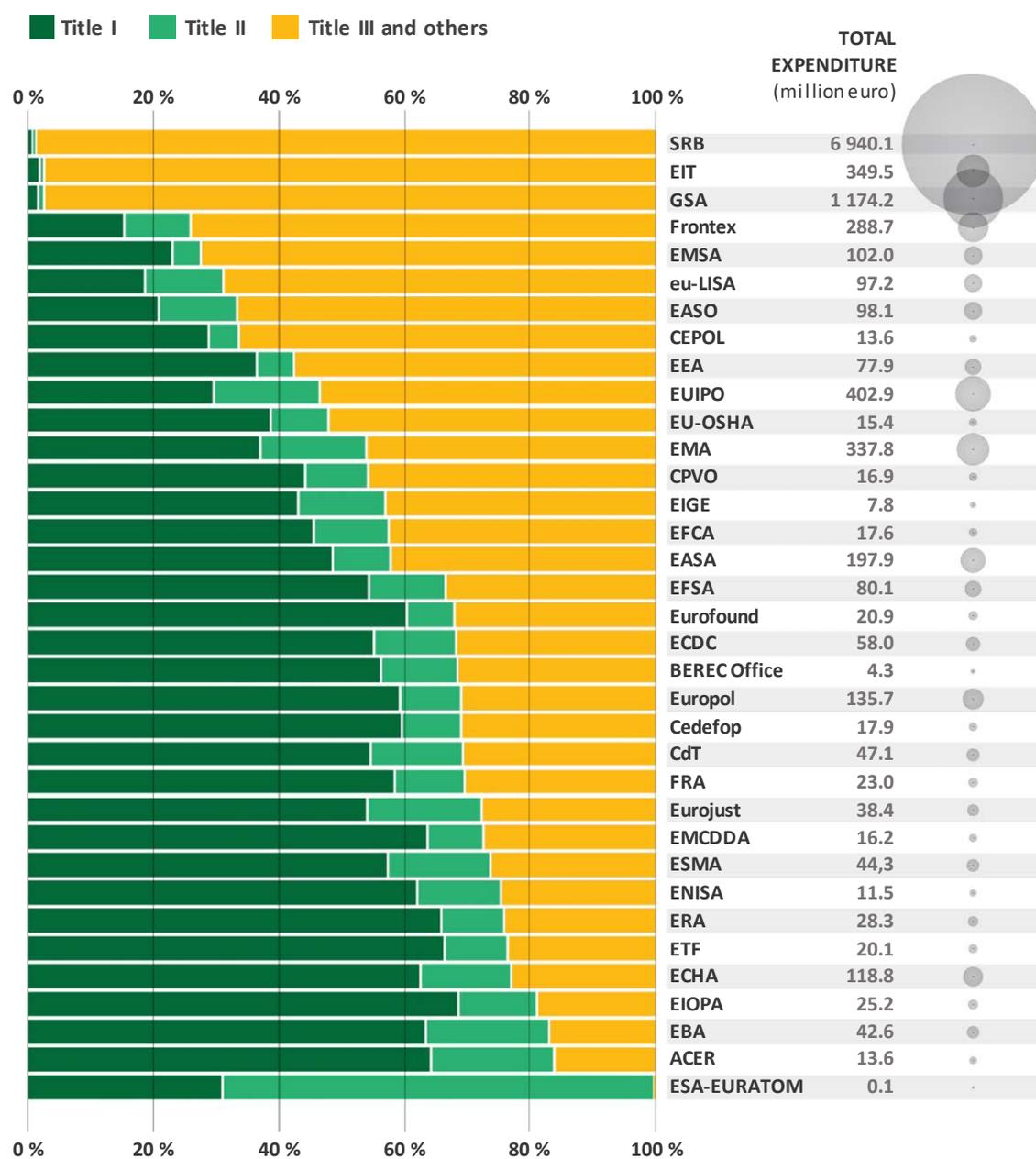
Annex VII – List of ECA special reports published during the period 2017-2019 in relation to agencies and other bodies

SR No	Title	Agencies and other bodies
01/2017	More efforts needed to implement the Natura 2000 network to its full potential	EEA
05/2017	Youth unemployment – have EU policies made a difference?	Eurofound
06/2017	EU response to the refugee crisis: the ‘hotspot’ approach	EASO, Europol, Frontex, FRA
08/2017	EU fisheries controls: more efforts needed	EFCA
09/2017	EU support to fight human trafficking in South/South-East Asia	Europol, Frontex
12/2017	Implementing the Drinking Water Directive: water quality and access to it improved in Bulgaria, Hungary and Romania, but investment needs remain substantial	EEA
13/2017	A single European rail traffic management system: will the political choice ever become reality?	ERA, INEA
18/2017	Single European Sky: a changed culture but not a single sky	EASA
23/2017	Single Resolution Board: Work on a challenging Banking Union task started, but still a long way to go	SRB
34/2017	Combating Food Waste: an opportunity for the EU to improve the resource-efficiency of the food supply chain	EEA
01/2018	Joint Assistance to Support Projects in European Regions (JASPERS) - time for better targeting	EMSA, Eurofound, EASA
02/2018	The operational efficiency of the ECB's crisis management for banks	SRB, EBA, ESMA
05/2018	Renewable energy for sustainable rural development: significant potential synergies, but mostly unrealised	EEA
13/2018	Tackling radicalisation that leads to terrorism: the Commission addressed the needs of Member States, but with some shortfalls in coordination and evaluation	Eurojust, Europol
16/2018	Ex-post review of EU legislation: a well-established system, but incomplete	EEA, EMA
19/2018	A European high-speed rail network: not a reality but an ineffective patchwork	EEA, ERA, INEA
23/2018	Air pollution: Our health still insufficiently protected	EEA
24/2018	Demonstrating carbon capture and storage and innovative renewables at commercial scale in the EU: intended progress not achieved in the past decade	EEA
25/2018	Floods directive: progress in assessing risks, while planning and implementation need to improve	EEA

28/2018	The majority of simplification measures brought into Horizon 2020 have made life easier for beneficiaries, but opportunities to improve still exist	REA, EASME, EIT
29/2018	EIOPA made an important contribution to supervision and stability in the insurance sector, but significant challenges remain	EIOPA, EBA, ESMA
33/2018	Combating desertification in the EU: a growing threat in need of more action	EEA
35/2018	Transparency of EU funds implemented by NGO's: more effort needed	EACEA, EASME, ERCEA, REA
01/2019	Fighting fraud in EU spending: action needed	EPPO
02/2019	Chemical hazards in our food: EU food safety policy protects us but faces challenges	EFSA, EMA
10/2019	EU-wide stress tests for banks: unparalleled amount of information on banks provided but greater coordination and focus on risks needed	EBA
11/2019	The EU's regulation for the modernisation of air traffic management has added value – but the funding was largely unnecessary	Eurocontrol, INEA
19/2019	INEA: benefits delivered but CEF shortcomings to be addressed	INEA
20/2019	EU information systems supporting border control - a strong tool, but more focus needed on timely and complete data	Frontex, CEPOL, eu-LISA
24/2019	Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results	EASO, Europol, Frontex

Source: ECA.

Annex VIII – The composition of the budget of EU agencies and other bodies (2018)



Source: ECA.

Acronyms and abbreviations

ABB: Activity-based budgeting

ABC: Activity-based costing

ABM: Activity-based management

AMIF: Asylum, Migration and Integration Fund

AWP: Annual work programme

CAAR: Consolidated annual activity report

CONT: Budgetary Control Committee (European Parliament)

DG CNECT: Directorate General for Communications Networks, Information and Technology

DGT: Directorate General for Translation

DG DEFIS: Directorate General for Defence Industry and Space

DG EAC: Directorate General for Education, Youth, Sport and Culture

DG EMPL: Directorate General for Employment, Social Affairs and Inclusion

DG ENER: Directorate General for Energy

DG ENV: Directorate General for Environment

DG FISMA: Directorate General for Financial Stability, Financial Markets and Capital Markets Union

DG GROW: Directorate General for Internal Market, Industry, Entrepreneurship and SMEs

DG HOME: Directorate General for Migration and Home Affairs

DG JUST: Directorate General for Justice and Consumers

DG MARE: Directorate General for Maritime Affairs and Fisheries

DG MOVE: Directorate General for Mobility and Transport

DG SANTE: Directorate General for Health and Food Safety

EMM: Europe Media Monitor

ETIAS: European Travel Information and Authorisation System

JHA: Justice and Home Affairs

JRC: Joint Research Centre of the European Commission

KPI: Key performance indicator

MFF: Multiannual financial framework

REFIT: Regulatory Fitness and Performance programme

REMIT: Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency

RSB: Regulatory Scrutiny Board

SIS: Schengen Information System

SMEs: Small and medium-sized enterprises

SPD: Single programming document

TFEU: Treaty on the Functioning of the European Union

Glossary

Centre of expertise and networking: A term we use to describe the role played by a decentralised agency in a given policy area, in that the decentralised agency can act like a centre to promote the sharing of expertise, as well as to bring together interests from Member States to reach common policy solutions and enhance cooperation with other European and international partners.

