REPORT

on the implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies (2018/2114(INI))

Committee on Constitutional Affairs

Rapporteur: György Schöpflin
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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

Procedure and sources

The drafting of this implementation report was authorised by the Conference of Presidents on 31 May 2018. The report aims to examine and evaluate how the institutional mechanisms ensuring democratic control over decentralised agencies have been implemented.

In preparation of this implementation report, the Rapporteur has collected information and has relied on the following sources, among others:

- technical meetings with the Commission and the EU Agencies Network;
- a study by Prof. Ellen Vos, entitled ‘EU agencies, Common Approach and Parliamentary Scrutiny’\(^1\), presented in the Committee on Constitutional Affairs on 27 November 2018;
- replies to a questionnaire sent to committees’ secretariats for the purpose of drafting this report;
- an exchange of views with the Commission and three committees for opinion (BUDG, ECON, ENVI) during the meeting of the Committee on Constitutional Affairs of 22 October;
- a fact-finding mission to the Fundamental Rights Agency (FRA) in Vienna;
- a fact-finding mission to the European Agency for Law Enforcement Training (CEPOL) in Budapest and to the European GNSS Agency (GSA) in Prague.

Findings of the research

Treaty provisions on agencies

There is no definition of decentralised agencies in the Treaties. On its webpage dedicated to agencies and other EU bodies\(^2\) the Commission describes EU agencies as ‘distinct bodies from the EU institutions – separate legal entities set up to perform specific tasks under EU law’ and distinguishes between decentralised agencies, agencies under the Common Security and Defence Policy, executive agencies, EURATOM agencies and bodies and other organisations.

According to the Commission “decentralised agencies contribute to the implementation of EU policies. They also support cooperation between the EU and national governments by pooling technical and specialist expertise from both the EU institutions and national authorities. Decentralised agencies are set up for an indefinite period and are located across the EU.” The Commission lists 33 decentralised agencies on its page\(^3\). With the proposal for a new European

\(^1\) Link to study
\(^2\) https://europa.eu/european-union/about-eu/agencies_en#type-of-agencies
\(^3\) Agency for the Cooperation of Energy Regulators (ACER), Office of the Body of European Regulators for Electronic Communications (BEREC), Translation Centre for the Bodies of the European Union (CdT) European Centre for the Development of Vocational Training (Cedefop), European Union Agency for Law Enforcement Training (CEPOL), Community Plant Variety Office (CPVO), European Aviation Safety Agency (EASA), European Asylum Support Office (EASO), European Banking Authority (EBA), European Centre for Disease Prevention and Control (ECDC), European Chemicals Agency (ECHA), European Environment Agency (EEA), European Fisheries Control Agency (EFCA), European Food Safety Authority (EFSA), , European Institute for Gender Equality (EIGE), European Insurance and Occupational Pensions Authority (EIOPA), European Medicines Agency (EMA), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), European Maritime Safety Agency
Labour Authority (ELA)¹ the total number comes to 34.

In her study Professor Vos describes decentralised agencies as “bodies governed by European public law that are institutionally separate from the EU institutions, have their own legal personality and a certain degree of administrative and financial autonomy and have clearly specified tasks”. She counts 36 decentralised agencies² (37 if the ELA is counted) and includes in her list also the European Public Prosecutor (EPPO), the Authority for European Political Parties and European Political Foundations (APPF) and the European Data Protection Board (EDPB). She notes that from a functional perspective agencies can be classified according to the six main tasks conferred upon agencies³:

1. scientific/technical expertise (EASA, EASO, ECHA, EEA, EMA);
2. information and cooperation (BEREC, CEDEFOP, CEPOL, EASO, ECDC, EEA, EFCA, EIGE, EIOPA, ELA, EMCDAA, EMSA, ENISA, ERA, ETF, EU-OSHA Eurofound, Eurojust, Europol, FRA, GSA);
3. provisions of services (registration and certification) (APPF, CPVO, EASA, ECHA, EUIPO);
4. supervision, inspection and enforcement (ACER, EBA, EDPB, EFCA, EIOPA, ELA EMSA, ERA, ESMA, SRB)
5. facilitation and support as well as (6) execution of EU programmes (CdT, EASO, EFCA, EPPO, EU-LISA, Eurojust, Europol, FRONTEX).

Some agencies fulfil several of the above mentioned functions (EASA, EASO, ECHA, EEA, EFCA, EIOPA, ELA, EMSA, ERA, Eurojust, and Europol). Some agencies may adopt legally binding acts in the execution of their functions (CER, APPF, CPVO, EASA, EBA, ECHA, EIOPA, EPPO, ERA, ESMA, EUIPO, Eurojust, SRB)⁴.

From the above it follows that there may not be a single model for a straightforward classification of agencies. Moreover, a clear-cut distinction between the type or typology of agencies appears difficult as well⁵.

² The EU Agencies Network counts 37 decentralised agencies and 8 Joint Undertakings located in 23 Member States.
³ Page 15-16 and Annex 1 of the study, re-ordered here; some agencies perform tasks in more than 1 category.
⁴ Annex 1 of the study.
⁵ For example, the GSA, which is considered to be a decentralised agency, was preceded by the GALILEO Joint Undertaking (GJU), set up in May 2002 by the European Community and the European Space Agency to...
Despite the absence of a general definition of agencies, as bodies of the Union they must abide by the principle of conferral of power (article 5 TEU). Agencies are explicitly mentioned in the Treaties in several articles, e.g. in Article 9 TEU (citizenship), Article 15 TFEU (principle of transparency), Article 16 TFEU (data protection), article 71 TFEU (internal security), articles 123, 124, 127, 130, 282 TFEU (financial measures and independence of the ECB), article 228 TFEU (Ombudsman), article 263 TFEU (review of the legality of acts), 265 TFEU (failure to act), article 267 TFEU (preliminary rulings), article 277 TFEU (inapplicability of acts), article 287 (European Court of Auditors), article 298 TFEU (European administration), article 325 TFEU (fight against fraud), as well as in a number of protocols to these Treaties and in the Charter of Fundamental Rights (Article 41 on the right to good administration, Article 42 on the right of access to documents, Article 43 on the European Ombudsman, Article 51 on the field of application of the Charter and Article 52 on the scope and interpretation of rights and principles). Therefore agencies, like EU institutions and other bodies, must uphold EU values and principles and their acts are subject to judicial review and other accountability mechanisms foreseen in the Treaties.

There is no explicit legal basis in the Treaties to create agencies. Agencies have been established on the basis of what is now article 352 TFEU or on the basis of the relevant Treaty article of the concerned policy area. Furthermore, as regards the question which powers may be delegated to agencies, in the ESMA case (also known as “Meroni” 2.0) the European Court of Justice was called upon to adjudicate on whether the authors of the FEU Treaty intended to establish, in Articles 290 TFEU and 291 TFEU, a single legal framework under which certain delegated and executive powers may be attributed solely to the Commission or whether other systems for the delegation of such powers to Union bodies, offices or agencies may be contemplated by the Union legislature. In this respect the Court noted that “while the treaties do not contain any provision to the effect that powers may be conferred on a Union body, office or agency, a number of provisions in the FEU Treaty none the less presuppose that such a possibility exists”. It considered that the power of the European Securities and Markets Authority to adopt emergency measures on the financial markets of the Member States in order to regulate or prohibit short selling is compatible with EU law; circumscribed by various conditions and criteria which limit that authority’s discretion, the exercise of that power does not undermine the rules governing the delegation of powers laid down by the FEU Treaty, in the Court’s view.  

