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# Keeping up Appearances

The Functioning of EU Agencies:  
Policy Recommendations

Gerrit Vrieze | Frederik Smit | Max Laven



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June 2011

ITS, Radboud Universiteit Nijmegen

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## Preface

After the entry into force of the Lisbon Treaty, and currently with the preparations for European economic governance, the EU has received new and extended competences. At the same time, its popularity with the citizens of its Member States has never been as low as it is today.

One of the reasons for the gap between the EU's competences and its popularity among ordinary citizens is that the entire structure of the EU is extremely complex. Even for journalists it is often hard to grasp what are the effects of the various stages of decision-making and who are the main actors. If this already holds for the formal rules governing decision-making, the reality is even more complex due to the influence of interest representatives at every level of the decision-making process.

As Member of the European Parliament for the Dutch Socialist Party (SP), and as deputy member of the Budget Control Committee of the EP, I have tried to focus on a specific phenomenon which, I feared, only adds to the complicated nature of the decision-making process, i.e. the role of the dozens of EU-agencies. Against this background, I decided to ask several academic institutions to submit a proposal for a quick scan of the agencies and a more thorough analysis of a couple of specific agencies.

Eventually, I was happy to agree with the proposal submitted by ITS of the Radboud University Nijmegen. This led to the study 'Keeping up appearances', a well chosen title for a study showing a clear lack of accountability of European agencies, both in terms of performance and of visibility to the public at large.

I want to thank the researchers Gerrit Vrieze, Frederik Smit and Max Laven for their substantial work. Clearly, the study cannot be the final word about agencies. However, it does make it clear that the current lack of transparency

surrounding both the establishment of and the control over Agencies does not contribute to bridging the gap between the EU and the citizens in Europe.

The researchers conclude, *inter alia*, that the European Parliament should become more active in evaluating not only the legitimacy of the agencies' expenditures, but also their efficiency, effectiveness and social accountability. In other words: do we get value for money, do the Agencies meet the objectives set in their work programmes and are their activities relevant for the citizens in Europe? Based on this study, and on submissions from the Agencies themselves and the European Court of Auditors, I shall raise these matters in the Budget Control Committee, and discuss them also with the chair of the inter-institutional working group on agencies, which is about to continue its activities with even more vigour immediately after summer. Hopefully, it will be possible to use the findings also in the context of the multi-annual budgetary framework for the EU, which the Commission is currently preparing: although it will not be easy politically, I do hope that in the medium term it will be possible to reduce the number of Agencies and to make those that have proven to be both efficient and effective, more visible with increased citizens' participation.

Brussels, June 2011.

Dennis de Jong, Member of European Parliament



## Acknowledgements

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Max Laven, student Political Sciences at the Nijmegen School of Management of the Radboud University, contributed to the literature review.

The research team is internally supervised by Jeroen Winkels and Peter Lucassen. Saline Toonen, student Communication Sciences of the Radboud University, helped with the translation.

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Gerrit Vrieze  
Frederik Smit



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## Summary

EU Agencies have been established to support the EU Member States and their citizens. These agencies are an answer to a desire of Member States for geographical devolution and the need to cope with new tasks of a legal, technical and/or scientific nature. They are meant to operate autonomous from the political centre. About 40 European Agencies are located in several Member States of the European Union (see Overview 3, pp. 15/16). In 1958 Euratom, the first Agency, was established, followed in the beginning of the seventies by CEDEFOP (information on vocational education and training systems) and EUROFOUND (to provide information, advice and expertise on living and working conditions). The number of EU Agencies has increased exponentially since 1994. There are Agencies in the field of aviation safety, information security, disease prevention and control, railway agency and many more.

Staff and budgets have grown. This is linked to an increase in Agencies' tasks: regulation, decision-making, enforcing regulation.

Agencies are attractive for Member States because of their autonomous status and employment possibilities. It is considered honourable to have an Agency within your borders. Agencies enjoy a considerable operational independence. The EU and its Member States have created European Agencies for a number of reasons (Vos, 2000):

- The need for specialised expertise.
- Remove some of the workload of the Commission.
- Contribute to a better understanding of the EU.
- Contribute to an enhanced transparency of the system.

Agencies are categorised as Community Agencies and Union Agencies. The 29 Community Agencies (also Decentralised Agencies) are part of the first pillar in which policy making has many supranational characteristics, whereas the three Union Agencies fall under the second pillar in which policy

making is essentially intergovernmental in nature. The six Executive Agencies manage Community programmes. Euratom, consisting of four Agencies, has a special status but is as well intergovernmental.

### *Overview of EU Agencies*

Category	Number	Prim. Competence
<b>Community or Decentralised Agencies</b>	29	Commission
<b>Executive Agencies</b>	6	Commission
<b>Union Agencies</b>	3	Council
<b>Euratom</b>	4	Council

Delegating certain tasks and powers from the European treaty-based institutions to autonomous decentralised EU Agencies evokes a number of issues (Andoura & Timmerman, 2008; Bovens, 2010; Busuioc, 2010; Groenleer, 2009):

- **Accountability:** to whom are Agencies answerable? Who runs these organisations, who controls them? (political, administrative, financial and social accountability)
- **Legitimacy:** too much independence leads to the critique of a technocratic culture and insufficient participation of external stakeholders.
- **Heterogeneity:** most Agencies are established in an ad hoc approach, resulting in a lack of coherence.
- **Decentralisation:** the idea of Community interest is not reflected in the way Member States approach the issue of allocating an Agency seat.

Recently, there have been several initiatives to improve the functioning of Agencies:

- Andoura & Timmerman ignited the reform debate on European Agencies by raising the key issues (2008).
- Ramboll, Euréval and Matrix evaluated the (26) Decentralised Agencies in 2009.

- The European Commission, the European Parliament and the Council of the European Union have started an inter-institutional working group on European Agencies. In 2011 a proposal is expected.

Before deciding about the budgets for European Agencies over 2013-2020 it is important to start a discussion about the way to improve the functioning of these Agencies.

Dennis de Jong, member of the European Parliament for the Dutch Socialist Party (SP), invited the Institute for Applied Social Sciences (ITS) of the Radboud University Nijmegen to conduct a research on EU Agencies. ITS uses the concept of social accounting. The objective of the research is to:

- Esteem the current level of accountability and efficiency.
- Make policy recommendations.

The study comprises a:

- Literature review.
- Two case studies.
- Interviews with experts.

## Main findings

### *Overview*

The research started with collecting basic information on the number of Agencies, revenues and budgets and number of staff. Where transparency is needed, the EU offers unclarity. There are many lists of Agencies but most of them are incomplete. Most of the time the Union Agencies and Euratom are omitted, because they are seen within the Council's competence. The European Commission and the European Council (Member States) are reluctant to interfere in each other's claims. Furthermore, in most budgetary overviews Euratom is not included and neither are the Union Agencies. These Agencies are mainly financed by Member States. On the budget of *Bodies set up by the European Union and having legal personality* attention is paid to Decentral-

ised and Executive Agencies and a new category Joint Undertakings to which ITER, a Euratom Agency, is belonging (European Commission, 2010a).

A clear overview of the budgets of the Decentralised and Executive Agencies (coming primarily under the competency of the European Commission) are also tough to give. From the total revenues of the Decentralised Agencies in 2011 (1438 million) 706 million is an EU contribution. Decentralised Agencies are often co-financed by Member States and by external sponsors. There is no overview how much Member States and sponsors each contribute.

The EU budget on Executive Agencies is 152 million in 2011. However, this is only the EU contribution to the Agency's operating budget ( 3.4 percent of the total operating budget of the programmes). Must we conclude, nobody confirmed this, that the Executive Agencies manage about 4 billion euro in EU programmes (subsidies, research-programmes)?

Comparable figures about the administrative and operational budgets of Agencies are hard to obtain. According to Groenleer (2009) the budget is divided into three titles. Title 1 contains personnel-related expenses, title 2 administrative and title 3 contains operative expenses. We find that most Agencies only distinguish between administrative and operational budgets. In practice, it is impossible to compare Agencies on financial indicators.

Our findings show:

- In most of the lists of Agencies some (types of) Agencies are missing, they are never complete.
- Financial control is taking place regularly; still a clear, transparent overview lacks.
- Budget definitions are difficult to compare, especially administrative and operating costs.
- The available information of the EU is fragmented, detailed and often incomparable. It is left to the user to make sense of it.

Another problem we faced in our research is that it is hard to obtain quantitative information about the functioning of the Agencies. This is in regards to the number of viewers of internet-pages, subscribers on information-papers,



number of experts and expert-groups. Most interviewees don't have access to that kind of information.

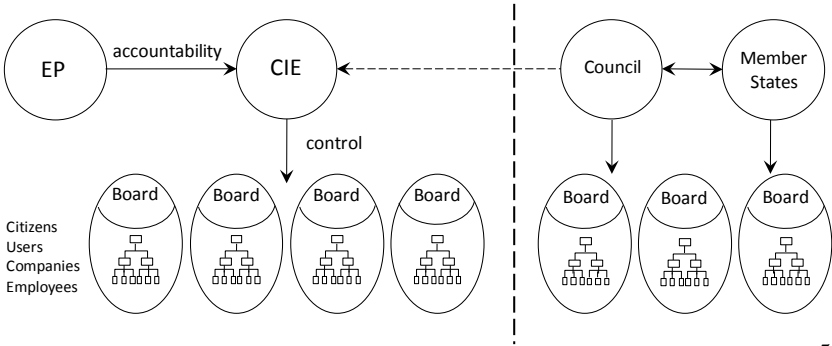
Many approached experts were reluctant to participate. We wondered why. Was it because of political reasons? Was it because they are part of what Geuijen (2008; see Bovens, 2010, 18) calls the 'New Eurocrats' who averted inspection? 'These are not the Commission officials who belong to the much-maligned 'Brussels bureaucracy'. They are the much more sizeable armies of national public servants and related 'experts' who piggyback on EU committee meetings to form and maintain networks of like-minded people working on the same issues in different countries' (cit, Bovens, 2010, pp. 18).

Therefore, we are especially thankful for the cooperation of the interviewees who were willing to participate.

*Accountability*

The research has a limited character, but it shows that only on paper there is an acceptable level of accountability. In practice the system is not transparent. European Agencies are meant to operate autonomously, but it is unclear to whom they should report to in regards to their actions and decisions. In the end the European Commission is responsible for the work and decisions taken by the Decentralised and the Executive Agencies. Therefore, the European Parliament should hold the European Commission accountable for the functioning of the Decentral and Executive Agencies. For the Union Agencies this is unclear. National Parliaments have a role.

*Figure 1 – Accountability and control*



The research indicates several shortcomings on the system of accountability and control:

- Budgetary control of the European Commission should be guaranteed by internal audits, annual reports by the Court of Auditors and the investigations conducted by the European Anti-Fraud Office (OLAF). However, The Court of Auditors investigates only whether the money is spend legally and regularly. The internal audits are not sufficiently owned and used. Performance reporting is almost nonexistent (Ramboll, 2009).
- On paper the Commission controls the Executive Agencies but the Court of Auditors says the Commission's supervision of the Executive Agencies' work is quite limited (European Court of Auditors, 2009).
- In particular, the European Parliament and the Council of the European Union would have the right to ask the director of Agencies to inform them about the Agency's activities. But Parliament and Council seldom use their powers. Formally, the European Commission is responsible and they should be held accountable for the work and decisions of European Agencies. The powerful force of the discharge procedure makes Agency directors accountable for regularity, but not for performance (Ramboll, 2009).
- The control of the European Commission is one-sided financially oriented. We thought that Agencies, because they are meant to operate autonomously in relation to the political centre, would be eager to show the European citizen their outcome. No, agencies are disguising themselves behind financial control. It gives no indication whether the budget is spend efficient or effective (Ramboll, 2009).
- The establishment of Agencies is often characterized by 'horse trading' (Ramboll, 2009). Their managerial, political, financial and judicial accountability show serious flaws (Busuioc, 2010).

In a broad view there seems to be a lot of accountability regarding EU Agencies. The control is financially oriented and the other instruments have shortcomings. If one takes a closer look, it never is what it seems to be. Accountability is often: Keeping up Appearances. The official message is that everything is under control, while in fact there are many flaws.

## *Efficiency*

It's not possible to estimate the level of efficiency of EU Agencies. The control of EU Agencies only investigates whether the money is spend legal and regular. There are no studies which question: Could we have the same result with less money? The available information does not allow to judge on efficiency of EU Agencies. Some Agencies work on performance indicators exploring what they do. This is only a part of what should be done.

Not only efficiency measures are necessary, but also effectiveness measures. What is needed are outcome indicators. The barriers towards effective EU Agencies consists of the fact that they stick to definitional, legal, financial and procedural problems. Normally starting Agencies deal with these issues. But after 10-20 years they should act more mature and put social issues and effectiveness first. The Agencies are 'wrestling' with how to measure their effectiveness. An open, innovative culture in Agencies is needed to recover trust (Smits, Kuhlmann & Shapira, 2010).

The research provided for 10 policy recommendations:

### *Overview*

- *Stop the division between Communion and Union Agencies which leads to intransparency*

For the European citizens it not important whether Agencies have communitarian or intergovernmental mandates. European Commission and European Council should act as one in regards to the governing of EU Agencies.

- *Consider a clear legal foundation for Agencies, preferably Treaty-based*  
This is very complicated but our interviewees told us that an opportunity is missed with the Lisbon Treaty. Agencies lack a coherent legal basis.

- *Make the establishment of Agencies transparent*

The current establishment of European Agencies is often a result of political ‘horsetrading’ or ‘package deals’. It should be made more objective why an Agency is established.

### *Accountability*

- *Hold the European Commission accountable for the functioning of the Communitarian (Decentralised and Executive) Agencies*

The European Parliament representing the citizens should hold the European Commission accountable for the functioning of the Decentralised and Executive Agencies. In the end the Commission is responsible for all decisions taken by Agencies. (Unless there is a clear legal basis or when the Council is placed above the Commission).

- *Represent the European citizen in the Agencies*

The ‘citizen’s interest’ is hardly ever represented in the Boards of the Agencies. The interest of the citizen should be leading.

- *Agencies must be social accountable*

Most control of the European Commission now is one-sided financially oriented. Financial accounting gives little information on the performing and effectiveness of Agencies. Needed is a change from a bureaucratic to a more innovative, open culture. The introduction of social accountability focuses on participation, empowerment, generating and evaluating alternatives, evaluation on effectiveness and learning.

- *European citizens should be more involved in the operation of European institutions in general*

The culture in European institutions can be described as bureaucratic, legalistic and oriented towards policy-making in the Member States. Europe should be brought back into the hearts and minds of its citizens by being accountable to them.

## *Efficiency*

- *Budgets should be awarded more responsive and less automatically extended*

There is a lot of financial control towards Agencies. Still a clear, transparent overview lacks. Inspected is whether the budget is spend regular. We hardly found any studies on efficiency: could we have the same result with less money? Too often budgets are automatically extended. The culture is focussed on control, not on learning.

- *Conduct research on effectiveness of Agencies*

Not only efficiency is needed, also effectiveness must be studied. The discussion on European Agencies is far too legalistic. We need more information about the outcome of Agencies. The European Commission should develop a sufficient framework of indicators for the functioning of Agencies.

- *European Parliament make more use of your present rights*

The European Parliament has gained more power (information and discharging power). Address the Commission on the functioning of Decentralised and Executive Agencies. Higher standards are needed for the functioning of the EU Parliament.