Coherence: The agency's tasks are logically consistent with the tasks of other agencies and EU services, and therefore make sense being part of a unified and functional EU administration that serves clearly identifiable policy objectives.

Common Approach: A set of guiding principles rectified by the EU in 2012 with the aim of making decentralised agencies more coherent, effective and accountable.

Cross-cutting evaluation: Evaluation of the performance of multiple agencies and parent DGs operating in the same policy area with mutually supporting actions. The aim is to identify potential synergies and economies of scale, and to overcome risks such as overlaps, policy fragmentation, disproportionality and "mission creep".

Delegation agreement: Agreement defining the activities entrusted by the Commission to the agencies for the implementation of the policy, the relations between the Commission and the agencies as well as the rules that need to be followed.

Discharge procedure: Decision by the European Parliament releasing the Commission from its responsibility for managing a given budget and closing it on the basis of a recommendation from the Council and the annual report of the European Court of Auditors.

EU Agencies Network: A network of decentralised agencies set up by the EU institutions and the Member States to carry out specific legal, technical or scientific tasks.

Evaluation: An evidence-based judgement of the extent to which an existing intervention is 1) effective, 2) efficient, 3) relevant given the current needs, 4) coherent both internally and with other EU intervention, and 5) has achieved EU added value.

Executive board: A steering group in a decentralised agency that oversees the preparation and implementation of management board decisions.

Impact assessment: An assessment that examines whether there is a need for EU action and analyses the possible impacts of available solutions.

Legislator: The European Parliament and the Council.

Management board: A decentralised agency's integral governance body. It has a supervisory role with general responsibility for budgetary and planning matters, the appointment of the executive director, and the monitoring of the agency's performance.

Multiannual financial framework (MFF): A long-term budget of the EU covering seven years. The current MFF covers 2014-2020. It sets the limits on how much the EU will spend on different areas of activity. It is used by the EU to support its political priorities and to ensure that it meets the commitments it has made to its citizens.

Relevance: The agency's tasks are appropriate to meet the policy objectives.

Review clause: A legal provision that sets out the circumstances under which the agency's tasks should be reviewed and adjusted.

Service-level agreement: The agreement between the end user and the service provider.

Single programming document: A standard document to be prepared by all decentralised agencies and reviewed by the Commission that contains both budgetary as well as operational planning for an agency, and thereby constitutes a guidance of the agency's work and its resource allocation.

Sunset clause: A legal provision that sets out the circumstances under which the agency's tasks can be terminated.

Replies

Replies of the European Commission

FINAL REPLIES OF THE EUROPEAN COMMISSION TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT

“FUTURE OF EU AGENCIES – POTENTIAL FOR MORE FLEXIBILITY AND COOPERATION”

EXECUTIVE SUMMARY

Common Commission reply to paragraphs I-V.

The Commission welcomes the ECA’s focus on performance of EU decentralised agencies. The agencies’ importance and share of the EU budget have grown significantly over the last decades. The Commission has a keen interest in making sure that decentralised agencies deliver on their mandate and that their expertise is fully used to deliver EU policy.

Decentralised agencies are autonomous bodies who bear the ultimate responsibility for their functioning and performance. Management boards, with a majority of Member State representatives, ensure the supervision of the management of the decentralised agencies.

The mandate, responsibilities, governance and financing arrangement of each decentralised agency are set out in its founding act, decided on by the European Parliament and the Council as legislator. They operate under the budgetary framework set up by the Treaty on the Functioning of the EU (TFEU), the Multiannual Financial Framework (MFF) and Regulation (EU) 2018/1046 (the Financial Regulation), and the decisions of the budgetary authority taken within that framework. The budget of decentralised agencies is decided by the budgetary authority, within the ceilings set out by the MFF and the annual budget.

In 2012, the European Parliament, Council and Commission signed a Joint Statement on a Common Approach for decentralised agencies (hereinafter Common Approach). This politically binding framework has been and remains a major step towards ensuring a coherent framework for better governance and performance management of decentralised agencies.

The Commission is committed to ensure greater consistency in the way Union bodies govern, plan and report on their activities. With measures implemented in 2019 and 2020, the Commission has strengthened the conditions to ensure the performance of and reporting by decentralised agencies.

The new Framework Financial Regulation (EU) 2019/715¹ (hereinafter FFR) provides for coherent and binding budget, planning, reporting, performance and governance rules for decentralised agencies. All decentralised agencies have adapted their financial rules to the FFR during 2019 and 2020, without any departures from the governance and performance framework set out therein.

The related Commission Communication on the strengthening of the governance of Union Bodies and on the guidelines for the Single Programming Document and the Consolidated Annual Activity Report, adopted by College on 20 April 2020 (C(2020)2297, hereinafter Commission guidelines for SPD and CAAR), further supports harmonised planning and reporting by all decentralised agencies.

It is now for the decentralised agencies to put this framework into practice and for the managing boards to supervise this. The effects of the improvements should start to become visible as of 2021. The Commission is committed to pursue the effective implementation by the decentralised agencies.

¹ Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the Framework Financial Regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council. (OJ L 122, 10.5.2019, p. 1–38).

With respect to the setting up of agencies, the Commission takes into account evidence from impact assessments, evaluations and stakeholder input as per the Better Regulation Agenda. Governance is being assessed in all the evaluations carried out by the Commission.

The tasks of decentralised agencies are often permanent and do not result from the policy making cycle of each MFF including their governance. Agencies are re-evaluated in line with the obligations set out by the legislator.

The Commission's Better Regulation Agenda provides a framework for evidence-based decision-making. Evaluations are used to assess the performance of agencies and identify potential synergies in the agencies' tasks looking at efficiency, effectiveness, coherence, relevance and EU added value of their actions. When carrying out evaluations of policy areas (fitness checks), the Commission agrees that it is important to consider the coherence of the role and tasks of agencies in a policy area, to identify synergies and cut red tape, while considering potential mergers or closures of agencies operating in this area. Evaluations also inform decisions on new proposals, while impact assessments look at different options and their potential impacts. The process is supported by extensive consultations of stakeholders.

The allocation of resources for decentralised agencies reflects the priorities of the EU budget. The budgetary authority decides about the funding. The funding process is subject to a well established regulatory framework defined in Article 314 TFEU and in the Financial Regulation. Both the Commission and each decentralised agency must respect these rules, which ensure predictability of funding. At the same time, the rules provide for the necessary flexibility to adapt to new or changing circumstances.

The budget allocation decided by the budgetary authority should reflect the performance of a decentralised agency by adjusting its budget upwards or downwards, taking into account possible efficiency gains and synergies including between agencies belonging to the same cluster. Cooperation between decentralised agencies is encouraged and the new FFR facilitates the use of service-level agreements to formalise such cooperation. Cooperation at international level within the limits of the decentralised agencies mandate is equally important and the FFR requests each decentralised agency to include a strategy for cooperation with third countries and/or international organisations in their single programming documents.

VI. The Commission accepts all recommendations addressed to it.

INTRODUCTION

05. The agencies' responsibilities and capacities are strictly delineated through the founding regulations adopted by the co-legislators.

The Commission guidelines for SPD and CAAR ensure a coherent and binding budget, planning, reporting, performance and governance framework for Union bodies.

OBSERVATIONS

Common Commission reply to paragraphs 16 and 17.

According to the Better regulation guidelines, an impact assessment must identify and describe the problem to be tackled, establish objectives, formulate policy options, assess the impacts of these options and describe how the expected results will be monitored.

The Commission's impact assessment system follows an integrated approach that assesses the environmental, social and economic impacts of a range of policy options thereby mainstreaming sustainability into Union policymaking. The impact assessment compares options, explains which is

the preferred one, if such a preferred option exists or explains why no preferred option was identified. Impact assessment does not replace the political decision but it provides evidence to inform this decision. The final set-up of an agency is the outcome of the negotiations between the co-legislators, which might differ from the Commission proposal.

When the Commission's Regulatory Scrutiny Board has twice given a negative opinion, only the Vice-President for Interinstitutional Relations and Foresight can submit the initiative to the College to decide whether to go ahead or not.

18. Cedefop, Eurofound, EU-OSHA and ETF ensure regular coordination and collaboration between them. This collaboration allows for creating synergies and avoiding overlaps and is an asset as it can interlink the agencies' work and it provides for a common space where agencies can consult each other on the way they fulfil their mandate.