The 2012 Joint Statement and Common Approach

manage the development phase of the GALILEO Programme, and part of the GSA's budget and related tasks may appear to fall rather within the remit of an executive agency. The ITRE committee noted that there is a new proposal for a European Cybersecurity Industrial Technology and Research Competence Centre and the Network of National Coordination Centres, announced in the 2018 State of the Union address, which does not fit clearly in the established structure of decentralised agencies, executive agencies and joint undertakings but contains elements of all three. The BEREC agency is another example of an agency with a dual structure. CEPOL receives part of its budget related to tasks described in its mandate through participation in calls for proposals under the operational part of the Union budget.

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1 See Annex 2 of the study. Besides article 352 TFEU, Article 114 TFEU has also been used quite frequently.
2 Case C-270/12, UK v. Council and European Parliament, OJ C 273, 8.9.2012, p. 3–3
3 See Court of Justice of the European Union PRESS RELEASE No 7/14 Luxembourg, 22 January 2014 Judgment in Case C-270/12 United Kingdom v Parliament and Council
The 2012 Joint Statement and Common Approach\(^1\) is the result of the work of an Interinstitutional Working Group on regulatory agencies set up by the Commission, the European Parliament and the Council, after a proposal by the Commission in 2005 for an Interinstitutional Agreement on regulatory agencies\(^2\) did not find the necessary support with the Council and the Parliament. The BUDG and CONT committees were represented in this Working Group. While the Joint Statement and Common Approach is legally non-binding, the institutions committed to taking the Common Approach into account in their decisions concerning decentralised agencies, albeit with the caveat of a case by case analysis. The Common Approach contains provisions on the establishment (inter alia the requirement of impact assessments) and ending of agencies (sunset or review clauses, possible mergers), the agencies seat (criteria) and role of the host country (headquarter agreements), the structure and governance of agencies (provisions on Management Boards, Executive Directors and other internal bodies), the operation of agencies (data protection, international relations, communication, sharing of services) programming of activities and resources (annual and multi-annual work programmes, human resources, budget) and accountability and control (containing provisions on inter alia the annual activity report, audit and discharge, an alert/warning system, evaluation, transparency and relations with stakeholders).

As a direct follow-up to the adoption of the Joint Statement and Common Approach, on 19 December 2012 the Commission adopted a ‘Roadmap on the follow-up to the Common Approach’ containing initiatives to be taken by the Commission, agencies, the Council, Member States and European Parliament. Progress reports on the implementation of the Common Approach were presented by the Commission on 10 December 2013 and 24 April 2015. The Commission also adopted guidelines with standard provisions for headquarter agreements, a communication handbook and guidelines on the prevention and management of conflicts of interests in respect of decentralised agencies\(^3\). In the 2015 progress report, regarding at that time ongoing interinstitutional discussions on the revision of certain agencies’ founding acts, the Commission “regrets the lack of political commitment to ensure respect of the Common Approach on EU decentralised agencies, in particular regarding the role or composition of the agencies’ management structures”. The progress reports of the Commission are rather succinct and do not deal with the issue of parliamentary scrutiny of agencies.

The analysis of Professor Vos as to the relevance of the Common Approach in the founding acts of agencies presents a mixed image of compliance of the agencies’ regulations with the Common Approach\(^4\). She notes that while for the budgetary procedure and annual reports the compliance rate is rather high, the composition of the Management Board and appointment of the Executive Director seem to depend strongly on the tasks of the agency. She considers that compliance is the most problematic for the work programmes of agencies where the requirement that the Parliament should be consulted on the multiannual programme is usually not met. She observes furthermore that compliance rates hardly differ between regulations adopted before the Common Approach and those adopted or revised after the adoption of the Common Approach.

\(^2\) COM(2005)59
\(^3\) https://europa.eu/european-union/about-eu/agencies/overhaul_en
\(^4\) Chapter 12 of the study.
The Common Approach has come under closer scrutiny of the Parliament in light of the Commission proposals for the relocation of the seats of two UK-based agencies. Parliament considered that “its role as co-legislator has not been duly taken into account since it was not involved in the procedure leading to the selection of the new seats of the agencies. The European Parliament also recalled that “the Common Approach annexed to the Joint Statement of the European Parliament, Council and European Commission on decentralised agencies signed in 2012 is legally non-binding, as acknowledged in the Statement itself and that it was agreed without prejudice to the legislative powers of the institutions”. Therefore, the European Parliament insisted that “the procedure followed for the selection of a new location for the agencies will be revised and not used anymore in this form in the future”.

Council stated in this respect that “it takes note of the request by the EP to revise, as soon as possible, the 2012 Joint Statement and Common Approach on decentralised Agencies. As a first step, it invites the Commission to provide, by April 2019, an in-depth analysis of the implementation of the Joint Statement and Common Approach as regards the location of decentralised Agencies. This analysis would serve as a basis to assess the way forward in engaging with the process of such a revision.”

**Parliamentary scrutiny over decentralised agencies**

The Parliament can scrutinise decentralised agencies in different ways:

- as one arm of the budgetary authority in its decision-making on the contributions from the EU budget to agencies;
- as the discharge authority;
- through designation of members of the Management Board of agencies;
- through the procedure for the appointment (or dismissal) of the Executive Director;
- through its consultation on the work programmes;
- through the presentation of the annual reports;
- other ways (delegation visits, contact groups or persons, exchanges of views, hearings, briefings, provision of expertise);

In her study Professor de Vos analyses the provisions founding regulations of agencies in respect of parliamentary scrutiny mechanisms:

- with regard to involvement of Parliament in the Management Boards she observes that in three agencies there are EP representatives (EMA, EUIPO, GSA), while in 7 agencies (ECHA, EEA, EFSA, EMCDDA, ETF, ACER, ECDC) there are Members designated by the European Parliament (experts or stakeholders); in the majority of cases there is however no Member designated by the European Parliament.

