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

**Agencies' financing structure**

Most decentralised agencies are funded entirely by contributions from the EU budget¹. Some agencies, however, depend fully or partially on revenue received from industry (fees):

- Partially self-financed agencies: EMA, ECHA² and EASA;
- Fully self-financed agencies: OHIM, CPVO and CdT³.

The three former second pillar agencies (EDA, ISS and EUSC) are funded on an intergovernmental basis. As from 2010 EUROPOL (former third pillar) has become a fully Union financed agency.

**Role of the budgetary authority**

The budgetary authority (European Parliament and Council) authorises only the contributions from the EU budget, not the other revenues; all revenue sources, including the EU contribution (if applicable), are part of the agencies' budgets, to be adopted by the agencies' Management Boards. See, in this regard, also Fiche 22 (role of the three Institutions - Commission, Parliament and Council).

**Union "balancing" subsidy**

The EU contribution to the agencies for a given financial year is meant to balance agency revenue and expenditure for that given year ("balancing subsidy"). In turn, an agency surplus for a given financial year has to be repaid to the EU budget (in the following year), up to the level of the total EU subsidy paid. The reasoning behind this provision is that a surplus means that the EU subsidy paid to the agency in order to balance agency revenue and expenditure turned out to be too high, and should therefore be recovered by the Commission as an amount "wrongly paid".

**Recovery of agencies' surpluses - assigned revenue**

---

¹ Without prejudice to other revenue, such as revenue stemming from (voluntary) contributions from Member States and third countries, administrative operations or services rendered against payments. Such other revenue tends to be of minor importance to agencies' budgets.

² While ECHA has been partially self-financed since its creation, it became fully self-financed as from 2010, on a temporary basis. It will receive Union contribution to its budget for the period 2013-2014, thus becoming partially self-financed again.

³ This issue was contested by CdT in the case T-456/07 (previous C-269/06, OJ C 190, 12.08.2006, p. 13). Court order of 12.02.2010 (OJ C 100, 17.04.2010 p.40) on case T-456/07 rejected the claim of the Commission as inadmissible on formal grounds. The controversial position between the parties remains as regards the substance of the matter.
In accordance with Article 18(1f) (repayment of amounts "wrongly paid") of the Financial Regulation\(^4\), amounts recovered from agencies' surpluses are entered as assigned revenue on the Commission's budget line for the agency concerned. As requested by the budgetary authority in order to increase transparency, and starting with the 2009 PDB, the Commission has deducted assigned revenues stemming from the recovery of previous years agencies' surpluses (N-1) from the agencies' Union subsidy for the following year (N+1), in order to arrive at the level of fresh appropriations in the PDB for year N+1\(^5\)\(^6\).

This policy to deduct assigned revenue for year N from fresh appropriations for year N+1 is a practical application of the rule that these assigned revenues, recovered in year N, may be carried over only once, and must be used first, in year N+1. As such, this means that in any year N two annual tranches of assigned revenues exist in parallel:

- Assigned revenues recovered in year N, to be carried over to year N+1, as they in principle have been taken into account when calculating the EU contribution for year N+1;
- Assigned revenues carried over from year N-1, to be used in year N, together with fresh appropriations in the budget for year N.

**Predictability of agencies' revenue**

The financing structure as set out above introduces an element of unpredictability, especially for agencies which are partially dependent on fees from industry: whereas the expenditure side of the agencies' budget (e.g. salaries and rent) will be relatively stable and predictable, the level of revenue actually received from industry may vary more significantly, depending for instance on the economic situation.

A higher (or lower) level of revenue actually received from industry may therefore lead to a surplus (or deficit) on the agency side, which may in turn lead to the need for a lower (or higher) UnionEU balancing subsidy during the financial year\(^7\), and/or to a surplus (or deficit) on the agency side at year-end.

**Agencies' cash management**

Typically, the actual payment of the Union balancing subsidy to the agency is made in a number of instalments throughout the year, depending on the actual cash requirements of the agency in question.

---


\(^6\) Given the timing of the preparation of the PDB year N+1 (Spring year N), the Commission deducts the provisional agency surplus for year N-1 from the Union subsidy for year N+1; the final amount of the agency surplus for year N-1 will only become available by July year N, as part of the final agency accounts.

\(^7\) Increasing the Union balancing subsidy during the financial year requires a transfer and/or an Amending Budget, to be adopted by the budgetary authority.
At the occasion of the latest revision of the Framework Financial Regulation (Article 15(5))\(^8\), a new provision was introduced requiring each agency to "implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests (for the Union balancing subsidy) it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue". This provision makes it even more important for agencies to make accurate forecasts on their revenue and expenditure.

