

# EUROPEAN PARLIAMENT

2004



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*Committee on Budgetary Control*

**2007/2214(DEC)**

13.2.2008

## **DRAFT REPORT**

on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006  
(C6-0389/2007 – 2007/2214(DEC))

Committee on Budgetary Control

Rapporteur: Hans-Peter Martin

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## 1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006  
(C6-0389/2007 – 2007/2214(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006<sup>1</sup>,
  - having regard to the Court of Auditors' report on the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006, together with Agency's replies<sup>2</sup>,
  - having regard to the Council's recommendation of ... (xxxx/0000 – C6-xxxx/0000),
  - having regard to the EC Treaty, and in particular Article 276 thereof,
  - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>, and in particular Article 185 thereof,
  - having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>4</sup>, and in particular Article 30 thereof,
  - having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002<sup>5</sup>, and in particular Article 94 thereof,
  - having regard to Rule 71 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),
1. Postpones its decision on granting the executive director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of

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<sup>1</sup> OJ C 261, 31.10.2007, p. 7.

<sup>2</sup> OJ C 309, 19.12.2007, p. 29.

<sup>3</sup> OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

<sup>4</sup> OJ L 349, 25.11.2004, p. 1. Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council (OJ L 199, 31.7.2007, p. 30).

<sup>5</sup> OJ L 357, 31.12.2002, p. 72.

the European Union discharge in respect of the implementation of the Agency's budget for the financial year 2006;

2. Sets out its observations in the resolution below;
3. Instructs its President to forward this decision and the resolution that forms an integral part of it to the executive director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the Official Journal of the European Union (L series).

## 2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the closure of the accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006  
(C6-0389/2007 – 2007/2214(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006<sup>1</sup>,
- having regard to the Court of Auditors' report on the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006, together with Agency's replies<sup>2</sup>,
- having regard to the Council's recommendation of ... (xxxx/0000 – C6-xxxx/0000),
- having regard to the EC Treaty, and in particular Article 276 thereof,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>, and in particular Article 185 thereof,
- having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>4</sup>, and in particular Article 30 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002<sup>5</sup>, and in particular Article 94 thereof,
- having regard to Rule 71 of and Annex V to its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),

1. Notes that the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European

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<sup>1</sup> OJ C 261, 31.10.2007, p. 7.

<sup>2</sup> OJ C 309, 19.12.2007, p. 29.

<sup>3</sup> OJ L 248, 16.9.2002, p. 1. . Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

<sup>4</sup> OJ L 349, 25.11.2004, p. 1. Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council (OJ L 199, 31.7.2007, p. 30).

<sup>5</sup> OJ L 357, 31.12.2002, p. 72.

Union are as annexed to the Court of Auditors reports;

2. Postpones the closure of the accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006;
3. Instructs its President to forward this decision to the executive director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the Official Journal of the European Union (L series).

### 3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006 (C6-0389/2007 – 2007/2214(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006<sup>1</sup>,
- having regard to the Court of Auditors' report on the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006, together with Agency's replies<sup>2</sup>,
- having regard to the Council's recommendation of ... (xxxx/0000 – C6-xxxx/0000),
- having regard to the EC Treaty, and in particular Article 276 thereof,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>, and in particular Article 185 thereof,
- having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>4</sup>, and in particular Article 30 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002<sup>5</sup>, and in particular Article 94 thereof,
- having regard to Rule 71 of and Annex V to its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),

A. whereas the Court of Auditors stated that it has obtained reasonable assurance that the

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<sup>1</sup> OJ C 261, 31.10.2007, p. 7.

<sup>2</sup> OJ C 309, 19.12.2007, p. 29.

<sup>3</sup> OJ L 248, 16.9.2002, p. 1. . Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

<sup>4</sup> OJ L 349, 25.11.2004, p. 1. Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council (OJ L 199, 31.7.2007, p. 30).