# 1. Literature review

## 1.1 Introduction

There is an abundance of literature on European Agencies. Much research on European Agencies has been done from a legalistic or thematic point of view. Andoura & Timmerman (2008) ignited the reform debate about the European Agencies with a review addressing the issues regarding Agencies. In 2009 a study on the Decentralised European Agencies was conducted by Ramboll (2009). The literature review also found that an inter-Institutional Working Group advised on regulatory Agencies (Papastamkos, 2008). Recently, two dissertations were conducted on the autonomy and accountability of European Agencies. With their case studies the studies give a deep insight in the functioning of Agencies (Groenleer, 2009; Busuioc, 2010). Their case studies look beyond the façade of Agencies.

Our literature review is mainly based on Andoura & Timmerman, Ramboll, Groenleer and Busuioc. It's beyond the scope of this limited literature review to address all questions in depth. We focussed our review on:

- An overview of the European Agencies (1.2)  
and on three topics based on the research questions:
- What is the best definition of the Agencies? (1.3).
- What is the legal basis of the Agencies? (1.4).
- What is the accountability of the Agencies? (1.5).

This chapter will finish with a summary (1.6).

## 1.2 Overview

The literature review started with collecting basic information on the number of Agencies, revenues and budgets and the number of staff.

Most overviews contain a list of Agencies, location, year of establishment and founding regulations. This information (Eurospeak) is repeated again and again. But if one tries to find exact numbers, budgets and number of persons working in Agencies Europe gives no clear basis. Where clarity is needed, the EU offers no transparency.

We indicate at least three shortcomings:

#### *A. The Union Agencies are often omitted*

Most of the time the Union Agencies and Euratom are omitted, because they are seen within the Council's competence. The European Commission and the Council (Member States) are reluctant to interfere in each other's claims. In most budgetary overviews Euratom is not included as well as the Union Agencies is. These Agencies are mainly financed by Member States. On the budget of *Bodies set up by the European Union and having legal personality* attention is paid to Decentralised and Executive Agencies and a new category Joint Undertakings appears, to which ITER, a Euratom Agency is belonging (European Commission, 2010a).

The EU uses all kind of divisions (pillars, union and community agencies, types) which lead to unclarity.

#### *B. No clear overview of revenues*

A clear overview of the budgets of the Decentralised and Executive Agencies (falling primarily under the competency of the European Commission) are also tough to obtain. From the total revenues of the Decentralised Agencies (1438 million) 706 million is an EU contribution. Decentralised Agencies are often co-financed by Member States and by external sponsors. There is no overview of how much Member States and sponsor each contribute.

The EU budget on Executive Agencies is 152 million in 2011. However, this is only the EU contribution to the Agency's operating budget ( 3.4 percent of the total operating budget of the programmes). Must we conclude, nobody confirmed this, that the Executive Agencies manage about 4 billion euro in EU programmes (subsidies, research-programmes)? This stays unclear.



### *C. Comparable figures about the administrative and operational budgets of Agencies are difficult to obtain*

According to Groenleer (2009) the budget is divided into three titles. Title 1 contains personnel-related expenses, title 2 administrative and title 3 contain operative expenses. However, we find that most Agencies only distinguish between administrative and operational budgets. In practice, it is impossible to compare Agencies on these financial indicators.

In most studies, researchers refrain from giving an overview of quantitative figures. Busuioc (2010) speaks of chasing a moving target. However, Ram-boll (2009) does a tremendous job on the Decentralised Agencies (see annex 3).

Our findings show:

- In most overviews some (types of) Agencies are missing, they are never complete.
- Budgets are difficult to compare, especially administrative and operating costs.
- There is a lot of information, but not transparent. It is left to the reader to make sense of it.

Nevertheless, on the basis of different sources we made an overview (see Overview 1). Agencies are categorised as Community Agencies and Union Agencies. The 29 Community Agencies (also Decentralised Agencies) are part of the first pillar in which policy making has many supranational characteristics, whereas the three Union Agencies fall under the second pillar in which policy making is essentially intergovernmental in nature. The six Executive Agencies manage Community programmes. Euratom, consisting of four Agencies, has a special status.

### *Overview 1 – Types of EU Agencies*

Category	Nr.	Prim. Competence
Community or Decentralised Agencies	29	Commission
Executive Agencies	6	Commission
Union Agencies	3	Council
Euratom	4	Council

### *Budgets and staff*

As mentioned, the budgets and staff numbers are difficult to obtain. This is the best we could do (Overview 2). (As the German television always said after giving the winning lottery-numbers: *Wie immer ohne Gewähr* (as always without guarantee)).

The number of staff are full time equivalents and consists of authorised established posts, contract agents and seconded national experts.

### *Overview 2 – Budgets and staff*

Category	Budget total	STAFF
Community or Decentralised Agencies	1438 million EURO (2011) 706 million EU contribution	5249 (filled 4704)
Executive Agencies	152 million EURO (+ about 4 billion operating programmes and research?)	1549
Union Agencies	52 million EURO (2008)	245 approx. (2008)
Euratom	275 million EURO (2009)	?

The total budget is 1.8 billion EURO and about 7.000 people work in EU Agencies. Excluded are the programmes managed by the Executive Agencies.

### Overview 3 – List of European Agencies

<b>Community Agencies (First Pillar)</b>	
Agency for the Cooperation of Energy Regulators (at planning stage) (ACER)	Ljubljana (Slov.)
Community Fisheries Control Agency (CFCA)	Vigo (Esp.)
Community Plant Variety Office (CPVO)	Angers (Fr.)
European Agency for Safety and Health at Work (EU-OSHA)	Bilbao (Esp.)
European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)	Warsaw (Pol.)
European Aviation Safety Agency (EASA)	Köln (Ger.)
European Centre for Disease Prevention and Control (ECDC)	Stockholm (Swe.)
European Centre for the Development of Vocational Training (Cedefop)	Thessaloniki (Gr.)
European Chemicals Agency (ECHA)	Helsinki (Fi.)
European Environment Agency (EEA)	Copenhagen (Den.)
European Food Safety Authority (EFSA)	Parma (It.)
European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)	Dublin (Ire.)
European Institute for Gender Equality (EIGE)	Vilnius (Lit.)
European Maritime Safety Agency (EMSA)	Lisbon (Port.)
European Medicines Agency (EMA)	London (UK)
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)	Lisbon (Port.)
European Network and Information Security Agency (ENISA)	Heraklion (Gr.)
European Railway Agency – promoting safe and compatible rail systems (ERA)	Lille (Fr.)
European Training Foundation (ETF)	Torino (It.)
European Union Agency for Fundamental Rights (FRA)	Vienna (Aust.)
Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Alicante (Esp.)
The European GNSS Supervisory Authority (GSA)	Brussels (Bel.)
Translation Centre for the Bodies of the European Union (CdT)	Luxemburg (Lux.)
European Police College (CEPOL)	Bramshill (UK)
European Police Office (EUROPOL)	The Hague (Nl.)
The European Union's Judicial Cooperation Unit (EUROJUST)	The Hague (Nl.)
<b>Union Agencies (Common Security and Defence Policy) (Second Pillar)</b>	
European Defence Agency (EDA)	Brussels (Bel.)
European Union Institute for Security Studies (ISS)	Paris (Fr.)
European Union Satellite Centre (EUSC)	Madrid (Esp.)

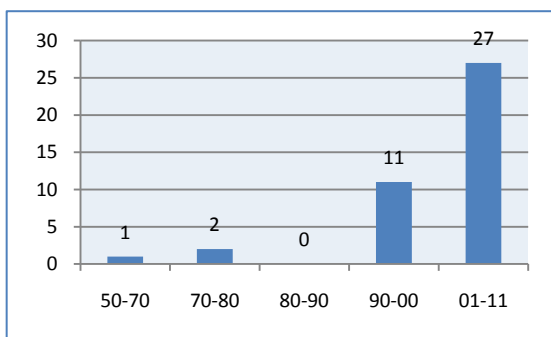
Executive Agencies	
Education, Audiovisual and Culture Executive Agency (EACEA)	Brussels (Bel.)
European Research Council Executive Agency (ERC Executive Agency)	Brussels (Bel.)
Executive Agency for Competitiveness and Innovation (EACI)	Brussels (Bel.)
Executive Agency for Health and Consumers (EAHC)	Brussels (Bel.)
Research Executive Agency (REA)	Brussels (Bel.)
Trans-European Transport Network Executive Agency (TEN-T EA)	Brussels (Bel.)
EURATOM Agencies and bodies	
EURATOM Supply Agency (ESA)	Luxemburg (Lux.)
European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy)	Barcelona (Esp.)
Single European Sky ATM Research (SESAR) Joint Undertaking	Luxemburg (Lux.)
European Institute of Technology (EIT)	Budapest (Hun.)

Source: European Commission (2010)

### *'Mushrooming'*

The number of EU Agencies has increased especially since 1994. Some feel there is 'mushrooming' of these Agencies. Nevertheless recently several new European Agencies started. The appetite for creating new Agencies seems limitless (Gérardin & Petit, 2004). This mushrooming is linked to an increase in Agencies' tasks: regulation, decision-making, enforcing regulation. The number of staff has grown.

Figure 2 – Number of established Agencies in decades



In the beginning EU Agencies were welcomed for their functional benefits and separation from political organs like the Council of the European Union and the European Commission. Recently they came under attack precisely due to their operation at a distance out of reach of the long-established controls (Curtin, 2005). The need for Agency control and accountability was called for by academics as well as Commission and European Parliament.

Agencies are blamed for several reasons (Ramboll, 2009; Andoura & Timmerman, 2008; European Commission, 2008):

- Their establishment is not transparent.
- Their financing is not transparent.
- Their advices are unfocused.
- Their work is not original.
- Their (Board)composition is questionable.
- They are uncontrollable.
- They show no progression.
- They have contradictive incoherent tasks.
- Their outcomes are dubious.

### *Waves*

Andoura & Timmerman (2008) distinguish three generations, three waves, of European Agencies.

#### *First wave: information, research and soft coordination*

The *first* 'wave' of Agencies dates back to the mid-seventies of the last century, when on the domain of social policy two Agencies were created: (1) CEDEFOP (the European centre for the Development of Vocational Training, originally located in Berlin) and (2) EUROFOUND (the European Foundation for the Improvement of Living and Working Conditions, located in Dublin). The tasks of these Agencies existed of gathering information, research and soft coordination (preparing regulation).

### *Second wave: market regulation*

The *second* ‘wave’ of Agencies dates back to the 90’s, when the completion of the internal market made administrative *regulation* necessary in the various new policy areas. The overall idea was that such regulation at the European level could help overcome obstacles to the single European market. As the complexity and the extent of the European competences increased, it became apparent that the exclusively legislative approach to integration was imperfect: to achieve full market integration through harmonizing the national legislations required the transposition of European legislation in to national legislation. Given this growing need for administrative regulation at the European level, this led to the creation of new specialised Agencies in the early nineties.

This wave stressed regulatory tasks, but in fact not all Agencies in this wave had a regulatory task. In 2005 the Commission specified regulatory in the draft of the Inter-institutional Agreement, but this makes it more unclear (see Andoura & Timmerman, 2.4.2., pp. 9).

*Being ‘regulatory’ does not mean that every Agency of this kind can automatically adopt binding legal rules or decisions. Regulatory activities do not necessarily involve the adoption of legal acts. They may also involve measures of a more incentive nature, such as co-regulation, self-regulation, recommendations, referral to the scientific authority, networking and pooling good practice, evaluating the application and implementation of rules, etc. It therefore follows that a European ‘regulatory’ Agency does not necessarily have the power to enact binding legal norms.*

This definition of the Commission makes regulatory diffuse.

### *Market regulation, but also a social dimension*

The ‘internal market argument’ is particularly the case for the OHIM (Office for the harmonization of the Internal Market), the CPVO (Community Plant Variety Office) and the EMEA (European Medicines Agency), which are very active in the context of the free movement of goods in the European Union. However, several of these Agencies have also a specific social dimension attached to them. Exemplary for this category are the EU-OSHA (European Agency for Safety and Health at Work), the EMEA (European Medicines Agency) and the EMCDDA (European Monitoring Centre for Drugs and Drug Addiction). All address health or safety aspects. As Chiti (2000),

Andoura & Timmerman (2008) state: these Agencies should be classified as 'market corrective', rather than categorising these Agencies as social or market economy driven.

This second generation accounted for 11 more Agencies.

### *Third wave: refocus on core tasks Commission and delegation*

The *third* 'wave' of Agencies dates back to more recent times: this generation of Agencies has been set up since 2001 and can partly be explained by the desire of the Commission to refocus on its principal tasks at the time. After the resignation of the Santer Commission in 1999, due to fraud and mismanagement, the new Prodi Commission launched an institutional audit to restore the faith in the Commission (Craig, 2003, in Andoura & Timmerman, 2008, pp. 2-3). One of the main findings regarding the need for the European Commission was to concentrate more on its core functions. Delegation of functions to bodies such as Agencies would enable the European Commission to concentrate more on its core tasks.

This third generation accounts 22 new Agencies created.

### *Summary*

In most overviews some (types of) Agencies are missing, they are never complete. Budgets are hard to compare. There is a lot of information, but not transparent. It's like chasing a moving target (Busuioc, 2010).

Nevertheless, on the basis of different sources we made an overview. Agencies are categorised as Community Agencies and Union Agencies. The 29 Community Agencies (also Decentralised Agencies) are part of the first pillar in which policy making has many supranational characteristics, whereas the three Union Agencies fall under the second pillar in which policy making is essentially intergovernmental in nature. The six Executive Agencies manage Community programmes. Euratom, consisting of four Agencies, has a special status.

The total budget is 1.8 billion EURO and about 7.000 people work in EU Agencies. The number of EU Agencies has increased especially since 1994.

### 1.3 Definition of EU Agencies

The first question of the literature review was looking for a definition of EU Agencies. What we found were primarily general descriptions, but no definition.

The official website of the EU Agencies says that EU Agencies have been established to support the EU Member States and their citizens. These agencies are an answer to a desire for geographical devolution and the need to cope with new tasks of a legal, technical and/or scientific nature.

EU Agencies are meant to operate autonomously from the political centre. Agencies are attractive for Member States because of their autonomous status and employment possibilities. It is considered honourable to have an Agency within your borders. Agencies enjoy a considerable operational independence. The EU and its Member States have created European Agencies for a number of reasons (Vos, 2000):

- The need for specialised expertise.
- Remove some of the workload of the Commission.
- Contribute to a better understanding of the EU.
- Contribute to an enhanced transparency of the system.

Their activities vary:

- Coordinating the decision-making process in Europe.
- Executing European rules and measures.
- Collecting and spreading information.

There is *no formal definition* of what a European Agency exactly is, nor is there any single legal framework on which all Agencies are modelled. In general, the term ‘Agency’ can be used to describe a variety of organisations that perform tasks of a governmental nature and that often exist outside the institutional framework (Everson & Majone, 2001).

There have been many attempts to categorize EU Agencies, but to no avail. One of the main problems is the division between Communion Agencies with supranational characteristics and the Union Agencies in which policy making is essentially intergovernmental in nature. This distinction promotes the



uncertainty of European Agencies. For the citizens it is not important whether they have communitarian or intergovernmental mandates. These distinctions only express the internal powers divisions in Europe.

The several European Agencies are grouped in different sets of categories. First, the European Commission grouped the Agencies in five different categories:

### *1. Community Agencies*

A Community Agency is an Agency governed by European public law; it is distinct from the Community Institutions (Council, Parliament, and Commission) and has its own legal personality. It is set up by an act of secondary legislation in order to accomplish a very specific technical, scientific or managerial task.