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3 Chapter 11, page 41 and following, Annex 5
4 The Common Approach (paragraph 10) provides that, in addition to one representative per Member State and two Commission representatives, where appropriate there may be additional members designated by the European Parliament and representatives of stakeholders
- with regard to the appointment of the Executive Directors\(^1\) she notes that Parliament’s confirmation is needed for the three Supervisory Authorities falling within the remit of ECON (EBA, EIOPA, ESMA), that in 15 cases the candidate shall be invited to the EP (BEREC, EASA, EASO, ECDC, ECHA, EFSA, EIGE, EMA, EMCDDA, ENISA, ETF, FRA, Frontex and EU-LISA), while in 6 cases the candidate may be invited. In 11 cases there is no involvement of the European Parliament;

- with regard to work programmes\(^2\), Parliament is consulted on the multiannual work programmes of 8 agencies (CEPOL, EASA, ERA, Europol, FRA, FRONTEX, GSA, OHIM) while it is informed of the multiannual work programmes of 6 agencies (EBA, ECHA, EIOPA, ELA, EMCCDA, ESMA); while not involved in the multi-annual work programme for these agencies, Parliament is consulted on the annual work programmes of 2 agencies (ENISA, Eurofound) and informed of the annual work programmes of 9 agencies (ACER, BEREC, EASO, EFCA, EFSA, EMA, EMSA, EU-LISA, SRB); there is no EP involvement at all in the work programmes of 8 agencies (CdT, Cedefop, ECDC, EEA, EIGE, EU-OSHA, EPPO, ETF) and two agencies do not have provisions on work programmes (CPVO, Eurojust);

- all agencies’ mandates foresee the submission of an annual activity report to the European Parliament, the Court of Auditors, the Council and the Commission. For two agencies the Executive Directors are required to present the annual reports to the European Parliament or its competent committees;

- in three cases the discharge is foreseen to be provided by internal bodies (it concerns the fully self-financed agencies EUIPO, SRB and CPVO)\(^3\)

Parliamentary scrutiny in the European Parliament is carried out in particular at the level of the parliamentary committees, both those specialised in the policy field of the agencies concerned and the BUDG and CONT committees, which consider all agencies to the extent that they are financed by the EU budget and subject to the discharge procedure.

Your rapporteur sent a questionnaire to committees’ secretariats asking them:

(1) about the way in which committees have been involved in legislative (tasks, competences, activities, objectives, structures, accountability mechanisms, relocation) as well as budgetary and discharge procedures in this legislature, and exercised political scrutiny over decentralised agencies;

(2) how they have taken account of the 2012 Joint Statement and Common Approach in these activities (impact assessments, sunset or review clauses, agencies’ seats, the structure and governance of agencies – i.e. Management Boards, Executive Director, scientific committees or other bodies-, the operation of agencies – i.e. services by the Commission, merging of agencies, sharing of services between agencies, handling of classified information, international relations, communication -, programming of

\(^1\) The Common Approach does not foresee a role here for the European Parliament. However the Framework Agreement between the Parliament and the Commission foresees that nominees for the post should come to parliamentary committee hearings

\(^2\) The Common Approach foresees that Parliament should be consulted on multiannual work programmes and informed of the annual work programme

\(^3\) The Common Approach (paragraph 58) foresees that for fully self-financed agencies, while not subject to a discharge within the meaning of the TFEU, solutions to this should be explored, i.e. through the submission of an annual report to the European Parliament, Council and Commission and taking into account their recommendations
activities, agencies resources and procedures linked thereto and accountability and controls – i.e. annual report, audits, evaluations- and transparency and relations with stakeholders);

(3) (policy decisions) whether, in considering the work of agencies, committees examine the intentions of the policy maker and whether these are implemented appropriately

(4) (delivery) whether committees assess the work of agencies in their remit in the light of presumed outcomes;

(5) (complexity) whether committees look at overlaps or gaps in the work of agencies and if there are cases in which committees believe that agencies have exceeded their remit or under-fulfilled.

At the time of drafting the report replies were received by the secretariats from the Committee on Budgets (BUDG), the Committee on Budgetary Control (CONT), the Committee on Economic and Monetary Affairs (ECON), the Committee on Environment, Public Health and Food Safety (ENVI), the Committee on Industry, Research and Energy (ITRE); the committee on Transport and Tourism (TRAN), the Committee on Agriculture and Rural Development (AGRI), the Committee on Culture and Education (CULT) and the Committee on Women’s rights and Gender Equality (FEMM), while the Committee on Civil Liberties, Justice and Home Affairs (LIBE) (which has the largest number of agencies falling within its remit) indicated that it intended to finalise its replies soon.

BUDG indicated that:

(1) it gave opinions in legislative procedures with regard to the founding regulations of several agencies (EBA, EIOPA, ESMA, ENISA, ACER, EU-OSHA, Eurofound, Cedefop, EASO and CEPOL) examining all aspects of the regulations; furthermore Agencies are discussed at budgetary trilogues, where appropriate (point 31 of the IIA on Budgetary discipline); BUDG was the leading committee to represent the Parliament in the IIWG on Decentralised agencies’ resources and followed up on its conclusions; BUDG and CONT are the lead committees to follow the revision of the Framework Financial Regulation (FFR) linked to the revision of the Financial Regulation that took place earlier this year; BUDG is the lead committee for the annual budgetary procedures concerning all decentralised EU agencies; Jens Geier (S&D) is the BUDG standing rapporteur on EU agencies; BUDG exchanges regularly information with the EU Agencies Network and individual EU agencies in the framework of the annual budgetary procedure and request briefings from them in that procedure; BUDG invites the EU Agencies Network on an annual basis to discuss the agency-related aspects of the draft budget, ahead of the deadline for budgetary amendments;

(2) it looked at various aspects of the joint statement and common approach in the context of its opinions and annual budgetary procedures, except those that belong to the competences of specialized committees, such as work programmes and annual reports of individual agencies; it requested a study on Potential revenue from the extension of charging fees by EU Agencies and on its (and CONT’s request) Policy Department D organised a Workshop on Oversight and Resources of Partially and Fully Self-Financed Agencies on 4/5/2017;

(3) it also responded positively to the three questions on policy decisions, delivery and complexity.
CONT replied that:

(1) it drafted an opinion in the form of amendments (Rule 53(4)) on the relocation of the seat of the European Medicines Agency; it was involved in the IIWG on decentralised agencies resources and in the revision of the FFR; it drafts 1 report on each of the decentralised agencies + 1 horizontal report in the context of the discharge procedure; In the context of the discharge procedure, CONT organises a hearing with 4 to 6 Executive Directors every year in December/January examining also the annual activity reports, however, CONT does not organise hearings before their appointment; it organised missions to Europol and the European Institute of Innovation and Technology;

(2) it looks at the various aspects of the Common Approach in its discharge reports, including, where relevant, fee-setting and simplification. Like BUDG it does not examine aspects that fall within the remit of specialised committees, such as work programmes;

(3) it also responded that it evaluates the three questions on policy decisions, delivery and complexity as part of the annual discharge procedure.

ECON indicated that:

(1) it is involved in the ongoing review of the European Supervisory Authorities (EBA, EIOPA, ESMA) as well dealing with a whole series of related directives and regulations for these agencies; an agreement was reached between the European Parliament and the Single Resolution Board on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Single Resolution Board within the framework of the Single Resolution Mechanism; ECON adopted a report on the proposal for a regulation amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority; it drafts annual opinions on the draft general budget and discharge (EBA, EIOPA, ESMA); as regards nomination powers regarding members of the Management Board and/or other bodies of agencies, it drafted a report on the proposal of the Commission for the appointment of a member of the Single Resolution Board and expressed its opinion on the extension of the term of office of the Chairperson of the three Supervisory Authorities, after hearing them; It conducts an annual joint exchange of views with the Chairs of EBA, EIOPA, ESMA, and the SRB on the work programmes and annual reports; it has a steady exchange of views with the agency and also continuously uses their output; it regularly requests briefings or opinions; it has specific scrutiny slots in committees for exchanges of views in committee and there are regular exchanges between ESAs and rapporteurs/shadows of different files;

(2) it has taken account of the Common Approach provisions in its report on the proposal for a regulation amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority (examining seat arrangements as well as the various aspects related to the operation of agencies); it looks at provisions on the structure of agencies and the programming of their activities in the context of the ongoing review of the European Supervisory Authorities (EBA, EIOPA, ESA); it monitors the agreement between the European Parliament and the Single Resolution Board on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Single Resolution Board within the framework of the Single Resolution Mechanism;
(3) all draft regulatory technical standards, implementing technical standards are sent to ECON Members; selected topics are discussed at ECON meetings in the context of the scrutiny slots;

(4) ECON does not assess the work of the agencies falling within its remit in the light of presumed outcomes;

(5) there are diverging opinions as to whether EIOPA is exceeding its mandate and as to whether ESMA and EBA are full fulfilling their mandate.

