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

Although an agency becomes a legal entity upon the entry into force of its constituent act, several steps have yet to be taken before a new agency is able to put its administrative autonomy fully in practice. These steps include: 1) the setting up of a Management Board, 2) the engagement of a Director, 3) the engagement of core administrative staff, 4) the adoption of a budget, 5) the appointment of an accounting officer, 6) the adoption of the financial regulation, and 7) the signing of service level agreements. Those steps are outlined below.

In accordance with the principles of good governance, the administrative autonomy of agencies leads to requirements in terms of reporting and accountability for the use of resources stemming from the EU budget (see Fiche 25 on agencies' "reporting requirements and processes").

**Constitution of agency's bodies**

In general, the constitution of two agency's bodies is essential for establishing the agency's autonomy. These are the Management Board\(^1\) and the agency's most senior manager, hereinafter: the Director\(^2\).

- **Management Board**

  The Management Board is the agency's main governing body. Its tasks and duties are defined in the constituent act establishing each agency. For detailed information on the role and functioning of the Management Board please refer to Fiche 5 and 6.

- **Director**

  The Director is the agency's most senior manager and, in most agencies, its legal representative. In relation to staff, the Director exercises the power of the appointing/contracting authority. The Director is also responsible for the execution of the budget.

While the agency comes into existence on the day of entry into force of its constituent act, the selection and engagement of the Director occurs later and is linked to the availability of a budget and an establishment plan. For more details on appointment, dismissal and tasks of the Director please refer respectively to Fiches 7 and 8.

As regards the transition period between the establishment of the agency and the appointment of the Director, the basic regulation normally foresees that a Commission official may be appointed as an interim director to facilitate the start up of an agency. The interim director is empowered to take decisions including signing contracts of employment, as well as take financial commitments subject to co-agreement by an authorising officer of the parent Directorate General. The interim director executes these tasks until the Director is properly

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\(^1\) Title may differ per founding regulation: Management Board, Governing Board, College, etc.

\(^2\) Title may differ per founding regulation: Director, Executive Director, Administrative Director, etc.
appointed by the Appointing Authority (in most cases - the Management Board). As long as an agency has an interim director in charge, administrative autonomy is not accomplished.

**Engagement of the core administrative staff**

Apart from the Director, the agency must engage a minimum number of agents who guarantee the independent functioning of the agency. These are an HR officer, an IT officer, a legal officer and an accounting officer. The latter is indispensable for the agency's financial autonomy.

Before the adoption of the founding regulation by the legislator, certain elements of the selection of the core administrative staff may be initiated by the parent Directorate General of the Commission, provided that there is sufficient certainty concerning the establishment of the agency and its timetable. However, actual engagement of staff is conditional on the appointment of the Director (or an interim one, if foreseen in the regulation) as well as on the availability of financial resources and an establishment plan of the agency adopted by the budgetary authority.

**Financial autonomy**

Financial autonomy is a part of the agency's administrative autonomy. Before an agency can fully exercise its financial autonomy, it is crucial that the budgetary authority adopts the agency's budget including the establishment plan. The latter constitutes a ceiling for number and level of posts to be filled. The financial Framework Regulation for agencies requires that each year each agency prepares a multi-annual Staff Policy Plan in the framework of the budgetary procedure. This Plan defines the agency's staff policy, including justification of the number and level of posts in its establishment plan. For details, see Fiche 23.

Once the budget and the establishment plan are authorized, the agency's financial autonomy is determined by three elements:

- **Appointment of the Director**

  The Director shall be the agency's authorising officer. His/Her powers as authorising officer may be delegated to staff of the agency in accordance with the financial rules adopted by the Management Board.

- **Appointment of an accounting officer**

  The Management Board appoints the accounting officer whose duties must be segregated from those of the authorising officer, in view of the fact that these two functions are incompatible. The accounting officer is responsible for the proper implementation of payments, collection of revenue and recoveries and also for the drawing up of the accounts of the Agency.

- **Adoption of the financial regulation**

  Each Agency shall, with prior consent of the Commission, adopt its Financial Regulation. It may also adopt, with the Commission's prior consent, detailed rules for implementing its Financial Regulation on a proposal from its Director.