### *2. Common Security and Defence Policy Agencies*

These Agencies have been set up to carry out very specific technical, scientific and management tasks within the framework of European Union's Common Security and Defence Policy.

### *3. Police and judicial cooperation in criminal matters Agencies*

Another group of Agencies has been set up to help the EU Member States cooperate in the fight against organised international crime.

### *4. Executive Agencies*

Executive Agencies are organisations established in accordance with Council Regulation (EC) No 58/2003. They are being entrusted with certain tasks relating to the management of one or more Community programmes. These Agencies are set up for a fixed period. Their location has to be at the seat of the European Commission (Brussels or Luxembourg).

### *5. EURATOM Agencies and bodies*

These Agencies are created to support the European Atomic Energy Community Treaty (EURATOM). The purpose of the Treaty is to coordinate the Member States' research programmes for the peaceful use of nuclear energy, to provide knowledge, infrastructure and funding of nuclear energy and to

ensure sufficiency and security of atomic energy supply (European Commission, 2010).

This way of classifying the European Agencies is well accepted and well detailed. However, according to Sacchetti (2009), although such a functional typology can be helpful from an analytical point of view, it cannot be adapted as a basis for legal consequences or proposed reforms: first, it contains too many categories and second, it's certainly not watertight, as some of the Agencies can easily fall within two or more of the categories.

The other typology the European Commission made, is the distinction between Executive and Regulatory agencies, a much simpler functional typology, which divides Agencies in two categories according to their tasks. *Executive Agencies* are those Agencies responsible for purely managerial tasks, such as assisting the Commission in implementing certain programs. These Agencies are subject to strict supervision by the European Commission (European Commission, 2002 in Sacchetti, 2009).

*Regulatory Agencies* on the other hand are required to be actively involved in exercising the executive function by enacting instruments which help to regulate a specific sector.

This distinction isn't helpful. It is too simple according to Sacchetti. A further distinction must be made between:

- Agencies (i.e. EMEA and EFSA) whose function is primarily to provide assistance in the form of opinions and recommendations in order to provide the European Commission the technical and scientific information which form the basis for the Commission's decisions.
- Agencies (i.e. the EMSA) which provide assistance to the Commission in the form of reports, intended to enable the European Commission to meet its responsibilities as so-called 'guardian' of the Community law.
- Agencies (i.e. the OHIM, CPVO and EASA) which are empowered to adopt individual decisions which are legally binding on third parties (Sacchetti, 2009, pp. 6-7).

The main issue, however, is that most Regulatory Agencies do not have regulatory tasks at all. EUROFOUND, OSHA, EEA and others only have a

mandate to gather information. Indeed, some Agencies were awarded regulatory powers, but sometimes these powers were partially lost again to the European Commission or to the Member States.

And further, where do the Union Agencies and Euratom belong in this typology? This distinction seems to ignore the existence of the Union Agencies.

The European Commission calls the Community Agencies also Decentralised Agencies. This is to separate them from the Executive Agencies which are located in Brussels. Executive Agencies have hardly an autonomous status. It's hard to call them Agencies which are meant to have a financial and administrative autonomy vis-à-vis the power centre, Brussels, even if they are located in Brussels.

### *Conclusion*

The system of European Agencies is ambiguous and confusing, due to the lack of a common framework (Andoura & Timmerman, 2008). Therefore it is difficult to give a single definition. The current distinctions are not helpful and to the point. Some Regulatory Agencies do not have regulatory tasks. The distinction between Community and Union Agencies leads to unclarity. It is not transparent.

Important questions are:

- Should Executive Agencies be regarded as Agencies, because they are mostly extensions of the European Commission and hardly autonomous?
- Should Euratom Agencies be regarded as Agencies, because the status of Euratom Agencies is unclear and ambiguous? Does Euratom belong to the second pillar?
- Should the Union Agencies (Common Security and Defence Policy) be regarded as Agencies? They are primarily responsive to the Council of the European Union. Their status is different from the Community Agencies.
- Do Agencies have a regulatory task or only an implementary capacity, fulfilling a need for independent technical expertise and scientific knowledge?

This leads to our first policy recommendation:

## **1. Stop the division between Communion and Union Agencies which leads to intransparency**

Our literature review shows that European Agencies lack a single definition (Andoura & Timmerman, 2008; Ramboll, 2009). The current distinctions (pillar, regulatory/executive; decentralised, typology) are not helpful. For the European citizens it is not important whether or not Agencies have communitarian and intergovernmental mandates. The European Commission and the European Council should act as one regarding EU Agencies. Don't make them a toy of internal conflict.

### *Towards a definition*

Papastamkos (2008) has laid the basis for a definition.

- A European Agency is a body governed by European law.
- It is set up by an act of secondary legislation (regulation/joint action/decision) [Why not Treaty based? - See the next paragraph on legal issue].
- It has its own legal personality.
- Their task is to inform, research, network, coordinate, prepare policy, enforce laws, or a combination of these. The task is laid down by in the above act of secondary legislation.
- It receives a financial contribution from the Community budget.
- It is a permanent body which is seated in one of the Member States of European Union.
- It has financial and administrative autonomy and is independent in regards to the execution of the assigned mission/tasks.

## **1.4 Legal basis of Agencies**

The second theoretical issue is the legal basis of Agencies.

There is no formal definition of what a European Agency exactly is, nor is there a single legal framework on which Agencies can be modelled. Agencies

are fundamentally different from Treaty-based institutions, such as the European Central Bank, because Agencies are found by means of secondary legislation. The oldest European Agency (1958), the Euratom Supply Agency, originates directly from the Euratom Treaty. These types of ‘European’ international organisations cannot be considered as being Agencies (Andoura & Timmerman, 2008, pp. 3-4).

The Lisbon Treaty (2009) does not provide a specific legal basis to create Agencies. Some of our interviewed experts said this is an omission. With the Lisbon Treaty taking effect, Agencies will fall under the full jurisdiction of the Court of Justice (Bovens, 2010, pp. 20). However, this is hardly effecting the legal basis of the Agencies.

In the following of this paragraph we show that delegating tasks and powers from the European treaty-based institutions and the European Commission evokes a number of contentious problems.

In article four of the Treaty of Rome (1957) is stated that each Institution (Commission, Parliament, Council) shall act within the limits of the powers conferred upon it by this Treaty. This has been interpreted by some as a prohibition to create additional bodies. However, this has not been prevented the delegation of powers to autonomous Agencies. Twelve of the twenty-three Agencies<sup>1</sup> have the same legal basis: Article 308 of the Treaty of Rome. This article states:

*‘If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures’ (Treaty of Rome).*

Since the third wave of Agencies, new Agencies are predominantly created on the basis of a *specific Treaty provision*. For example, the legal basis of

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1 CEDEFOP, EUROFOUND, ETF, EMCDDA. EMEA, OHIM, EU-OSHA, CPVO, CDT, FRA, EAR and GSA.

EEA was Article 130s EC42, which contains the aims of environmental protection, and ECHA is based on Article 95 EC, which relates to the internal market. The Commission has argued that this should logically be so 'since the regulatory Agency is an instrument of implementation of a specific Community policy'.

However, this vision does not remain unchallenged. In 2004, the UK evoked the choice of Article 95 EC as the legal basis of the European Network and Information Security Agency (ENISA) to the European Court of Justice and stated that Article 308 EC was the only possible legal basis. The Court ruled that the use of Article 95 EC was appropriate for ENISA, as it constituted a part of the normative context directed at completing the internal market in the area of electronic communications.

Agency creation based on a specific Treaty provisions has three consequences:

- Creating an Agency based on a specific legal basis results in a more flexible legislative procedure in the Council, because the majority voting procedure replaces the unanimity voting process.
- The proposed Agency's range of activities will probably become narrower in the case of a specific Treaty provision than in the case of Article 308 EC. This is because in the latter case the Council has a large margin of discretion about the nature of the Community action it will adopt.
- The creation of an Agency based on a specific legal basis requires the co-decision procedure, whereas Article 308 EC only requires parliamentary consultation. The power of the European Parliament has thus increased since 2000, because it must come to an agreement with the Council on the creation of an Agency (Andoura & Timmerman, 2008, pp. 7-8).

#### *Interpreting the Meroni-doctrine*

Agencies are generally provided with a (very) limited mandate: tasks are defined technical, scientific or managerial in nature. This limited mandate results from the anti-delegation bias following the strict applications of the so-called *Meroni-doctrine* (Andoura & Timmerman, 2008, pp. 9). The EC Treaty does not explicitly provide for the formation of Regulatory Agencies, nor does it set out the special procedure to this end. Agencies are therefore

instituted on the basis of the classic legislative procedures provided by the EC Treaty, and thus emerge thanks to the intervention of other EU institutions (Majone, 1999 cited in: Sacchetti, 2009).

However, the delegation of power is subjected to strict limitations conform the *Meroni-doctrine*, enunciated by the European Court of Justice (European Court of Justice, 1958). This case relates specifically to the European Coal and Steel Community Treaty (1952), but the Meroni-doctrine is generally assumed to be applied *mutatis mutandis* to all European treaties and to act as a rigid barrier to the delegation of regulatory responsibilities to administrative bodies, such as European Agencies (Sacchetti, 2009, pp. 9).

The conservative interpretation of the Meroni-doctrine has extended the restrictions of this rather specific case law to the general case of delegation of powers. And, in this way, restricting the possibility of instituting EU-wide Agencies enjoying effective legislative, executive and judicial powers. In the Court's reasoning, the conditions under which the Commission could delegate certain tasks to administrative Agencies were the following:

- Delegation might only relate to powers that the Commission itself possesses.
- Delegation must relate to the preparation and performance of executive acts alone, without the possibility of delegating discretionary powers.
- The Commission must retain oversight over the delegated competence and will be held responsible.
- The delegation of powers must not disturb the balance of powers among the various European Institutions (Sacchetti, 2009, pp. 9).

But the number of European Agencies has continued to grow, forcing the Commission to acknowledge the main problems the Agencies are facing, such as the incomplete character of their independency and the ambiguity of their accountability.

This had led to inter-institutional working groups (EP, Cie and Council) considering the legal basis of European Agencies (European Commission, 2005, 2008).

In March 2008 the European Commission reinitiated the debate on the role of (Regulatory) Agencies within Europe. Because the number of (Regulatory)

Agencies has increased, there is a need for a common approach (Cie, EP and Council). The following issues are mentioned (European Commission, 2008):

- *Tasks of Regulatory Agencies*, one-size-fits-all will not work, but some categories are suggested: 1. rule enforcement (CVPO, OHMI, EASA, ECHA), 2. support for Europe, technical and scientific advice (EMSA, EFSA, ERA, EMEA), 3. operational activities: (EAR, GSA, CFCA, FRONTEX, EUROJUST, EUROPOL, CEPOL) 4. collecting, analysing and sharing information (CEDEFOP, EUROFOUND, EEA, ETF, EMCCDA, EU-OSHA, ENISA, ECDC, FRA, Gender) and 5. service: CDT.
- *Structure and working of Agencies* (Standards for Board, Director, programming).
- *Accountability and tuning with other Agencies.*
- *Explicit tasks.*
- *Procedures for establishing and finishing Agencies.*
- *Communication strategy.*

Delegating tasks and powers from the European treaty-based institutions and the European Commission evokes a number of contentious problems. Concerns are mainly being raised to the legitimacy and accountability of the European Agencies.

### *Conclusion*

Our literature review shows that European Agencies lack a coherent legal basis (European Commission, 2008; Andoura & Timmerman, 2008; Ramboll, 2009). Agencies are based on secondary legislation. Although the Lisbon Treaty abolished the ‘third pillar’, our expert interviewees said it is a missed opportunity to lay a clear legal foundation under the Agencies with the Lisbon Treaty. But also on this issue, our interviewees told us: The debate on Agencies is far too legal. All discussions lead to legal quicksand. It might be too ambitious to have a single legal basis.



Our second policy recommendation is:

## **2. Consider a clear legal foundation under Agencies, preferably Treaty-based**

Agencies lack a single, coherent legal basis. But we also see that this might be too ambitious.

Elements of the legal basis could be (European Commission, 2008):

- Establishment of Agencies (objective, transparent rules).
- Tasks of Agencies (the whole range is possible).
- Structure (Board, selection and terms Director, programming, activities).
- Autonomy/Accounting procedures toward Commission, Council of the European Union, European Parliament.
- Coherent evaluation rules.
- Procedure for establishment and termination.

### **1.5 Accountability**

The third issue of our literature review is accountability. Accountability means a relationship between an actor (agency) and a forum (European citizens, Commission, European Parliament, and others), in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences. There are different forms of accountability (Bovens, 2007; Grimmeliikhuijsen & Welch, 2010).

Political accountability means accountability towards elected representatives (European Parliament, Council of European Union, and European Commission).

Administrative accountability is accountability towards administrative forums like the Ombudsman.

Financial accountability consists of audits by the European Court of Auditors. The Court investigates whether the budget implementation has been legal and regular.

Social accountability means direct and explicit accountability relations between public Agencies, on the one hand, and clients, citizens and civil society, on the other hand (Bovens, 2007; Grimmelikhuijsen & Welch, 2010).

The issue of accountability is addressed by:

- Andoura & Timmerman (2008), the right balance between autonomy and accountability.
- Sacchetti (2009), four elements of accountability.
- Ramboll (2009), flaws concerning accountability in Agencies.
- Busuioac (2010), evaluation of four forms of accountability.
- Groenleer (2009), autonomy versus control of Agencies.

### *Andoura & Timmerman*

European Agencies, especially those with regulatory tasks, can take decisions that have substantial consequences. In the light of their autonomous status raises the question of accountability: to whom are they answerable? As Andoura & Timmerman (2008) state, it is difficult to find the right balance between the necessary independence that Agencies should enjoy in executing their tasks on the one hand and the required (democratic) control over their activities on the other hand (Andoura & Timmerman, 2008, pp. 18).

It is important to note that formally European *Regulatory* Agencies are not directly accountable to the general public. Therefore, it is important that there is a solid system of control in place that prevents an Agency from sidestepping the tasks assigned to it. The Commission, Council, European Parliament and European Court are empowered to keep the European Agencies politically, financially and judicially accountable for their activities. Besides that, in ten recent years, other bodies as well have been involved in the oversight of activities, such as the Court of Auditors, the European Anti-Fraud Office (OLAV) and the financial controller of the European Commission (Andoura & Timmerman, 2008, pp. 18-19).

On the other hand, *operational independence* is an important prerequisite in the functioning of European Agencies: it allows them to perform their tasks free from external pressure and operate in the general interest. But, in practice, the member states and the Commission directly or indirectly influence the functioning, for example through the powers granted to them in the

nomination process for the administrative board and directors. A way to prevent this, is to provide an Agency with a clear internal structure and a set of procedures that clearly limit its functions and powers: this forces the Agency to focus on its principal tasks and makes external pressure less effective (Andoura & Timmerman, 2008, pp. 18-19).

It is difficult to find a balance between independence and control regarding EU Agencies.

### *Sacchetti*

Sacchetti (2009) set forth that the concept of ‘accountability’ can be subdivided in democratic, budgetary/financial, judicial and procedural accountability (Sacchetti, 2009, pp. 16-17).

An important aspect of the *democratic* accountability is the fact that the European Parliament ultimately decides on the creation and review of the Agencies. Concerning the *budgetary and financial* accountability, the European Parliament (as the budgetary branch responsible for non-compulsory expenditure) decides on the allocation. Similarly, the European Parliament is the recognized authorised authority for granting discharge in respect of the Agency budget, whenever it receives an EU subsidy (Sacchetti, 2009, pp.17).