As regards ELA, the Commission reiterates that after a first documented assessment and discussion, the Commission services in charge presented a new version of the Impact Assessment, based on which the Commission's Regulatory Scrutiny Board issued a positive opinion (SEC(2018)144) with reservations.

19. The setting-up of a new EU resolution authority that would be responsible for the management of a cross-border resolution mechanisms throughout the whole EU was contemplated as a policy option in the 2012 impact assessment for the Bank Recovery and Resolution Directive (BRRD)². At the time of the Impact Assessment for the BRRD, the Banking Union with its centralised supervision of banks by the ECB/SSM was not yet established. The establishment and operation of resolution colleges with the assistance of the EBA was therefore considered the preferred option in the Impact Assessment.

21. The then Commission's President Juncker announced in the State of the Union 2017 the intention of setting up a European Labour Authority. This statement was made following intense work and negotiations on labour mobility since 2014 (adoption of Directive 2014/54, Directive 2014/67, reform of the EURES Regulation, proposals to review the Posting of Workers Directive and Social Security Coordination Regulation), which showed **clear support among the different European decision makers** on the need to have such a new body at the European level. This also explains why the proposal from the Commission was adopted at political level in less than one year.

22. Regular agency's evaluations are provided for by the Common Approach and the FFR (2019/715).

The FFR establishes evaluation requirements (ex-ante and retrospective), including the action plan to follow up on the conclusions of overall periodic evaluations in order to ensure their efficient implementation.

The initiative to set up the European Labour Authority was undertaken independently of the evaluation process of the other agencies on the grounds of the political priority accorded by the Commission and the co-legislators on the subject of EU labour mobility and of the very specific cross-border focus of the Authority with respect to the mandate of the existing agencies.

(3) The adoption of the agencies' founding acts is the result of a legislative procedure, usually with the European Parliament and Council as co-legislators. The Commission can only contribute to agencies' relevance and coherence through its legislative proposals and on the basis of an impact assessment.

An impact assessment is required when the expected economic, environmental or social impacts of EU action of setting-up or revising the founding regulation of an existing agency are likely to be significant. When no or little choice is available for the Commission, impacts are small or cannot be

² See pp. 54-56 of the Impact Assessment: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0166&from=EN>

clearly identified, it is likely to conclude that no impact assessment is needed. The need for an impact assessment should be assessed on a case-by-case basis and carried-out when it is useful.

23. While the Commission is committed to bringing all founding acts in line with the Common Approach, including by adding a “sunset” or “review” clause, the Commission's right to propose that a founding regulation is amended or repealed, is covered by the Commission’s general right of initiative.

24. Under the better regulation guidelines, an impact assessment is required only when the expected economic, environmental or social impacts of EU action are likely to be significant. Better regulation (Tool#9) specifies that when no or little choice is available for the Commission, impacts are small or cannot be clearly identified, it is likely to conclude that no impact assessment is needed. The need for an impact assessment should be assessed on a case-by-case basis and carried-out when it is useful.

There may be circumstances where a proposal needs to be presented urgently, which does not allow an impact assessment. In addition, it may be possible to proceed directly from an evaluation of existing legislation to a legal proposal without an impact assessment. This is usually the case when the evaluation identifies specific issues, which need to be addressed, and there is little choice about how to address them.

The proposal for the new Frontex founding Regulation was indeed not preceded by a full impact assessment. However, the implementation of the EBCG 1.0 Regulation was regularly reported through series of dedicated reports on its operationalisation, which identified gaps and shortcomings that could be taken into account by future legislation.

Due to the technical nature of the revision of Eurofound’s, Cedefop’s and EU-OSHA’s Founding Regulations and the absence of a direct socio-economic impact, an impact assessment has not been carried out.

25. The Commission notes that the cross-cutting evaluation of the agencies under the remit of DGEMPL suggested a number of recommendations for each of the agencies (see Commission reply to paragraph 75), but none of them would have required changes to the legislative proposals of the Commission. In addition, merging or co-locating agencies was not amongst the evaluation’s recommendations.

Furthermore, the Commission wishes to point out that, in the context of the negotiations on the revision of the Founding Regulations of Cedefop, Eurofound and EU-OSHA, the European Parliament did call for an assessment of the feasibility and cost effectiveness of various measures, including possible mergers, but the co-legislators did finally not pursue this line of thinking and adopted recasts for the agencies as they were.

26. By contrast with its powers on executive agencies, the Commission cannot decide on closing, merging or adapting the tasks of a decentralised agency which requires the agreement of the co-legislators.

Finally, evaluations and identification of synergies are taken into account when preparing Commission legislative proposals in order to change the constituent act of a decentralised agency, including a possible merger of decentralised agencies in the same policy area, although the co-legislator keeps the final say on any proposals tabled by the Commission.

27. The fitness check confirmed the fit-for-purpose of the General Food Law Regulation and identified some shortcomings, which were addressed by the new Regulation³.

28. Although it is for the Commission to propose legislation, the co-legislators are responsible for adopting the rules on evaluation and sunset/review clauses.

The Commission has established other tools and indicators for assessing a decentralised agency's performance with respect to attaining its policy objectives.

29. Second indent - The Commission considers that reviewing the application of Regulation (EU) 806/2014 every three years, as stipulated in the Regulation itself ensures transparency regarding its implementation and helps improve the efficiency and the effectiveness of the SRM.

In the case of FRA, the frequency of the evaluations has nonetheless *de facto* been of five years (the first took place in 2012, the second in 2017). Moreover, the Commission has adopted on 5 June 2020 a proposal for a Regulation amending the FRA Founding Regulation, which explicitly provides, in line with the Common Approach, that the Commission shall carry out an evaluation every five years.

Considering EIGE's small size and the fact that recommendations from its first evaluation were still being implemented, and taking the principle of proportionality into account, the Board decided to postpone the second external evaluation of EIGE from 2020 to 2022. The Commission considered this decision as duly justified.

Third indent - In the case of FRA, the Commission has adopted on 5 June 2020 a proposal for a Regulation amending the FRA Founding Regulation, which explicitly provides, in line with the Common Approach, that it will be for the Commission to carry out the evaluation of FRA (every five years).

In the case of EFCA, the Commission, in its proposal COM(2018) 368 for a Regulation amending the Control Regulation and the EFCA Founding Regulation, explicitly provided, in line with the Common Approach, that an independent external evaluation of the Agency shall be commissioned every five years by the Commission.

30. In relation to EASA, the reason under which the Board decided on this scope limitation was to limit the risk of duplication and inconsistency of results of a full evaluation on a set of activities that was likely to be affected substantially by the revised Founding Regulation of 2018.

31. Fitness checks in the relevant policy area also consider the role of the agencies involved therein. Depending on the scope of the assessment, for example if it is to reflect specificities in the agency's mandate or particular enforcement's obstacles, individual evaluations would capture these aspects better.

32. The EIT has not been set up as an executive agency, but rather as a knowledge operator. Its activities are different from those of the executive agencies under education, research or innovation programmes. They are larger and complementary, contributing to the development of the Community and the Member States' innovation capacity through the integration of the Knowledge Triangle (higher education, research and innovation) and closing the innovation gap between the EU and key competitors. This was confirmed by the last independent evaluation in 2017, which confirmed that EIT administrative costs are significantly below the ceilings set in the Horizon 2020 legal base and are comparatively lower than the similar costs of the executive agencies.

³ Regulation (EU) 2019/1381 of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002 and eight other pieces of sectorial legislation.

36. The Commission points out that the evolution of the fee income is only one indicator of the workload of an agency and not the only one. Some tasks are not accompanied by the charging of a fee. And some tasks generating a fee income may not generate a corresponding workload.

In addition, the agencies were expected to increase their efficiency. Therefore, there is a reason why the increase in staff did not follow mechanically the increase in revenues coming from the fees, as the fee-financed agencies were also bound by the 5% staff cut imposed on the Commission and EU bodies.

The Commission recalls that EASA is part of a pilot project, coupling fee-income with staff numbers. Following the agency's own reporting on the fee-activity, staffing has remained relatively stable.

A key weakness in the funding approach for EASA is that the EU budget must compensate shortfalls in fee income, but does not benefit from surpluses.

For ECHA, the Commission deems that the challenge identified by the Court mostly stems from the atypical way the ECHA fee is charged and does not translate into a challenge to match workload with staff numbers (not from an alleged structural mismatch between the staff and the workload). Contrary to agencies which are charging a recurring fee on the industry (e.g. SRB, EMA), the ECHA fee is entirely upfront, at the moment of the registration of a substance or the application for authorisation. It created a high peak in the past years, and since the last regulatory registration deadline under REACH in 2018, the fee income has dropped as foreseen and has been compensated by an increase of the balancing EU contribution in the MFF programming.