Accurate forecasts of agency cash requirements allow for fine-tuning of the actual (final instalments of the) balancing payments to the agency, so as to avoid year-end surpluses on the side of the agency. This, in turn, avoids the need for the Commission to recover agency surpluses as assigned revenue in the following year.

However, if the budgeted Union subsidy to the agency during the financial year itself proves higher than the actual year-end cash requirements of the agency, on which basis the Commission decides not to make the full subsidy available to the agency, this will lead to a cancellation of (payment) appropriations on the Commission side, which will become part of the surplus of the Union budget.

**Self-financed agencies**

The Framework Financial Regulation only applies to Union bodies in the sense of Article 185 of the Financial Regulation, i.e. which have legal personality, which are created by the Communities and which actually receive a contribution from the Union budget, i.e. to the fully and partially Union funded agencies. Two of the fully self-financed agencies (OHIM and CPVO) have their own Financial Regulations, adopted in accordance with their founding Regulation, although OHIM has so far chosen to align its Financial Regulation as much as possible on the Framework Financial Regulation; the Framework Financial Regulation applies to CdT, even though this agency is fully self-financed.

No general rules apply to agency surpluses (when revenue for a given year overshoots expenditure); tailor-made rules are laid down in provisions of applicable acts. Depending on the financial rules applicable, agency surpluses can be attributed to a special fund, and/or budgeted by the agency in the following financial year as additional revenue for that year. In practice, the current state of play is as follows:

- **OHIM**: OHIM has created a reserve fund, which will be kept at its end-2008 level of some € 200 million; as from 2009, future annual budgetary results will be incorporated in the following year's budgets.

- **CPVO**: in 2002, CPVO set a minimum level of surplus of € 5 million, or 50% of annual revenues. This amount corresponds to the amount of credits needed to pay for one year of administrative expenditure in the case that no fees would be received at all. In 2008, this minimum level of surplus was reached; as from 2010, CPVO will present a balanced budget;

• CdT: on the one hand, CdT uses a pre-financing fund, amounting to 4/12th of credits of the annual budget. On the other hand, CdT reimburses annual surpluses to its clients.

2) Critical analysis of the issue at hand

As set out in part 1, revenue for most decentralised agencies depends entirely on the Union contribution, which is authorised on an annual basis by the budgetary authority during the budgetary procedure (see fiche 22).

The analysis below therefore focuses predominantly on those agencies which receive other revenue (mostly revenue from industry fees) over and above the Union balancing contribution (i.e. "partially self-financed agencies"), as well as on agencies which depend entirely on own revenues ("self-financed agencies").

General aspects

Carry-over rates and surpluses

More in general (to a lesser extent relating to the particular situation of the (partially) self-financed agencies as described above), the lack of a strong link between operational planning and resource planning often leads to unrealistic requirements for funds for agencies, which on the other hand translates into high carry-over and cancellation rates. Therefore, with a view to fully respecting the principle of sound financial management, it is necessary to ensure that agencies improve their planning and the follow-up of their budgetary requirements, bringing them in line with their detailed operational planning.

This could be helped by the introduction of Activity Based Budgeting / Management (ABB/ABM, see fiche 21). In addition, such management tools should also facilitate the allocation of resources to the agency when the latter has to cope with emerging needs or requests from the Commission or the budgetary authority.

Accuracy of cash forecasts

The issue of carry-overs and cancellation of credits links to making accurate cash forecasts, to fine-tune the balance between revenue and expenditure, as described in part 1. Despite the recent introduction of related provisions in the Framework Financial Regulation (see Art. 15, paragraph 5), further improvements in cash forecasting, in particular as regards making available the final tranche of the Union balancing contribution ("cash management approach"), are still needed in order to reduce the current level of agency surpluses, as shown in the provisional accounts for the financial year 2009. This concerns both the fully Union financed agencies and the partially self-financed agencies. The latter group of agencies has a more complex task to perform in this regard, given the built-in uncertainties as to the revenue to be received from industry.

---

9 Op. cit., point II.B.3b
10 Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2007 (5587/09), Council of the EU, Budget Committee Brussels, 4 February 2009, point 3 European Union agencies, p. 39
Last, dependence of annual contributions from the EU overall budget limits the long-term planning possibilities of agencies. The issue of linking multiannual activity programming with multiannual resource planning is considered in fiche 14.

**Specific issues concerning fee-collecting agencies**

The main issue when it comes to fee setting is aligning the level of fees with the agency's cost for providing a given service, as well as in forecasting demand from industry.