But, it seems that the European Parliament is not fully aware of its abilities to exploit these important tasks.

### *Ramboll*

The question of the accountability of Agencies can according to Ramboll be subdivided into five elements: political, judicial, financial, administrative and public accountability.

#### *Political accountability*

European Agencies have only a *limited political accountability*. Only in a few cases, the constituent regulations provide the European Parliament with the possibility to invite the director to a hearing before his appointment or to report on the Agency’s activities. The European Parliament is gradually gaining powers, but is advised to must do more to implement their tasks.

### *Judicial accountability*

The principal mechanism to guarantee judicial accountability of Agencies is a review of legality of the Agencies' acts. All acts taken by European Agencies, capable of producing binding legal effects, are challengeable to the Court of Justice of the European Communities on the basis of Article 230 of the EC Treaty. Some Agencies are provided with an internal chamber for the review of legality of the adopted acts. Decisions of such an internal Board of Appeal can be challenged to the Court of Justice. This procedure applies for OHIM, CPVO, ECHA and EASA, which are the Agencies with the authority to make decisions. Regarding Executive Agencies, administrative appeal is treated by the Commission before a possible infringement action is filed at the Court of Justice. If the Commission concludes that an act is unlawful, it can demand a revision or annulment.

### *Financial accountability*

Several control mechanisms exist to make Agencies financially accountable. First, the European Parliament has significant power over Agencies through its budget and budgetary discharge procedure as many Agencies depend completely or partly on Community funding.

### *Administrative accountability*

The administrative accountability is increasingly safeguarded by the European Ombudsman, who has the power to investigate complaints of maladministration in Agencies. Another way in which Agencies subject themselves to administrative control is by agreeing on a code of conduct (e.g. EDA's Code of Conduct on Defence Procurement).

### *Public control*

Direct public control is carried out by the stakeholders who operate in the network set up to assist Agencies. In some cases, stakeholders have been given a seat in the administrative board (e.g. ERA).

### *Ramboll on performance evaluation*

Ramboll (2009) identifies first that in the European Agencies, the directors are accountable to the board through the approval of annual reports, and often to the Parliament through the discharge procedure. According to Ramboll, accountability means that European Agencies have to report on their accom-

plishments, and that they incur risks if these accomplishments are considered as unsatisfactory. The executives of the Agencies should be held accountable for both regulation and performance. It is in any case much easier to identify who is responsible for regulatory problems than performance ones.

Thus, accountability for *performance* is therefore a notorious difficult issue (Ramboll, 2009, pp. 22-23).

### *Ramboll on internal audit function*

Until 2003, all Agencies were responsible for their own internal audit function. By this date, and under strong parliamentary pressure, the so-called Internal Audit Service of the Commission became responsible for playing this role on behalf of the Agencies, except in the case of the CPVO and the OHIM. For comparison: in the Commission, internal audit reports are reviewed by a high level Audit Committee, which includes external experts and which holds frequent meetings. This provides an arena for discussing, possibly challenging, and most often using the audit conclusions. But, this reflecting system does not exist in the case of the European Agencies. It is therefore the joint responsibility of the director and the board of the Agencies to use the audit conclusions. In fact, as Ramboll signals, the boards cannot really play this role at a significant level because most board members are experts in the Agency's core business, but they do not have the competence and interest in the area of management and administration (Ramboll, 2009, pp. 24-25).

### *Conclusions Ramboll*

Ramboll (2009) concludes that the Agency's periodic evaluations tend to cover only a limited number of issues, i.e. relevance, coherence, Community added value, and internal efficiency. And, they fall short of concluding on rationale, effectiveness (for example, in achieving policy objectives), and cost effectiveness or external efficiency. Ramboll suggests that there are three main reasons for these findings:

- The political profile of the evaluations is too low to attract the evaluation of management issues.
- A serious reconsideration cannot put on the political agenda every five years: Agencies cannot, for example, develop a long-term vision if their mandate is changed and challenged every five years.

- Evaluators have difficulties in assessing many results and impact at time, which means that they can conclude on a specific activity, but not as well of the whole range of activities of an Agency, which may be wide (Ramboll, 2009, pp. 25-26).

The bulk of periodic evaluation efforts fall short of concluding on results and impact and therefore add little value in terms of accountability.

Ramboll, finally, identifies five problems concerning the accountability of European Agencies:

- The ownership and use of so-called ‘internal audits’ are problematic.
- Performance reporting has not yet the strong and accurate form which could serve as a basis for the discharge procedure.
- The bulk of evaluation efforts apply to periodic Agency evaluations which add little value in terms of accountability for results and impacts.
- At presents, the powerful force of the discharge procedure makes Agency directors accountable for regularity, but not for performance.
- And, finally, a point which has not yet been clarified sufficiently is the need to hold the Commission accountable for its interactions with the Agencies, but not for the activities of the Agencies that are independent bodies (Ramboll, 2009, pp. 26-27).

Ramboll generally advises seven options for improvement of European Agencies:

- Reconsidering Agencies periodically.
- Merging small Agencies with larger ones where relevant.
- Improving the transparency of seating conditions.
- Providing administrative support to new Agencies.
- Establishing an inter-agency audit and performance committee.
- Developing inter-agency comparisons.
- Alleviating administrative burdens.

What is lacking are clear output and outcome indicators. Control is based on regularity and not on outcome.

## *Busuioc*

Busuioc confirms the analysis of Ramboll with her research. In 2010 Busuioc conducted a promotion research on accountability of European Agencies. European agencies are enveloped in a complex web of accountability relations to a multiplicity of forums (political bodies, citizens, boards). She distinguishes between managerial, political, financial and (quasi)-judicial accountability.

### *1. Managerial accountability*

The nearest and most direct accountability relation is that vis-à-vis the management board of the Agency. Busuioc finds that some delegations to the boards are well prepared, and an overwhelming number are not the vigilantes that they are officially meant to be (pp. 206). All in all, the supervision of the management boards displays a broad range of failings (pp. 207). These governance and accountability problems depicted often reflect the inherent EU tensions and struggles for competing, legitimate interests between the EU level and the national level.

Many board delegations have not fully stepped up to the challenge and due to either generic shortcoming or other reasons, fall short in many cases of adequately holding directors to account and comprehensively assessing the performance of the Agency (pp.208).

### *2. Political accountability*

This takes form of reports and hearings with European Parliament and Council of the European Union being able to enact consequences towards Agencies within their remit (pp. 208).

Political accountability is on the rise, particularly in the case of the European Parliament as we have seen earlier (Sacchetti, Ramboll). All in all, Busuioc concludes: political accountability is an important element of Agencies' accountability, but not a sufficient one (pp. 209).

The European Parliament gained more authority, but is not that powerful as represented. The discharging power is regarding only regularity, not output or outcome results.

### *3. Financial accountability*

Agencies are subject to an extensive and complex system of financial accountability (pp. 210). These accountability arrangements follow the three steps of an accountability process: information, debate and the possibility of consequences. The last element is largely informal, as most financial forums lack the possibility to impose outright sanctions. Busuioc is positive about the financial accountability, although there might be an overload (costs) and the performance issue (output and outcome) is not addressed. The focus of the discharge process is almost exclusively on regularity; aspects relating to agencies' results and performance are generally not addressed (pp. 212).

### *4. (Quasi-) Judicial accountability*

The Courts of Justice and the European Ombudsman are both important avenues for redress against Agency decisions (pp. 214).

The research of Busuioc (2010) underlines and details the flaws Ramboll found. The control is one-sided financially. On paper it seems sufficient, but when one inspects in detail there are many deficiencies.

### *Groenleer on autonomy*

The autonomous status of EU Agencies also gives rise to questions concerning their accountability. If EU Agencies are autonomous, to whom are they answerable? Our discussion here is mainly based on the dissertation of Groenleer (2009). EU Agencies are meant to be autonomous. They contribute to the EU's implementing capacity, fulfilling a need for independent technical expertise and scientific knowledge (pp. 344).

Groenleer starts his dissertation with the formal design of Agencies. What is put on paper by their creators in regards to their powers and controls is likely to shape their development. He shows in his research that the differences between EU Agencies outweigh their similarities. His description of the formal design raises many interesting points regarding their autonomy (Groenleer, especially Chapter 6, pp. 115-140):

- Community Agencies are more autonomous with respect to the Member States than the Union Agencies (Defence and Security Agencies). These



Agencies, in turn, are more autonomous with respect to the Commission than Community Agencies. Community Agencies are part of the first pillar in which policy making has many supranational characteristics, whereas Union Agencies fall under the second pillar in which policy making is essentially intergovernmental in nature.

- Agencies are more autonomous when their regulations expressly state they are independent.
- The mandates of the Agencies differ. Some have predominantly advisory functions with several broad categories. Some are tripartite organisations. Most EU Agencies, whether Community or Union, have no independent decision-making powers.
- The tasks and objectives of EU Agencies differ. Some Agencies have seen their tasks being expanded. But often leaving their budget at the same level.
- The management Board's composition raises the question whether Boards of Agencies should be considered part of the Agency or part of their external environment.
- Boards of Agencies fulfil an important role as interface between the Agency and its environment.
- In some Boards of Agencies external stakeholders are represented, but often without the right to vote.
- Directors of Agencies have organised themselves into the Heads of EU Agencies Network. They convene so that their voice is heard more clearly.
- The Agencies' staff has grown steadily since the first wave of Agency creation. The Parliament has on several occasions been highly critical on the 'unguided growth' (Grässle, 2008).
- Most Community Agencies are financed from the general EU budget. Union Agencies receive contributions from member states. A few Agencies are entirely or partially self-financed (Medicines, Harmonisation of Internal Market, Aviation Safety Agency).
- The Commission only seems to be willing to exert control over the Agencies when this yields political gain; in other circumstances, such as during their practical set-up, the Commission denies responsibility for the Agencies.
- The European Parliament has budgetary and informational powers.

- Member states control Agencies through their representatives in the management boards. EU Agencies often rely heavily on the cooperation of national authorities in their policy areas; this must make them responsive to the demands of national authorities and their governments.

In general, Groenleer finds that EU Agencies do not possess a high level of formal autonomy, neither in respect of the Commission nor in respect of the Member States. We believe that this autonomy is relative. In the end the European Commission stays responsible for the work and decisions taken by EU Agencies. That's why the European Commission controls Agencies via internal audits and via financial control.

### *Conclusion*

The authors we discussed above differ on details sometimes, but they all believe that the practice of accountability regarding EU Agencies can be improved. The accountability mainly has a financial character and focuses only on whether the money is spend legal and regular. Financial accountability doesn't look at the performance or the effectiveness (output and outcome) of the Agencies. The board members should be more active in controlling the Agencies. They are primarily defending their own States interest (regain influence through the Agencies which in an earlier stage was 'lost' to Europe) and should place the common interest first.

Accountability has improved since the nineties of the last century, but still there is a lot to do. What is needed is social accountability, a culture of learning. Needed for this are outcome indicators. Europe should leave the culture of Eurospeak and the Eurocrats behind and aim for an open and innovative culture.

The most important point found is that until there is a clear legal basis for the EU Agencies, the European Commission is responsible for the actions and decisions of EU Agencies. The autonomy of EU Agencies (Decentralised and Executive Agencies) is in fact based on a myth. They have some discretionary power, but in the end the European Commission is responsible. For the Union Agencies (intergovernmental bodies) this is unclear.

The two policy recommendations are:

### **Hold the European Commission accountable for the functioning of the Communitarian (Community and Executive) Agencies**

The literature review (Ramboll, 2009; Busuioc, 2010; Groenleer, 2009; Sacchetti; 2009; Papastamkos, 2008) showed that it is often unclear to whom the Agencies are politically accountable: the Council of the European Union, the Commission or the European Parliament. Agencies have to produce annual reports, work programmes, activity plans, finance reports, evaluation reports which suggest control by the European Commission, the Council of the European Union or the European Parliament. These documents are not visibly used by the Commission, Council of the European Union or European Parliament to steer (Ramboll, 2009). There is no transparency. There is a lot of influencing but it is not clear in what way.

Ramboll identifies five problems:

- Performance reporting is almost nonexistent
- The discharge procedure is limited to regularity
- Audits are not sufficiently owned and used
- Directors' accountability is limited in scope
- The Commission is sometimes made accountable for what is beyond its responsibility.

Most Agencies believe that they are accountable to their own Board. Board members of the Agencies, however, are often not the vigilantes they are supposed to be (Busuioc, 2010). The European Parliament incidentally made use of their discharging power (Busuioc, 2010).

Agencies (Decentralised and Executive) are meant to be autonomous from the Commission, but in the end the European Commission is responsible for their actions. Unless a clear legal basis is made. The European Parliament should hold the European Commission accountable for the work of the Community and Executive Agencies. When the European Commission becomes the Daily Executive Board of the European Council, then the Council is accountable.

Union Agencies are accountable to Member States and the Council. National parliaments should take action.

## European Parliament make more use of your present rights

The European Parliament has formally gained a larger foothold in Agency oversight on a par with the increase of its legislative powers. The European Parliament has discharging power over the Directors of Agencies. However, the European Parliament only used this instrument once (CEPOL). For regularity reasons it was delayed but finally voted. Ramboll (2009, pp. 23) says the discharge procedure is limited to regularity.

The study of Busuioc (2010) and Groenleer (2009) showed that the fora don't execute their tasks and powers sufficiently. They don't ask the right questions, or they ask them too late. 'While some EP committees demonstrate interest and are involved with the Agencies within their remit, others display a low level of involvement and a very low attendance during hearing meetings (Busuioc, 2010a).

Now the European Parliament has gained more powers (information and discharging power budgets) there has been more effort put into. However, the European Parliament did not bite yet. Some say Members of the European Parliament do not show up when the directors of the Agencies give information to the European Parliament. The deadlines to act are strict, this hinders the European Parliament. According to Schillemans (2009) the oversight of the parliament is always focused on a limited number of politically salient issues, which could bring risks with it.

The European Parliament should have powers during the whole process:

- Drafting budgets.
- Drafting annual work plans.
- Controlling.
- Discharging on financial and social indicators.

The European Parliament has requested the Commission to devise clear benchmarks for comparing cross-agency results (Papastamkos, 2008). The European Parliament should go on on this way. Higher standards are needed for the functioning of the EU Parliament.

## 1.6 Summary

The literature review is focussed on an overview of the European Agencies, the best definition, the legal basis and the accountability. Our findings show that there is a lot of information on EU Agencies, but it is unclear.

There is no formal definition of what an European Agency exactly is, nor is there any single legal framework on which all Agencies are modelled.

Although on paper there is much accountability, the practice of accountability must improve. Financial accountability doesn't look at the performance or the effectiveness of the Agencies. Output and outcome indicators are necessary for improvement.

On the basis of the literature review three policy recommendations are formulated:

- *Stop the division between Communion and Union Agencies which leads to intransparency.* For the European citizens it not important whether Agencies have communitarian or intergovernmental mandates. European Commission and European Council should act as one in regards to the governing of EU Agencies.
- *Consider a clear legal foundation for Agencies, preferably Treaty-based.* This is very complicated but our interviewees told us that an opportunity is missed with the Lisbon Treaty. Agencies lack a coherent legal basis.
- *Hold the European Commission accountable for the functioning of the Communitarian (Community and Executive) Agencies.* The European Parliament representing the citizens should hold the European Commission accountable for the functioning of the Decentralised and Executive Agencies. In the end the Commission is responsible for all decisions taken by these Agencies (unless there is a clear legal basis).
- *European Parliament make more use of your present rights.* The European Parliament has gained more powers (information and discharging power). Address the Commission on the functioning of Decentralised and Executive Agencies. Higher standards are needed for the functioning of the EU Parliament.



