Analytical Fiche Nr° 1

Definition and classification of "European Regulatory Agency"

1) State of play de jure and in practice

Definition

No commonly agreed definition of the term "European Regulatory Agency" exists to date. European regulatory agencies are also referred to as "decentralised agencies", "traditional agencies" or "satellite agencies".

The 2002 Commission's Communication on the operating framework for the regulatory agencies describes agencies as actively involved in the executive function by enacting instruments which help to regulate a specific sector.

In 2005 the Commission proposed a definition for regulatory agencies in the Draft Inter-institutional Agreement, now withdrawn. According to the Draft IIA the term "European regulatory agency" should be ascribed to "any autonomous legal entity set up by the legislative authority, in order to help regulate a particular sector at European level and help implement a Community policy".

In the Trialogue of 7 March 2007, it was agreed that for the purpose of applying Point 47 of the IIA of 17 May 2006 the definition of an "agency" would be determined by whether the body in question was set up pursuant to Article 185 of the Financial Regulation applicable to the general budget of the European Communities. This definition would exclude all European agencies which do not benefit from a Community subsidy (e.g. OHIM).

Main characteristics

A comparative look at the constituent act of the existing regulatory agencies allows for the following conclusions:

- A European regulatory agency is a body governed by European law;

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1 European Parliament (2006) Study on Agencies' Discharge, Committee on Budgetary Control
3 Draft Interinstitutional agreement on the operating framework for the European regulatory agencies COM(2005)59 final, 25.02.2005
4 Article 185
1. The Commission shall adopt a framework financial regulation for the bodies set up by the Communities and having legal personality which actually receive grants charged to the budget. The financial rules of these bodies may not depart from the framework regulation except where their specific operating needs so require and with the Commission's prior consent.
2. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1, shall be given by the European Parliament on the recommendation of the Council.
3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments.
4. The bodies referred to in paragraph 1 shall apply the accounting rules set out in Article 133 so that their accounts can be consolidated with the Commission's accounts.
• It is set up by an act of secondary legislation (regulation/joint action/decision);
• It has its own legal personality;
• It sometimes takes legally binding individual decisions for third parties;
• It most often receives financial contribution from the Community budget;
• It is most often a permanent body which has its seat in one of the Member States of the European Union;
• It has financial and administrative autonomy and is independent in the execution of the assigned mission/tasks.

For the purpose of the work of the Inter-institutional working group on regulatory agencies, 31 existing entities across the former first, second and third pillars are considered, and in addition the Commission proposal for the Agency for Operational Management of SIS II, VIS and EURODAC, as well as the founding act of the European Agency for Reconstruction whose mandate expired on 31 December 2008. For an overview of all agencies see the Annex.

Classification

In its Communication "European Agencies: the way forward", the Commission suggested a classification of the existing agencies based on the primary mission they are entrusted with:

• Agencies adopting individual decisions which are legally binding on third parties: CPVO, OHIM, EMA, EASA and ECHA;
• Agencies providing direct assistance to the Commission and, where necessary, to the Member States, in the form of technical or scientific advice and/or inspection reports: ECDC, EMSA, EFSA, ERA and EMA;
• Agencies in charge of operational activities: EAR, GSA, CFCA, FRONTEX, EUROJUST, EUROPOL and CEPOL;
• Agencies responsible for gathering, analysing and forwarding objective, reliable and easy-to-understand information/networking: CEDEFOP, EUROFOUND, EEA, EFSA, ETF, EMCCDA, EU-OSHA, ENISA, ECDC, FRA and EIGE;
• Services to other agencies and institutions: CdT.

The ongoing evaluation of the system of EU decentralised agencies, suggests alternative criteria for an operational classification of agencies: by pillar; by policy area; by period of

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6 Distribution across pillars: Former first pillar agencies: 27 (including the European Agency for Reconstruction, whose mandate expired on 31.12.2008, as well as the proposed Agency for Operational Management of SIS II, VIS and EURODAC); Former second pillar agencies: 3; Former third pillar agencies: 3.
8 ACER, EASO and the BEREC Office are not included in this classification as they did not exist at the time of adoption of the Communication. Considering the primary activity of these three agencies, ACER would figure among the agencies listed under the first bullet, EASO among those listed in the third and fourth. The BEREC Office, is a special case being the secretariat of BEREC, whose activities are similar to those of the agencies listed under the second bullet.
creation; by size; by the addressees of the agency's output; by origin of resources and funding; by the type of the management board.

