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European agencies – The way forward

What are European agencies?

There are two broad types of agency - regulatory and executive - each with different characteristics and raising different issues.

Executive agencies have a clear place in the Union's institutional framework. They are set up under a Council regulation adopted in 2002. They are under full responsibility of the Commission. Their tasks must relate to the management of Community programmes, they are set up for a limited period, and they are always located close to Commission headquarters. The Commission creates them, maintains "real control" over their activity, and appoints the key staff. Their annual activity reports are annexed to the report from their parent Directorate-General. A standard financial regulation adopted by the Commission, governing the establishment and implementation of the budget, applies to all executive agencies. Working arrangements to govern executive agencies have recently been agreed with the European Parliament Committee on Budgets.

"Regulatory" or "traditional" agencies have a variety of specific roles, set out in their own legal basis, case-by-case. They are independent bodies, with their own legal personality. Most are funded by the EU budget - as well as, in some cases, by the direct receipt of fees or payments. There are no general rules governing the creation and operation of these agencies. They have been set up in successive waves in order to meet specific needs on a case-by-case basis. In a nutshell, they are typified by their diversity.

What are the different types of regulatory agencies?

The creation of decentralised Community bodies dates from the 70's, since the first agencies (the European Centre for the Development of Vocational Training and the Foundation for the Improvement of Living and Working Conditions). However, in the 90's and in the dynamics of the finalisation of the internal market, a series of new agencies appeared, giving a new dimension to what constitutes a Community model of European agencies at present. These so called second generation agencies were an answer to a desire for geographical devolution and the need to cope with new tasks of a technical and/or scientific nature. The majority of them started their activities in 1994 or 1995, after a decision by the European Council in Brussels on 29 October 1993, which fixed the headquarters of seven agencies, some of which had already seen their basic regulation adopted by the Council several years previously. Since 2000, a new wave of agencies has emerged.

There are currently 29 decentralised agencies, with proposals on the table for two others. Three of these are agencies under the Common Foreign and Security Policy, and three are agencies dealing with issues under Title VI of the EU Treaty on Police and Judicial Cooperation in Criminal Matters. These agencies employ some 3800 staff, with an annual budget of around € 1 100 million, including a Community contribution of around € 559 million. They vary widely in size, from e.g. fewer than 50 people in the agency monitoring plant varieties to over 600 in the agency monitoring trademarks. A full factual overview of the regulatory agencies, their tasks according

to their Constituent Acts, budget and staff can be found in annex to the Communication of the Commission (SEC(2008) 323).

What are the activities of regulatory agencies?

There are clear and strict limits to the autonomous power of regulatory agencies in the current Community legal order. Agencies cannot be given the power to adopt general regulatory measures. They are limited to taking individual decisions in specific areas where a defined technical expertise is required, under clearly and precisely defined conditions and without genuine discretionary power. In addition, the agencies cannot be entrusted with powers which may affect the responsibilities which the Treaty has explicitly conferred on the Commission (for example, acting as the guardian of Community law).

Agencies perform however very varied tasks. Some can adopt individual decisions with direct effect, applying agreed EU standards; some provide additional technical expertise on which the Commission can then base a decision and some focus more on networking between national authorities.

One useful way is to try to look at the key functions they perform. The Communication of the Commission therefore provides for a classification of the agencies on the basis of an analysis of the centre of gravity of agencies' activities, as follows:

- Agencies adopting individual decisions which are legally binding on third parties: CVPO (Community Plant Variety Office), OHIM (Office for Harmonisation in the Internal Market), EASA (European Aviation Safety Agency) and ECHA (European Chemicals Agency).
- Agencies providing direct assistance to the Commission and, where necessary, to the Member States, in the form of technical or scientific advice and/or inspection reports: EMSA (European Maritime Safety Agency), EFSA (European Food Safety Authority), ERA (European Railway Agency) and EMEA (European Medicines Agency).
- Agencies in charge of operational activities: EAR (European Agency for Reconstruction), GSA (European GNSS Supervisory Authority GALILEO), CFCA (Community Fisheries Control Agency), FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU), EUROJUST (European Body for the Enhancement of Judicial Co-operation), EUROPOL (European Police Office) and CEPOL (European Police College).
- Agencies responsible for gathering, analysing and forwarding objective, reliable and easy-to-understand information / networking: CEDEFOP ((European Centre for the Development of Vocational Training), EUROFOUND (European Foundation for the Improvement of Living and Working Conditions), EEA (European Environment Agency), ETF (European Environment Agency), EMCCDA (European Monitoring Centre for Drugs and Drug Addiction), EU-OSHA (European Agency for Occupational Safety and Health), ENISA (European Network and Information Security Agency), ECDC (European Centre for Disease Prevention and Control), FRA (Fundamental Rights Agency) and European Institute for Gender Equality.

