Tasks, duties and responsibilities of the Director

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

The Director of an agency is a key actor in the agency's organisational structure. This function is named differently, depending on the agencies' founding regulations: Director\(^1\) in 15 cases, Executive Director\(^2\) in 13 cases, President\(^3\) in two cases, Administrative Director\(^4\), Administrative Manager\(^5\) or Chief Executive\(^6\) in one case each.

With the exception of the Administrative Director of EUROJUST\(^7\), the Director is the legal representative of the agency and he/she is independent in the performance of his/her duties\(^8\). He/she is accountable to the Management Board for his/her activities.

Tasks of the Director

In general, he/she is responsible for:

- The day-to-day administration of the agency;
- Taking all the necessary actions to ensure the agency's operation;
- Managing all staff related matters;
- Providing the secretariat for the Management Board;
- Preparing the draft version of the following documents: annual work programme (when appropriate), multiannual work programme (when appropriate), budget, financial rules applicable to the agency, rules of procedure or other internal rules, statement of revenue and expenditure, annual activity report;
- Preparing and implementing the decisions, strategies, programmes and activities adopted by the Management Board, its implementing rules and any other applicable provisions;
- Preparing the work of the Management Board and Executive Board, when appropriate, as well as participating in their meetings, without voting rights;

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\(^1\) ACER, CDT, CEDEFOP, EAR, ECDC, EIGE, EMCDDA, ETF, EU-OSHA, EUROFOUND, FRA, EUSC, ISS, CEPOL, EUROPOL

\(^2\) Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EASA, EASO, ECHA, EEA, EFSA, EMA, EMSA, ENISA, ERA, FRONTEX, GSA

\(^3\) CPVO, OHIM

\(^4\) EUROJUST

\(^5\) BEREC Office

\(^6\) EDA

\(^7\) The Administrative Director is the authorizing officer and the Appointing Authority of EUROJUST and is responsible, under the supervision of the President, for the day-to-day administration of EUROJUST and for staff management, but not for EUROJUST's core tasks, which are carried out by the College, with the President of the College as legal representative of EUROJUST.
• Implementation of work programme (when appropriate), budget and decisions taken by the Management Board;

• Drawing up the final accounts of the agency under his/her own responsibility and submitting it to EU institutions;

• Keeping contacts with the EU institutions, in particular by informing them of the agency's activities;

• Cooperating with the discharge authority in order to be granted discharge.

There are also other tasks and duties related to the Director's function which are common to some agencies:

• Decisions on sending deployment teams to Member States\(^9\)\(^10\);

• Decisions on organising visits in Member States\(^11\);

• Putting in place an effective monitoring system to enable regular evaluations and to compare the agency's achievements with its operational objectives\(^12\);

• Preparation or coordination of the work of different internal bodies\(^13\);

• Ensuring the cooperation with different institutions and stakeholders\(^14\).

In addition, there are specific Director's tasks and duties related to the activities of individual agencies.

**Assistance to the Director**

Directors are usually assisted by different internal agencies' bodies or staff.

In thirteen agencies the Director is assisted by one or more Vice-Directors, called also Vice-Presidents, Deputy Directors or Heads of Unit\(^15\).

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\(^9\) In the case of FRONTEX: groups (Rapid Border Intervention Teams) providing rapid operational assistance for a limited period to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally. In the case of EASO (as per Commission proposal): groups (Asylum Support Teams) providing the necessary technical and operational assistance to Member States subject to particular pressure, for a limited time.

\(^10\) EASO, ECDC, FRONTEX

\(^11\) ERA, EMSA

\(^12\) Agency for Operational Management of SIS II, VIS and EURODAC (as per Commission proposal), CFCA, EIGE, EMSA, ERA, ETF, FRA, EUROJUST

\(^13\) BEREC Office, ETF, CEDEFOP, EMSA, EMA, EIGE, FRA

\(^14\) EFSA: EU Member States National Competent Authorities, European Parliament and stakeholders; ENISA: European Parliament, business community and consumers organisations; ECHA: European Parliament; FRA: National Liaison Officers and civil society; EDA: Council preparatory bodies - Political and Security Committee and European Union Military Committee; EUSC: Community, national and international space-related services and institutions; ISS: Community, national and international institutions in related fields; CEPOL: relevant services in the Member States; CFCA: Regional Advisory Councils; EEA: European Parliament; EASA: Safety Standards Consultative Committee, Advisory Group of National Authorities, EASA/NAAs Certification Transition Working Group; EIGE: various stakeholders through the agency's Expert's Forum

\(^15\) CPVO, EASA, EASO (as per Commission proposal), EMSA, EUROFOUND, FRONTEX, OHIM, EDA, EUSC, EUROPOL, CEDEFOP, EUROJUST, EMA
Five agencies' founding regulations foresee an advisory body which should support the Director.\textsuperscript{16} In this case, the advisory body is always chaired by the Director.

CFCA's founding regulation establishes the Advisory Board composed of one representative designated by each Regional Advisory Council\textsuperscript{17}. The role of the Advisory Board is to advise the Executive Director in the performance of his/her duties and to ensure close cooperation with stakeholders.