**Fee setting – self-financed agencies**

In the cases of the self-financed agencies (CdT, CPVO, OHIM, and ECHA as from 2010) there have been instances where the fees exceeded the costs, because user demand for the agencies’ services, and thus the revenue from user fees, was larger than forecast, or, as in the case of CdT, because of overpricing, which is connected to inadequate costing and/or monopoly on the market. In the latter case, it should be borne in mind that CdT reimburses annual surpluses to its clients (Agencies and other offices set up by the Council, institutions and other bodies of the Union). This is not the case for the other self-financed agencies mentioned above, which in the past have generated significant cash balances and interest income that did not flow back into the EU budget and thereby remained out of the control of the institutions. Surpluses have accumulated, and the necessary adjustments were generally made through a long and complex process (see also part 1). This involved a progressive fine-tuning (reduction) of fee levels, and/or reimbursement of surpluses to stakeholders. In doing so, the issue seems now largely under control, but this practice does not fix the root cause for the surpluses – difficulties to set the right fee levels and forecast demand.

**Fee setting – partially self-financed agencies**

By definition, for partially self-financed agencies (currently EASA and EMA) fee revenue from industry is at a level which is not sufficient to cover all expenditure and hence balancing contribution from the EU budget is still required. This raises the question how industry fees are set, and who decides on their level. In theory, fee levels should be set at a level, enough to cover the agencies’ work for the industry, whereas the Union balancing contribution ought to be used to finance activities which the agency carries out on behalf of the Union, and which cannot and should not be charged to industry. In other words, activities carried out for and funded by industry / the Union should be strictly separated, in order to avoid cross-subsidising. In the case of EASA, the basic act specifically requires that fees collected and the Union contribution shall be dealt separately in the Agency's budget, thus forcing separate accounting for certification activities (and avoiding cross-subsidisation). Transparency is needed as to the cost structure of agencies, and the way in which fees as set.

The need for clear distinction between revenue from fees and revenue from the Union budget, as well as the need to avoid accumulating surpluses, shows the importance

---

11 EP study 2008, Autonomy regarding personnel and finance, p. 159
12 In the case of EMA there are some tasks laid down in EU legislation for which no fees are to be charged and which should be financed from the EU contribution.
13 ECHA is in a special situation in 2010. ECHA is forecast to generate a surplus of about € 250 million from the 2010 registration deadline and it is supposed to finance its activities from this surplus until
of predicting revenue from industry. For instance in times of economic crisis, workload from industry, and, hence, revenue actually received from industry may be below forecast, which in turn would require a balancing contribution from the Union budget, over and above the foreseen Union contribution. This may effectively mean that the Union will have to finance staffing/activities which were foreseen to be funded from industry fees.

**Using surpluses to offset the unpredictability of industry revenue**

Nonetheless, the unpredictability of industry revenue has drawn political attention, especially from the side of the Parliament. Concretely, Parliament in recent years has chosen to keep the assigned revenues stemming from the recovery of partially self-financed agencies' surpluses available to the concerned agencies, as a precautionary reserve in case revenue from industry turns out lower than forecast, rather than to deduct these assigned revenues from the fresh appropriations required for the following financial year, as for the fully Union funded agencies. In case revenue from industry follows forecast, one drawback is that these credits ("reserved" for the agency) do not remain available as margin for unforeseen expenditure for the financial framework heading in question as a whole (i.e. not exclusively for the agency). This was the situation also before 2009 when assigned revenues was not considered for determining the contribution from the EU budget.

**Effects of the varying time span for collecting fees**

A related issue concerns forecasting when revenue from industry will actually be received: for instance in the case of EMA, industry has some room for manoeuvre as to paying fees towards the end of one financial year or at the beginning of the following year, depending also on their balance sheets in question. This impacts on the budget outturn of EMA, such as for the financial year 2008, to the extent that revenue actually received unexpectedly by end of year might lead to a budget surplus, as revenue received (in cash) turns out higher than forecast. In the case of ECHA, the timing of the fee income has lead to a requirement for a subsidy in 2010. Even though the Agency is forecast to receive about € 330 million in revenue related to the first registration deadline for industry on 30 November 2010, greatly exceeding the agency’s budget needs for 2010, the Commission must pay a subsidy in 2010 to provide cash for salary, rents, etc. before fee income is cashed towards the end of the year as industry will submit most of its dossiers only shortly before the deadline. The EU contribution thus required for 2010 will be recovered at the end of the financial year.

**Unexplored alternatives to the principle of charging for certain types of services**

Finally, there are also unexplored alternatives to the principle of charging for certain type of services, notably in the case of ECHA (pre-registration is paid by the EU budget whereas registration will be charged to companies). As far as ECHA is concerned, it is expected by regulation to become fully fee-funded for a certain time and require partial contribution subsequently.

---

end of 2013, i.e. it will become fully fee funded and require partial contribution subsequently. The reason is that the registration fees shall also cover evaluation activities and these evaluation activities can occur until several years after the registration has been made. Thus in the case of ECHA the accumulation of the surplus is in line with the REACH Regulation.