2) **Critical analysis of the issue at hand**

**The need for a definition/ common denomination**

While there is no outstanding need to have a uniform definition of "agency", the varying denomination of these bodies (centre, office, authority, institute, etc.) is what often creates confusion among citizens and potential stakeholders.\(^9\)

Furthermore, absence of a common denomination may generate problems as to the common understanding (with regard to budget and regulatory authorities, international partners, third parties in general) on the applicable legal framework for existing or upcoming bodies.

In addition, the term "regulatory" can be misleading, in the sense that, while agencies can have regulatory functions, they do not create and set new norms in the relevant sector. Although a couple of agencies can adopt individual decisions with direct effect, these decisions are taken in specific areas where a defined technical expertise is required, under clearly and precisely defined conditions. The term "decentralised" on the other hand is rather neutral, not prejudging agencies' varying functions. At the same time it reflects adequately agencies' role to assist in policy-making and policy implementation.

**The need for classification**

It is difficult to have a single classification of agencies since there are various criteria according to which agencies can be classified. The choice of criterion depends on the needs and the purpose for which the classification is going to be used. While classification can be helpful for simplifying the agency system, for adopting a tailor-made approach to a set of agencies with common features and for facilitating benchmarking of performance, the lack of a single classification is not a weakness per se.

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\(^9\) Evidenced by citizens' requests for clarifications via Europe Direct
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full name</th>
<th>Seat</th>
<th>Year of creation</th>
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<tbody>
<tr>
<td><strong>Former 1st pillar agencies</strong></td>
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</tr>
<tr>
<td>ACER</td>
<td>Agency for the Cooperation of Energy Regulators</td>
<td>Ljubljana (SL)</td>
<td>2009</td>
</tr>
<tr>
<td>Agency for Operational Management of SIS II, VIS and EURODAC</td>
<td>Agency for the operational management of SIS II, VIS, EURODAC and other large-scale IT systems in application of Title IV of the EC Treaty</td>
<td>-</td>
<td>Proposed in June 2009</td>
</tr>
<tr>
<td>BEREC Office</td>
<td>The Office for the Body of European Regulators for Electronic Communications</td>
<td>Riga (LV)</td>
<td>2009</td>
</tr>
<tr>
<td>CdT</td>
<td>Translation Centre for the bodies of the EU</td>
<td>Luxembourg (LU)</td>
<td>1994, last modified in 2003</td>
</tr>
<tr>
<td>CEDEFOP</td>
<td>European Centre for the Development of Vocational Training</td>
<td>Thessaloniki (GR)</td>
<td>1975, last modified in 2004</td>
</tr>
<tr>
<td>CFCA</td>
<td>Community Fisheries Control Agency</td>
<td>Vigo (ES)</td>
<td>2005</td>
</tr>
<tr>
<td>CPVO</td>
<td>Community Plant Variety Office</td>
<td>Angers (FR)</td>
<td>1994, last modified in 2008</td>
</tr>
<tr>
<td>EAR</td>
<td>European Agency for Reconstruction</td>
<td>Thessaloniki (GR)</td>
<td>2000, last modified in 2006^[10]</td>
</tr>
<tr>
<td>EASA</td>
<td>European Aviation Safety Agency</td>
<td>Köln (DE)</td>
<td>2003, last modified in 2008</td>
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<tr>
<td>EASO</td>
<td>European Asylum Support Office</td>
<td>La Valletta (MT)</td>
<td>2010</td>