ENVI reports that:

(1) it has been involved in legislative procedures relating to the founding regulation of EMA, as well as proposals for additional tasks for ECHA (requiring additional funds), EEA and EFSA; it drafted a report on the EMA seat location (provisional agreement voted in October 2018 in plenary); it drafts opinions on the annual budgets of the five agencies under ENVI’s remit (budgetary amendments, including on establishment plans, restoring draft budget, increasing budget), as well as opinions on the discharge for the five agencies under ENVI’s remit; pursuant to the founding Regulations of the Agencies falling within the remit of ENVI, Parliament appoints (ECDC, ECHA, EEA, EMA), or gives its opinion to the Council on the appointment (EFSA) of, a certain number of Management Board members of those agencies - EP representatives, but also scientific experts. Parliament is also consulted on the appointment of representatives of patients and clinicians (EMA) who are members of the management board. Parliament is consulted on the appointment of representatives of patients and clinicians in different scientific committees of EMA; furthermore article 2 of the ‘Rules of Procedure for the EEA Management Board and Bureau’ requires the appointment of one of the EP Board members as Bureau member; it holds systematic hearings of designated Executive Directors before their appointment; it appoints a contact person per agency; ENVI organises an annual exchange of views with the Executive Director of each agency, which covers work programmes, activity reports etc.; each year the two members of the Management Board of the EEA appointed by Parliament draft comments to the EEA draft annual work programme, which are then agreed by the ENVI coordinators and communicated to the Agency; there are biannual visits to each agency; with regard to requests or use of expertise, a scientific opinion was requested from EFSA on bees and pollination (2018); in the framework on an own-initiative report on antimicrobial resistance, a report was requested from EEA, EMA and EFSA and meetings were organised with the Rapporteur; EEA reports are regularly used for ongoing legislation and implementation reports; examples of exchanges of views in committee concern the ECDC and EFSA; ECHA, EMA or EEA may also be invited by the Committee to participate to exchange of views concerning specific sectorial policy files; as to briefings of the rapporteur examples concern antimicrobial resistance, novel foods;

(2) agencies falling within ENVI’s remit were created before the 2012 Joint Statement, however following the process followed in Council to select the new seat of EMA and its conclusion with drawing lots, ENVI denounced the Joint Statement and the Common

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1 e.g. Committee for Advanced Therapies, Pharmacovigilance Risks Assessment Committee, Paediatric Committee
2 Lyme disease on 1 February 2018 and on Zika on 25 April 2017
3 EFSA participated in the public hearing organised on glyphosate on 11-12 October 2017; there was an exchange of views with EFSA on GMO environmental risk assessment on 11 October 2017 and an exchange of views with EFSA on vegetable oil on 4 May 2017;
Approach annexed to it and called for close involvement of the European Parliament in the decision-making process on the location and relocation of agencies and bodies in view of its prerogatives as co-legislator under the ordinary legislative procedure (this position was supported in plenary in March 2018); in this context the Parliament encouraged the headquarters agreement to include a detailed framework for the Agency’s installation to reduce uncertainty and provide clarity to staff members in order to ensure business continuity; with regard to the proposal on the transparency and sustainability of the EU risk assessment in the food chain the proposal mainly changes the composition of the management board and the duration of their term of office; the proposal on the transparency and sustainability of the EU risk assessment in the food chain (2018/0088(COD)) also amends the appointment procedure for the experts of the Scientific Panels;

(3) with regard to the questions on policy decisions and (4) delivery ENVI examines the implementation during specific motions for resolutions, during biannual delegation visits, implementation reports or mid-terms reviews of specific programmes; ENVI does not use failure/success criteria. As regards complexity (5) ENVI looks at how coordination between agencies can be improved, for instance with respect to chemical data.

ITRE communicated that:

(1) it is involved in revisions of the founding regulations for ACER, GNNS (to allocate new tasks and a “stronger position” to the Agency), ENISA (tasks, duration, governance), BEREC (structure); it does not provide opinions to the discharge procedure but there are repeated requests by the ITRE Committee in the framework of the annual budgetary procedures to grant sufficient resources to ACER; it is involved in the nomination of EP representatives to the Administrative Board; there are no specific hearings with designated Executive Directors before their appointment but regular contacts with Agency representatives and their appearance in ITRE Committee meetings; there are no standing Rapporteurs but informal ACER contact group was established at beginning of legislature, composed by MEPs from several groups; there are regular exchanges about ACER’s ongoing work and challenges; There are exchanges of views with agencies on work programmes; information on activity reports is provided to coordinators, ITRE newsletters also contain information on agencies; headquarters are visited every 2 years; ITRE uses reports, studies and scientific opinions of agencies and representatives of the Agencies are requested to come to the hearings linked to the Agency’s competence (for ACER: Annual Presentations of Energy Market Monitoring Reports)

(2) ITRE addresses at all aspects of the Common Approach in the framework of the revision of the new Regulations (currently ongoing). There are regular presentations and hearings in committee on the multiannual work programmes, while the annual reports are sent to coordinators;

(3) with regard to the question on policy decisions there are regular contacts with Agency representatives and their appearance in ITRE Committee meetings;

(4) as to the question of delivery, there are regular contacts with Agency representatives and their appearance in ITRE Committee meetings and these issues are addressed in the framework of the revision of the new Regulations (currently ongoing);

(5) as to the question on complexity, these issues are addressed in the framework of the revision of the new Regulations (currently ongoing);
TRAN provided three separate replies for the three agencies within their remit:

(1)  
- the founding regulation of EMSA was revised in 2016; there were visits to this agency in 2015 and 2018; there have been regular exchanges of views with the Executive Director over the last years, where also the annual work programmes have been discussed;  
- with regard to ERA: the role of the agency has been expanded with the adoption of the 4th Railway package; also a Management Board and an Executive Board are introduced. ITRE provides an opinion on discharge; a visit to the agency took place in 2018; there are ad-hoc consultations by individual rapporteurs/staff of expertise products of the agency; there was an exchange of views with ERA Executive Director in 2015;  
- with regard to EASA: the founding regulation of 2002 was revised in 2018, reviewing completely the structure of previous regulations based on empowerments (delegated and implementing acts) and added competences; there is no standing rapporteur; there were visits to the agency in 2015 and 2018; there are ad-hoc consultations by individual rapporteurs/staff with regard to expertise products of the agency; there were exchanges of views with EASA Executive Director on specific aviation safety issues in 2015 and 2016;  

(2)  
- with regard to EMSA: in the context of multi-annual programming Council and Parliament adopted a regulation in 2014 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to marine pollution caused by ships and oil and gas installations;  
- with regards to ERA: TRAN discusses annual work programmes during the exchange of views with the Executive Director; as to the linking of financial and human resources the Executive Director raised issues on insufficient funding;  
- with regard to EASA: In the new EASA regulation, there is a specific provision on the headquarters agreement.

