1) State of play de jure and in practice

Overall retrospective evaluation of the agency

This type of evaluation assesses the *raison d’être* of the agency. Twenty four agencies' constituent acts stipulate the need to conduct an evaluation of the agencies' performance and/or of the founding act establishing the agencies.¹ In the case of 16 agencies² the constituent act establishes the timing of the first evaluation, e.g. 3-5 years after the agency's creation or entry into force of the founding regulation. In the other eight cases³ the regulation only mentions the obligation to conduct an evaluation on a regular basis without indicating the timing.

The constituent act of 17 agencies⁴ vests the agency itself with the responsibility to commission an independent external evaluation. In the rest of the cases⁵, the founding regulations vest this responsibility with the Commission.

The founding regulations of nine agencies⁶ do not foresee any obligation on evaluation. Seven of these agencies⁷ conduct an evaluation nevertheless. In four of them⁸ the evaluation is commissioned by the agency, and in three⁹ it is requested by the Commission. In the case of EU-OSHA an evaluation can be required by the agency and/or by the Commission.

The frequency of the evaluations differs among agencies and the period from one evaluation to the next can vary between 3 to 6 years.

The scope of the overall retrospective evaluation most often encompasses:

- Implementation of the constituent act;
- Agency's working methods and practices;
- Results obtained and fulfilment of mission;

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¹ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, CFCA, EASA, EASO, ECDC, ECHA, EEA, EFSA, EIGE, EMCDDA, EMSA, ENISA, ERA, ETF, FRA, FRONTEX, EUSC, ISS, CEPOL, EUROJUST, EUROPOL
² BEREC Office, ECDC, ECHA, EEA, EFSA, EIGE, EMSA, ENISA, ERA, FRA, EDA, EUSC, ISS, CEPOL, EUROJUST, EUROPOL
³ ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO, EMCDDA, ETF, FRONTEX
⁴ Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO, ECDC, EEA, EFSA, EIGE, EMSA, FRA, FRONTEX, EUSC, ISS, CEPOL, EUROJUST, EUROPOL
⁵ ACER, BEREC Office, ECHA, EMCDDA, ENISA, ERA, ETF,
⁶ CdT, CEDEFOP, CPVO, EAR, EMA, EU-OSHA, EUROFOUND, GSA, OHIM
⁷ CdT, CEDEFOP, CPVO, EAR, EMA, EUROFOUND, OHIM
⁸ CdT, CPVO, EUROFOUND, OHIM
⁹ CEDEFOP, EAR, EMA
• Agency's mandate, tasks, areas of activity, structure and functions defined in the founding regulation;

• Impact of the agency.

Evaluation of agencies activities and programmes (prospective and retrospective)

Article 25 of the Framework Financial Regulation\(^{10}\), establishes that all the agencies (except CPVO and OHIM)\(^{11}\) should regularly carry out *ex ante* and *ex post* evaluations of programmes or activities which entail significant spending. The evaluation results should be sent to the Management Board.

In the case of evaluation of activities and programmes, the timing is defined by the lifecycle of the activities (ex-ante/ex-post evaluation).

**Meta-study 2003**

The purpose of the 2003 meta-study\(^ {12}\) was to contribute to the debate on the future of the Union agency system by taking a horizontal look at the individual evaluation reports that had been issued for ten (out of a total of fifteen) Union agencies at that time. The scope of this study is limited to those agencies that were created under the former first pillar of the EU Treaty. The conclusions of the study are drawn on the basis of identified frequently recurring findings and other patterns in these reports.

The main conclusions centre on the rationale of outsourcing activities, the agencies' tasks and objectives, the primary addressees and beneficiaries of agencies' activities, agencies’ relations with the European institutions and agencies' efficiency.

**Meta-study 2008**

A similar exercise was conducted in 2008. The 2008 meta-study\(^ {13}\) was designed to increase the transparency concerning European agencies and respond to the information needs of the European institutions, in particular the European Parliament request for a cross-cutting analysis of evaluations of individual agencies. The study covered 26 European agencies, i.e. all former first and third pillar agencies.