</tr>
<tr>
<td>ECDC</td>
<td>European Centre for Disease Prevention and Control</td>
<td>Stockholm (SE)</td>
<td>2004</td>
</tr>
<tr>
<td>ECHA</td>
<td>European Chemicals Agency</td>
<td>Helsinki (FI)</td>
<td>2006, last modified in 2009</td>
</tr>
<tr>
<td>EEA</td>
<td>European Environment Agency</td>
<td>Copenhagen (DK)</td>
<td>1990, last modified in 2009</td>
</tr>
<tr>
<td>EFSA</td>
<td>European Food Safety Agency</td>
<td>Parma (IT)</td>
<td>2002, last modified in 2009</td>
</tr>
<tr>
<td>EIGE</td>
<td>European Institute for Gender Equality</td>
<td>Vilnius (LT)</td>
<td>2006, last</td>
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<table>
<thead>
<tr>
<th>Agency</th>
<th>Description</th>
<th>Location</th>
<th>Last Modified</th>
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<tbody>
<tr>
<td>EMCDDA</td>
<td>European Monitoring Centre for Drugs and Drug Addiction</td>
<td>Lisbon (PT)</td>
<td>1993, Recast: 2006</td>
</tr>
<tr>
<td>EMA</td>
<td>European Medicines Agency</td>
<td>London (GB)</td>
<td>1993, last modified in 2009</td>
</tr>
<tr>
<td>EMSA</td>
<td>European Maritime Safety Agency</td>
<td>Lisbon (PT)</td>
<td>2002, last modified in 2006</td>
</tr>
<tr>
<td>ENISA</td>
<td>European Network and Information Security Agency</td>
<td>Heraklion (GR)</td>
<td>2004, last modified in 2008</td>
</tr>
<tr>
<td>ERA</td>
<td>European Railway Agency</td>
<td>Lille-Valenciennes (FR)</td>
<td>2004, last modified in 2008</td>
</tr>
<tr>
<td>ETF</td>
<td>European Training Foundation</td>
<td>Turin (IT)</td>
<td>1990, Recast: 2008</td>
</tr>
<tr>
<td>EU-OSHA</td>
<td>European Agency for Safety and Health at Work</td>
<td>Bilbao (ES)</td>
<td>1994, last modified in 2005</td>
</tr>
<tr>
<td>EUROFOUND</td>
<td>European Foundation for the Improvement of Living and Working Conditions</td>
<td>Dublin (IE)</td>
<td>1975, last modified in 2005</td>
</tr>
<tr>
<td>FRA</td>
<td>Fundamental Rights Agency (ex - European Monitoring Centre on Racism and Xenophobia)</td>
<td>Vienna (AT)</td>
<td>2007</td>
</tr>
<tr>
<td>FRONTEX</td>
<td>European Agency for the Management of Operational Cooperation at the External Boarders of the Member States of the EU</td>
<td>Warsaw (PL)</td>
<td>2004, last modified in 2007</td>
</tr>
<tr>
<td>GSA</td>
<td>European GNSS Supervisory Authority</td>
<td>Brussels</td>
<td>2004 In revision</td>
</tr>
<tr>
<td>OHIM</td>
<td>Office for Harmonization in the Internal Market</td>
<td>Alicante (ES)</td>
<td>1993, last modified in 2009</td>
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**Former 2nd pillar agencies**

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<th>Agency</th>
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<th>Location</th>
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<tbody>
<tr>
<td>EDA</td>
<td>European Defence Agency</td>
<td>Brussels (BE)</td>
<td>2004 last modified in 2008</td>
</tr>
<tr>
<td>EUSC</td>
<td>European Union Satellite Centre</td>
<td>Torrejon de Ardoz (ES)</td>
<td>2001 last modified in 2009</td>
</tr>
<tr>
<td>ISS</td>
<td>European Institute for Security Studies</td>
<td>Paris (FR)</td>
<td>2001 last modified in 2006</td>
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<tr>
<td><strong>CEPOL</strong></td>
<td>European Police College</td>
<td>Bramshill (GB)</td>
<td>2005</td>
</tr>
<tr>
<td><strong>EUROJUST</strong></td>
<td>European Union's Judicial Cooperation Unit</td>
<td>The Hague (NL)</td>
<td>2002, last modified: 2009</td>
</tr>
<tr>
<td><strong>EUROPOL</strong></td>
<td>European Police Office</td>
<td>The Hague (NL)</td>
<td>1995, last modified: 2009</td>
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