AGRI reported that:

(1) a Commission implementing decision in the framework of the regulation on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries, adopted in 2014, led to the extension of the competences of the Consumers, Health and Food Executive Agency; AGRI drafted an opinion in the procedure for a Regulation on the transparency and sustainability of the EU risk assessment in the food chain concerning activities carried out by EFSA (risk communication, transparency of studies) as well as the governance structures, which was however rejected by the committee; AGRI regularly votes budgetary amendments in order to restore any cuts the Council would propose to the budget of the agencies that concern AGRI (e.g. EFSA, CHAFEA); AGRI made a request for two scientific opinions by EFSA on the health and welfare of rabbits kept for meat production in Europe (ongoing); as to exchanges of views in committee there was a presentation by the President of the Community Plant Variety Office of the agency’s work in 2016, a presentation by an EFSA representative at a hearing on “Cloning of animals for farming purposes” in 2015 (joint hearing with ENVI, expert proposed by ENVI) and there were presentations by EFSA and ECHA at a hearing on “The Monsanto papers and glyphosate” in 2017 (joint hearing with ENVI, experts proposed by ENVI);
CULT indicated that:

(1) it gives an opinion in the framework of the annual budgetary procedure and a discharge procedure on the CdT; it has exchanges of information and exchanges of views in committee with the CdT on their activities;
(2) internal audits by the Commission and, to a certain extent, evaluations, are taken into account in CULT’s discharge opinions;

CULT also referred to activities it carries out in respect of the EACEA (executive agency) and reports in that context that it has exchanges on the annual work programmes with the relevant DGs of the Commission and visited EACEA for a presentation of the activities concerning the implementation of the Creative Europe programme in 2016. The rapporteur for the Creative Europe programme had meetings with EACEA on performance indicators; it also gave some recommendations to EACEA in the implementation report on the Creative Europe Programme on transparency and relations with stakeholders; as to the question on delivery it reports that to some extent, the work of the EACEA in implementing Creative Europe has been evaluated in the implementation report and some recommendations issued.

FEMM communicated that:

(1) it is involved in the annual budgetary and discharge procedures; it designates two Members and two alternate Members of the EIGE’s Experts Forum; it has exchanges of views on work programmes; it paid agency visits in 2015 and 2018; it uses expertise products of the agency, requests briefings or opinions and has exchanges of views in committee;
(2) it is consulted on multiannual work programmes, while there are also presentations of annual work programmes;
(3) as to the question (5) on complexity it states that for FEMM it is important to differentiate the remit of EIGE in relation to the remit of FRA. FEMM considers it important keeping an agency exclusively devoted to women’s rights and gender equality.

**Key findings**

- While there is no general definition of EU agencies or clear circumscription of their competences or tasks, in institutional terms agencies can be seen as in-betweeners, between the Commission and Member States. They respond to the need for more uniformity in the implementation of EU policies by EU Member States by providing a model of more direct administration at EU level, leading to a pluralisation of the EU executive1.
- The fact that there is no explicit legal basis for the creation of agencies or general definition or description of agencies and their competences and tasks, neither in article 13 TEU nor in the system of delegation laid down in Article 290 and 291 TFEU, may be due to a lack of unitary view on the EU executive, or to the variety of functions that agencies have been called upon to perform. However agencies do not function in a legal vacuum. They have been deliberately created by the EU legislator in line with the principle of conferral of powers, on the basis of different provisions of the Treaties. The Lisbon Treaty has formally recognised agentification of the EU executive by

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1 See chapter 2 of the study
introducing EU agencies formally into the Treaties. The delegation of powers to
agencies is not unlimited, delegation must comply with the legal guarantees set by the
Treaties, respect the institutional balance and protect the interests of the individual
within the EU. Nevertheless, a better distinction and categorisation of different types of
agencies and their accountability mechanisms could be considered. Furthermore if and
when there will be the occasion of a Treaty change, it could be considered how to anchor
agencies still more firmly in the Treaties (e.g. in relation to article 13 TEU and article
290 and 291 TFEU).

- Mechanisms to ensure accountability of agencies can be found in the Treaties (e.g.
  transparency, judicial review), in the founding regulations, in the case-law of the Court
  (in particular the Meroni doctrine) and in the Joint Statement and Common Approach.
The adoption of their budgets depends in the majority of cases upon approval of the
budgetary authority and agencies are generally subject to discharge by the European
Parliament (with the exception of fully self-financed agencies). This conjunction of
rules and regulations, although perhaps not as complete as it could be, has provided the
framework for the European Parliament to carry out its tasks of scrutiny. Parliamentary
committees have actively carried out their scrutiny tasks despite the variety in
provisions. While the specialised committees scrutinise the agencies falling within their
remit, the BUDG and CONT committees scrutinise all agencies, and have also gained
experience and an overall view of agencies through their work in the Interinstitutional
Working Group. They have been at the forefront of holding the agencies to account in
their various activities and governance structures. For the future it could be considered
to hold an annual debate in the European Parliament on the functioning and governance
of agencies.

- The 2012 Joint Statement and Common Approach provides a non-binding framework
  for agencies, the implementation of which presents a mixed picture. This may be
  partially due to the very different task and functions that agencies perform, which makes
  it difficult to apply a one-size fits all model. Nevertheless there could be greater efforts
to streamline certain provisions in the founding regulations, taking into account the
various types of agencies that currently exist, grouping them by their nature and tasks.
A thorough assessment of the implementation of the Common Approach in all its
aspects, with detailed analytical papers, similar to those produced in 2010 might be
helpful in that respect.

- Agencies employ more than 9000 persons. The EU Agencies Network, with its sub-
  networks, working groups and thematic cooperation in clusters, is a forum for
  coordination, for information exchange, for agreement of common positions on issues
  of common interest, for avoiding duplications, for promoting good governance, for
  encouraging the sharing of services and for bringing agencies closer to the EU citizen.

- Agencies need to have sufficient funds to carry out their increasing tasks and be able to
  attract the necessary qualified staff in every host country in which they are situated.