Some of the conclusions put forward in the 2008 meta-study touch upon agencies' relevance, the coherence of agencies' activities with the relevant Union policy, their effectiveness and added value.

Concretely:

• The evaluation reports tend to be more positive than negative as regards the relevance of agencies’ objectives and priorities to the needs of their main addressees.

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\(^{11}\) CPVO and OHIM are self-financed and thus are not covered by Article 185 of the Financial Regulation.

\(^{12}\) Meta-evaluation on the Union Agency system. Final Report, European Commission, Budget Directorate General, Evaluation Unit, 15 September 2003

\(^{13}\) Meta-study on decentralised agencies: cross-cutting analysis of evaluation findings. Final Report, Eureval/Rambøll-Management, September 2008
• The reasons put forward when agencies have been created or renewed tend to be just a repetition of the rationale for launching the EU policies served by these agencies. How a policy would work in the absence of an agency is a point which is most often missed.

• Evaluation reports often assess effectiveness by analysing the clients' satisfaction instead of looking at real impacts.

• Assessments of added value are quite often positive and expressed in a conclusive way. The main areas where Union value is added are the production of European-level information, the setting of EU-wide methodological standards, and the contribution to policy-making processes at EU level.

• This report shows that the issues covered in evaluation reports are uneven. Some issues are covered well enough across agency evaluations, i.e. relevance, coherence, Union added value, and internal efficiency. Other issues are however addressed in a few agencies only.

Evaluation of the system of EU decentralised Agencies, Jan-Nov 2009

As announced in the Communication "European agencies - The way forward"\(^{14}\), the Commission launched a thorough evaluation of the regulatory agencies, taking a horizontal look at all agencies. This evaluation examines the implications of agencies' creation and operation for EU governance and EU policies, agencies' effectiveness and efficiency. The evaluation report concludes positively on several aspects of the agency system such as the generally timely and adequate input from agencies to EU policies; coherence of agencies' activities with agencies' mandates, with key policy priorities and with activities of actors in the same area; transparency vis-à-vis the general public.

At the same time it points at weaknesses of the agency system. Among these weaknesses is also the existing evaluation practice with regard to timing and content.

Review of the Founding Regulation

The regular evaluations foreseen in agencies' founding acts may be followed by a revision of the founding regulation, by recommendations concerning the functioning of the agency, including putting an end to its activities.

The founding regulation of 18 agencies\(^ {15} \) foresee that on the basis of the evaluation, an appropriate body may present a proposal for a revision of the founding regulation establishing the agency or issue recommendations regarding changes on various issues, such as its working practices, tasks and the scope of its mission.

CdT's operating procedures as defined in the founding regulation can be reviewed by the Council on the basis of a proposal from the Commission and after the opinion of the European Parliament.

\(^ {14} \) Communication from the Commission to the European Parliament and the Council "European agencies - The way forward", COM(2008) 135 final

\(^ {15} \) ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CdT, CFCA, EAR, EASA, ECDC, EFSA, EMCDDA, EMSA, ENISA, EIGE, ERA, ETF, EU-OSHA, FRA, FRONTEX, CEPOL
In the case of ECHA the Commission will carry out a review in order to assess whether to extend the application of the obligation to perform a chemical safety assessment and to document it in a chemical safety report to substances currently not covered by this obligation. On the basis of this assessment the Commission may, if appropriate, present a legislative proposal. Several reviews are foreseen, the first one is to take place by 1 June 2012 at the latest.

The constituent acts of all former 2nd pillar agencies (EDA, EUSC and ISS) foresee that the head of agency presents a report to the Council on the implementation of the Joint Action establishing an agency with a view to its possible review.

Detailed information concerning the agencies' evaluations and the review of their founding regulations are presented in the Annex to this Fiche.

2) Critical analysis of the issue at hand

On a general level, not all agencies' constituent acts contain provisions on evaluation, and where there are rules, they are not coherent across the different agencies. In addition, the obligations following from the provisions in the agency's founding act are often not well differentiated from the obligations under the Framework Financial Regulation for agencies.