<sup>5</sup> OJ L 357, 31.12.2002, p. 72.

annual accounts for the financial year 2006 are reliable, and the underlying transactions, are legal and regular,

B. whereas 2006 was the Agency's first year of financial autonomy,

***Reasons for postponement***

- C. having regard to the principle of the limited conferral of powers, which, in the current documents providing the legal basis for the European Union, is enshrined, inter alia, in Article 5 of the Treaty on European Union (TEU) and which stipulates that the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors should exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of the TEU,
- D. having regard to the principle of subsidiarity, which, in the current documents providing the legal basis for the European Union, is enshrined, inter alia, in Article 5, second paragraph, of the Treaty establishing the European Community (TEC) and which stipulates that in areas which do not fall within its exclusive competence the Community should take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community,
- E. whereas, pursuant to paragraph 4 of the Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997), for any proposed Community legislation the reasons on which it is based must be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality and the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or quantitative indicators,
- F. whereas, pursuant to paragraph 3 of the Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997), Community action within the limits of its powers can either be expanded or restricted, or discontinued where it is no longer justified,
- G. whereas, pursuant to paragraph 9 of the Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997), due account must be taken of the need for any financial or administrative burden falling on the Community to be minimised and proportionate to the objective to be achieved,
- H. having regard to the principle of sound financial management, which is laid down, inter alia, in Article 274 TEC, and, hence, the requirement to achieve the best possible result with the appropriations available or to achieve a given result using the lowest possible volume of appropriations,
- I. whereas the Commission, in its 2000 White Paper on the Reform of the Commission, laid down as guidelines for the formulation of an externalisation policy cost-effectiveness and the ability to exercise its powers to implement the budget, pursuant to Article 274 TEC,



- J. whereas, pursuant to Article 253 TEC, regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, must state the reasons on which they are based and must refer to any proposals or opinions which were required to be obtained pursuant to the Treaty,
- K. concerned that in 2006 administrative spending accounted for a substantial proportion of the agency's overall expenditure, making the effective and efficient performance of its tasks virtually impossible,
- L. concerned that no strict logic was applied to the selection of the location for the agency and that, as a result, a substantial volume of unnecessary additional costs has arisen,
- M. concerned that it is not clear how this activity can be carried out more efficiently and more effectively in a decentralised agency and in this location than in the Commission itself,
- N. concerned about the horizontal problems and considerations developed in the section headed 'General points',
- O. concerned at the high cost of privileges for agency staff,
- P. concerned that the cost of private travel by agency staff and members of their families is unacceptably high,
- Q. concerned that the agency's staff expenditure per post increased by 400% between the financial year 2006 and the 2008 preliminary draft budget,
- R. suspecting that the Commission has breached the requirement to justify compliance with the subsidiarity principle,
- S. suspecting that the agency's work and the funding provided for that work are not consistent with the subsidiarity principle and the principle of sound financial management,
- T. suspecting that this has led to a serious waste of public funds,
- U. calling on the Director of the agency to propose, by 1 June 2008 at the latest, practical measures to achieve savings and to explain in detail why staff expenditure per post increased by 400% between the financial year 2006 and the 2008 preliminary draft budget and thus far exceeds the average,
- V. calling on the Commission, pending the possible granting of discharge to the agency, and pursuant to the Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997), to meet, or demonstrate in detail that it has met, the requirement to justify compliance with the subsidiarity principle,
- W. calling on the Commission, pending the possible granting of discharge to the agency, and the Council to outline in detail the logic behind the choice of location for the agency,
- X. calling on the Commission, pending the possible granting of discharge to the agency, to

demonstrate that the agency is being run in accordance with the principle of sound financial management, as laid down, inter alia, in Article 274 TEC; this includes provision of proof of cost-effectiveness, in keeping with the 2000 White Paper on the Reform of the Commission, and a detailed cost-benefit analysis conducted by a competent, independent firm,

- Y. calling on the Commission, pending the possible granting of discharge to the agency, to put forward a proposal which seeks to amend the Staff Regulations of officials of the European Communities, so that the cost of private travel for staff and members of their family, as governed by Annex VII, Section 3C, Article 8, can no longer be met from public funds, and which seeks to achieve drastic savings in connection with staff privileges,

***General points which relate to horizontal issues affecting the EU agencies and which therefore also have a bearing on the discharge procedure for each individual agency***