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1 See chapter 5, 7 and 8 of the study
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies
(2018/2114(INI))

The European Parliament,

– having regard to the Treaty provisions related to agencies and in particular Articles 5 and 9 of the Treaty on European Union (TEU), and Articles 15, 16, 71, 123, 124, 127, 130, 228, 263, 265, 267, 277, 282, 287, 290, 291, 298 and 325 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to the Charter of Fundamental Rights of the European Union and in particular Articles 41, 42, 43, 51 and 52 thereof,

– having regard to the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19 July 2012 and the Common Approach annexed to it,

– having regard to Rule 52 of its Rules of Procedure, as well as to Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,

– having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the Environment, Public Health and Food Safety and the Committee on Civil Liberties, Justice and Home Affairs (A8-0055/2019),

A. whereas agencies play a vital role in the implementation of EU policies at European and national levels, performing a wide variety of tasks to contribute to the implementation of EU policies, such as creating networks or supporting cooperation between the EU and national authorities; whereas good cooperation between EU agencies and Member States helps bring greater efficiency and effectiveness to the work of the agencies; whereas agencies have also established cooperation among themselves through the European Union Agency Network;

B. whereas the coordination and collaboration between the different agencies and parliamentary committees has generally been good; whereas Europol is the only agency scrutinised by Parliament jointly with national parliaments through the Joint Parliamentary Scrutiny Group;

C. whereas agencies have been created and developed over time, on a case-by-case basis; whereas the Lisbon Treaty has formally recognised agentification of the EU executive by introducing EU agencies formally into the Treaties;

D. whereas agencies are primarily accountable to Parliament and the Council, which must ensure that adequate scrutiny mechanisms are in place in the legislative acts governing those agencies and that those mechanisms are subsequently properly implemented;
whereas agentification of the EU executive should not weaken Parliament’s control of the EU executive as provided for in Article 14 TEU;

E. whereas the Treaties contain neither a definition of decentralised agencies, nor a general description of powers that may be conferred on agencies;

F. whereas a number of agencies have their legal basis under Article 352 TFEU and others are created on a specific sector legal basis;

G. whereas the 2012 Joint Statement and the Common Approach are the result of the work of the Interinstitutional Working Group on regulatory agencies, which was set up by the Commission, the European Parliament and the Council to assess the coherence, effectiveness, accountability and transparency of agencies after a proposal by the Commission in 2005 for an Interinstitutional Agreement on regulatory agencies had not received the necessary support from the Council and Parliament;

H. whereas the Common Approach contains provisions on the structure and governance of agencies, as well as on their operation, programming of activities, funding, management of budgetary resources, budgetary procedures, accountability, controls and transparency, which help ensure parliamentary scrutiny over decentralised agencies;

I. whereas, despite a generally positive appreciation, agencies have, in a few cases, encountered occasional distrust of their scientific and technical opinions;

**Main observations**

1. Notes that mechanisms to ensure the accountability of agencies are incorporated in the Treaties, in the founding regulations of agencies, in the case-law of the European Court of Justice, as well as in the Joint Statement and the Common Approach; emphasises that through the conferral of power, Parliament has powers of scrutiny vis-a-vis decentralised agencies which are not, however, spelled out in detail in the Treaties; notes in this respect the non-binding nature of the Joint Statement and Common Approach; regrets, however, that the Institutions have not yet agreed to a binding regulatory framework;

2. Points out that Parliament scrutinises agencies in different ways:
   - as one arm of the budgetary authority in its decision-making on the contributions from the EU budget to agencies;
   - as the discharge authority;
   - through designation of members of the Management Boards of agencies;
   - through the procedure for the appointment (or dismissal) of the Executive Director;
   - through its consultation on the work programmes;
   - through the presentation of the annual reports;
   - through other methods (delegation visits, contact groups or persons, exchanges of views,
hearings, briefings, provision of expertise); 

3. Notes that the provisions in the founding regulations differ in varying degrees from the mechanisms for accountability and parliamentary scrutiny set out in the Common Approach, which may be due to the very different tasks and functions that agencies perform; 

4. Observes that parliamentary committees have actively carried out their scrutiny tasks despite the variety of provisions in the founding regulations; 

5. Recognises the implementation by the Union agencies of the Joint Statement and Common Approach and its roadmap; highlights, in particular, the recommendations of the Interinstitutional Working Group on Decentralised Agencies (IIWG), which were endorsed by the Conference of Presidents on 18 January 2018; notes that with the follow-up meeting of 12 July 2018, the work of the IIWG was considered achieved; 

**Recommendations** 

6. Considers that greater efforts could be made to streamline certain provisions in the founding regulations of agencies relating to their governance and accountability mechanisms, taking into account the various types of agencies that currently exist and defining the general principles governing the relationship between the institutions of the EU and the agencies; points out that these issues should also be addressed in impact assessments whenever the establishment of an agency is proposed; underlines that agencies need to have a certain degree of organisational flexibility in order to better adapt to the tasks envisaged and the needs that arise while carrying out their duties; welcomes the cluster- and cross cluster-based internal organisation of agencies in similar domains; 

7. Calls therefore for a thorough assessment of the implementation of the Common Approach in all its aspects, with detailed analytical papers similar to those produced in 2010 with a focus on governance-related aspects, reviewing in particular the compatibility of the provisions included with Parliament’s co-decision and scrutiny powers, while taking account of the need to allow for flexibility in view of the diverse landscape of decentralised agencies; 

8. Regrets that Parliament, as the lead guarantor of respect for the principle of democracy in the EU, was not fully involved in the procedure to select the new seat of EMA and EBA; recalls in this regard its request to revise the 2012 Joint Statement and Common Approach as soon as possible and also recalls the commitment of the Council to engage in the revision thereof, inviting the Commission to provide, by April 2019, an in-depth analysis of the Joint Statement and Common Approach as regards the location of decentralised agencies; 

9. Stresses that the location of the seat of an agency should not affect the execution of its powers and tasks, its governance structure, the operation of its main organisation or the main financing of its activities; 

10. Expects the prerogatives of Parliament and Council as co-legislators to be fully respected in future decisions on the location or relocation of agencies; considers that
Parliament should be systematically involved, throughout the legislative process and on equal terms with the Council and the Commission, in defining and assessing the weight of the criteria for the location of all Union bodies and agencies, in a transparent manner; points out that Parliament, the Council and the Commission made a commitment in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 to sincere and transparent cooperation, and that the agreement highlights the principle of equality between the co-legislators, as enshrined in the Treaties; underlines the value of enhanced exchange of information from the initial stages of future processes for the location of agencies, as such early exchange would make it easier for the three institutions to exercise their rights and prerogatives;

11. Believes that the decision on the location of an agency is of great importance and considers that objective criteria such as accessibility, administrative synergies and proximity to stakeholders have to be taken into account by the Union institutions in reaching the best possible decision;

12. Asks the Commission, in line with the recommendations of the Interinstitutional Working Group on decentralised agencies’ resources, to swiftly present an evaluation of agencies with multiple locations, using a consistent approach to assess their added value by taking costs incurred into account; calls for significant measures to be taken on the basis of the results of this evaluation, with the aim of reducing the number of multiple locations, if and where appropriate;

13. Proposes that, on the basis of a review of the Common Approach, fresh consideration should be given to drawing up an Interinstitutional Agreement (IIA) on agencies and that such agreement should contain provisions on a five-yearly review of the principles governing the establishment and functioning of agencies, drawing upon the expertise of a group of eminent persons;

14. Considers that this IIA should respect the European Parliament’s powers in co-decision procedures and should also cover the relationship between an agency and the institutions of the Member State in which it is located, as well as transparency measures, procedures to avoid conflict of interest and to ensure gender balance among the members of the governing and advisory bodies, and the implementation of gender mainstreaming in all the activities of the agencies;

15. Believes that in drafting such an IIA several specific suggestions to strengthen democratic oversight, improve the accountability of Union agencies and strengthen the system for reporting to Parliament should also be addressed, such as:

