1) State of play \textit{de jure} and in practice

The constituent acts of 21 agencies\(^1\) foresee the participation of third countries in agencies' activities or the cooperation\(^2\) between the agency and a third country. Fifteen of these agencies\(^3\) are open to cooperation with international organisations as well.

In most cases, the respective founding regulations contain the following standard provision: “agency shall be open to the participation of third countries which have concluded agreements with the European Community which provide for the adoption and application by these countries of Community law in the area covered by the basic act. Under these agreements, arrangements shall be made specifying, in particular, the nature and the manner in which these countries will participate in the agency’s work, including provisions on participation in certain internal bodies, financial contributions and employment of staff”.

At present third countries participate in or cooperate with 12\(^4\) of the former 1\(^{st}\) pillar agencies, either as a result of concluded agreements or following a decision by the EEA Joint Committee concerning cooperation with Norway and Iceland.

From among the former 2\(^{nd}\) pillar agencies, EDA can maintain relations with third countries and international organisations.

With regard to the former three 3\(^{rd}\) pillar agencies, the constituent acts of two of them – EUROJUST and EUROPOL, foresee cooperation with third countries, international organisations and EU bodies (third partners). Both EUROJUST and EUROPOL have administrative arrangements/cooperation agreements with administrations in several third countries. The policy followed by the two agencies concerning establishing cooperation with third partners is authorised and approved by the Council. In the case of CEPOL, the constituent act stipulates that the agency can cooperate with national training institutes of non-member States of the EU, in particular with those of the candidate countries, as well as with those of Iceland, Norway and Switzerland.

Financing of agencies' cooperation with third countries

There is an increasing demand from third countries to cooperate with the European agencies, which raises, among others, the question of financing. The situation in that respect differs for

\(^{1}\) ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO, ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMA, EMSA, ENISA, ERA, ETF, EU-OSHA, EUROFOUND, FRA, FRONTEX, GSA

\(^{2}\) Cooperation between an agency and a third country implies financing agency's activities from the Community budget. Participation of a third country implies pre-financing from the Community budget of the ultimate contribution of the third country to the agency's budget. The participation of EFTA countries in agencies' activities is governed by Article 82 of the Agreement on the European Economic Area (EEA).

\(^{3}\) CFCA, EASA, EASO, ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMA, ENISA, ETF, EUROFOUND, FRA, FRONTEX

\(^{4}\) CEDEFOP (Cooperation agreements with EFTA countries based on protocol 31 of the EEA Agreement), CPVO (technical Memoranda of Understanding), EASA, ECDC, EEA, EFSA, EMA, EMSA, ETF, EUROFOUND, FRONTEX, EMCDDA
the countries from the European Neighbourhood Policy (ENP), the candidate countries and other third countries.

**ENP countries**

Cooperation between the regulatory agencies and the ENP countries can be financed through the Technical Assistance Information Exchange (TAIEX) Facility until 2011, provided that the given activity falls within the latter’s scope: information seminars, workshops, study visits and technical assessments. However, the TAIEX Facility cannot finance long-term cooperation activities. For the period 2011-2013, funding to facilitate the participation of ENP countries in the work of the agencies will be proposed under the European Neighbourhood Partnership Instrument (ENPI). In line with Council conclusions of 5 March 2007, support will be provided in cases where:

- there is mutual agreement to proceed between the relevant regulatory agency and the interested ENP country;
- there is substantial progress made by the ENP country as evidenced by the implementation of sector reforms and convergence with EC technical requirements and standards. Progress on sector dialogue as reported in the Annual Report on implementation of ENP Action Plans and the technical assessment of the regulatory agency will be critical in this regard.

**Candidate and potential candidate countries**

Participation in Community agencies is part of the Enlargement Strategy and the Thessaloniki Agenda. In the Communication from the Commission to the Council and the Parliament "Enlargement Strategy and Main Challenges 2008-2009" (the Enlargement Strategy Paper) of 5 November 2008, the Commission stated that as regards Community agencies it will seek to offer further participation possibilities, including observer status for all enlargement countries in the meeting of the Management Boards or expert groups. Against this background, the Instrument for Pre-Accession Assistance (IPA) provides financial support to the Community Agencies to prepare the candidate and potential candidate countries for participation in specific agencies.

Once the Commission and an agency have established that a country is ready to participate in the agency, a memorandum of understanding between the Community and the country will be concluded to allow for this participation. The costs for participation in an agency can be co-financed by IPA up to 90% of the country contribution to a agency in the first year of participation, gradually decreasing in the following years, in percentage or in real amounts.

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5 Council Decision 2006/62/EC of 23 January 2006 enabling countries covered by the European Neighbourhood Policy, as well as Russia, to benefit from the Technical Assistance and Information Exchange (TAIEX) Programme, OJ L 032, 04.02.2006
7 See also COM (1999) 710 final of 20.12.1999
8 See also COM(2003) 748 final of 03.12.2003
9 COM (2008) 674 final of 05.11.2008
11 In the case of the FRA the Association Council decides whether a candidate country may join the FRA. In the case of potential candidate countries, an invitation from the Council of the EU is needed first.
Participation in international forums

The European Commission represents the Community in several international organisations. In this framework, the agencies have to work in close cooperation with their parent and/or partner DG in the Commission on initiatives planned at international level.

The Commission can invite a representative of an agency to participate in intergovernmental meetings as a member of the Community delegation. He/she can also take the floor as a member of the Community/Commission delegation. When an agency is specifically invited by an international organisation, in which the Community is represented, to give an *ad hoc* presentation, the agency informs the Commission in order to ensure appropriate coordination.

Cases where experts of an agency are invited to contribute in their personal capacity would fall outside the scope of the international representation of Community. Nevertheless, an expert, prior to taking the floor, should make clear that he/she is acting and speaking in his/her personal capacity. Agencies' experts are free to participate in international meetings which are not of an intergovernmental nature, such as international conferences, symposiums etc.

2) Critical analysis of the issue at hand

Funding of ENP countries' participation

Securing financing for ENP countries' participation in agencies' activities through the European Neighbourhood Partnership Instrument (ENPI) for the period 2011-2013 is a viable solution for facilitating such collaboration. It follows the same logic as the financing of candidate and potential candidate countries respectively from the Instrument for Pre-Accession Assistance.

Funding of candidate and potential candidate countries' participation

The current scheme, i.e. financing from the Instrument for Pre-Accession Assistance, works well.

Balance between cooperation with third countries and the agency's core activities

There is increasing demand by third countries for cooperation with EU agencies. Agencies' tendency to respond positively to such demands might interfere with the priorities within their core business as resources are shifted. It is therefore necessary to ensure that cooperation with third countries is encouraged and pursued only if it is compatible with the mandate of the agency, with the priorities and the available resources of the agency as set up in the agency's Management Plan, and where there is a EU interest.

Cooperation with third countries vs. representation of the Union's position

In the cooperation between an agency and a third country the agency should not be seen as representing in any way the EU position to an outside audience. Guaranteeing the clear delimitation of the agency's role in that context is strongly related to the agency's communication strategy. See also *fiche* 19.