1. Emphasises that it unreservedly endorses the principle of the limited conferral of powers, which, in the current documents providing the legal basis for the European Union, is enshrined, inter alia, in Article 5 of the Treaty on the European Union (TEU) and which stipulates that the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of the TEU;
2. Emphasises that it unreservedly endorses the principle of subsidiarity, which, in the current documents providing the legal basis for the European Union, is enshrined, inter alia, in Article 5, second paragraph, of the Treaty establishing the European Community (TEC) and which stipulates that in areas which do not fall within its exclusive competence the Community shall take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community;
3. Emphasises, in that connection, that pursuant to paragraph 4 of the Protocol on the application of the principles of subsidiarity and proportionality for any proposed Community legislation the reasons on which it is based must be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality and the reasons for concluding that a Community objective can be better achieved at Community level must be substantiated by qualitative or quantitative indicators;
4. Emphasises, in that connection, that pursuant to paragraph 3 of the Protocol on the application of the principles of subsidiarity and proportionality Community action within the limits of its powers can be either expanded or restricted or discontinued where it is no longer justified;
5. Emphasises, in that connection, that pursuant to paragraph 9 of the Protocol on the application of the principles of subsidiarity and proportionality due account must be taken of the need for any financial or administrative burden falling on the Community to be minimised and proportionate to the objective to be achieved;

6. Emphasises that it unreservedly endorses the principle of sound financial management, as laid down, inter alia, in Article 274 TEC, and, hence, the objective of achieving the best possible result with a given volume of appropriations or achieving a given result using the smallest possible volume of appropriations;
7. Emphasises, in that connection, that in its White Paper on the reform of the Commission the Commission laid down as guidelines for the formulation of an externalisation policy cost-effectiveness and the ability to exercise its powers to implement the budget, pursuant to Article 274 TEC;
8. Emphasises that pursuant to Article 253 TEC regulations, directives and decisions adopted jointly by the European Parliament and the Council and such acts adopted by the Council or the Commission must state the reasons on which they are based and refer to any proposals or opinions which were required to be obtained pursuant to the TEC;
9. Notes that the budgets of the 24 agencies and other satellite bodies audited by the Court of Auditors totalled EUR 1 080,5 million in 2006 (the biggest being that of the European Agency for Reconstruction at EUR 271 million and the smallest being that of the European Police College (CEPOL) at EUR 5 million);
10. Points out that the range of external EU bodies subject to audit and discharge now includes not only traditional regulatory agencies but also executive agencies set up to implement specific programmes, and will in the near future also extend to joint undertakings set up as public-private partnerships (joint technology initiatives);
11. Observes as regards the Parliament that the number of agencies subject to the discharge procedure has evolved as follows: financial year 2000: 8; 2001: 10; 2002: 11; 2003: 14; 2004: 14; 2005: 16; 2006: 20 regulatory agencies and 2 executive agencies (not including 2 agencies which are audited by the ECA but subject to an internal discharge process);
12. Concludes therefore that the auditing / discharge process has become cumbersome and disproportionate compared to the relative size of the agencies' / satellite bodies' budgets; instructs its competent committee to undertake a wide-ranging review of the discharge process as regards agencies and satellite bodies with a view to devising a simpler and more rational approach, bearing in mind the ever-growing number of bodies each requiring a separate discharge report in future years;

#### *Fundamental considerations*

13. Notes that decentralisation and devolution were key results of the process of reforming the Commission started in 1999, but that to date the Commission has submitted neither a study, nor an activity report nor an interim assessment of this form of administration; by the same token, the Commission has never given a convincing explanation of the added value provided by the agencies and of why their tasks could not equally well be performed within the Commission itself;
14. Emphasises, in that connection, that between the year 2000 (publication of the White Paper on the Reform of the Commission) and 2007 the staff complement of the Commission and agencies (excluding executive agencies) increased by a total of 85%;