## 2 Two cases: OSHA and EACEA

### 2.1 Introduction

#### *Sample*

For the case studies two Agencies have been selected. Because education, health and labour belong to the main research topics of the ITS we have chosen for:

- Education, Audiovisual and Cultural Executive Agency (EACEA), Brussels, Belgium.
- European Agency for Safety and Health at work (OSHA), Bilbao, Spain.

The client agreed with our choice.

We have a Community Agency and an Executive Agency. The results cannot be representative for all Agencies.

#### *Design*

By studying two European Agencies in-depth we are able to show how the current process of accountability works. We focussed, based on the research questions 3-9, on six issues:

- Establishment of Agency - How was the Agency established (history, ad-hoc, political bargaining, interest groups, transparency)?
- Tasks - How is the task of the Agency defined (tasks, powers, consistency, coherence)?
- Political accountability - to who are Agencies politically accountable (European Parliament, Council of the European Union and European Commission)?
- Social control - Who is involved (how, effectively)?
- Administrative accountability - Complaints to European Ombudsman (how many, what kind)?
- Financial accountability - ((Lack) transparency in general (budget control, efficiency).

Both case studies will start with factual information on the Agency:

- Year of establishment.
- Budget.
- Number of employees.
- Board.

Then we will pay attention to the task and establishing (history) of the Agency. The term transparency is in the European context also used for the (in)transparency in the establishing process of the Agencies. We see this in the third research question (To what extent are Agencies established in a transparent manner?). We will address the establishment of OSHA and EACEA in the case studies.

Transparency in general is the active disclosure of information by an organization that enables external actors to monitor and assess its internal workings and performance. Transparency is the basis for accountability processes. This side of the transparency issue is addressed with research question 8: To what extent are the current budgets controls transparent?

Next we will pay attention in the case studies to accountability. Accountability means a relationship between an actor (agency) and a forum (European citizens, Commission, European Parliament, and others), in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences. We will address four forms of accountability (Bovens, 2007; Grimmelikhuijsen & Welch, 2010):

Political accountability towards elected representatives (European Parliament, Council of European Union).

Administrative accountability towards administrative forums like the Ombudsman.

Financial accountability consists of audits by the European Court of Auditors.

Social accountability towards clients, citizens and civil society.

We used information from literature. Most Agencies are periodically evaluated and these evaluation reports gives much information. Internet is used and interviews are held mainly with Dutch liaison officers and specialists (see research design).



We start with a description of the two agencies in keywords.

*Figure 5 – OSHA and EACEA in keywords*

	OSHA	EACEA
Year of est. Budget p.y.	1994 15 million Euro	2006 administrative 49.5 million Euro operational budget 600 million Euro
Employees Board	70 posts Board 84 (tripartite) Director, Bureau supports Board	432 employees Director, Head of Department and 10 operational units (managing pro- grammes) and 3 horizontal units (HR, finances, IT), Internal Audit Capability, Steering Committee: 5 members of Parent DGs
Task	Collecting, analysing, sharing knowledge and information, promot- ing culture of risk prevention Mandate is informational	Managing community projects throughout their life cycle  Mandate: purely managerial, execu- tive
Establishment (transparency)	Issue of safety and health had long history. After decision about location European Bank other Agencies were established. 'Package deal'	Mainly driven by constraint on employment on Commission
Political accountability	Not clear toward Council and EP. Discharge procedure. OSHA is primarily accountable to Governing Board. Ritual accounting. Window dressing	EACEA works in cooperation with and close supervision of the Euro- pean Commission. Periodic coordina- tion meetings, Internal Audit Service Formally to Commission, but in fact supervision of Commission is quite limited (Court of Auditors)
Social control	Tripartite, employers' associations and unions represent companies and workers Experts are primarily repr. of member states	Satisfaction survey of both applicants and beneficiaries. But also: application rules highly bureaucratic
Administrative accountability	European Ombudsman received a few technical complaints of employ- ees	European Ombudsman received a few technical complaints of appli- cants Steering Committee, Court of Justice
Financial accountability	Strict financial control, , 'Every pencil needs a receipt' Effectiveness hard to measure	Strict financial control, balance between costs and controls Effectiveness hard to measure

## 2.2 OSHA

The European Agency for Safety and Health at Work (OSHA) was established by Council Regulation no. 2062/94<sup>2</sup> in July 1994.

The primary aim of the Agency is to provide the Community institutions, the Member States and the stakeholders in the field with technical, scientific and economic information about safety and health at the workplace through:

- Collecting.
- Analysing.
- Sharing knowledge and information.
- Promoting a culture of risk prevention.

OSHA has a budget of EURO 15 million and employs 70 people. OSHA has a Director appointed by the Governing Board. The Board has 84 members from Member States (27), employers' associations (27) and unions (27) as well as 3 representatives of the European Commission. The Bureau (11 members) supports the Board and monitors Board's decisions.

### 2.2.1 Establishment - How was the Agency established?

OSHA is established in 1994. The Agency is located in Bilbao in Spain and was set up in 1996. After the accession of Spain to the European Union (1986 together with Portugal) it was clear that Spain wanted an Agency. After the European Bank was established in Frankfurt (1994) - this was the most important institution to have - the further establishment of decisions to locate Agencies could start. From 1993 - 1996 several Agency were established (OHIM, Alicante, Europol The Hague, EMEA (London), EMCDDA (Lisbon), CPVO (Angers), CdT (Luxemburg).

Discussions regarding safety and health at the workplace across Europe took place before the establishment of OSHA. There were always questions like: Are legislative measures needed and what was the usefulness of common

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2 With further amendations Regulation no 1643/95, 1645/2003 and 1112/2005.

standards to enhance safety and health? Discussions about prevention of long-term diseases were coming up already in the seventies and eighties of the last century.

Companies and Member States want to realise a fair level playing-field on issues regarding safety and health in the workplace.

OSHA is one of the Agencies who has a tripartite distribution in the Board, (government representatives of the Member States, employees and employers).

### 2.2.2 Task

The Agency carries out four main tasks (Ramboll/Euréval/Matrix, III, 154):

1. Communication and awareness rising (campaigns, producing promotion and technical working environment material).
2. Identification of new and emerging risks (making thematic reports, forecasts, surveys, seminars, workshops).
3. Development of good practice information (case study report, factsheets, web-information).
4. Networking.

The main work of the Agency is collecting, editing, improving and distribute information about safety and health on the workplace.

Networking activities aims at linking the OSHA resources scattered across Europe and consists of meetings, information exchange and similar activities. The focal points have a central function.

There is a clear division of tasks between the Agency and the Commission as the latter is responsible for the legislative process for the adoption of EU Health and Safety at Work legislation and monitoring this process.

OSHA provides information, exchanges examples of best practices between European members and engages in network activities.

### *Employers and employee organisations*

Tensions between the interests of employer and employee organisations are not reported during our interviews with representatives of employers' associations and union representatives. The main task of OSHA, as they brought forward, is getting and circulating information. There are no policy issues where competing interest of employees and employers show up. During the Board meeting the different groups in de Board sub convene to discuss the agenda. Consensus between government, employee and employer representatives is (most of the time) the result. The possible conflicting aspects (policy, legislation on safety and health) are deposited elsewhere (European Commission, Advisory Committee in Luxemburg). Concrete legal measures on safety and health are made by the Advisory Committee or the European Commission itself.

However, getting to the consensus involves often a long process where different representatives have very different opinions. For OSHA it is essential to have the backing from all four groups (governments, unions, employers' associations, Commission) to have an impact. This is necessary to implement decisions afterwards using the networks.

### *Coherence in tasks of Agencies*

The task of OSHA seems to duplicate with that of EUROFOUND the European Foundation for the Improvement of Living and working conditions. EUROFOUND in Dublin was established in 1975.

However, our interviewed experts stress to say that differences are big:

- The issues of EUROFOUND (market relations, quality of life) are much broader than those of OSHA (safety and health on the workplace).
- The main activity of EUROFOUND is (coordinating) research. OSHA conducts no research. OSHA is about collecting information and distributing information. In EUROFOUND work researchers, in OSHA work technical hands-on safety and health experts and communicators.

From the first sight there might seem an overlap between the tasks and work areas of EUROFOUND and OSHA. More research is needed to answer this question.

There is no conflict with the task, for instance, the International Labour Organisation in Genève (ILO). The work of ILO (the right of workers to strike) is different from that of OSHA.

### 2.2.3 Political accountability

The establishing Council Regulation (2062/94) makes clear that it is the Governing Board of OSHA which holds the Director of OSHA accountable, together with the European Parliament and the Council. In the Establishing Council Regulation OSHA is responsible for making annual reports, work programs, evaluation reports, budget, and financial accounts. Even after reading this Regulation several times it stays unclear what the status is of these documents vis-à-vis the Council and the Parliament. The work programme is adopted by the Board after consultation with the Commission. The final budget is adopted by the Board once the budgetary authority (EP and Council) has decided on the EU budget. Sometimes the European Commission adds earmarked money for special projects.

Informally there is more accountability through consulting (see also Busuioc, 2010). There are many informal networks where Board members consult their rank and file, where employers' associations and trade unions, companies and users are consulted. But, it is not transparent.

The Council and the European Parliament have rights (budget discharging power towards the Director, interviewing directors of Agencies). The European Parliament is not pro-active in executing their powers, because they have had no reasons to do so.

Although the European Commission is the main partner of OSHA (budget, planning) also the European Parliament and the Council of the European Union are parties to which OSHA is to a certain extent accountable.

The approval of the own Board of OSHA is the most important obstacle to pass. The interviewees think that OSHA is only accountable to their own Board. Once the annual work programs, budgets and financial accounts are approved by the Board of OSHA the work can proceed.

## 2.2.4 Social control

The main goal of OSHA is raising public awareness of safety and health issues on the workplace. Important beneficiaries are individual companies, workers, safety coordinators and personnel managers involved in improving occupational safety and health. The research showed that key target groups are intermediate organisations. These are for instance authorities, unions, employers' associations or sector organisations in the Member States who are involved in policies concerning safety and health (maintenance, building sector). The sector organisations discuss safety and health measures in their sector.

The tripartite composition is mentioned as giving a helping hand in the work of spreading information. If measures are taken by the European Commission, or campaigns are started by OSHA, it is important to have the support of the social partners to implement this in the Member States.

OSHA does research on who visits the web sites and how many times.

An important asset of OSHA are the focal points. These are the representatives in the 27 Member States. The Dutch focal point is located at the Department of Social Affairs and Employment and is de facto located at TNO (a Dutch research company). The Dutch focal point employs two people.

The focal point has the liaison-function between OSHA and the Member States. They collect, analyse and spread National Information to OSHA and disseminate OSHA information at the national level. Good practices are promoted to OSHA and vice versa.

The main activities of the Dutch focal point are:

- Website (50.000 visitors yearly).
- Organising three meetings a year with 100-150 visitors per meeting. Visitors are mostly representatives of intermediate or sector organisations.
- Publish information in the professional press about safety and health issues.

The external evaluation of OSHA carried out by the Centre for Strategy & Evaluation Services (CSES) in 2006/2007 addresses much attention to the

focal points (FOP's). The evaluation has a character of congratulations to the FOP's. However, some challenges can arise for the FOP's if national plans diverge from the Agency plans. (CSES, iii, advice 9). Also Groenleer (2009) mentions tensions in Agencies in general considering focal points. Some focal points are stronger in representing the interests of their country than the interests of Europe. Also OSHA has to deal with this issue. Since the enlargement of the EU it has become increasingly difficult to ensure that the Agency's priorities always coincide with national ones (CSES, pp. iii).

It is hard to say, even on the basis of this research, whether the activities of OSHA reach the public or whether the awareness is rising concerning safety and health on the workplace. The Agency has almost 50.000 subscribers to its newsletter. In a survey on the subscribers 90 percent believed that the work of OSHA contributed to higher awareness. In 2009 there were over 30 million pages viewed on the web-site and there were more than 2 million unique visitors.

The focus is on representatives of the Member States (civil servants), employers' associations and trade unions. Interviewed persons mention the catalysing function of OSHA, and the tripartite composition.

In the OSHA-Strategy 2009-2013 (EU-OSHA, 2008) attention is paid to measuring progress and assessing performance. This serves to:

- Demonstrate accountability to OSHA stakeholders.
- Identify lessons from past activities.
- Develop an 'evaluation culture'.

The developed indicators however are targeted on outcomes and impacts on users and not on the European citizens. It is a start.

### *Advisory and expert groups*

Basically the Agency has two kinds of groups providing it with expert advice. At the strategic level (long-term planning of issues) there are the *Advisory Groups* in the areas of the European Risk Observatory, Working Environment Information and Communication, Campaigning and Promotion. These groups involve members of the Board and give the Agency advice on how to implement the work programme and feedback on activities developed according the work programme.

At the operation level there is what is called *Expert Groups*. These groups consist of people with a special expertise in the relevant area and help the Agency implement the work programme – for example by validating findings or facilitating access to relevant data. The number of expert groups varies over time because they are established depending on the priorities in the work programme and the need for expertise input in the implementation.

Expertise is provided through a number of other channels as well, such as via the Agency's Topic Centres (a consortium of leading European OSH Institutes), via Stakeholder Consultations and via contractors.

The main advantage of involvement of expertise advice at the strategic level is that this ensures the relevance and usefulness of the Agency's activities to key beneficiaries and stakeholders. Relevance and usefulness are necessary conditions for meeting the objectives of the Agency and having an impact on occupational safety and health in Europe. At the operational level the experts' input helps identifying the relevant data resources for the Agency's projects and ensures a high quality of the products. It also brings along the side-effect that the Agency's work is promoted among a very relevant audience.

The members of the Advisory Groups are selected by the interest groups and the Commission in the Board and are therefore representative of the Board. In addition the Agency appoints 1-2 members depending on the group. Where the Agency appoints two members one of them will represent the Topic Centre. As in regards to the Agency's Expert Groups, membership depends on the project and the need for expertise. However, in general the Agency's focal points (one in each Member State and EEA state) appoint members to the groups and the groups therefore have representation of the key network for implementation of the work programme, the focal point network.

The issue of representation is a highly political one. And in the area of employment and social policy there is a long existing tradition of tri-partism between governments, unions and employers' associations. The tradition is reflected in the structure of OSHA. OSHA works with a wide range of stakeholders, but the formal structures are built on tri-partism. The activities of OSHA try to be relevant to the target audiences and beneficiaries. This in



most cases comes back to the workplace and the two parties represented there – workers and employers.

The issue of ‘consumer interests’ is important, but occupational safety and health is primarily important to workers and employers. The direct impact on consumers of occupational safety and health is not so obvious. The Agency’s policy on this is implemented via its stakeholder consultations where those affected by an activity are involved.

### *Representation*

The Advisory Groups mainly represent the interest groups and Commission in the Board. Each interest group appoints two members to each Advisory Group. There are two employee, two employer and two governments’ representatives in each group.

The ‘Expert Groups’ are mainly made up of Member States’ representatives. There are, however, also social partners and Commission representatives. And in some cases, others are represented.

In terms of numbers: There are three Advisory Groups and at this moment around four active expert groups. Their background is not registered. But they do, to a large extent, represent ‘users’ as the information developed will at some points have to be used at the workplace by workers and employers.