**Operational autonomy**

- **Signing of service level agreements**
To benefit from certain services provided by the Commission departments, the agency may sign a Service Level Agreement with each service provider. In light of the requirements stemming from the Staff Regulations (SR) and the implementing rules to the SR, the agency usually signs an agreement with the following entities: the Office for administration and payment of individual entitlements (PMO), EPSO and the Medical Service of the Commission. In most cases agencies also sign agreements with DG DIGIT, DG BUDG and the training unit of DG HR.

- Seat agreement

The seat agreement regulates the relations between the agency and the host country. However, not all agencies have signed one, and there is no obligation to do so. The seat agreement is not indispensable for the agency's administrative autonomy. For detailed information on seat agreements, please refer to Fiche 3.

Internal investigations by OLAF

The establishing Regulations of the agencies normally include provisions on accession to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adoption of a decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests. Most agencies do have such decisions adopted and communicated to OLAF.

2) Critical analysis of the issue at hand

The importance of governance arrangements for agencies' autonomy

One of the elements of agencies' autonomy is the collective responsibility and own powers of the agencies' Management Boards. Therefore, agencies' autonomy has to be constructed on appropriate governance arrangements. As appropriate can be considered those arrangements that allow for all relevant interests to be voiced and balanced, and for responsibilities clearly defined and assumed. The variety of governance arrangements and the effects they produce can be found in fiche 5.

Need to align autonomy with controls

The autonomy and flexibility assigned to agencies for managing their operations and resources have shown to be essential for their credibility, effectiveness, efficiency and added value. At the same time, though, delegation of power and autonomy implies responsibility and thus requires adequate controls. In the current agency system, the (Executive) Director is responsible for the elaboration and execution of the work programme. He is the Authorising Officer for the implementation of the budget and the Appointing Authority in human resources matters (recruitment, evaluation and promotion, etc…). In the current governance structure of agencies, monitoring and controls exercised in practice by the Management Board vis-à-vis the (Executive) Director are often limited, in particular as far as performance, financial management, and internal controls mechanism are concerned. This limitation can have different origins such as size of the boards or board members' lack of knowledge and expertise in EU rules and regulations.

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3 Evaluation 2009, Volume I, point 4.1, p. 10
4 The experience of the agencies: a contribution to the debate on the future of the agency model "Learning with the past, building the future", Agencies' Contribution to Inter-institutional Debate, Point 2.2, p. 6
It is therefore necessary to re-assess certain control mechanisms and to increase the effectiveness and efficiency of the monitoring and control function of management boards.

On the other hand, agencies' autonomy needs to be balanced with accountability vis-à-vis the budgetary authorities. To this end, the reporting mechanisms at hand need to be streamlined and adjusted. See *fiche 25.*

**Difficulties to achieve financial autonomy**

One aspect that needs to be addressed is determining the moment of the acquisition of the financial autonomy by the agency.

It is important to distinguish between the decisional autonomy and the financial autonomy. The first is obtained when the annual work programme and the draft budget are adopted by the Management Board. The second is obtained when the EU's first contribution is transferred by the parent DG to the agency, i.e. when the (executive) director and the accountant are appointed, the financial regulation of the agency is approved, the bank account opened and the accounting system as well as the required financial actors are in place.

The role of the Commission changes in respect of those different stages in acquiring autonomy. Before acquiring decisional autonomy, the agency exists only as a project in the work programme of the Commission responsible service. When the agency obtains decisional autonomy, the Commission helps it only in the management (for example, via an ad interim director or providing it with budgetary structures). When the agency acquires the financial autonomy, the Commission remains just a support via its responsible department. Bearing this in mind, the fact that this transitional period towards autonomy and the different competences involved are often not spelled out in basic acts presents a difficulty for the timely and efficient planning of these stages. This also sometimes results in late acquisition of the financial autonomy by the agency, which on its turn makes it practically impossible for the Commission to transfer the EU contribution from the general budget to the agency.

In light of the above, it is therefore necessary to regulate the roles and competences during the transitional period and shorten the time during which the agency remains on paper before becoming operational.

**Internal investigations by OLAF**

Agencies do not always adopt their internal decisions on OLAF investigations in a sufficiently timely manner. In order to facilitate the work of OLAF, these decisions should be adopted as soon as possible after the creation of an agency.

There are differences in applying the model decision when drafting the decision of the agencies, which leads to a varying coverage of the agency staff and management. For efficient investigations, it is important to ensure that all agency staff and management are bound by the duty to cooperate and supply information.