37. Despite the efforts by Frontex, the vacancy rate was relatively high, also due to the relatively low salary correction co-efficient for Warsaw. Acknowledging the challenges and exceptional needs related to the new mandate for qualified staff from the broadest possible geographical basis, the Commission proposed in the EBCG 2.0 Regulation arrangements to improve the attractiveness of Frontex as employer.

EASO has made efforts to improve recruitment through a plan to add 90 staff in 2019. Recruitment has improved and 80% of planned recruitments in 2019 was implemented. 2019 staff turnover was 5% against a 7% target.

Finally, in the case of GSA, the Agency competes for specialists on the job market with the space industry, and space agencies (national and European), who offer high salary levels. Despite the difficulties, GSA has every year been able to fill vacant posts.

39. The decision to outsource usually concerns activities for which the necessary expertise cannot be made available in-house.

eu-LISA experiences difficulties in attracting IT specialists. There is strong competition to recruit the best profiles. The Agency has taken measures.

Since relocating to Paris, the EBA no longer uses interim workers and undertakes to address business continuity implications of interim workers use.

The high number of interims in EASO owes to the lack of national experts seconded from Member States, as well as the specific language requirements for work in the field.

The Commission acknowledges the risks of overdependence on external staff and non-compliance with applicable employment rules.

Box 5 - Examples of agencies that for critical functions are dependent on external contractors

The Commission acknowledges that EASO depends on human and technical resources provided by Member States. The Agency requests the nomination of national experts, but the decision on their secondment remains with Member States.

In relation to eu-LISA, the Agency experiences difficulties in attracting competent staff, especially IT specialists. This resource is rare throughout Europe and there is a strong competition in the EU to recruit the best profiles.

Box 7 - Frontex faces a recurrently low implementation of budget for return operations

Frontex operational support for the Member States and AMIF are supporting return activities in a complementary way. The ultimate responsibility for ensuring the coordination and synergy between the AMIF funds and activities supported by the Agency lies with the Member States. Having the possibility to organise return operations financed through AMIF gives Member States the flexibility needed in order to perform returns when and where the Agency cannot provide support or where Member States consider that the involvement of the Agency is not needed.

As regards the implementation of the related budget, indeed, in the past years the Agency has experienced some difficulties in absorbing fully the budget for return. However, it should be noted that due to the continuous development of Frontex's assistance in the area of return, a significant improvement was recorded in 2019 when the return budget was committed at 100%. Although this trend was expected to continue in 2020 thanks to the takeover of return networks, the expected natural growth of the services and the increasing uptake by the Member States, restrictive measures introduced worldwide to contain the spread of COVID-19 significantly reduced the possibility to return irregular migrants and consequently Member States' requests addressed to the Agency to organise return operations both by charter and scheduled flights.

42. The planning cycle for decentralised agencies results from the provisions of the TFEU and the Financial Regulation with respect to the annual budgetary cycle. The timing of the SPD is in line with Article 40 of the Financial Regulation. The SPD can be changed, providing agencies with flexibility to adapt to changes.

Box 8 - eu-LISA: a case study on the challenges of a new agency

The former eu-LISA establishing regulation (EU) No 1077/2011 was repealed and replaced by Regulation (EU) 2018/1726 with effect from 11 December 2018.

The timing of adoption of the Union legal acts governing the large-scale IT systems managed by eu-LISA and their interoperability depends on the EU co-legislators.

The Commission uses its best estimate of the likely timing of adoption of such legal basis to make resources available to agencies early enough in the budgetary cycle, making sure achievement of relevant policy objectives is not hampered or delayed due to insufficient funding. The Commission then follows the legislative procedure in close cooperation with agencies, and provides support where required. However, adoption of such legal basis depends on the co-legislators.

44. The Commission considers that the comparison with executive agencies is not pertinent. The main task of the executive agencies is to implement the EU financial programmes on behalf of the Commission. The Commission has full control of the executive agencies. This is reflected in the governance of the executive agencies: their steering committee is composed usually of senior management members of the Commission, representing the various Commission departments responsible for the programmes delegated to the executive agency in question.

45. The FFR harmonises the main responsibilities irrespective of the name given in the constituent act, insofar as the legislator has not set out different rules in the founding regulation.

46. Through the FFR, the Commission has introduced conflict of interest avoidance rules also for members of the board.

48. In the case of Eurofound, the Management Board meets on average only once a year to adopt the most important decisions in Eurofound. The much smaller Executive Board, which has 8 members and represents workers, employers, governments and the Commission, meets on average 4 to 5 times a year.

The Executive Board prepares the decisions to be taken by the Management Board at its plenary meeting or by written procedure. Decision taking runs rather smoothly in Eurofound, probably also due to the important role of the Executive Board.

Similar observations can be made for Cedefop and EU-OSHA.

In any case, it is clear that the size of the Management Board in the tripartite agencies is decided by the co-legislators and determined by the particular tripartite nature of these EU agencies.

Finally, the management board of the CdT is defined in its founding act as follows: a representative from each of the agencies and offices of the EU listed in the CdT's founding act and with which the CdT has a working arrangement; a representative from each of the Member States of the EU; two representatives from the Commission; and one representative each from the institutions and bodies which have their own translation services but have concluded agreements with the Centre for collaboration on a voluntary basis.

Under Article 4 (1) (a) of the CdT's founding act, any arrangement with agencies and offices set up by the Council "may envisage a representation in the Management Board of the agency or office party to that arrangement". Currently, around half of the agencies and bodies that have concluded an arrangement with the Centre are using the possibility to be represented in the Management Board.

49. The EU-wide perspective in the agencies' decision-making is ensured by the participation of all Member States and of the Commission in the management boards, and the need to reach agreements and compromises.

Common Commission reply to paragraphs 50 and 51.

The FFR aims at reinforcing democratic control where accountability towards the European Parliament and the Council is required.

The discharge authority, notably the CONT Committee, pays attention to performance of agencies.

They have a dedicate section to performance for the horizontal discharge resolution on EU agencies and for each discharge resolution of each EU agency.

53. Public control over the SRB is ensured through the Plenary Session of its Board, which comprises representatives from every Banking Union Member State.

EUIPO discharge is given by the EUIPO's Budget Committee (which has two representatives from the Commission, one from the European Parliament and one representative of each Member State).

CPVO discharge is given by its Administrative Council composed of one representative from the Commission and one representative of each Member State.

In addition, the annual financial statements of the fully self-financed agencies (EU-IPO, CPVO and SRB) are audited by the European Court of Auditors.

54. The Commission points out that the FFR makes a clear link between performance assessment and contribution to EU policy.

The Commission has established different/other tools to monitor the evolution of key indicators for assessing Agencies' performance with their policy objectives. They allow to organise such assessment on an annual or multi-annual basis.

56. KPIs can be of different nature: a first category will measure the performance of the activities (what is delivered) and others will measure how the outputs are delivered (financial and HR dimensions). The guidelines on KPIs for directors of agencies mentioned by the ECA provide examples of the second category. Across the board guidance for the first category is more difficult to provide as agencies are performing tasks in very different fields of competence and of different nature, as acknowledged by the ECA in paragraph 60. Agencies have developed their own KPIs, as mentioned by the ECA in paragraph 57, and have the obligation to include them in their SPD and to report on them annually in their CAARs.

57. The FFR together with the Commission guidelines for SPD and CAAR include the obligation for the agencies to report on the main activities or achievements that have contributed to the EU priorities and on performance indicators in order to measure the achievement of the objectives and results set in the SPD.

The SPD and CAAR require linking indicators to policy objectives.

In addition, many of the indicators developed and currently used by EASO are the result of audits carried out by the ECA or by the Commission's Internal Audit Service. EASO is also reporting in quarterly reports, which provide a summary of more detailed indicators provided in other documents.

Finally, as for EFSA, the detailed indicators are key to keep track of requested activities, as EFSA has to perform risk assessment only, i.e. it provides scientific /technical support (scientific basis) to risk managers.

58. Evaluations remain the tool by which the Commission assesses the implementation of the policy by the agencies. Evaluations use a mix of indicators such as output, outcome or impact indicators. Annual monitoring on the other hand is mainly based on output indicators.

Common Commission reply to paragraphs 59 and 60.

The revised Commission guidelines for SPD and CAAR will help in achieving a gradual improvement in the presentation of data.

61. The Commission guidelines for SPD and CAAR have introduced an obligation for each agency to plan and report on environmental management. Agencies will report as of the 2019 reporting (published in 2020) on the impact of their administrative operations on the environment. As of 2022 they will plan actions and targets to reduce their impact.

65. Second indent - In addition to the participation of the Commission in the Executive and Management Boards, the coordination is also enabled through networks of authorities and representative bodies assisting ERA in the delivery of their tasks.