### **2.2.5 Administrative accountability**

We have studied the files of the European Ombudsman. We found two decisions on two direct complaints on OSHA. These complaints dated from 1998/2000.

The first complaint was about an employee of OSHA who claimed that the local staff regulations should be applicable to his work contract base on Commission’s regulations. The Ombudsman decided the complainer was right.

The second was a complaint by local staff on the issue of grading. On short notice the complaint was cancelled by the complainers themselves.

The OSHA is mentioned six times, but detailed inspection showed it concerned general or other Agencies and OSHA was only involved indirectly.

## 2.2.6 Financial accountability

OSHA has a budget of 15 million euro. About 70 people work at OSHA in Bilbao. Not all of them have a contract for an indefinite period of time. Administrative and operational costs are 50/50 percent. However, the administrative costs include mainly staff costs doing operational tasks. So, it is not possible to compare the administrative and operational cost with EACEA, the next case in our study. Good comparable figures lack.

Governance costs are 1.35 percent of OSHA's budget.

With the actual figures it is impossible to compare Agencies on financial indicators. The European Commission has to act.

Given the task of OSHA 15 million is not considered much by most interviewees. OSHA produces a lot for this amount of money:

- Reports (some interviewees laudate the reports of OSHA).
- Campaigns.
- Factsheets.
- Information.
- Networks.

The European Court of Auditors has few remarks: . ' 13. .... According to the accounting information, approximately two million euro of the appropriations carried forward corresponds to activities not yet implemented at the year end. This situation indicated delays in the implementation of the activities financed from Title III of the Agency's budget and was at odds with the budgetary principle of annularity.

14. Appropriations carried over from 2008 amounting to 0,7 million euro, or 18 % (compared to 10 % in 2008), had to be cancelled. The increased cancellation rate again indicates the need for stricter application of the annularity principle by the Agency' (European Court of Auditors, 2010, (2010/C338/09).

There is an indication for the need for stricter application of the annularity principle by the Agency. Not all activities are implemented at the years' end.

It is clear also that the European Court of Auditors only studies whether the money is spend in a regular and legal way. The Court does not say whether

the money is spend efficiently: Could we do the same with less money?  
Neither the effectiveness is studied.  
Performance indicators only are not enough.

## 2.2.7 Summary OSHA

### Strong points OSHA

#### *Clear task, information*

OSHA produces information on the issue of safety and health on the workplace. Although the exact contribution of OSHA to raising consciousness cannot be pinpointed, the issue of safety and health on the workplace has got more attention in Europe than 30 years ago. It remains unclear whether this is the result of national policy or the work of OSHA.

### Improvement points OSHA

#### *Efficiency not measured*

The efficiency of OSHA is not measured, so it is hard to say whether OSHA is efficient or not. Currently with its 27 Member States the Board is composed inefficiently. OSHA has taken measures already: organising, when possible, its Board meetings in connection with the meetings of the Advisory Committee meetings in Luxembourg; have a Bureau taking care of the daily oversight of activities.

#### *Representation*

Why tripartite when policy on safety and health is made elsewhere? OSHA is a regulatory Agency but has no regulatory tasks. Of course, tripartism is important to generate adoption. The question is whether all 27 countries have to be presented in the Board.

Because of the non-political task of OSHA could reconsider the composition of the Board of OSHA. Why can't representatives of Member States, employees and employers rotate. Every half year the Presidency of the Euro-

pean Union rotates. A tripartite representation of five Member States which rotates in every five years.

### *Involvement of public/users*

Given the core task of raising consciousness in the public, the public is underrepresented in the Board, the focal points and in the activities.

The organization of OSHA is top-down. First are the interests of member states, employers and employee organisations.

The focal points could do more to address issues relevant to the public.

Because of the primary task of OSHA, raising awareness, the prime focus in the Board composition should be on users and public. The Agency should be a service organisation to the European citizens in the field of safety and health on the workplace.

FOPs could do more to address issues relevant to public.

An obstacle for OSHA is that they are too dependent on political consensus. Given the mandate of information gathering and spreading their autonomy vis-à-vis Member States and the European Commission should be strengthened focussing on one issue: improving safety and health on the workplace for European citizens, workers and companies.

## **2.3 EACEA**

The Education, Audiovisual & Culture Executive Agency (EACEA) is established and operational from the beginning of 2006. It took over the programme management from the Technical Assistance Offices (TAOs) and the Commission. EACEA was the first big Executive Agency to be established. The objective of the Executive Agency is to manage community projects throughout their lifecycle. The beneficiaries vary substantially from education institutions to non-governmental and government organisations and enterprises (COWI, pp. 13).

EACEA is located in Brussels. Staff numbers have increased from 278 persons in 2006 to 376 in 2008 and 432 in 2010. The operational budget in 2010 was 600 million Euro and the administrative budget 49.5 million Euros.

The management of EACEA is composed of a Director and Head of Department, with ten operational units and three horizontal units. EACEA is managed by the Steering Committee and the Director. The Steering Committee is composed of five members from the parent DGs of the European Commission.

### 2.3.1 Establishment - How was the Agency established?

Until 2006 four centralised programmes of DG Education and Culture (DG EAC) as well as two strands of the Media programme of DG INFSO were managed by three Technical Assistance Offices (TAO's) and the European Commission. According to the reform of the Commission (2000 onwards), it was decided to phase out the TAO's because it was considered that programme management by privately owned entities, such as the TAO's, was raising issues of reliability and transparency. Alternatives available at the time were either to establish an Executive Agency to which programme management would be delegated, or to internalise these tasks in the Commission (all-Commission option). A cost-benefit assessment (2004) showed that the creation of an Executive Agency was preferable to outsource programme management to private law entities and to the all-Commission option (COWI, Internal Evaluation of the AECEA, pp. 5). According to the European Court of Auditors (2009, pp. 17) the 'Commission's assumption is that savings are achieved by recruiting 75 % proportion of contract staff instead of permanent officials at the Agencies.'

The European Court of Auditors (Special report 13/2009) finds that:

- 1. The initiative of setting up the Executive Agencies was mainly driven by constraints on employment within the Commission rather than being based on the intrinsic features of the programmes themselves.*
- 2. The cost-benefit analyses (CBA's) required by the legislation in order to support the decision to create the Agencies took little account of non-financial aspects and omitted some important factors on the side of costs. The picture provided, though undeniably positive from a financial point of view, was not entirely accurate. The contribution of the CBA's to the decision-making process was rather limited.'*

Because the Commission was not allowed to grow in size, Executive Agencies were created to increase specialisation of programme management and to offer a better and more cost-efficient service to programme participants.

### 2.3.2 Task

The task of EACEA covers tasks related to the management of projects throughout their lifecycle, in particular operations required for launching and concluding grant procedures, including calls for proposals, evaluation and selection of projects, financial commitments, notifications to applicants, entering and modifying agreements, contracting, monitoring of projects, execution of payments, and other contacts with beneficiaries (COWI, pp. 5).

The initial task (in terms of years) of EACEA has been extended progressively over the period 2007-2008. The extension of the mandate was necessary to cover the new generation of programmes 2007-2013 as well as the new initiatives on the external dimension of projects in the field of education. In 2007, the programmes managed by the Agency came from three parent DGs. The parent DGs now are EAC, DEVCO and COMM.

The Agency provides an umbrella for the internal and external higher education programmes of the Community, providing a uniform management system and acts as a single interlocutor for the higher education institutions and beneficiaries (COWI, pp. 6).

Executive Agencies, like EACEA, are Agencies responsible for purely managerial tasks, such as assisting the Commission in implementing programs (European Commission, 2002). EACEA is subject to strict supervision by the European Commission. Due to their executive role, the tasks of the Executive Agencies do not involve any political decision making or policy development.

Nevertheless, the European Court of Auditors (nr. 13/2009; Executive summary) concludes:

*The Commission's supervision of the Agencies' work [all five Executive Agencies] is quite limited:*

- *The annual work programmes (subject to the Commission's approval) are scarcely used for setting targeted objectives.*
- *The monitoring is mainly focused on indicators related to how the tasks are carried out rather than to the results produced.*
- *The reports are usually confined to budgetary execution and omit to measure progress made on a multi-annual basis and identify corrective actions of the future.*

This remark of the Court of Auditors is made for all Executive Agencies. The report of the Court does not give rise to the adoption that EACEA is excluded from these findings.

EACEA appears to be under strict supervision by the European Commission, but the European Court of Auditors places question marks.

### **2.3.3 Political accountability**

The Executive Agencies work in cooperation with and under supervision of the Commission. The Agency has autonomy in the field of managing the life cycle of projects, but depends on the Commissions' political orientations, the definitions of the programme priorities and budgets (COWI, pp. 14).

EACEA is under close supervision of the Commission. The Agency is exactly what it is, executing the rules and priorities of the Commission. Its autonomy in directing policy is nihil.

After hearing the opinion of the Court of Auditors, The Council of the European Union and the European Parliament issue a specific discharge on the accounts of the Executive and Regulatory Agencies. Council and Parliament are informed about award decisions. Both are informed about the activities through the parent DGs in the Annual Activity Report.

### 2.3.4 Social control

In 2007 - the first year with a new generation of programmes - EACEA received nearly 9.000 applicants in total and selected close to 4.100 applicants for funding.

The Agency's analyses shows that the main challenges facing applicants are to:

- Understand the purpose of the call for proposals.
- Understand the procedures.
- Pay attention to details.
- Plan the preparation of the application in an appropriate manner.

The Agency is communicating in various ways with the potential and selected applicants and beneficiaries:

- Website.
- Events.
- Information sessions.
- Individual feedback.
- Help desk.
- Mail box.

Appendix 11 of the COWI-evaluation contains a survey under applicants and beneficiaries about their satisfaction with EACEA.

Those whose proposals were accepted were more satisfied with the transparency of the principles of the selection procedure than those who were rejected. It is concluded that there is room for improving the communication of principles of selection, since some respondents have difficulties understanding them.

The survey shows that beneficiaries are mostly satisfied about the transparency, accuracy, and timeliness during the implementation process.

The beneficiaries were mostly satisfied with the overall programme management. This specific question however was only posed to the beneficiaries not to the applicants who were rejected a subsidy. They didn't reach to the implementation phase, but now comparison is impossible.

The overall satisfaction with the service of EACEA (and its predecessors) improved over the years (2003-2005, 2006 and 2007-2008).



In the interviews we did for our research EACEA is by some heralded for its clear and efficient rules. However two interviewed are clearly very critical, representatives of employers and employees. They criticize the Executive Agencies in general. The programs are set up from the perspective of the government, ministries, ministers and politicians. They want to spend money legitimately and controllable on the target. Preferably the Agencies make regulations which are executable, controllable and payable from the perspective of the government than from the perspective of the the multicoloured reality. Users, as the interviewed say, consider the rules as ‘made behind the desk’, by lawyers and accountants with far too much accountability. Only those can apply that are able to handle these rules and regulations. Monitor committees, monitoring these processes, can help and can lead to adjustments, the interviewed advice. But this also leads to more bureaucracy.

Mentioned are also the valorisation studies of EACEA. These are mainly targetted at improving the programmes but can give an indication of the outcome of EACEA.

### *Is the public involved?*

The target group of EACEA is not specifically the public in general. The programmes of EACEA are targeted at higher education institutions, university researchers, redeployment of workers, audiovisual companies and performers and cultural institutions and performers.

The topic of citizenship could be more directed towards the public.

Nevertheless, an important question is whether the European citizens know and feel that the programmes EACEA manages are improving their lives. Is our global educational position improved? Do European audiovisual and cultural performers get better chances? Does the handling of EACEA improve the accessibility of the programmes?

The European Commission should measure the effectiveness with output and outcome measures. This is what is needed to assess the efficiency and effectiveness.

### 2.3.5 Administrative accountability

Citizens of a Member State of the Union or people who reside in a Member State can make a complaint to the European Ombudsman. Businesses, associations or other bodies with a registered office in the Union may also make a complaint to the Ombudsman.

Since 2005 five complaints were made against EACEA. It is not possible in this study to describe all cases in detail. Most of them concern issues of applications and payments. In all cases the Ombudsman stopped his inquiry prematurely. In some cases a settlement was agreed before the Ombudsman had to decide.

In most cases EACEA gets compliments from the Ombudsman because of the acceptance of the Ombudsman's friendly solution proposal and its willingness to settle the complaint.

EACEA is further accountable to the Court of Justice, the Court of Auditors and the Internal Audit Service of the European Commission.

### 2.3.6 Financial accountability

As the EACEA task broadened (longer en more programs) the budgets of EACEA has grown also. In 2009 the administrative budget (Agency's costs) was 44 million Euro (2010 49.5 million Euro) and the staff number has increased up to 400 persons.

The operational budget (programs) managed by EACEA increased from 283 to 600 million Euro in 2010. The ratio of administrative cost compared to the operational budget has decreased steadily over the 2006-2008 period from 9.4 to 7.6 percent (COWI).

COWI concludes that EACEA has shown an improved level and quality of services and that the Agency is cost-effective.

Further COWI looked at relevance, effectiveness and efficiency. EACEA functions in accordance to the Act of Delegation and to the Modalities for

cooperation between the supervisory DGs and the Agency. There is no overlap of tasks between the Agency and the Commission. Nevertheless, there are areas with need for further clarity between the tasks of Agency and Commission, according to COWI. This issue is addressed in the action plan drawn up after the COWI evaluation. The division of tasks and responsibilities have subsequently been clarified for staff and management.

EACEA is, according to COWI who is looking at regular-effectiveness, effective since it achieved the objectives set in 2006 and 2007 work programmes. But also, COWI concludes that the different structures of the Annual Management Plan (AMP) and the Annual Activity Report (AAR) make it difficult to assess the extent of objective achievement for the Agency. The structures of AMP and AAR have now been aligned. Efficiency can be improved by simplification and harmonising internal procedures (joint databases, system harmonisation, IT systems, etc.). Many measures have been taken to simplify internal procedures.

With a ratio of administrative costs of 7.6 percent EACEA seems to be efficient.

The evaluations of COWI and the European Court of Auditors show however that this is purely financial.

The Court found that there were indeed cost savings stemming from the prevalence of lower paid contract staff. But the actual amount of the savings depends also on the redeployment of the Commission staff that were previously doing the work of the Agency. The Court concludes that the lack of reliable information on the *ex ante* situation at the Commission does not allow the extent of the savings to be verified.

### 2.3.7 Summary EACEA

#### Strong points

##### *Satisfaction*

Although the interaction of the Agency with applicants and beneficiaries can be improved EACEA seem to be rewarded by them.

## Improvement points

### *Establishment*

Although the service of the Agency has improved compared to the predecessor the establishment of EACEA was mainly driven by constraints on employment within the Commission rather than being based on the intrinsic features of the programmes themselves, the European Court of Auditors claims. EACEA claims the Agency was established with a view to improve the management of the programmes delegated and that that goal has been achieved.

### *Supervision*

On the one hand, EACEA is subject to strict supervision by the European Commission. The periodic reports do contain, according to EACEA, a full set of performance indicators that relate to the objectives.

On the other hand the European Court of Auditors states that the Commission's supervision is quite limited. What is lacking is supervising by setting results-oriented and targeted objectives, using a limited number of relevant performance indicators which form the basis for next years' objectives (Court of Auditors, executive summary).

### *Social accountability*

Purely financially everything seems to be all right. There is however little information about the efficiency of EACEA. Could we achieve the same result with less money?

