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

Access to documents

All former 1st pillar agencies apply Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents. In fact, following the joint Declaration adopted by the European Parliament and the Council on 30 May 2001, the Regulations setting up the agencies were amended as a result of the adoption of a number of Regulations by the Council on 18 June 2003 and by the European Parliament and the Council on 22 July 2003. These Regulations, which came into force on 1 October 2003, make Regulation 1049/2001 applicable to the agencies. The agencies were required to adopt implementing rules by 1 April 2004. For newly created agencies, the basic Regulation includes a provision making Regulation 1049/2001 applicable and requiring the Management Board to adopt the practical arrangements for implementing Regulation (EC) No 1049/2001. Twenty-two agencies' founding regulations stipulate that these practical arrangements should be adopted within six months of entry into force of the founding regulation establishing the agency, whereas for five agencies no deadline is foreseen.

The constituent acts of the former 2nd pillar agencies - EDA, EUSC, ISS - and of the former 3rd pillar agencies - CEPOL, EUROJUST and EUROPOL - foresee that the Management Board adopts rules on public access to the documents of the agencies upon a proposal by the Director, and taking into account the principles and limits laid down in the above-mentioned Regulation (EC) No 1049/2001. However, as these agencies do not fall within the scope of Regulation 1049/2001, their rules on public access may diverge from those of the Regulation.

According to the Article 15(3) of the consolidated version of the Treaty on the Functioning of the European Union, as amended by the Lisbon Treaty, any citizen of the European Union, as amended by the Lisbon Treaty, any citizen of the European Union,
and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Union institutions, bodies, offices and agencies.

Transparency

The founding regulations of nine agencies\(^9\) include provisions which explicitly state that the agency should act with a high level of transparency. Often the founding regulations request agencies to publish relevant documents on their websites, such as the list of members of the Management Board and Scientific Committees, the minutes of the Management Board's meetings, the annual activity report, the internal rules of procedure, the evaluation report, the opinions issued by the agencies, as well as specific documents produced by the agencies as defined in the founding regulation, e.g. the annual aviation safety review in the case of EASA. Thirteen agencies' founding regulations\(^10\) stipulate that the opinions, documents as well as information and databases concerning their activities are accessible to the general public.

The principle of transparency is implemented in the financial regulation of each agency by providing that:

- The financial regulation of the agency shall be published in the Official Journal of the European Union;

- A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption;

- The agency shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council\(^11\);

- The final accounts of the Agency, consolidated with those of the Commission, shall be published in the Official Journal of the European Union.

Consultations and contacts with stakeholders

Nine agencies' founding regulations\(^12\) include provisions on consultations with relevant stakeholders in the framework of the accomplishment of the tasks of agencies.

In addition, nine agencies' founding regulations\(^13\) stipulate the need to establish appropriate contacts with interested parties, such as public and private specialised bodies, national or international authorities, foundations, educational institutions, workers' and employers' organisations, in order to exchange, on a regular basis, experiences and information in the domain of their activities.

The founding regulations of five agencies\(^14\) foresee the cooperation with the stakeholders via the networks established by the agency. In addition, the stakeholders' views are taken into

\(^9\) ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, ECHA, EFSA, EMSA, ENISA, ETF, FRA

\(^10\) ACER, Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, ECDC, ECHA, EFSA, EIGE, EMA, EMSA, ENISA, ERA, EU-OSHA, ETF

\(^11\) OJ L8, 12.01.2001, p. 1

\(^12\) ACER, CFCA, CPVO, EASA, ECHA, EFSA, EIGE, EMA, ERA

\(^13\) CEDEFOP, ECDC, ECHA, EEA, EFSA, EMCDDA, EU-OSHA, EUROFOUND, ETF

\(^14\) EEA, ECDC, EIGE, EMCDDA, EU-OSHA
account during the evaluation on the implementation of the founding regulation of 11 agencies.\(^\text{15}\)

**Participation of stakeholders in agency's bodies**

The founding regulations of six agencies\(^\text{16}\) foresee the possibility for the representatives of interested parties to participate in the meetings of the agency's bodies as observers.

According to their founding regulation, nine agencies\(^\text{17}\) establish advisory bodies whose members are stakeholders and interested parties. These bodies give their opinions regarding the activities of the agencies as well as preparation of some documents, e.g. work programmes.