Fourth indent - The Commission furthermore notes that EASA has put in place an extensive advisory and coordination mechanism with both Member States and industry, thus covering the different aviation domains.

66. The perimeter of an agency's powers is defined by the founding acts adopted by the legislator, and applied in accordance with the principles of the Meroni Case.

68. As part of the impact assessment and evaluations processes, agencies are invited to provide input or are observers in the inter-service steering groups.

The Commission is committed to consult agencies within targeted consultations in evaluations and impact assessments, in order to harvest their knowledge, including for revisions of their founding regulations.

Common Commission reply to paragraphs 69 and 70.

The establishment of the Draft Budget follows the same internal procedures as any other document subject to the adoption by the College. The Commission internal budgetary procedure enables the agencies to clearly present their needs and to communicate with their partner Directorate-Generals. Once adopted, the Draft Budget is made public.

Based on a political agreement, Frontex received additional resources in response to an unprecedented migration crisis.

The need for budget appropriations and staff posts related to the reinforced Frontex were presented in the Commission's proposal of 15 December 2015. In the first years of implementation, Frontex faced some difficulties in the effective absorption of increasing budgetary resources in the period 2016-2018. However, due to the reinforced efforts by the Agency, the 2019 budget was nearly entirely absorbed, including in the area of return operations. This fact proves that the initial allocation of budgetary resources was correct. See also Commission's reply to Box 7. With regard to the operational activities and the programming of large-scale research and IT-projects, EU-OHSA has taken an approach to run these projects over two years in order to achieve a greater impact for the given resources. Carry-overs are a planned feature of such an approach and are foreseen in the Agency's work programme, ABB and procurement plan which are approved by the Management Board.

71. Fourth indent - The Commission points out that the CPVO, ECHA and EMA fulfil part of their (especially scientific) workload with the assistance of experts made available by Member States. As this is foreseen in the founding regulations, it was decided by the co-legislators and not by the agencies themselves.

As far as ECHA is concerned, the tasks undertaken by Member States (such as substance evaluation) are enshrined in Articles 44 and 45 (EC) No 1907/2006 (REACH).

Box 11 - After more than a decade, ECHA is still operating in a context of limited powers

Within the limits pointed out certain staff of the Agency can be mobilised for different tasks entrusted to ECHA under REACH, CLP, BPR, PIC and POPs to allow for synergies and economies of scale.

Box 12 - Border control and asylum: a tale of two stories⁴

The Commission agrees that Frontex largely depends on human and technical resources provided by the Member States. The Agency's needs during the 2015 migration crisis to support Member States under pressure increased fourfold. So far, it has been entirely relying on voluntary pooling of Member States' resources. The EBCG 2.0 Regulation of 2019 has significantly overhauled the available capabilities and tools by providing the Agency with its own operational arm (i.e. standing corps and equipment) and reinforcing its interactions with the Member States' authorities as part of the European Border and Coast Guard. This will make the Agency operational to effectively fulfil its mandate by responding to the present needs and ensuring the EU's strategic readiness to respond to challenges in the future.

EASO is constantly exploring ways to improve its operations. For example, in Greece, EASO and the Greek Asylum Service have now agreed on a new model, whereby staff deployed by EASO is directly managed by the Greek Asylum Service (rather than in parallel to the Greek authorities and managed by EASO).

73. The Commission points out that each Member State can only register trade marks nationally, whereas the EUIPO only registers trade marks for the whole of the EU territory. Therefore, the services are not exactly the same.

EFSA's Founding Regulation (Regulation (EC)178/2002) provides for cooperation with Member States (via its Advisory Forum and the Article 36-Network), to promote coherence between respective activities/programmes and possibly avoiding duplication; Article 30 calls for specific collaboration on divergences. A provision on co-operation is also included in ECDC's Founding Regulation.

75. First indent - While both agencies are active in the area of women's rights, EIGE and FRA's mandates are clearly distinct:

- FRA's mandate aims to provide EU institutions and Member States with independent information and data on the situation of fundamental rights in the Member States, to support them in developing evidence-based initiatives in the area of fundamental rights. FRA collects data in the areas outlined in the Multiannual Framework⁵. In this context, FRA also collects data on the situation of women, as its surveys and studies can be disaggregated by gender (e.g. survey on Antisemitism). This is however not the focus of its work and is only part of the information it can provide.
- EIGE's mandate is to contribute to and strengthen the promotion of gender equality, including gender mainstreaming, by supporting better-informed policy-making and promoting increased awareness of decision-makers and citizens, at the EU and national levels. EIGE focuses on gender equality as a whole, covering the social, economic and political dimensions – i.e. not only from the perspective of women rights but also from the angle of participation, representation, empowerment and visibility of women and men in all spheres of life. EIGE also produces gender statistics (which is a wider concept than sex-disaggregated data).

⁴ See also ECA special report 24/2019, Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results.

⁵ The current one – 2018-2022 – includes victims of crime and access to justice; equality and discrimination based on any ground; information society and, in particular, respect for private life and protection of personal data; judicial cooperation, except in criminal matters; migration, borders, asylum and integration of refugees and migrants; racism, xenophobia and related intolerance; rights of the child; integration and social inclusion of Roma.

In 2010, FRA and EIGE signed a cooperation agreement aimed at improving their cooperation, promoting synergies and avoiding overlaps. FRA and EIGE also have regular meetings to improve their cooperation. The Commission plays an active role to ensure the best use of resources.

Third indent - See Commission's reply to paragraph 25. In addition, ELA has a cross-border operational focus which is not the case for the other agencies.

76. In September 2016, the mandates of EMSA, EFCA and Frontex were, indeed, modified and amplified with the introduction of a common article related to European cooperation on Coast Guard Function⁶ in their respective Founding Regulation. The cooperation tools used by the three agencies are Service Level Agreements (SLA), whether in providing surveillance means, in sharing data or in providing mutual backup and support for Accounting Services.

77. The FFR facilitates the establishment of Service Level Agreements (SLA) between agencies and/or the Commission (see Article 59(3)).

Also, the revised Commission guidance on SPD provides for a “strategy for achieving efficiency gains” whereby agencies inform about “*sharing services and IT development projects among agencies operating the same Member State or policy areas and between the agencies and the Commission*”.

Box 13 - ECHA and EFSA – similar work, not enough cooperation

The European Green Deal announced the development in 2020 of a chemicals strategy for sustainability. Within that framework, an increased coordination and cooperation between ECHA and EFSA and other EU's scientific bodies is envisaged. Also, the Commission noted that it would look at how to simplify and strengthen the legal framework and review how to better use the EU's agencies and scientific bodies to move towards a process of ‘one substance – one assessment’.

ECHA and EFSA cooperate for hazard or risk assessment of chemicals in case of chemical substances regulated by different pieces of legislation. Examples are the assessment of Bisphenol A or phthalates.

The Commission has awarded a tender for a Pilot Project proposed by the European Parliament that considers the benefits as well as technical, legal and budgetary challenges of harmonising data formats and of developing a common platform for chemical safety data. The project will also look into possibilities to improve data sharing across agencies (EFSA, ECHA) while implementing the different pieces of legislation. The foreseen duration of the project is 16 months.

79. Before an agency is created, the Commission formally requests that it should make use of CdT's linguistic services. The Commission ensures that the standard translation clause is included in the founding act of newly created agencies and bodies.

82. The new FFR requests each agency's SPD to include a strategy for cooperation with third countries and/or international organisations (see Article 32).

CONCLUSIONS AND RECOMMENDATIONS

84. The Commission recalls that the set-up of a decentralised agency and the framework in which it operates is the result of political negotiations between co-legislators. The Commission prepares its proposals for legislation on the basis of evidence from impact assessments, evaluations and

⁶ (Frontex) Regulation (EU) 2016/1624 of the European Parliament and of the Council, of 14 September 2016. (EMSA) Regulation (EU) 2016/1625 of the European Parliament and of the Council, of 14 September 2016; (EFCA) Regulation (EU) 2016/1626 of the European Parliament and of the Council, of 14 September 2016.

stakeholders' input, following the better regulation guidelines. The concept of flexibility has its limitations where it requires changes to the founding acts to be agreed by the legislator.

85. Under the Common Approach, the decision to create a new agency should be based on an objective impact assessment of all relevant options. In line herewith, the Commission's first option before proposing to set up a new agency is always that the Commission or an existing agency carries out the tasks envisaged. Only when this or other possible alternatives are not deemed to be the best option, establishing a decentralised agency can be considered.

Fitness checks of policy areas provide information about the operation and coherence of agencies in the same policy areas. Such evaluations, possibly in combination with individual agency evaluations, allow the Commission to make proposals for adaptations of the agencies' founding acts, where relevant.