- setting a time limit for agencies to reply to questions addressed to them by the European Parliament or the Council;
- making arrangements for the sharing of sensitive and confidential information and the consultation of parliamentary committees, where so required;
- considering whether there should or should not be a specific number of members of the respective Management Boards appointed by Parliament;
- considering the added value of attendance by Parliament representatives/observers at
meetings of boards of supervisors and agency stakeholder groups;

- streamlining Parliament’s involvement in the annual and multi-annual work programmes of the agencies;

- streamlining and harmonising reporting obligations, particularly with regard to the annual activity report, the budgetary and financial management report and the final accounts;

- informing Parliament in a detailed manner of the measures taken to meet the recommendations of the discharge authority (follow-up reports) and those of the Court of Auditors;

16. Considers furthermore that Parliament’s role in the oversight of the governance dimension of decentralised agencies could be significantly improved by the establishment of a specialised unit within Parliament entrusted with the task of ongoing horizontal scrutiny of the governance of such agencies, based on the sincere and reciprocal sharing of information, cooperation and values; suggests, moreover, the strengthening of cooperation with the Joint Parliamentary Scrutiny Group and a revision of the rules for missions to agencies to allow for better regular contact between parliamentary committees and agencies falling under their remit;

17. Proposes that, in the context of the five-yearly review, building on and in addition to the scrutiny activities conducted by Parliament’s committees over agencies falling within their remit, the Committee on Constitutional Affairs holds an annual debate on the functioning and governance of agencies, followed, if deemed appropriate and/or necessary, by a debate in plenary in order to facilitate a stronger and more structured system of scrutinising agency activities within Parliament; proposes moreover, given the role of agencies as intermediaries between the EU and the Member States, a period of consultation with national parliaments should they wish to make any intervention on the matter;

18. Considers that Union agencies should apply the rules and principles of good governance and better law-making, including conducting open public consultations on their draft proposals for secondary and tertiary acts, where the domain of the agency so allows; proposes that agencies be subject to the same transparency rules as the Commission, including rules and obligations in relation to interest representatives;

19. Stresses that, while making sure that all assignments resulting from the regulatory framework are carried out in full and within deadline, Union agencies should carefully adhere to their tasks and act in accordance with the mandates assigned to them by Parliament and the Council; considers it imperative that the Union agencies are transparent when carrying out their mandates;

20. Proposes that all agencies should be able to submit non-binding opinions on current files within their remit;

21. Believes furthermore that, in the event of any future changes to the Treaties, consideration should be given as to how agencies can be anchored even more firmly in the Treaties, in particular in relation to Articles 13 and 14 TEU and Articles 290 and
291 TFEU, by inserting a clear definition of the various types of agencies, the powers that can be conferred on them and general principles guaranteeing their parliamentary scrutiny;

**Budgetary matters**

22. Notes that fee-financing of agencies currently amounts to around EUR 1 billion annually, which can alleviate pressure on the EU budget and can be an effective way of financing agency activities in cases where the business model so allows; expresses concern, however, at the potential conflicts of interest that can arise if agencies have to rely on membership fees as their main source of income; insists that safeguard measures need to be in place to avoid any kind of conflict of interest;

23. Stresses the need to take into account the new climate, sustainability and environmental protection priorities within the next MFF and the tasks attributed to particular agencies for the implementation of this MFF;

24. Notes that even though decentralised agencies share a number of similarities in terms of budgetary management, one-size-fits-all approaches have proven to be detrimental to the efficient and effective management of certain agencies; considers the 5% reduction target for staff and the redeployment pool among agencies to be a one-off exercise; reiterates its intention to oppose any such approach in the future;

25. Notes with concern that a number of agencies have difficulties in attracting qualified staff on account of employment conditions; believes that Union bodies need to be in a position to attract qualified staff in order to fulfil their tasks effectively and efficiently; calls, therefore, for concrete action to be taken in order to meet these goals;

26. Notes that the strengthened cooperation between the agencies in sharing services has resulted in savings, such as those achieved by the creation of a joint procurement portal; encourages further exploration of the potential for sharing services either among the agencies themselves, or between the Commission and the agencies, with a view to creating new synergies and optimising existing ones; believes that, where applicable, further budgetary efficiency could be achieved through close cooperation on administrative support and facility management services among Union bodies and agencies in immediate proximity;

27. Notes that agencies’ budgets should be prepared in accordance with the principle of performance-based budgeting, taking into account the agency’s objectives and the expected results of its tasks; calls for a thematic approach to the budgeting of decentralised agencies in order to better prioritise the agencies’ tasks, boost cooperation and avoid overlaps, particularly in the case of agencies working within the same policy field;

28. Notes with concern that a number of administrative requirements are disproportionate to agencies which have not reached a certain size; expects the Commission and the Council to ensure that the applicable administrative requirements are commensurate with the financial and human resources of all agencies;

29. Recalls that the legislative procedure results in modifications to the original
Commission proposal; notes with concern that updated financial statements generally only become available at the end of the legislative procedure, if at all; recalls the twin roles of Parliament and the Council as legislative authority and budgetary authority;

30. Welcomes the Commission’s draft revised text of the framework financial regulation for decentralised agencies and, in particular, its plans outlined therein to strengthen the governance of these agencies;

31. Maintains, however, that a variety of issues remain unresolved, and urges the Commission to submit without delay an evaluation of agencies with multiple locations, as recommended by the IIWG, as well as proposals for possible mergers, closures and/or transfers of tasks to the Commission, on the basis of a careful in-depth analysis and using clear and transparent criteria, as was envisaged in the IIWG’s terms of reference but which was never properly examined owing to a lack of proposals to that effect from the Commission;

32. Notes that the auditing of the decentralised agencies ‘remains under the full responsibility of [the Court of Auditors], which manages all administrative and procurement procedures required and finances these’; reiterates that auditing carried out by private sector auditors has significantly increased the administrative burden on the agencies and has, as a result of the time spent on the procurement and administration of audit contracts, created additional expenditure, putting their diminishing resources under even greater strain; emphasises that it is imperative to resolve this issue in accordance with the Common Approach, within the context of the revision of the framework financial regulation; calls on all parties involved in this revision to provide clarity on this issue as a matter of urgency so as to significantly reduce the excessive administrative burden;

33. Instructs its President to forward this resolution to the Council and the Commission, the European Court of Auditors and the EU decentralised agencies.
OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Constitutional Affairs

on the implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies
(2018/2114(INI))

Rapporteur for opinion: Jens Geier

SUGGESTIONS

The Committee on Budgets calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes that fee-financing of agencies currently amounts to a total of about EUR 1 billion annually, which is significantly alleviating pressure on the EU budget; considers fee-financing to be an effective way of financing agency activities in cases where the business model so allows; notes, however, that safeguard measures need to be in place to avoid any kind of conflict of interest;

2. Notes that even though decentralised agencies share a number of similarities in terms of budgetary management, one-size-fits-all approaches have proven to be detrimental to the efficient and effective management of certain agencies; considers the 5 % reduction target for staff and the redeployment pool among agencies a one-off exercise; reiterates its intention to oppose any such approach in the future;

3. Believes that the decision on the location of an agency is of great importance and considers that objective criteria such as accessibility, administrative synergies and proximity to stakeholders have to be taken into account by the Union institutions in reaching the best possible decision; expects the prerogatives of both Parliament and the Council as Union co-legislators to be fully respected in future decisions on the location of agencies;