15. Notes, in that connection, that in recent years the pace at which decentralised agencies are being set up has steadily increased, and that they are being established unsystematically and with no uniform framework: whereas in 1990 only three, in 1995 six, and in 2000 seven agencies existed, the 2008 budget lists no fewer than 25, seven of which have been added since 2005 alone;
16. Emphasises, in that connection, that the agencies to which it grants discharge make up only a part of the total and that the increase in permanent and temporary posts for all the decentralised agencies from 166 in the year 2000 to a total of 3151 in 2007 (+1800%) clearly illustrates the problems in this area;
17. Emphasises further, in that connection, that average staff costs increased by more than 40% between 2006 and 2008;
18. Emphasises finally, in that connection, that the subsidies paid to the agencies from the Community budget have increased disproportionately in recent years, that the appropriations from the Community budget paid to agencies to which Parliament grants discharge, which were established between 1975 and 1997 and have thus gone well beyond the start-up and initial growth phases, increased by some 90% between 2000 and 2008, and that during that period the subsidies paid to some of these agencies increased by more than 210%;
19. Emphasises that only two agencies are not in any way dependent on EU subsidies, whilst most of them are funded exclusively from EU budget appropriations;
20. Notes, in that connection, that a clear trend is emerging whereby the agencies revise their need for Community subsidies disproportionately upwards every six months, thus committing a steadily increasing proportion of the available appropriations, and that there are insufficient incentives to use financial resources sparingly;
21. Takes the view that direct and indirect payments and subsidies to the agencies from host countries (e.g. funding for building projects, office facilities, municipal taxes, etc.) have made it impossible to draw up a comprehensive breakdown of the cost of the agencies and that this practice disguises the true costs;
22. Takes the view that in most cases there has been no proper strategy underpinning the process of establishing agencies and that political considerations and factors, such as the attempt, with the help of the agencies, to influence the balance of power among the institutions, outweigh, and in some cases run entirely counter to, the original objectives, such as greater responsibility, transparency and efficiency in European administration;
23. Takes the view that the lack of a proper strategy on setting up agencies has generated unnecessary costs and that the true costs have been hidden from taxpayers, since, for example, missing infrastructure has not been taken into account and additional costs – for instance for the construction of new office and conference buildings, the setting-up of new schools, the development of transport infrastructure in response to an increase in missions between places of work scattered throughout Europe, as a result of serious recruitment problems, etc. – have arisen as a result;

24. Notes that the Commission's devolution policy has given rise to the duplication of work, above all in the area of administration, generating unnecessary additional costs and requiring the same know-how to be available several times over; notes, at the same time, that many agencies' administrative expenditure is far too high;
25. Takes the view that, with a few exceptions, no efforts have been made systematically to involve the agencies in the work of the Commission and that the agencies' spheres of responsibility frequently relate only to areas covered by 'open coordination' and bear no relation to the European Union's real needs and taxpayers' expectations;
26. Takes the view that the Commission no longer regards the decentralised agencies as a means of implementing its policies and has attempted to shed all responsibility for them, for example by stipulating that the Commission's Internal Auditor should no longer be responsible for auditing the decentralised agencies and should in future only confirm that their internal audit practices are consistent with international standards;
27. Notes that in the case of some agencies the number of members of the administrative board exceeds the total number of staff, ruling out efficient and cost-effective decision-making;
28. Notes, on that basis, that the aim behind the practice of devolution - which is seen as one of the three main aspects of externalisation policy and was put forward as a reform strategy by the Commission in its White Paper - namely the more efficient, more rational and more effective provision of responsible administration, has not been achieved through the setting-up of decentralised agencies and that the Commission's reform efforts in this area have failed;
29. Calls on the Commission to comply strictly with the subsidiarity principle;
30. Calls on the Commission to meet to the letter the requirements to justify compliance with the subsidiarity principle;
31. Calls on the Commission to comply strictly with the principle of sound financial management;
32. Requests that the Commission provide clear explanations regarding the following elements before the creation of a new agency or reform of an existing agency: agency type, objectives of the agency, internal governance structure, products, services, key procedures, target group, clients and stakeholders of the agency, formal relationship with external actors, budget responsibility, financial planning, and personnel and staffing policy;
33. Calls for every decision on the final location of an agency to be taken when the regulation establishing that agency is adopted;
34. Calls on the Commission to submit a proposal which provides for the number of full members of the administrative board of an agency to be reduced as quickly as possible to a figure equal to no more than 10% of the posts in that agency's establishment plan and to no more than 20 in total;