Recommendation 1 – Ensure the relevance, coherence and flexibility of the set-up of agencies

The Commission accepts recommendation 1 (a).

The Commission agrees that it is important to consider the coherence of the role and tasks of agencies when conducting regular cross-cutting evaluations in a policy area (fitness checks), to identify synergies and cut red tape, while considering potential mergers or closures of agencies operating in this area.

The Commission accepts recommendation 1 (b).

86. The Commission understands that the reference to EU budgetary procedures covers both the annual and multi-annual dimension as a result of the revised single programming document.

Recommendation 2 – Allocate resources to agencies in a more flexible manner

The Commission accepts recommendation 2 (b).

The Commission accepts recommendation 2 (c).

87. The Commission considers that the responsibility of management board members is clearly defined in the Common Approach and in the agencies' founding acts.

Recommendation 3 – Improve governance and reporting on performance

The Commission notes that recommendation 3 (a) is addressed to the agencies. The Commission has recently strengthened the applicable framework through the new FFR and related Commission guidelines for SPD and CAAR and will monitor its implementation by the agencies.

The Commission accepts recommendation 3 (b).

The Commission accepts recommendation 3 (c).

The Commission evaluates the governance of agencies and where appropriate makes legislative proposals in line with the Common Approach.

89. The Commission underlines that Article 32 (1)f of the FFR requires agencies to establish, in their SPD, a strategy for cooperation with third countries and/or international organisations that underpins the support from the Commission.

Moreover, the exchange of expertise between Agencies and 'non-EU' bodies is generally established through 'working arrangements' in collaboration with the EEAS and the Commission.

Recommendation 4 – Strengthen the role of agencies as centres for sharing expertise and networking

The Commission notes that recommendation 4 (a) is addressed to the agencies. The FFR and related new Commission guidelines require the agencies to adopt a ‘*Strategy for achieving efficiency gains*’.

The Commission accepts recommendation 4 (b), insofar as it is concerned.

The Commission points out that the main responsibility lies with Member States to provide the information, expertise and support.

The Commission accepts recommendation 4 (c).

Replies of the EU Agencies Network (EUAN)

EUAN reply to “Future of EU Agencies – Potential for more flexibility and cooperation”

The EU Agencies Network (EUAN) welcomes the preliminary observations of the audit of the European Court of Auditors (ECA), which examined whether the conditions are in place to allow EU Agencies to successfully achieve their mandates and objectives.

The EUAN takes note of the Court’s conclusion that Agencies are playing an increasingly important role in the delivery of EU policies and that Agencies are central in bringing together different interests from Member States to reach common policy solutions for the EU. The Court also observed that Agencies suffer from limited flexibility in resources, in part because their planning cycle is strictly attached to the Commission’s budgetary process, that Agencies should receive adequate resources according to their changing needs and that the role of Agencies as centers of expertise and networking should be strengthened.

The report is particularly important against the backdrop of expanded mandates and the increased demands from their stakeholders that Agencies face. In parallel, however, Agencies’ resources have been reduced which put at risk Agencies’ ability to fulfil their obligations. The EUAN also welcomes the Court’s call for allocating resources to Agencies in a more flexible manner. Indeed, the impact of consistent staffing reductions in recent years and the requirement for flexibility has become acutely evident during the current COVID-19 crisis, in which several Agencies were required to respond urgently and, as a result, had to divert substantial resources to ensure essential EU coordination and critical expertise to facilitate European and national decision-making during the pandemic.

The EUAN supports the ECA’s steps to streamline the review process associated with this audit while, equally, the EUAN recognizes that each Agency has its own legal personality. EUAN wishes to highlight the need for close cooperation between the Agencies and the Commission in assessing the feasibility of the recommendations such as preparatory work for evaluations prior to their implementation, given the unique scope of each Agency, including differences in the composition of their governing bodies. The one-size-fits-all approach should be avoided.

Finally, the EUAN wishes to thank the ECA for its constructive approach in the development of the preliminary observations and looks forward to continuing collaborative engagement with Agencies.

**Replies of the European Agency for Safety and Health at Work
(EU-OSHA)**

The fact of recurrent amounts of budget carry-over is caused by the multi-annual nature of the agency's operations and contracts. Cancellation rates for carry-overs from previous years are very low. EU-OSHA is introducing new measures to increase transparency of its financial planning, which will confirm the sound management of its financial resources.

Replies of the European Asylum Support Office (EASO)



Valletta Harbour, 20th July 2020

EASOs reply on the European Court of Auditor’s preliminary observations: “Future of EU agencies – Potential for more flexibility and cooperation”

As a general introductory remark, EASO commends the European Court of Auditor’s extensive analysis into areas of direct interest to EU agencies. Whilst one finds preliminary observations and recommendations of shared interest to Agencies, EASO cites the European Court of Auditor’s own difficulties in drawing comparisons between, what are diverse organisational structures, missions and challenges of the current 37 EU agencies. To this end, EASO recommends caution in avoiding the temptation to apply a one-size-fits-all approach to measuring agencies’ performance.

EASO would also like to draw attention to the following targeted comments on relevant sections/paragraphs of the preliminary report.

Observations

EASO reply (paragraph 29):

Article 46 of Regulation (EU) No 439/2010¹ provides for an independent external evaluation which covers EASO’s impact on practical cooperation on asylum and on the CEAS. The independent external evaluation of the Agency conducted by EY in 2014, was commissioned by EASO on the basis of terms of reference issued by the Management Board in agreement with the Commission. This is in accordance with the same Article 46 of EASO’s founding Regulation. Moreover, paragraph 2 of Article 46 also provides that the decision on the timing of future evaluations is to be decided by the EASO Management Board, in agreement with the Commission.

On 4 May 2016, the European Commission issued a Proposal for a Regulation on the European Union Agency for Asylum – EUAA (repealing Regulation (EU) No 439/2010). Under the new Proposal, which is still under negotiation at the EU level, the European Commission is requested to commission an evaluation of the EUAA within three years of entry into force of the new Regulation, and then every five years thereafter, to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices. That evaluation must cover the Agency’s impact on practical cooperation on asylum-related matters and on the CEAS. The Commission is to send the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. The findings of the evaluation are to be made public.

¹ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing the European Asylum Support Office.

EASO reply (paragraph 37):

Measures were introduced in the EASO's Governance Action Plan and the Staff Engagement plan to address the serious turnover rate EASO had been experiencing, especially in the first semester of 2018 (rate in 2018 – 10%, rate in 2019 - 5.76%^[1]). The turnover rate at the end of April 2020 stood at 1.97%, which seems to be on track to remain under the 7% on a yearly basis.

The introduction of several measures aim to both attract and retain staff at the Agency. The following is a non-exhaustive list of measures, which includes reinforcing internal communication within the Agency, more flexible work arrangements – conciliation of work and family life – and the strengthening of learning and training prospects for staff:

- Strengthening the governance of the Agency through a restructuring of the organisational structure. The restructuring implemented on 1 January 2020 aims at establishing a solid framework for flexible workflows and better functioning inside the Agency, together with enhanced visibility and use of EASO knowledge and expertise;
- Greater transparency at management level. For example, in the publication of Management Team meeting reports on the intranet;
- Continuous efforts to ensure proper communication with colleagues providing operational support in the field, e.g. through weekly VCs;
- Greater attention to the functions of the staff committee;
- Regular staff meetings are held across units and departments;
- Introduction of flexitime and teleworking;
- More favourable schooling arrangements;
- An increase in the number of staff “away days” and team building activities;
- The formalisation of an exit procedure, which allows the Agency to gather feedback and lessons learned from staff leaving the Agency.

Due to the recent outbreak of the Novel Coronavirus (COVID-19), a critical risk of major disruptions and delays in the implementation of the EASO establishment plan was identified by EASO management team. The Executive Director immediately adopted and implemented mitigating risk responses.

EASO reply (paragraph 39):

In accordance with the EASO Founding Regulation, Asylum Support Teams ('AST') can be deployed on the request of a Member State subject to a particular pressure (Article 13) on the basis of an operating plan (Article 18). Pursuant to Article 13(2) of the EASO Founding Regulation, in response to such a request, EASO may coordinate the necessary technical and operational assistance to the requesting Member State or Member States and the deployment, for a limited time, of an asylum support team.

In accordance with the EASO Founding Regulation (Articles 13, 15 and 16 thereof) the EU Member States should make national experts available in such EU Member States under pressure upon their request (e.g. Malta; Cyprus; Greece; Italy). However, due to fact that the deployment rate of Member States' experts is currently only 8%, EASO was/is forced to find alternative ways to provide the needed support. This was highlighted in the European Council Conclusion of October 2016. This was the reason why the interim workers model was established.