Concerning representatives of stakeholders in the Management Board of agencies, please see fiche 5.

**EUROJUST and EUROPOL**

In order to perform their tasks, both agencies have established information systems enabling the national authorities to have access to the data gathered by the agencies. Individuals may have access to data which directly concern them.

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

**Access to documents and transparency**

Agencies' documents are generally available and easily accessible to the public.

All former 1\(^\text{st}\) pillar agencies have applied the principles of Regulation (EC) N° 1049/2001 regarding access to documents through their founding regulations. Former 2\(^\text{nd}\) and 3\(^\text{rd}\) pillar agencies have applied similar rules through decisions adopted by the Management Boards. The assessment of the actual implementation of these principles is positive.\(^\text{18}\)

All agencies publish a substantial amount of documentation on their websites, such as reports, scientific papers, data, etc. There are differences in the volume of publishable information depending on the nature of the agency’s tasks. For instance, EUROJUST, dealing with issues of a highly sensitive nature, publishes only official documents, press releases, annual reports and other documents of general interest. There have been difficulties in making agencies' websites multilingual, so as to facilitate consultation by citizens of all Member States.\(^\text{19}\)

With a view to facilitating access to information about agencies, a common website for Commission/regulatory agencies was launched by the Commission in March 2008. The aim of this common website is to establish a comprehensive, up to date library of information relating to agencies, to promote an understanding of the common challenges faced by agencies, and to improve the way agencies function by learning from good practices.\(^\text{20}\) This website would also be a good platform for accessing relevant general or agency-specific

---

\(^\text{15}\) Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), BEREC Office, EASA, EASO , ECDC, EIGE, EMSA, ENISA, ERA, FRA, FRONTEX

\(^\text{16}\) ECHA, EMCDDA, EMSA, ENISA, ERA, ETF

\(^\text{17}\) CFCA, EASA, EASO , ECDC, EIGE, EMA, ENISA, ERA, FRA

\(^\text{18}\) Evaluation 2009, Volume II, point 2.3.2, p. 61-63

\(^\text{19}\) CoA, footnote 32, p. 24

\(^\text{20}\) CoA, Replies of the Commission and agencies to the Special Report of the Court of Auditors "The European Union’s agencies: Getting Results", point 42, p. 43
documents, notably for the exercise of the Budgetary authority's prerogatives, but this would require more frequent updates and contributions by all users.

Consultations and contacts with stakeholders

Most agencies maintain multiple relations with other key operators, especially UN and other international organisations, sister agencies in third countries, and Member States' agencies. Co-operation with other stakeholders take place at different levels, including through MoUs and joint action programmes and projects. While the extent to which there is actual coherence and complementarities between the tasks of the agencies and their international and Member States' counterparts cannot be determined, these contacts should be regarded as positive even if further potential synergies could be realised.²¹ For example, the sharing of roles between EU agencies and their national counterpart is not always clear.

Participation of stakeholders in agency's bodies

It can be considered that in a significant number of cases, the composition of the Management Boards does not fully reflect the needs of stakeholders other than Members States and EU Institutions.²² However, it should be underlined that often those stakeholders are involved in the work of agencies as members of other internal bodies and/or advisory bodies/working groups set up by agencies or as observers in the boards without voting rights. This arrangement, which can be explained by the fact that, contrary to Member States and EU institutions, the above stakeholders do not bear budgetary and legal responsibility for an agency, contributed to limit the size of boards, while allowing interested parties to have a say on the activities of the agency (see also fiche 5).

In a few agencies the board involves a large number of users or stakeholders with voting rights.²³ The assessment of this type of arrangement is mixed. On the one hand, stakeholders bring valuable expertise and information. On the other hand, these agencies have sometimes experienced difficulties in gaining reputation as autonomous, politically neutral entities, thus capable of performing tasks independently of stakeholders.²⁴ In addition, the high number of stakeholders, whose representatives come from all Member States, increases the size of boards, which might affect the fulfilment of tasks (see also Fiches 5 and 6).

²¹ Evaluation 2009, Volume II, point 2.4.4, p. 75-79
²² Evaluation 2009, Volume II, point 2.3.3, p. 65
²³ CdT, CEDEFOP, EU-OSHA, EUROFOUND