35. Requests that each agency be governed by a yearly performance agreement which is formulated by the agency and the responsible DG and which should contain the main objectives for the coming year, a financial framework and clear indicators to measure performance;
36. Requests that the performance of the agencies be regularly (and on an ad hoc basis) audited by the Court of Auditors; considers that this should not be limited to traditional elements of financial management and the proper use of public money, but should also cover administrative efficiency and effectiveness and should include a rating of the financial management of each agency;
37. Calls on the Council to agree to a binding horizontal funding ceiling for the agencies;
38. Acknowledges that Parliament, as the body responsible for financial control of the agencies, creates unacceptable conflicts of interest through its practice of appointing members of the agencies' administrative boards and management bodies, and calls, therefore, for Parliament to halt this practice;

#### *Privileges*

39. Calls on the Commission to submit as quickly as possible a proposal to abolish or drastically cut back privileges, in particular under budget Items 1101, 1102, 1141, 1182 and 1183;
40. Refuses to accept that agency staff and members of their families should be able to undertake private travel paid for from the agency's budget;
41. Calls on the Commission to submit a proposal which seeks to amend the Staff Regulations of officials of the European Communities, so that private travel by staff and members of their families, as governed by Annex VII, Section 3 C, Article 8, can no longer be paid for from public funds, and to achieve drastic savings in the area of staff privileges;

#### *Presentation of reporting data*

42. Notes that there is no standard approach among the agencies with regard to the presentation of their activities during the financial year in question, their accounts and reports on budgetary and financial management and the question as to whether a declaration of assurance should be drawn up by the agency's director; observes that not all agencies clearly distinguish between a) presenting the agency's work to the public and b) technical reporting on budgetary and financial management;
43. Notes that while the Commission's standing instructions for the preparation of activity reports do not expressly require the agency to draw up a declaration of assurance, many directors have nonetheless done so for 2006, in one case including an important reservation;
44. Recalls paragraph 41 of its resolution of 12 April 2005<sup>1</sup> inviting the directors of the

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<sup>1</sup> All resolutions regarding the Agencies were published in OJ L 196, 27.7.2005.

agencies from now on to accompany their annual activity report, which is presented together with financial and management information, with a declaration of assurance concerning the legality and regularity of operations, similar to the declarations signed by the Directors General of the Commission;

45. Asks the Commission to amend its standing instructions to the agencies accordingly;
46. Suggests in addition that the Commission should work with the agencies towards producing a harmonised model applicable to all agencies and satellite bodies clearly distinguishing between
- an annual report intended for a general readership on the body's operations, work and achievements;
  - financial statements and a report on implementation of the budget;
  - an activity report along the lines of the activity reports of the Commission's Directors General;
  - a declaration of assurance signed by the body's director, together with any reservations or observations which he considers it appropriate to draw to the attention of the discharge authority;

#### *General findings by the Court of Auditors*

47. Notes the Court's finding (Annual Report paragraph 10.29) that the disbursement of subsidies paid by the Commission from the Community budget is not based on sufficiently justified estimates of the agencies' cash requirements and that this, combined with the size of carry-overs, leads them to hold sizeable cash balances; notes further the Court's recommendation that the level of subsidies paid to the agencies should be in line with their real cash requirements;
48. Notes that at the end of 2006 14 agencies had still to implement the ABAC accounting system (Annual Report, footnote to para 10.31);
49. Notes the Court's remark (Annual Report, para 1.25) concerning accrued charges for untaken leave which are accounted for by some agencies; points out that the Court of Auditors has qualified its statement of assurance in the case of three agencies (European Centre for the Development of Vocational Training (CEDEFOP), CEPOL and European Railway Agency) for the financial year 2006 (2005: CEDEFOP, European Food Safety Authority, European Agency for Reconstruction);

#### *Internal audit*

50. Recalls that in accordance with Article 185(3) of the Financial Regulation the Internal Auditor of the Commission is also the internal auditor of the regulatory agencies receiving grants charged to the EU budget; points out that the Internal Auditor reports to each agency's management board and director;
51. Draws attention to the reservation entered in the Internal Auditor's Annual Activity

Report for 2006 as follows:

"The Internal Auditor of the Commission is not in a position to properly fulfil his obligation assigned by Article 185 of the Financial Regulation as internal auditor of the Community bodies due to a lack of staff resources.";