For this purpose EASO has established public contracts with interim agencies for the provision of interim workers, concluding assignments in each of the respective countries of operation (Malta, Italy, Greece and Cyprus). Two categories of interim workers are performing assignments for EASO: Interim workers providing

^[1] Figure as of 31 December 2019.

temporary support in administrative related tasks, temporarily replacing statutory staff; and interim workers that are deployed in the hotspots to provide support to the EU Member states in particular need (Malta, Italy, Greece and Cyprus), temporarily replacing Member state experts. The public contracts are governed by Union law, complemented, where necessary, by the law applicable to the country of operation. Each of the legal jurisdictions have national rules in place transposing the Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

The asylum reserve pool envisaged in the draft EUAA Regulation may help to address better the issue of lack of deployment, notably in cases where immediate action is required to address situations causing disproportionate pressures and extreme burden on Member States' asylum and reception systems.

EASO reply (paragraph 42):

EASO acknowledges and welcomes ECA's observation regarding the length of the planning cycle and the challenges that this could pose for agencies, such as EASO, operating in a somewhat unpredictable and changing environment.

EASO reply (paragraph 64):

In just online media (readers of the concerned media) EASO's presence has jumped dramatically from 2.1 billion in 2017 to 8.2 billion in 2019. All figures (including those hereunder) are sourced from Meltwater Media Intelligence.

EASO focuses on audience reach more than the number of articles. Small local articles reach a limited number of people, whereas news wires (Reuters, AFP, AP, ANSA, etc.) and major international and national publications reach millions in one article. EASO, in order to continue building brand recognition, focuses on the latter. Its Meltwater tool finds that between 1 January 2018 and the end of July 2019, **10,773 articles mentioned EASO** (as opposed to the 2,226 cited). Between just January and July 2019, 2.48k articles mentioned EASO (more than for the entire reference period cited).

Finally, EASO notes that it places a very high amount of focus on social media presence, in addition to traditional/online media. EASO is aware that the modern citizen has a short attention span and generally gets his/her news from his/her Facebook or Twitter account, rather than traditional media. In this regard, EASO populates its accounts continuously and has a strong audio-visual record, producing regular content to convey its activities and mandate to citizens on social media. Two examples are:

- <https://twitter.com/i/status/1205095369870368770> (733k impressions on Twitter; 1.5 million views on Facebook)
- <https://twitter.com/i/status/1182213348508753920> (777k impressions on Twitter)

EASO reply (paragraph 65):

EASO concurs with ECA's observation on the scope for improvement in informing agencies on the outcome of key discussions held in the course of the budget negotiations. A case in point is EASO's budget for 2020, which suffered a cut of €24.7 million by the budgetary authority in the course of conciliation. As a result, EASO is undertaking a cumbersome task of having to revisit several of its planned activities, including its operational planning set out in its programming documents.

EASO reply (paragraph 77):

EASO agrees on the benefit of establishing meaningful cooperation with other EU agencies active in the same policy area. EASO has established working arrangements with a number of JHA Agencies, including Frontex,

FRA, Europol and eu-LISA. EASO also continues to engage on the basis of cooperation plans with Frontex and eu-LISA.

**Replies of the European Border and Coast Guard Agency
(Frontex)**

The European Border and Coast Guard

Agency's reply

Box 7. Frontex's budget in the field of return is not exclusively meant to support return operations. From 2016 onwards, the mandate on returns also includes pre-return activities. All return operations and return-related activities supported by Frontex very much depend on ad hoc requests of Member States based on short-term needs (mostly depending on effective availability of returnees).

In 2019 the trend was reverted: the budget allocated for return amounted initially to EUR 63 million and the implemented budget was EUR 67.4 million.

76. The EU Policy Cycle/EMPACT framework reinforced the JHA Agencies cooperation. This platform has helped to strengthen mutual contacts especially among Europol, Frontex, Eurojust and CEPOL.

EFCA and EMSA cooperate with Frontex on coast guard matters based on the Tripartite Working Arrangement signed in 2017. Annual Strategic Plan is adopted by the Steering Committee represented by the Executive Directors of the three EU Agencies.

Replies of European Food Safety Authority (EFSA)

REPLIES OF THE EFSA TO THE ECA’S SPECIAL REPORT:

“FUTURE OF EU AGENCIES – POTENTIAL FOR MORE FLEXIBILITY AND COOPERATION”

OBSERVATIONS

Agencies report more on performance aspects, but their contribution to EU policy and cooperation is not clearly measured and communicated to citizens

57. The EFSA has both input/output (results at operational level), as well as outcome and intermediate impact (results at strategic/policy level) indicators, which measure overall performance comprehensively; these are clearly linked in the Single Programming Document (SPD) and Annual Activity Report (CAAR) to the objectives of its founding regulation and its strategy, which are for Agencies a reflection of the overarching policy objectives. As (most) Agencies are bodies contributing partially to the implementation of policies, they are not at a position to measure directly the impact of their work to the policy objectives and society as such; this is the task of the Commission and Member State policy makers. EFSA and other agencies are keen to contribute to this should such a framework be designed by the relevant policy makers. Nevertheless, EFSA already does cooperate with its partner DG SANTE to measure policy relevant indicators, such as linked to stakeholder reputation, satisfaction and use of the scientific advice and evidence it produces.

Indicators should measure the performance of an organisation, which, as indicated above, is relevant at operational level (e.g. inputs, outputs), as well as at a strategic level (e.g. outcomes, impacts). Operational performance refers to what an organisation should control, while strategic performance refers to what an organisation can contribute to, particularly the further out in the intervention logic of results one goes (i.e. society/policy impacts). Thereby, it is to be expected, and good practice for an Agency such as EFSA, to have a larger share of operational performance indicators rather than impact ones at the policy level.

There is limited awareness and follow-up in the media about the contribution of agencies to policy and cooperation

63. Risk communication and engagement with all EFSA’s target audiences, such as industry, NGOs, consumers, academics, farmers, practitioners and distributors has been an important element of EFSA’s work. Risk communication is part of EFSA’s mandate laid down in its founding regulation but EFSA has also invested a lot of efforts to establish open and transparent risk assessment processes, supported by a strong stakeholder engagement approach. The recent Transparency Regulation enhances even more both risk communication and engagement efforts. All EFSA’s outputs are made publicly available. Priority topics, as they are identified by EFSA in discussion with its partners, often benefit from specific campaigns which aim at raising awareness of food safety issues examined amongst the general public.

Figure 9 – News articles by agency

64. The EFSA publishes its scientific outputs in the EFSA Journal. The outputs of all the activities that EFSA contracts or co-finances via grants are published in the EFSA Supporting Publications. Both are open access, online scientific journals. The EFSA Journal has been accepted into the Science Citation Index Expanded. Articles are published continuously, i.e. as soon as a scientific output is finalised.

Cooperation with Member States is crucial, but does not always run smoothly

71. The EFSA maintains close collaboration with Member States (MS) competent authorities. This is achieved via several mechanisms, including:

The Advisory Forum (AF), a body comprising representatives from the MS, Norway and Iceland, advising EFSA on its work programme and priorities, with the objective of enhancing scientific cooperation and avoiding duplication of work. The Advisory Forum also has an important role in identifying, resolving or explaining divergences in scientific opinions between EFSA and the MS authorities.

The Focal Point network, which acts as an ambassador of EFSA in the MS and assists EFSA's collaboration with the Advisory Forum

The Scientific Networks which have a thematic focus and consist of representatives of the MS, Norway and Iceland, providing support on scientific matters, data collection, etc. according to the priorities of EFSA. The Communication Experts Network operates as a scientific network focusing its activities on risk communication initiatives and coordination.

The EFSA, on the proposal of AF members, maintains a list of MS competent organisations, as foreseen in Article 36 of Regulation (EC) 178/2002. The organisations on this list can undertake tasks that EFSA may entrust them, as specified in Commission Regulation (EC) No 2230/2004. EFSA has a corresponding grant mechanism in place to support cooperation with such organisation.

73. For EFSA, the Advisory Forum has amongst its mission objectives to identify synergies and avoid the duplication of work. To achieve these objectives, EFSA provides tools to facilitate information exchange among the Advisory Forum members and EFSA on ongoing and planned risk assessment activities. This is non-binding for the MS. Article 30 of Regulation (EC) 178/2002 foresees a mechanism for the identification and handling of scientific divergences.

Another important route of cooperation with the MS is the Scientific Networks. They are formed in areas identified by EFSA under Terms of Reference that are proposed by EFSA and endorsed by the Advisory Forum (e.g. GMO, Microbial Risk Assessment, Chemical monitoring data collection, Food consumption, etc.). MS representatives are members in those Networks. The work in the Networks facilitates data collection and information exchange.

BOX 13 ECHA and EFSA – similar work, not enough cooperation.