Also, the attention for social accountability is lacking. What advantage does the European citizen take from the activities of EACEA? Do the programmes of EACEA improve education, innovation, culture, audiovisual performance? Is Europe more competitive through education and innovation vis-à-vis Far East and United States and upcoming economic spheres?

These are evaluation questions European citizens pose. We did not find output or outcome measures to answer these questions.

## 2.4 Policy recommendations

The main findings of the case studies are:

- The establishment of Agencies is intransparent.
- Citizens are underrepresented in the Boards of Agencies.
- Control on Agencies has a financial character.
- Budget control is mainly on regularity and not on efficiency and effectiveness.
- There is a lack of research on the effectiveness and efficiency of Agencies (output and outcome measures).

The case studies provide for another six Policy Recommendations.

### 1. Make the establishment of Agencies transparent

The establishment of European Agencies is often the result of political ‘horse trading’ or ‘package deals’ (Ramboll, 2009; Groenleer, 2009). The two case studies, the interviews and the literature review made this clear. It should be made more objective why an Agency is established.

Most Agencies have an undetermined duration, except the two cases of EAR and ENISA which have been established for a five year period (Ramboll, 2009, pp. 20).

There is a general understanding that Agencies need to be evaluated every five years with an aim to reconsider their mandate or even their very existence. This view is stated in the specific financial regulations of many Agencies, and it is sometimes made explicit in the founding regulations. An analysis of the current practice shows that the periodic Agency evaluation do not have a high enough profile for leading to a serious reconsideration of an Agency, and even less to its closure (Ramboll, 2009, pp. 20).

Ramboll identified five problems:

- Alternatives to the Agency option used to be paid limited attention but the recent impact assessment practices achieves a better transparency, although not yet perfect, especially in regards to governance and seating arrangements.
- There is no effective mechanism for reconsidering established Agencies.

- Once the host country is selected, the remaining options are taken through bilateral discussions, with quite uneven outcomes and negative transparency.
- With the exception of ECHA, the most recently established Agencies have not benefited from sufficient guidance, support, and transfer of lessons learnt with regards to administrative issues.
- The evaluation team considers that the critical mass issue is not yet assessed in sufficient depth in the impact assessment.

## 2. Represent the European citizen in the Agencies

Agencies should be guided by the interest of the ‘European citizen’. (Community) Agencies have a community task. They, like all European institutions, do something for European citizens. The research of Groenleer (2009) shows that Member States in the Board often put national interest first. The power that individual Member States have lost to the Commission is sometimes recovered by Member States through participating in the Agencies (Groenleer 2009; Egeberg & Trondal, 2010).

Our literature review (Bovens, 2008; Groenleer, 2009; Busuioc, 2010) shows that European citizens are hardly represented in the European Agencies. Representatives of Member States often represent the vested interests of individual Member States. What is lacking is a vision about the interest of the European citizen. This vision must be strengthened.

Suggestions to represent the interest of the ‘citizens’ in the Agencies:

- *Chief Citizen Officer.* Mrs. M.L. Vos, ex-member of the Dutch Parliament of the Labour Party, advised a Chief Customer Officer in the Board of Banks (2010). European citizens are not represented in the Boards of Agencies.
- *Client councils, client fora.* Involvement of citizens (customers, clients) can be regarded as a way to improve the quality of Agencies (Schillemans, 2009). Customer Councils and customer forums can provide useful feedback about the activities of public organisations from the experience of clients or customers. The primary importance of client councils and customer forums is that they direct recipients of a service a voice in the service and help spread the word to give to their experiences with the service.

Customer Councils and generate customer forums, such as customer satisfaction surveys, targeted surveys, focus groups and suggestion boxes, insight into the views, wishes and experiences of citizens (stakeholders).

- *Visitation of professionals and citizens.* Visitation by professional (colleague Agencies) or representatives of citizens of Agencies can give information on the effectiveness of the output of the Agency (Bovens, 2009). A direct and explicit accountability relation between public Agencies and clients, citizens and civil society is possible by putting the results of visitations on the internet. It can provide ways to improve the functioning of Agencies.
- *Ombudsman.* The European Ombudsman can have an important role to involve the citizens and to represent interests of European citizens in the functioning of the European Agencies.

### 3. Agencies must be social accountable

EU Agencies are heavily controlled financially by the European Commission. This is a basis, but not enough. No accountant warned the European citizens for the financial risks of banks, the housing crisis or the consequences of public overspending. We see no studies on the efficiency of the Agencies: Could we achieve the same result with less money?

The European Agencies should be held accountable to the European citizen (What have we done for you?), the interest groups (workers, employers, sectors). We agree, it's hard to imagine the 'interest of the European citizen'.

We offer a few examples:

- What did the *European Aviation Safety Agency* (EASA) do for travellers? Do we have one European Aviation Safety area or are there still competency claims with safety risks for travellers?
- What did the *European Chemicals Agency* (ECHA) do for the European citizens? Are European citizens protected against dangerous chemical substances or are the interests of chemical companies guarded by this Agency?
- What did the *European Police Office* (EUROPOL) do to prevent tough criminals to cross the border and start over? In the Netherlands we have

the example of a child abuser in a day care center who was convicted in Germany already for the same transgression. Prevention of these kind of criminals is what the citizens expect of Europe.

- What did the *European Centre for the Development of Vocational Training* (CEDEFOP) do to make free movement of citizens possible through the recognition of diploma's and certificates? Recognition of diploma's is still an obstacle to free movement of citizens than conducive to it. European policy has not been able to lift the obstacles because national interests prevailed. The *European Qualifications Framework* (European Commission, 2008a) might offer new possibilities.

The dogma should be:

What did the European Agency do for the European citizen?

We agree that this is a tough question which is not always easy to answer. But there should be a better balance between citizens, Member States and the earlier mentioned Eurocrats.

#### **4. European citizens should be more involved in the operation of European institutions in general**

The two case studies show that complaints at the Ombudsman are seldom submitted by citizens. Also in administrative accountability citizens should be more visible.

Administrative institutions should address the interest of the European citizen more specific.

#### **5. Budgets should be awarded more responsive**

The literature review (Busuioc, 2010; European Court of Auditors, 2009) and the two case studies showed that budgets are mostly automatically extended. There is sometimes informal consultation between Director and the European Commission on the budget but this is intransparent. Checks and balances are below par. There is a lot of financial accountability but it hardly gives a view on efficiency: could we have achieved the same result with less money?



The controls might be sufficient but they are not democratic (do the citizens take advantage of it?) or transparent (make clear how efficient and what effects are created with the money). Neither the Commission, nor the European Parliament use their discharging powerfully to change budget or to redirect budgets. Informal contacts between Directors and Commission have influence but these are intransparent.

A greater role should be awarded to the Council of the European Union and the European Parliament in regards to spending on Agencies.

## **6. Do research on effectiveness of Agencies**

Our research (literature review and case studies) points to the fact that no research is done that examines the effectiveness of European Agencies. The European Court of Auditors does not answer that question.

Our case studies found that the Agencies are working on performance indicators. This is a start. But it is not enough to shed light on the effectiveness of Agencies. This compels for a new, mature and innovative culture in the (management of the) Agencies. It is not easy to measure effectiveness. Intervention can help to come up with new ideas.

The European Commission should develop a good framework of indicators.

## **2.5 Summary**

The two case studies of the study are not representative for the functioning of the EU Agencies. Nevertheless, they reveal that the establishment of European Agencies is not transparent. The accountability and control of Agencies shows shortcomings.

From our model of social accountability we see that the European citizens are hardly ever represented in the Boards of the Agencies. The work in Agencies is oriented towards policy-making in the Member States. The control of Agencies by the European Commission is primarily financially oriented. An evaluation based on effectiveness and efficiency is lacking because there are no output or outcome measures. Evaluation is on regular effectiveness.

On these findings six policy recommendations were formulated:

- *Make the establishment of Agencies transparent.* The establishment of European Agencies is often the result of political ‘horsetrading’ or ‘package deals’. It should be made more objective why an Agency is established.
- *Represent the European citizen in the Agencies.* The ‘citizen’s interest’ is hardly ever represented in the Boards of the Agencies. The interest of the citizen should be leading.
- *Agencies must be social accountable.* Most control of the European Commission now is one-sided financially oriented. Financial accounting gives little information on the performing en effectiveness on Agencies. Needed is a change from a bureaucratic to a more innovative, open culture. The introduction of social accountability focuses on participation, empowerment, generating and evaluating alternatives, evaluation on effectiveness and learning.
- *European citizens should be more involved in the operation of European institutions in general.* The culture in European institutions is bureaucratic, legalistic and oriented towards policy-making in the Member States. Europe should get back in the hearts and minds of its citizens by being accountable to them.
- *Budgets should be awarded more responsive.* There is a lot of financial control towards Agencies. Still a clear, transparent overview on efficiency lacks. Too often budgets are automatically extended. The culture is focused on control, not on learning.
- *Do research on effectiveness of Agencies.* Not only attention for efficiency is needed, also the effectiveness must be studied. The discussion on European Agencies is far too legalistic. We need more information about the outcome of Agencies. The European Commission should develop a good framework of indicators on the functioning of EU Agencies.

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## Annex 1: Research design

Dennis de Jong, member of the European Parliament for the Dutch Socialist Party (SP), invited the Institute for Applied Social Sciences (ITS) of the Radboud University Nijmegen to do research on EU Agencies. The objective of the research is to:

- Esteem the current level of accountability and efficiency
- Make policy recommendations.

There is mountain of information on the functioning of European Agencies, but the policy recommendations lack.

De Jong asks the following:

### *Definition and legal basis*

1. How to best define EU Agencies, in light of the lack of a single conclusive definition?
2. What is the legal basis of EU Agencies? And what are the main changes under the Lisbon Treaty?

### *Establishment of Agencies*

3. To what extent are Agencies established in a transparent manner?

### *Political and democratic accountability*

4. How does the sharing of powers and mandates in reality take place between Agencies, the Commission and the European Parliament? Who is responsible for what, when and how? What is the legal and practical status of decisions taken by Agencies?
5. How are Agencies currently political accountable and to what extent are Agencies contributing to democratic accountability?
6. In what ways is democratic control exercised over Agencies? And is this functioning effectively?

### *Administrative accountability*

7. To what extent are complaints being made to the European Ombudsman in relation to Agencies and what have they led to so far? (Administrative accountability)

### *Financial accountability and transparency*

8. To what extent are the current budgets controls sufficient, democratic and transparent?
9. To what extent have the Agencies conducted their activities efficiently and achieved their objectives in a cost-effective manner?

To answer these questions we did four research activities:

- Literature review.
- Two case studies.
- Interviews with experts.
- Analyses.

#### *A. Literature review*

The literature review is focussed on an overview of the European Agencies and three topics based on the research questions:

- What is the best definition of the Agencies?
- What is the legal basis of the Agencies?
- What is the accountability of the Agencies?

#### *B. Case studies*

##### *Sample*

For the case studies two Agencies have been selected. Because education, health and labour belong to the main research topics of the ITS we have chosen for:

- Education, Audiovisual and Cultural Executive Agency (EACEA), Brussels, Belgium.
- European Agency for Safety and Health at work (OSHA), Bilbao, Spain.

The client agreed with our choice.

The case studies are based on evaluation studies, interviews with key figures, internet searches.

### *C. Interviews*

To draw policy recommendations we interviewed key figures. Some were interviewed primarily concerning the cases.

#### List of interviewed Dutch experts

drs. M. Blomsma	Ministry of Social Affairs and Employment
prof. dr. M. Bovens	Utrecht University
prof. dr. N. Groenendijk	University of Twente, President of the European Community Study Association
dr. M. Groenleer	University of Delft
mr. H. Goudsmit	Ministry of Social Affairs and Employment
drs. M. den Held	Ministry of Social Affairs and Employment
dr. H. Koëter	Retired, former director of EFSA
hr. B. Koning	Employer representative
drs. A. van der Leest	Employer representative, Metall union
mr. M. van Mierlo	Employer representative, VNO-MKB
prof. dr. P. Peters	Member of Dutch Senate for Dutch Socialist Party
mr. A. Ploegmakers MA	Former Union representative
dr. Th. Schillemans	Utrecht University
mr. H. Schrama	Focal point Netherlands
drs. W. van Veelen	Union representative
mevr. prof. dr. E. Versluis	University of Maastricht

Three interviewed experts wanted to stay anonymous but delivered useful information. The policy recommendations are not per se the views of the interviewees.

#### *D. Analysis*

Our focus in this research is on social accountability which is promoted by theorists like Vosselman and Bovens (Vosselman, 2006; Bovens, 2007; Vrieze, Marx, De Gier & Van Esch, 2007). In our current study we make a distinction between classic and modern social accountability (see Figure 1).

*Figure 1 – Typology of accountability*

	Classic accountability	Social accountability
Forum	Political, legal, administrative	Public, citizen, professions
Way	Financial	Effectiveness, results
Direction	Top-down	Bottom-up
Measuring	Narrow (quantitative)	Rich (quantitative and qualitative)
Character	Procedural, ritual, intransparent, window dressing	Content, what works
Perspective	Controlling	Learning
Interaction	Principal-agent	Partnership
Culture	Bureaucratic	Innovative

In our theoretical view the European Union is losing trust because it is relying too much on classical accountability which leads to an intransparent, procedural bureaucracy. The functioning of the European Agencies should, according to these theorists, be characterized by a focus on participation (public, citizen, professions), empowerment (bottom-up), generating and evaluating alternatives (quantitative and qualitative measuring), evaluation of effectiveness (content, what works), improving (learning), listening and being supportive (partnership) and change from a bureaucratic to a more innovative, open culture.