52. Notes, however, the Internal Auditor's remark in his activity report for 2006 that as from 2007, with the additional staff resources granted by the Commission to the Internal Audit Service (IAS), all regulatory agencies in operation will be subject to internal audit work on an annual basis;
53. Notes the ever-growing number of regulatory and executive agencies and joint undertakings required to be audited by the IAS under Article 185 Financial Regulation; asks the Commission to inform its competent committee as to whether the staff resources at the IAS's disposal will be sufficient to conduct an annual audit of all such bodies in the coming years;
54. Observes that Article 72(5) of Regulation No 2343/2002 requires each agency to send each year to the discharge authority and the Commission a report drawn up by its director summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations; asks the agencies to indicate whether this is done and, if so, how;
55. Takes note, as regards internal audit capability, especially in relation to the smaller agencies, of a proposal made by the Internal Auditor before Parliament's competent committee on 14 September 2006 that smaller agencies should be authorised to buy in internal audit services from the private sector;

#### *Evaluation of agencies*

56. Recalls the joint statement by the Parliament, the Council and the Commission<sup>1</sup> negotiated at the conciliation before the ECOFIN budget Council of 13 July 2007 calling for i) a list of agencies which the Commission intends to assess, and ii) a list of the agencies already assessed, together with a summary of the major findings;

#### *Disciplinary procedures*

57. Notes that, because of their size, individual agencies have difficulty in setting up ad hoc disciplinary boards composed of staff at the appropriate career grade and that the Commission's IDOC (Investigation and Disciplinary Office) is not competent for agencies; calls on the agencies to consider an inter-agency disciplinary board;

#### *Draft interinstitutional agreement*

58. Recalls the Commission's draft Interinstitutional agreement on the operating framework for the European regulatory agencies (COM(2005)0059), which intended to create a horizontal framework for the creation, structure, operation, evaluation and control of the

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<sup>1</sup> Council document DS 605/1/07 Rev1.



European regulatory agencies; notes that the draft represents a useful initiative in the effort to rationalise the creation and running of agencies; notes the statement in the Commission's 2006 synthesis report (paragraph 3.1, COM(2007)0274) that although progress in negotiations stalled after the proposal's publication, discussions on the substance were relaunched in the Council at the end of 2006; regrets that it has not been possible to make further progress towards adoption;

59. Welcomes therefore the Commission's commitment to bring forward a Communication on the future of the regulatory agencies during the course of 2008;

#### *Self-financed agencies*

60. Recalls that for the two self-financing agencies, discharge is given to the director by the administrative board; notes that both have significant accumulated surpluses from fee income carried over from previous years figures:

Office for Harmonisation of the Internal Market (OHIM) cash and cash equivalents: EUR 281 million;

Community Plant Variety Office (CPVO) cash and cash equivalents: EUR 18 million<sup>1</sup>;

#### *Specific points*

61. Notes that the agency's administrative spending in 2006 accounted for a substantial proportion of its overall expenditure, making the effective and efficient performance of its tasks difficult;
62. Notes that no strict logic was applied to the choice of location for the agency and that as a result a substantial volume of unnecessary additional costs has arisen;
63. Notes that it is not clear how this activity can be carried out more efficiently and more effectively in a decentralised agency and in this location than in the Commission itself;
64. Notes that the cost of privileges for agency staff is unacceptably high;
65. Notes that the cost of private travel for agency staff and members of their families is unacceptably high;
66. Notes that the agency's staff expenditure per post increased by 400% between the financial year 2006 and the 2008 preliminary draft budget;
67. Notes the Court of Auditors' observation in its 2006 report that for the financial year 2006 the rate of commitment was 85 %; the rate of carry-over was more than 70% overall and nearly 85 % for operating expenditure; transfers of appropriations between chapters or titles during the year exceeded the total ceiling of 10 % provided for in the Financial Regulation; therefore, the budgetary principle of specification was not strictly observed;
68. Notes further that legal commitments were entered into before budgetary commitments,

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<sup>1</sup> Source: ECA special report.

contrary to the Agency's Financial Regulation, and that the criteria and procedures used for recruiting staff were not in line with the general provisions of the Staff Regulations;

