1) State of play de jure and in practice

Regulatory agencies are most often created for an indefinite period of time and are thus defined as permanent bodies. Nevertheless, agencies can be dismantled at any time in the same way they have been created, i.e. by means of a legal act amending/repealing the agency's founding act.

Two agencies' founding regulations foresee an end date by which the agency's mandate would expire - EAR and ENISA. Both agencies' founding regulations foresee also a review clause allowing for an assessment as to whether the agency has fulfilled its mandate before it is disbanded.

There is one case when the mandate of an agency was terminated without having such a clause in the founding regulation - the European Monitoring Centre on Racism and Xenophobia (EUMC). The agency was legally succeeded by a newly created one with a broader mandate - FRA.

Extending the duration of ENISA

ENISA was established in 2004 for a period of five years. Before the end of its mandate the Commission prepared an evaluation report with the aim to determine whether the duration of the agency should be extended beyond the above mentioned period. The evaluation assessed the impact of the agency on achieving its objectives and tasks, as well as its working practices and envisaged a proposal to prolong the existence of the agency. The mandate of ENISA was thus extended for a period of another three years.1

Extending the duration of EAR

The duration of EAR's mandate was stipulated in the agency's founding regulation. Its founding regulation from 2000 stated that the Commission should submit to the Council a proposal to wind up the agency once the Commission considers that the agency has fulfilled its mandate. It also foresaw an evaluation report prepared by the Commission together with a proposal on the status of the agency. An evaluation report was submitted in July 2004. Later the founding regulation was amended and the agency's duration was extended until December 20062. Another evaluation report was submitted to the Council and to EP for information, on 23 December 2005. On that basis, in April 2006 the Commission submitted a proposal to extend the mandate of the agency till 31 December 2008. The agency's existence was thus extended for final two years3. The agency is currently disbanded.

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Succession: EUMC-FRA

In another case an agency's functions were overtaken by a new agency with an extended scope of mandate. This is the case with the European Monitoring Centre on Racism and Xenophobia (EUMC) and FRA. FRA, existing since 1 March 2007, was built upon EUMC. The latter was established in Vienna as an independent body of the European Union by a Council Regulation in 1997, amended in 2003. The founding regulation of the EUMC did not foresee a fixed duration of the agency. The EUMC activities started in 1998 and ended on 28 February 2007.

At present there are no fixed criteria to measure whether an agency has fulfilled its mandate and can be disbanded.

Merging agencies

Despite convergences in some agencies' tasks, there has never been a case of merging agencies.

2) Critical analysis of the issue at hand

Lack of ending date of agencies' mandates

The fact that agencies' constituent acts do not foresee the ending date of their mandate, or do not include a clause on the possibility to dismantle them, is not a problem in itself, but has given rise to critics in the public space in the context of agencies proliferation. In general, there is, however, no reason to foresee an end date in the agency's founding regulation, if at the time of its creation it was considered the most appropriate option for the implementation of a given policy. The lack of ending date does not prevent the institutions to dismantle an agency. An agency can be wound up in the same way it was created.

In order to be able to reconsider the existence of an agency, however, two drawbacks need to be remedied: the lack of common criteria for determining when an agency has fulfilled its mandate or does not create enough value for money and the lack of a systematic overall retrospective evaluation of the agency and its founding regulation, conducted in a manner that provides solid grounds to reconsider the agency's existence. These two challenges are interconnected: the lack of criteria for determining whether an agency has fulfilled its mandate/does not create enough value for money and can be disbanded, appears to be an obstacle for conducting effective evaluations on agency's mandate and activities, providing for possible recommendations for the agency's dismantling.

Another issue to consider is whether closing down an agency when it performs badly is an option. Such an approach might not be appropriate if the agency (as a type of body) remains the most viable policy option. Then reforms and restructuring could be an alternative to dismantling.

In addition, the legal and financial consequences of a decision to close down an agency should also be considered (e.g. all questions related to the management of all contracts in place for building, staff, services and others, for which a legal succession in the title of this

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5 Except for EAR and ENISA whose mandates are determined in their founding regulations.
contracts should be provided for in favour of the EU. A transitional period would be necessary for the smooth ending of these contracts).

**Overall evaluations creating the opportunity for reconsidering the agency's existence**

Periodic overall agency evaluations do not provide in practice the opportunity of reconsidering the agencies since they are not designed for such use.6 There are two aspects that deserve attention in that regard – the way evaluations are conducted and their frequency. Overall periodic evaluations do not have a high enough profile for leading to closure/merger of agencies. Until now, in five instances, when the relevance of the agency's existence was considered, the potential problem was addressed through a change in the agency’s mandate or another major decision, i.e. change in the main activity (CEDEFOP), extension of the geographic coverage and thematic scope (ETF), downsizing and continuation (GSA), and closure (EAR).

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6 Evaluation 2009, Volume I, point 4.2.2, p. 20