## Annex 2: European Agencies

Agency	Date of Creation & Legal Source	Description of activities
<b>CEDEFOP:</b> European Centre for the Development of Vocational Training – Thessaloniki	10 February 1975 - Regulation (EEC) 337/1975	To promote a European area of lifelong learning throughout an enlarged EU, by providing information on and analyses of vocational education and training systems, policies, research and practice
<b>EUROFOUND:</b> European Foundation for the Improvement of Living and Working Conditions – Dublin	26 May 1975 - Regulation (EEC) 1365/1975	To provide information, advice and expertise – on living and working conditions, industrial relations and managing change in Europe – for key actors in the field of EU social policy on the basis of comparative information, research and analysis
<b>ETF:</b> European Training Foundation – Torino	7 May 1990 - Regulation (EEC) 1360/1990	To contribute to the development to the vocational training systems in partner countries and to facilitate dialogue amongst stakeholders by developing international, national and local networks
<b>EEA:</b> European Environment Agency – Copenhagen	7 May 1990 - Regulation (EEC) 1210/1990	To provide sound and independent information on the environment and environmental policies and to develop and coordinate the European environment information and observation network (Eionet)
<b>EMCDDA:</b> European Monitoring Centre for Drugs and Drug Addiction – Lisbon	8 February 1993 - Regulation (EEC) 302/1993	To gather, analyse and disseminate objective, reliable and comparable information on drugs and drug addiction and, in so doing, provide its audiences with a sound and evidence-based picture of the drug phenomenon at European level
<b>EMA:</b> European Medicines Agency – London	22 July 1993 - Regulation (EEC) 2309/1993	To perform the scientific evaluation of applications for European marketing authorization for medicinal products for human and veterinary use

Agency	Date of Creation & Legal Source	Description of activities
<b>OHIM:</b> Office for Harmonisation in the Internal Market (Trade Marks and Designs) – Alicante	20 December 1993 - Regulation (EC)40/1994	To register and manage the applications for the Community trade mark and the Community registered design
<b>EU-OSHA: European Agency for Safety and Health at Work – Bilbao</b>	<b>18 July 1994 - Regulation (EC) 2062/1994</b>	<b>To develop, analyze and disseminate information to improve occupational safety and health in Europe and to develop a comprehensive network with national focal points, European institutions, European social partners, and international organisations</b>
<b>CPVO:</b> Community Plant Variety Office – Angers	27 July 1994 - Regulation (EC) 2100/1994	To implement and apply a system for the protection of plant variety Rights
<b>CdT:</b> Translation Centre for the Bodies of the European Union – Luxembourg	28 November 1994 - Regulation (EC) 2965/1994	To provide the translation services required by the institutions, bodies and Decentralized Agencies of the European Union
<b>EUROPOL:</b> European Police Office – The Hague	18 April 2008 - Regulation not yet published in the Official Journal of the EU. (original: 26 July 1995 – Convention)	To help member states co-operate more closely and effectively in preventing and combating organised international crime by facilitating the exchange of information between Europol and Europol Liaison Officers, providing operational analysis and supporting member states' operations, providing expertise and technical support for investigations and operations carried out within the EU and generating strategic reports and crime analysis on the basis of information and intelligence supplied by member states or gathered from other sources
<b>FRA:</b> European Union Fundamental Rights Agency – Vienna (Before: EUMC: European	15 February 2007 - Regulation (EC) 168/2007 (2 June 1997 - Regulation (EC)	To provide Community institutions and member states with information, assistance and expertise on fundamental rights when implementing community law, and to support them in taking measures and formulating appropriate courses of action

Agency	Date of Creation & Legal Source	Description of activities
Monitoring Centre on Racism and Xenophobia)	1035/1997)	
<b>EAR:</b> European Agency for Reconstruction – Thessaloniki	15 November 1999 - Regulation (EC) 2454/1999	To manage the main EU assistance programmes in Serbia and Montenegro (Republic of Serbia, Republic of Montenegro, UN administered Kosovo) and FYR of Macedonia
<b>ISS:</b> European Union Institute for Security Studies – Paris	20 July 2001 - Council Joint Action 2001/554/CFSP	To help create a common European security culture, to support the strategic debate by organising research and debate on security and defence issues that are of importance to the EU and to create a network of academics, officials, experts and decision-makers in order to provide a forward-looking analysis on security and defence issues
<b>EUSC:</b> European Union Satellite Centre - Torrejon de Ardoz	20 July 2001 - Council Joint Action 2001/555/CFSP	To support the decision-making of the European Union by providing analysis of satellite imagery and collateral data
<b>EFSA:</b> European Food Safety Authority – Parma	28 January 2002 - Regulation (EC) 178/2002	To collect and analyze scientific data, identify emerging risks and provide independent scientific advice on all matters with a direct or indirect impact on food safety, including animal health and welfare and plant protection
<b>EUROJUST:</b> The European Union’s Judicial Cooperation Unit - The Hague	28 February 2002 - Council Decision 2002/187/JHA	To enhance the effectiveness of the competent authorities within member states when they are dealing with serious cross-border and organised crime, to stimulate and improve the coordination of investigations and prosecutions and to support the member states in order to render their investigations and prosecutions more effective
<b>EMSA:</b> European Maritime Safety Agency – Lisbon	27 June 2002 - Regulation (EC) 1406/2002	To assist the Commission and the national authorities in matters of maritime safety, security and the prevention of pollution caused by ships, to control the proper application of EU law in this field and to promote cooperation between national authorities

Agency	Date of Creation & Legal Source	Description of activities
<b>EASA:</b> European Aviation Safety Agency – Köln	15 July 2002 - Regulation (EC) 1592/2002	To provide technical expertise to the European Commission by assisting in the drafting of rules for aviation safety and to carry out the certification of aeronautical products and organisations involved in their design, production and maintenance, which help to ensure compliance with airworthiness and environmental protection standards
<b>ENISA:</b> European Network and Information Security Agency – Heraklion	10 March 2004 - Regulation (EC) 460/2004	To advise and assist the Commission and the member states on information security and to address security-related problems in hardware and software products in dialogue with industry, to collect and analyze data on security incidents in Europe and emerging risks, to promote risk assessment and risk management methods to enhance our capability to deal with information security threats, to exchange best practices and to track the development of standards for products and services on network and information society
<b>ECDC:</b> European Centre for Disease Prevention and Control – Stockholm	21 April 2004 - Regulation (EC) 851/2004	To enhance the capacity of the Community and the member states to protect human health through the prevention and control of human disease, to act on its own initiative when outbreaks of contagious illnesses of unknown origin threaten the Community and to ensure complementary and coherent action in the field of public health by bringing together the member states, the EU Institutions and the relevant international organisations
<b>ERA:</b> European Railway Agency – Lille/Valenciennes	29 April 2004 - Regulation (EC) 881/2004	To reinforce safety and inter- operability of railways throughout Europe
<b>GSA:</b> The European Global Navigation Satellite Systems Supervisory Authority – <i>Undecided (provisionally in Brussels)</i>	12 July 2004 - Regulation (EC) 1321/2004	To manage the European satellite navigation programmes



Agency	Date of Creation & Legal Source	Description of activities
<b>EDA:</b> European Defence Agency – Brussels	12 July 2004 - Council Joint Action 2004/551/CFSP	To improve the EU’s defence capabilities, especially in the field of crisis management, to promote EU armaments cooperation, to assist in the development and overall re- structuring of the European defence industry and to promote EU defence-related Research and Technology
<b>FRONTEX:</b> European Agency for the Management of Operational Cooperation at the External Borders – Warsaw	26 October 2004 - Regulation (EC) 2007/2004	To coordinate operational cooperation between member states in the field of management of external borders, to assist member states in the training of national border guards, to strengthen border security by ensuring the coordination of Member States’ actions in the implementation of Community measures relating to the management of the external borders and to promote overall coherency by liaising with other Community and EU partners responsible for the security of the external borders
<b>CFCA:</b> Community Fisheries Control Agency – Vigo	26 April 2005 - Regulation (EC) 768/2005	To organize operational coordination of fisheries control and inspection activities by the member states and to assist them to cooperate so as to comply with the rules of the Common EU Fisheries Policy in order to ensure its effective and uniform application
<b>CEPOL:</b> European Police College – Bramshill	20 September 2005 - Council Decision 2005/681/JHA	To encourage cross-border cooperation in the fight against crime, maintenance of public security and law and order by organising courses, seminars and conferences with senior police officers from across Europe
<b>ECHA:</b> European Chemicals Agency – Helsinki	18 December 2006 - Regulation (EC) 1907/2006	To manage the registration, evaluation, authorization and restriction processes for chemical substances, to ensure consistency in chemicals management across the EU and to provide technical and scientific advice, guidance and information on chemicals

Source: Andoura & Timmerman, 2008

### Agencies under preparation (Andoura & Timmerman, 2008, p.33)

Agency	Date of Creation & Legal Source	Description of activities
<b>EIGE:</b> European Institute for Gender Equality – Vilnius	20 December 2006 - Regulation (EC) 1922/2006	To contribute to and strengthen the promotion of gender equality and the fight against discrimination based on sex, to collect, analyze and disseminate relevant, objective, comparable and reliable information as regards gender equality, to raise EU citizens' awareness of gender equality and to set up and coordinate a European Network on Gender Equality

### Proposed Regulatory Agencies (Andoura & Timmerman, 2008, p.33)

Agency	Date of Creation & Legal Source	Description of activities
Agency for the Cooperation of Energy Regulators	(unknown)	(unknown)
European Electronic Communications Market Authority	(unknown)	(unknown)

Source: Andoura & Timmerman, 2008

## European executive Agencies (Andoura & Timmerman, 2008, p.33)

Agency	Date of Creation & Legal Source	Description of activities
<b>PHEA:</b> Executive Agency for the Public Health Programme – Brussels	15 December 2004 - Decision 2004/858/EC	To support actions to improve and protect human health in the EU
<b>EACEA: Education, Audiovisual and Culture Executive Agency – Brussels</b>	<b>14 January 2005 - Decision 2005/56/EC</b>	<b>To implement the Community funded programmes and actions in the fields of education and training, active citizenship, youth, audiovisual and culture</b>
<b>TEN-TEA:</b> Trans-European Transport Network Executive Agency – Brussels	26 October 2006 - Decision 2007/60/EC	To manage the projects and events for the promotion of the Trans- European Transport Network
<b>EACI:</b> Executive Agency for Competitiveness and Innovation – Brussels (Before: IEEA)	31 May 2007 - Decision 2007/372/EC	To manage the projects and events funded under Intelligent Energy - Energy Europe programme and to disseminate the resulting knowhow and best practices
<b>ERC:</b> European Research Council Executive Agency - Brussels (Under preparation)	14 December 2007 - Decision 2008/37/EC	To stimulate scientific excellence in Europe by supporting and encouraging the very best, truly creative scientists, scholars and engineers
<b>REA:</b> Research Executive Agency – Brussels	14 December 2007 - Decision 2008/46/EC	To evaluate the proposals and manage the research projects of the current research framework programme FP7

Source: Andoura & Timmerman, 2008

### 3: Community Agencies (Ramboll, 2009)

Agency	Date of creation	Location	Parent DG	Staff	Overall budget €million	EU subsidy %	Type of governance	Main category of activity	Stage in lifecycle
CEDEFOP	1975	Thessaloniki (GR)	EAC	122	18	94%	Tripartite	Soft coordination	
EURO-FOUND	1975	Dublin (IE)	EMPL	87	21	100%	Tripartite	Information	
ETF	1990	Torino (IT)	EAC	124	19	96%	Standard	Service and support	Changing
EEA	1990	Copenhagen (DK)	ENV	167	37	86%	Standard	Information	
EMEA	1993	London (UK)	ENTR	547	183	25%	Standard	Individual applications	
EMCDDA	1993	Lisbon (PO)	JLS	99	14	93%	Standard	Information	
CdT	1994	Luxembourg (LU)	DGT	189	42	0%	Users and MS	Service and support	
EUOSHA	1994	Bilbao (ES)	EMPL	64	15	93%	Tripartite	Communication	
CPVO	1994	Angers (FR)	SANCO	45	13	0%	Standard	Individual applications	
OHIM	1994	Alicante (ES)	MARKT	705	318	0%	Standard	Individual applications	
EUROPOL	1995	The Hague (NL)	JLS	408	65	100%	Member States	Operational coordin.	Changing
EAR	2000	Thessaloniki (GR)	ELARG				Standard	Service and support	Closed
CEPOL	2000	Bramshill (UK)	JLS	32	9	100%	Member States	Soft coordination	
EUROJUST	2002	The Hague (NL)	JLS	172	20	100%	Member States	Operational coordin.	
EFSA	2002	Parma (IT)	SANCO	395	66	100%	Expert	Expert advice	
EMSA	2002	Lisbon (PO)	TREN	179	50	100%	Standard	Operational coordin.	
EASA	2002	Köln (DE)	TREN	440	85	35%	Standard	Individual applications	Growing
ECDC	2004	Stockholm (SE)	SANCO	195	40	98%	Standard	Information	
ERA	2004	Lille (FR)	TREN	113	18	100%	Standard	Expert advice	
ENISA	2004	Heraklion (GR)	INFSO	57	8	100%	Standard	Information	

Agency	Date of creation	Location	Parent DG	Staff	Overall budget €million	EU subsidy %	Type of governance	Main category of activity	Stage in lifecycle
FRONTEX	2005	Warsaw (PL)	JLS	185	70	97%	Standard	Operational coordin.	
CFCA	2005	Vigo (ES)	MARE	47	9	78%	Standard	Operational coordin.	Growing
GSA	2005	Brussels (BEL)	TREN	52	11	100%	Standard	Service and support	Changing
ECHA	2006	Helsinki (FI)	ENTR	219	66	95%	Standard	Individual applications	Growing
FRA	2007	Wien (AU)	JLS	55	15	100%	Expert	Information	
EIGE	2007	Vilnius (LT)	EMPL	N/A	7	100%	Standard	Information	Start up
ESRB	2010	Frankfurt (GER)							Start up
EBA	2011	London (UK)							Start up
ESMA	2011	Paris (FR)							Start up
EIOPA	2011	Frankfurt (GER)							Start up

*Explanation to overview Community Agencies:*

*Staff and budget figures apply to year 2008*

*Types of governance*

*Standard = all Member States plus Commission*

*Member States = Member States only have voting rights*

*Tripartite = Member States plus social partners (employee and employers)*

*Expert = Board Members nominated on a professional basis*

*Tasks*

*Information = Collecting and disseminating harmonised information*

*Operational coordination = Facilitating operational coordination*

*Individual application = Dealing with individual applications (ensure security on the market)*

*Service or support = Delivering a highly specific service or support*

*Soft coordination = Contributing to soft coordination*

*Expert advice = Providing expert advice*

*Communicating = Communicating*

## *Overview – Union, Euratom and Executive Agencies*

<b>Agency</b>	<b>Date of creation</b>	<b>Location</b>	<b>Budget 2008</b>	<b>Type</b>
Union (Security and defence)				
IIS	2001	Paris (FR)	3,8 million	Security.
EDA	2004	Brussels	27 + 8 optional	Security
EUSC	2002	Madrid (SP)	14,5 million	Security
Euratom			275 million total	
ESA	1958	Luxemburg		Euratom
ITER FfE	2007	Barcelona		Euratom
SESAR	2007	Luxemburg		Euratom
EIT	2008	Budapest		Euratom
Executive Agencies				
EAHC / EACI	2005	Brussels (EU)	15.3 million	Exec
EACEA	2005	Brussels (EU)	41.9 million	Exec
TEN-TEA	2006	Brussels (EU)	10.2 million	Exec
EACI	2007	Brussels (EU)	15.3 million	Exec
ERC	2007	Brussels (EU)	20 million	Exec
REA	2007	Brussels (EU)	14.6 million	Exec

### *Overview 3 – Proposed Agencies*

Agency	Date of creation	Location
BEREC	2010	Riga (LAT)
ACER	2011	Ljubljana (SLOV)
Police databases	2012	
ESA	2014	Paris (FRA)

## Keeping up Appearances

About 40 European Agencies are located in 18 Member States of the European Union. Euratom, the first Agency, was established in 1958, followed in the seventies by Cedefop and Eurofound. The number of EU Agencies has increased exponentially since 1994. Staff and budgets have grown. 7.000 People work in Agencies and their revenues are 1 800 million EURO every year.

Agencies are attractive for Member States because of their autonomous status. For the cities where the Agencies are located they are offering employment possibilities and prestige.

However, delegating tasks and power from the European treaty-based institutions to autonomous decentralised EU Agencies evokes a number of issues:

- Accountability: Who runs these organizations? Who controls them?
- Legitimacy: Too much independence leads to bureaucracy and insufficient participation of external stakeholders like citizens.
- Heterogeneity: Most Agencies are established in an ad hoc approach, resulting in a lack of coherence.

Before deciding about the budgets for European Agencies over 2013-2020 it is important to start a discussion about the way to improve the functioning of these Agencies.

The objective of the research is to:

- Esteem the current level of accountability and efficiency.
- Make policy recommendations.

ITS of the Radboud University Nijmegen (NL) conducted a literature review, two case studies and interviews with experts.

In a broad view there seems to be a lot of accountability regarding EU Agencies. However, the control is financially oriented and investigates only whether the money is spend legal and regular. Other instruments have serious shortcomings. If one looks closer it never is, what it appears to be. Europe and the Agencies need a clear foundation.

Ten policy recommendations are offered to improve the functioning of the EU Agencies.

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