69. Acknowledges the Agency's reply that the rate of carry-over to 2007 was due to difficulties inherent in the start-up period of the Agency and to the fact that sizeable resources were made available only very late in 2006; the Agency was not able to fully implement normal procedures for most of the recruitment procedures launched during 2006 because of a lack of resources in the start-up period and difficulties in attracting potential staff;
70. Notes from the Agency's accounts (balance sheet) that at 31 December 2006 the Agency held EUR 14,3 million in cash (for a Community subsidy of EUR 15,2 million and an annual budget of EUR 19,2 million);
71. Recalls that, while in the first year of its existence the budget of the Agency was EUR 6,2 million, the budget in 2006 was twice amended by the budgetary authority, increasing it from EUR 12,3 million to EUR 19,2 million; notes the statement in the annual report that the late availability of the additional funds granted to the Agency in October 2006 led to spending problems beyond the limits of the absorption capacity of the Agency;
72. Notes further from the accounts that at 31 December 2006 only 9 of 18 AD posts had been filled;
73. Takes note of the statement in the agency's annual report for 2006 that the Agency was granted full financial autonomy only from 1 October 2006, and that before that date all expenditure relating to administrative matters was authorised by the Commission's DG JLS in Brussels.

#### **4. EXPLANATORY STATEMENT**

Decentralisation and devolution were key objectives of the Commission reform process starting in 1999. To date, no assessment of this process has been submitted. In addition, the Commission has never given a convincing explanation of the added value provided by the decentralised agencies, why their tasks could not equally well be performed within the Commission, or, as in many cases, why action by the European Union was required in the area concerned in the first place.

Instead, the result has been irresponsible proliferation. New agencies have been set up on the basis of bizarre political decisions. These new agencies are not subject to control and are often uncontrollable, mostly inefficient and, above all, they give rise to significant burdens on European taxpayers. At the same time, an unprecedented range of staff privileges has become established. In other words, the Commission's reform efforts, whose aims were linked to assurances concerning responsibility, accountability, efficiency, a new European service culture and transparency, have proved a spectacular failure. The unacceptable confusion in the area of devolution and decentralisation policy is now clear for all to see.

More and more decentralised agencies have been set up, although one looks in vain for a clear strategy on or a logical rationale behind their establishment. Whereas in 1990 there were only three and in 2000 only seven decentralised agencies, the 2008 budget lists no fewer than 25, seven of which have been set up since 2005 alone. The level of subsidies from the Community budget, the main source of income for most of the agencies, has likewise increased disproportionately over the years, even for those agencies which had already been established in the 1970s and the 1990s. There is no evidence of a measured approach; indeed, the reverse is true, since more and more new agencies are to be founded in the future. Responsible action this is not.

The problems are wide-ranging – above all the generation of unnecessary additional costs as a result of a failure to draw up an overall strategy or a detailed cost-benefit analysis (in particular in connection with decisions on locations); frequent duplication of work – primarily in the area of administration; massive overlaps in areas of activity; vastly excessive administrative expenditure and eyebrow-raising privileges for staff. In addition, what are often unmanageably large administrative boards prevent efficient decision-making. Frequently, in the area of policy formulation itself – in stark contrast to that of costs – no added value for the Member States of the European Union can be made out. Those agencies whose *raison d'être* is clear and whose work does in fact produce added value are being tarred with the same brush.

The institutions of the European Union have thus far only rarely held fundamental policy debates on decentralised governance, and the public is virtually never involved. At the very least, decentralisation policy should be placed as quickly as possible on a sensible, properly organised and, in the interests of taxpayers and the public, cost-effective footing.

In that connection, however, it is essential that the powers of the European Union should not continue to be over-stretched. The subsidiarity principle must take precedence, something

which implies consistent compliance with the requirement to demonstrate that the additional financial and administrative burden is proportionate to the objectives to be achieved and that the activity, if essential, is in any way consistent with the principle of sound financial management. Moves to abolish, or at least drastically restrict, privileges are also essential. At all events, Union citizens deserve much better administration. Failing that, the question of the purpose of an ever-expanding EU apparatus will become unavoidable.