The Director of EASO may be assisted by the Executive Committee with regard to the preparation of the decisions. The Executive Committee shall consist of 8 members appointed from among the members of the Management Board (amongst whom one of the Commission members of the Management Board).

In the performance of his/her duties, the Director of ECDC is assisted by the Advisory Forum, composed of representatives of competent bodies in the Member States and representatives of interested parties at European level, such as non-governmental organisations, professional bodies or academia. The Advisory Forum constitutes a mechanism for an exchange of information on potential risks and the pooling of knowledge and for monitoring the scientific excellence and independence of the agency's work. The Advisory Forum of EFSA is composed of representatives from competent bodies in the Member States. Its role is to advise the Executive Director in the performance of his/her duties, notably to constitute a mechanism of exchange of information, and to ensure close cooperation in particular with regard to the network of organisations operating in the field of food safety.

The founding regulation of EIGE establishes the Experts' Forum, composed of members from competent bodies specialised in gender equality issues. It consist of one representative per Member State, as well as of two members representing other relevant organisations specialised in gender equality issues designated by the European Parliament, and three members designated by the Commission and representing interested parties at European level. The Forum is responsible for supporting the Director in ensuring the excellence and independence of activities of the Institute and constituting a mechanism for an exchange of information in relation to gender equality issues and the pooling of knowledge. It also ensures close cooperation between the Institute and competent bodies in the Member States.

2) Critical analysis of the issue at hand

Tasks

Given the wide tasks attributed to Directors by agencies' constituent acts, their role is crucial for agencies' governance, notably as regards the overall agencies' management and relationship towards EU institutions.\textsuperscript{18} In particular, the Director has a full management power concerning financial and staff matters.\textsuperscript{19}

\textsuperscript{16} CFCA, EASO (as per Commission proposal), ECDC, EFSA, EIGE
\textsuperscript{17} Regional Advisory Councils are primarily composed of fishermen and other representatives of interests affected by the Common Fisheries Policy. They were established with the aim to contribute to the achievement of the objectives of Common Fisheries Policy and to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones.
\textsuperscript{18} EP study, January 2008, recommendation 4, p. 117
\textsuperscript{19} Evaluation 2009, Volume I, point I, p. 3
Directors' accountability

When assessing the current nature and degree of Directors' accountability on their accomplishments, it emerges that Directors are, first of all, accountable to their Management Board, to which they submit an annual report, including accounts. Directors are also accountable to the Parliament and the Council through the annual discharge procedure, for the use of the EU contribution. Through its audits, which take into account work carried out by the agency's internal audit, the Commission Internal Audit Service provides the Director and the Board with independent assessments on risk management, controls and governance. The IAS audit reports are sent to the European Court of Auditors. The Parliament takes its decision on the basis of agency's accounts and reports, statement of assurance and report made by the Court of Auditors - which focuses on legality and regularity of procedures - and to the extent necessary hearings of the director and director’s answer to written questions.20

In light of the above, it appears that in practice the discharge procedure makes agencies' directors accountable for regulatory compliance, but not for performance.21 This has to be seen in connection with widespread shortcomings in the agencies' planning, which do not allow for effective assessment of the results achieved in terms of objectives, and with lack of performance indicators and of activity-based budgeting/management.22 Indeed, while many agencies have implemented an activity-based management system either totally or in part, agencies' main tasks are rarely expressed in verifiable objectives and performance indicators23 (for further details see fiches 13 and 14).

Exercise of AIPN powers

The accountability of Directors in the area of human resources gives rise to specific concerns. In fact, experience has shown that the board is very reluctant to address these issues, even in those cases where the Staff Regulation was blatantly infringed. This weakness is not sufficiently addressed by the Court of Auditors' specific reports on the legality and regularity of agencies' operations24, transmitted to the discharge authority, nor can it be counterbalanced by the Commission Internal Audit Service, all the more that, as a general rule these bodies are not authorised to inform the relevant Commission services of any infringement25 (and even if they were, the Commission would have no power to correct the situation26). Another element of check and balance could be the potential recourses by staff to Courts. But it should be borne in mind that staff in agencies mainly consists of staff under contract of employment (temporary and contract staff) who, in this situation, could have some hesitations to sue their employer.

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20 Evaluation 2009, Volume II, point 2.3.2, p. 56, Volume II, point 4.3.2, p. 23
21 Evaluation 2009, Volume I, point 4.3.2, p. 24
22 European Court of Auditors Special Report, June 2008
23 Evaluation 2009, Volume I, point 4.3.1, p. 23, Volume II, point 2.7.3, p. 126
24 Sometimes the Court highlights weaknesses in the area of human resources.
25 At the same time, it is to be noted that OLAF has frequent and repeated contacts with both the IAS and the Court of Auditors about the findings of their audit in the Agencies and about possible risk areas. These formal or informal exchanges of information often result in the opening of investigations within the Agencies.
26 OLAF may issue recommendations to the Management Board of the agency and to its Director, who so far, always acted upon the recommendations submitted to them.