Timing and frequency of agencies' overall retrospective evaluations

The added value of the agency's overall retrospective evaluation depends to a great extent on the timing, i.e. whether it takes place at a moment when the agency has been fully operational for long enough time to produce results. In cases, where this evaluation takes place 3 years after the agency's creation, the exercise can for the most part tackle questions relating to the agency's start-up (setting up, organisation, recruitment), but not on actual performance. The problem is that the deadlines which are imposed by the basic regulations in some cases do not take sufficient account of the fact that it is hard for an agency to reach its "cruising speed" until it has been in existence for two years.16

Transparency of the agency system would be improved if all agencies were subject to similar requirements. In terms of frequency, a comprehensive overall evaluation of all agencies every 4-5 years seems reasonable (and is also the most widespread practice).17

Content of agencies' overall retrospective evaluations

As a tool for accountability and for promoting performance, overall retrospective evaluations need to cover an adequate set of aspects of agencies' operation. The overall evaluations tend to cover a limited number of issues, i.e. relevance, coherence, added value in general and EU added value, and internal efficiency, and they fall short of concluding on rationale, effectiveness (in achieving policy objectives), and cost effectiveness (or external efficiency).18 (For details on the importance of that aspect, see fiche 4 on ending of agencies). This, on the other hand, means that evaluations add little value in terms of accountability, as compared to audits.19

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16 CoA, Evaluations, points 36, p. 25
17 Evaluation 2009, Volume II, point 2.7.1, p. 123
18 Evaluation 2009, Volume I, point 4.3.6, p. 26
19 Evaluation 2009, Volume I, point 4.3.6, p. 26
Overall agency evaluation: to be commissioned by the agency or by the Commission?

The widespread practice currently is that the agency itself is in charge of managing its overall evaluation (see Annex), and in a limited number of cases this is the responsibility of the Commission. If one is to strengthen the overall evaluations by ensuring that they provide a critical view on agencies' existence and relevance, then it would be inappropriate to have agencies managing this process.

Securing the reliability of findings

Given that the ultimate aim of evaluations is to provide relevant and reliable insight regarding agencies' activities and value added, the selected external contractor should have a sound knowledge of both the core business of the agency and the agency system in general. In addition, in order to secure the reliability and objectiveness of the findings on should consider involving a third party (for the administrative management of the evaluation, quality checks), as is the case for impact assessments. Parliament has previously suggested that such a role be played by the Court of Auditors.

Ex-ante and ex-post evaluations of agencies' activities and programmes

It seems that most agencies do not conduct ex-ante evaluations of their activities/programmes. One of the main advantages of the ex ante evaluation is that it obliges agencies to present their objectives in a structured manner that underpins the whole planning process. A mandatory ex-ante evaluation of agencies' activities/programmes would foster the setting of SMART objectives. However, the effort invested in an ex-ante evaluation should be proportional to the size of the budget to be used for the relevant activity/programme. Ex post evaluations of agencies' programmes and activities, on the other hand, provide useful input to the periodic updating of strategies and for organising the agencies’ structure.

A potential problem with regard to both ex-ante and ex-post evaluations is that the specific financial regulation of an agency may not have meaningful rules for these types of evaluation (e.g. sometimes those rules are copied from the Commissions Implementing Rules).

Follow-up to evaluations

Effective follow-up to evaluations increases their added value. It seems however that, left at agencies' own discretion, often evaluations are not sufficiently followed-up upon.

About half of the agencies state that they follow up in a structured way on evaluations. Generally, follow-up on task (activity) evaluation seems to be less formalised than for overall evaluations. In this respect, the involvement of Management Boards could be reinforced in order to guarantee better ownership and adequate follow-up of evaluations findings.

20 CoA, point 12, p. 15
21 CoA, Evaluations, points 35, p. 25
22 Op. cit., point II.B.2
23 Rapport d'information sur l'évaluation de l'activité des agences européennes, Denis Badré, Sénat, Commission des affaires européennes et de la commission des finances, 7 octobre 2009, point II
24 Evaluation 2009, Volume II, point 2.7.1, p. 123