The European Commission, for topics where EFSA and ECHA have both considerable expertise, has provided the two agencies with joint mandates. This builds further to the provisions of the REACH Regulation.

DG SANTE, together with other relevant DGs, have initiated efforts to boost cross-DG and inter-agency cooperation, involving Agencies operating under its patronage (EFSA, ECDC, EMA, CVO) as well as agencies whose activities is closely connected to health and environment (ECHA, EEA). The aim is to align strategically and to develop joint projects in areas of common interest.

On top of that, further to their existing memorandum of understanding, EFSA and ECHA have been engaged in discussions, at senior management level, with the objective of identifying fields of mutual interest where synergies or cooperation would make sense. So far, there have been several tangible outcomes from this – ongoing – discussion. For instance, ECHA provides to EFSA, via an SLA, support in the preparation of IUCLID as the data management solution of the collection and processing of data submitted in dossiers. A pilot on the pesticides domain has already taken place with positive results. The cooperation with ECHA on this front is expected to lead to a simplification of the dossier submission process for the industry.

In addition, when working on the same substances but under different regulatory frameworks, ECHA and EFSA keep each other informed and explore possibilities to cooperate, e.g. by sharing expertise where topics of mutual interest emerge such as the assessment of certain chemical substances.

Synergies have also taken place on other areas, such as joint staff recruitment, joint procurement for common services, joint contribution to policy initiatives, etc.

Agencies' outreach efforts at international level remain limited

83. EFSA's interactions with international organisations and organisations in third countries are framed by the provisions of its founding Regulation (EC) 178/2002. In practical terms, EFSA's work programme includes international scientific cooperation activities. These are planned in consultation and communication with the European Commission and contribute to improving the cooperation between the EU and the Third countries of international organisations involved.

Currently, EFSA has ongoing scientific collaboration, on topics within its remit, with several major international partners. Such cooperation is conducted under the framework of Memoranda of Cooperation or similar arrangements. EFSA has a dedicated staff group facilitating exchanges with international partners and international organisations.

RECOMMENDATIONS

Recommendation 2a – Allocate resources to agencies in a more flexible manner

In EFSA's view, the allocation of resources to agencies in a more flexible manner could be best achieved by lifting the double limitation of budget and establishment plan and by eliminating the headcount ceilings with regards to Contract Agents employed under CEOs.

The possibility for more agencies to collect fees would also allow them to depend less on the EU contribution (the European Parliament already invited the Commission and Agencies to further explore the collection of fees).

Recommendation 3a – Improve governance and reporting on performance

The EFSA already reports on policy deliverables (linked to the Founding regulation objectives and multiannual strategy) in the annual activity report based on performance. All annual activity reports are publicly available. These reports could be better aligned with reports of other Agencies and EU institutions operating within the same policy cluster.

In EFSA's view, to improve governance arrangements, multi-agency governance structures could be defined within policy clusters (e.g. health and environment). These governance bodies would structure the expected contributions of the various stakeholders to intended policy goals, assess joint planning and performance, and enable synergies and joint services.

Recommendation 4a – Strengthen the role of agencies as centres for sharing expertise and networking

For increased collaboration among agencies to be efficient and consistent, EFSA could benefit from an increased role of the Commission as an enabler developing a coordinated approach to be defined in a binding framework linking policies, expected results, key outputs, resources, and responsibilities within policy clusters of agencies. This would allow to better assess the contributions of the various agencies to an intended goal, but also force cooperation and synergies while increasing overall efficiency.

**Replies of the European Union Intellectual Property Office
(EUIPO)**

Office's replies

53. Public control over the fully self-financed agencies, including the Office, is exercised differently in accordance with the governance structure established by the legislator. In the case of EUIPO, the discharge is granted by the Office's Budget Committee, which includes one representative from European Parliament, two representatives from the Commission and one representative of each Member State. The Office's Budget Committee relies not only on financial and compliance matters but also quite extensively on performance considerations. The Office has a mature and well established performance management system. Moreover, User Associations participate as observers in the Management Board and Budget Committee meetings, thus allowing extensive public scrutiny.

The Office's Financial Regulation, governing the budget implementation, is based on the Framework Financial Regulation and is approved by the Budget Committee following consultation of the European Court of Auditors and the European Commission. Besides, the Office's annual accounts are audited by the European Court of Auditors.

The difference in the way the public control is exercised lays in the logic underlying two different models of discharge. Indeed, the objective of the general discharge procedure is to hold the relevant body accountable for the implementation of the EU budget before the European Parliament and the Council, i.e. the two authorities responsible for the EU budget. In cases where no funds from the EU budget are involved, the legislator decided that European Parliament and the Council shall not be responsible for the discharge. This difference is also acknowledged by the EU Draft Budget¹ according to which the financing structure of agencies (i.e. whether or not they actually receive contributions from the EU budget) also has an impact on the discharge procedure applicable, as laid down in Article 70(4) of the Financial Regulation². EUIPO is not subject to Article 70(4) of the Financial Regulation and therefore discharge is granted by its Budget Committee (Article 176(2) of the Office's constituent act).

79. The collaboration between the EUIPO and the CdT constitutes a positive example of constructive partnership. The EUIPO is indeed working hand in hand with the CdT in the context of the EUIPO-CdT cooperation programme 2019-2020 which includes 5 modernisation projects for the Centre that are implemented jointly by both agencies.

¹ Draft General Budget of the European Union for the financial year 2020 (Working Document Part III – Bodies set up by the EU having legal personality and public-private partnership).

² With the exception of the two fully self-financed agencies, all decentralised agencies are subject to discharge for the implementation of their budgets by the European Parliament on the recommendation of the Council.

Replies of the Single Resolution Board (SRB)

The SRB's reply

22 (Figure 5). Regarding the SRB, DG FISMA acts as partner DG and point of entry into Commission (with a permanent observer's status in the Executive and Plenary Sessions of the Board). DG FISMA, as such, is not responsible for the operations of the SRB, which is however accountable to the European Parliament, Council and Commission for the implementation of the SRMR.

29 (Figure 6). According to Article 94(1) of Regulation (EU) No 806/2014, the Commission shall publish a report every three years, not assessing the SRB as such, but rather assessing the application of the SRMR with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market.

53. The SRB understands that ECA's reference to the limited public control over the fully-financed agencies is made as regards their budget implementation whereas public control on the overall performance of the SRB is governed by various provisions of the SRMR, in particular Article 45 and Article 46, and the Agreement on accountability and oversight between the European Parliament and the SRB.

Audit team

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This performance audit was carried out by Audit Chamber IV Regulation of markets and competitive economy, headed by ECA Member Alex Brenninkmeijer. The audit was led by ECA Member Alex Brenninkmeijer, supported by Di Hai, Private Office Attaché; Friedemann Zippel, Principal Manager; Eddy Struyvelt, Head of Task; Joaquín Hernández Fernández, Arunas Juozulynas, Sevdalina Todorova, Julio Cesar Santin Santos, Benedicte Hemelaer, Christine Becker and Janis Gaisonoks, Auditors. Data scientists Claudia Albanese, Zsolt Varga and Emmanuele Fossati carried out the big data project. Thomas Everett provided linguistic support.



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Timeline

Event	Date
Adoption of Audit Planning Memorandum (APM) / Start of audit	26.2.2019
Official sending of draft report to the European Commission (or other auditee)	30.4.2020
Adoption of the final report after the adversarial procedure	28.7.2020
Official replies of the European Commission received in all languages	25.8.2020
Official replies of the EU Agencies Network (EUAN) received in all languages	3.8.2020
Official replies of the European Agency for Safety and Health at Work (EU-OSHA) received in all languages	29.7.2020
Official replies of the European Asylum Support Office (EASO) received in all languages	28.8.2020
Official replies of the European Border and Coast Guard Agency (Frontex) received in all languages	24.7.2020
Official replies of the European Food Safety Authority (EFSA) received in all languages	5.7.2020
Official replies of the European Union Intellectual Property Office (EUIPO) received in all languages	3.8.2020
Official replies of the Single Resolution Board (SRB) received in all languages	27.7.2020

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Having focused in the past on the performance of individual agencies, this is the ECA's first overall assessment of the conditions put in place by the EU to support all EU agencies in the delivery of policy for the benefit of citizens. Our audit identified a need for more flexibility in the set-up, functioning and possible winding-up of agencies. We also found that insufficient support from Member States, industry, Commission or other agencies prevents some agencies from fully performing their role. We recommend that the Commission and the agencies evaluate more sensibly the coherence of agencies over their lifetime, and adjust resources accordingly; that they assess inefficiencies in the area of governance and improve performance reporting to focus not only on agencies' activities but also on their important contribution to policy implementation; and that they facilitate agencies' efforts to cooperate as centres of expertise and networking.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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