Why a Framework for regulatory agencies?

Already in 2002, the Commission had adopted a communication from the Commission on the operating framework for the European Regulatory Agencies. In this communication, the Commission recalled the White Paper on European Governance, which envisaged that one possibility for improving the way rules and

policy are applied across the Union was to use regulatory agencies. The Commission announced its intention to begin work with the European Parliament and the Council on defining framework criteria for recourse to agencies. The 2002 communication was welcomed by the Parliament and the Council and, as a follow-up the Commission adopted in 2005 a draft inter-institutional agreement on the operating framework for the European regulatory agencies with a view to defining framework conditions for the creation, operation and control of regulatory agencies.

Framework conditions for creation, operation and control of these agencies were defined in the draft agreement. Despite general support from the European Parliament, negotiations on this draft agreement unfortunately stalled in the Council.

However, the issues which the inter-institutional agreement sought to address remain. This is therefore the aim of the present communication to revive the inter-institutional debate about agencies.

What problems were encountered in the negotiation on the interinstitutional Agreement?

There was no political discussion at Council or Coreper level on the Commission's proposal. The legal service of the Council considered that there was no appropriate legal basis in the Treaty for an inter-institutional agreement in the matter of agencies, the use of an inter-institutional agreement therefore being no appropriate legal vehicle.

Though the Commission's Legal service argued on the contrary, and despite the support of the European Parliament on the file, it has not been possible to make progress.

Why a new communication of the Commission about regulatory agencies?

By adopting the Communication on European Agencies, the Commission intends to revive the inter-institutional debate on this issue. In recent years, using agencies to implement key tasks has become an established part of the way the European Union does its business. They have become an integral part of the institutional landscape of the Union. The Communication concentrates on regulatory agencies since this is where there is a need for clarification and a common approach. The Commission invites the European Parliament and the Council of Ministers to join it in a dialogue with a view to develop a clear and coherent vision on the place of agencies in European governance. An inter-institutional working group will allow the key issues facing agencies to be set out as ground rules to apply to all.

Is the new Communication a step backward?

Despite general support from the European Parliament, negotiations on the draft interinstitutional agreement have unfortunately stalled since 2005, with the Council not ready to give attention to the issue and with doubts raised over the use of an inter-institutional agreement as an appropriate legal approach.

However, the issues which the inter-institutional agreement sought to address remain. The responsibilities of the institutions toward agencies and of the Commission in particular, suffer from the lack of a clear framework and defined lines of responsibility. The Commission therefore considers that the time has come to re-launch a debate on the role of agencies and their place in the governance of the EU, with a view to a consistent political handling of the approach to agencies which would promote the transparency and effectiveness of an important part of the EU's institutional machinery.

What are the proposals of the Commission in the new communication?

As the proposed inter-institutional agreement has not been able to make progress, and with a view to reviving the inter-institutional debate over regulatory agencies, the Commission intends to withdraw it and to replace it by an invitation to an inter-institutional discussion which should lead to a common approach. An inter-institutional working group would allow the key issues facing agencies to be set out as ground rules to apply to all.

These key issues will in particular cover "building blocks" about the structure and working of agencies, accountability and regulatory agencies' relationship with the other institutions, better regulation and the work of agencies, process for establishing and ending regulatory agencies.

At the same time, the Commission intends to:

- Undertake a horizontal evaluation of regulatory agencies;
- Refrain from proposing new regulatory agencies until the work of the evaluation is complete;
- Undertake a review of the Commission's own internal systems governing its relations with agencies, as well as the methodology for conducting impact assessment of agencies.