4. Asks the Commission, in line with the recommendations of the Interinstitutional Working Group on decentralised agencies’ resources, to swiftly present an evaluation of agencies with multiple locations, using a consistent approach to assess their added value by taking costs incurred into account; calls for significant measures to be taken on the
basis of the results of this evaluation, with the aim of reducing the number of multiple locations, if and where appropriate;

5. Notes with concern that a number of agencies have difficulties in attracting qualified staff on account of unfavourable employment conditions and limitations caused by the salary coefficient; believes that Union bodies need to be in a position to attract qualified staff in order to fulfil their tasks effectively and efficiently; calls, therefore, for concrete action to be taken to rectify salary coefficients to better reflect real costs;

6. Notes that the strengthened cooperation between the agencies in sharing services has resulted in savings, such as those achieved by the creation of a joint procurement portal; encourages further exploration of the potential for sharing services either among the agencies themselves, or between the Commission and the agencies, with a view to creating new synergies and optimising existing ones; believes that, where applicable, further budgetary efficiency could be achieved through close cooperation on administrative support and facility management services among Union bodies and agencies in immediate proximity;

7. Believes that the democratic oversight can be strengthened by ensuring the participation of representatives nominated by Parliament in Management Board meetings; believes that ensuring the best value for money for the European citizen, represented by Parliament, should be an important factor in this decision-making process; notes that the Union institutions have refrained on a number of occasions from making use of this possibility provided for in the Common Approach;

8. Notes that agencies’ budgets should be prepared in accordance with the principle of performance-based budgeting, taking into account the agency’s objectives and the expected results of its tasks; calls for a thematic approach to the budgeting of decentralised agencies in order to better prioritise the agencies’ tasks, boost cooperation and avoid overlaps, particularly in the case of agencies working within the same policy field;

9. Notes with concern that a number of administrative requirements are disproportionate to agencies which have not reached a certain size; expects the Commission and the Council to ensure that the applicable administrative requirements are commensurate with the financial and human resources of all agencies;

10. Recalls that the legislative procedure results in modifications to the original Commission proposal; notes with concern that updated financial statements generally only become available at the end of the legislative procedure, if at all; recalls the twin roles of Parliament and the Council as legislative authority and budgetary authority.
### INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| **Result of final vote** | +: 24  
| | -: 1  
| | 0: 2  |
| **Members present for the final vote** | Jean Arthuis, Richard Ashworth, Lefteris Christoforou, Manuel dos Santos, André Elissen, José Manuel Fernandes, Eider Gardiazabal Rubial, Jens Geier, Ingeborg Gräßle, John Howarth, Siegfried Mureşan, Liadh Ní Riada, Jan Olbrycht, Pina Pichierno, Paul Rübig, Petri Sarvamaa, Jordi Solé, Patricija Šulin, Indrek Tarand, Monika Vana, Daniele Viotti, Marco Zanni |
| **Substitutes present for the final vote** | Xabier Benito Zuluaga, Karine Gloanec Maurin, Marco Valli |
| **Substitutes under Rule 200(2) present for the final vote** | Clara Eugenia Aguilera García, Claudia Schmidt |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
8.1.2019

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Constitutional Affairs

on implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies
(2018/2114(INI))

Rapporteur: Dennis de Jong

SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recognises the implementation by the Union agencies of the Joint Statement and Common Approach and its roadmap; highlights, in particular, the recommendations of the Interinstitutional Working Group on Decentralised Agencies (IIWG), which were endorsed by the Conference of Presidents on 18 January 2018; notes that with the follow-up meeting of 12 July 2018, the work of the IIWG was considered achieved;

2. Welcomes the Commission’s draft revised text of the framework financial regulation for decentralised agencies and, in particular, its plans outlined therein to strengthen the governance of these agencies;

3. Maintains, however, that a variety of issues remain unresolved, and urges the Commission to submit without delay an evaluation of agencies with multiple locations, as recommended by the IIWG, as well as proposals for possible mergers, closures and/or transfers of tasks to the Commission, on the basis of a careful in-depth analysis and using clear and transparent criteria, as was envisaged in the IIWG’s terms of reference but which was never properly examined owing to a lack of proposals to that effect from the Commission;

4. Recalls the letters sent by its President on 28 March 2018 to the President of the Commission and the President-in-Office of the Council expressing regret, in view of its prerogatives as co-legislator, that Parliament had not been involved in the selection procedure for the new seat of the European Medicines Agency, and calls for the Joint Statement and the Common Approach to be revised accordingly; urges the Commission
to prepare the necessary proposals based on an in-depth analysis of the implementation of the Joint Statement and Common Approach, as requested by the Council in its reply to the aforesaid letter;

5. Notes that agencies’ budgets should be prepared in accordance with the principle of performance-based budgeting, taking into account the agency’s objectives and the expected results of its tasks; calls for a thematic approach in decentralised agencies’ budgeting in order to better prioritise the agencies’ tasks, increase cooperation, and avoid overlaps, especially among agencies working within the same policy field;

6. Expresses concern at the potential conflicts of interest that can arise if agencies have to rely on membership fees as their main source of income; reiterates that the agencies are aware of this reputational risk and would prefer a steady and predictable flow of income from the EU budget, which is crucial also to planning, rather than having to rely on fees, which are unpredictable and vary from year to year; urges the Commission to submit a proposal for the fees to be paid directly to the Commission and for the agencies to be provided with a regular subsidy from the EU budget in return;

7. Calls for concrete action to correct salary coefficients to better reflect real costs;

8. Repeats its call for streamlined and harmonised reporting obligations, particularly with regard to the annual activity report, the budgetary and financial management report and the final accounts;

9. Encourages the agencies to inform Parliament in a detailed manner of the measures taken to meet the recommendations of the discharge authority (‘follow-up reports’) and those of the Court of Auditors;

10. Notes that in order to properly handle new tasks, seek constant efficiency gains, fill vacant positions quickly and effectively and enhance their ability to attract experts, the agencies should continuously monitor and assess their staffing levels and their needs in terms of additional human and financial resources, and make relevant requests where necessary to be able to carry out their tasks and responsibilities adequately;

11. Notes that the auditing of the decentralised agencies ‘remains under the full responsibility of [the Court of Auditors], which manages all administrative and procurement procedures required and finances these’; reiterates that auditing carried out by private sector auditors has significantly increased the administrative burden on the agencies and has, as a result of the time spent on the procurement and administration of audit contracts, created additional expenditure, putting their diminishing resources under even greater strain; emphasises that it is imperative to resolve this issue in accordance with the Common Approach, within the context of the revision of the framework financial regulation; calls on all parties involved in this revision to provide clarity on this issue as a matter of urgency so as to significantly reduce the excessive administrative burden.
### INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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<td>Dennis de Jong, Ingeborg Gräßle, Georgi Pirinski, José Ignacio Salafranca Sánchez-Neyra, Bart Staes</td>
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<td>Karin Kadenbach, Andrey Novakov</td>
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<td>Pervenche Berès, John Howarth, Jude Kirton-Darling</td>
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## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
11.12.2018

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Constitutional Affairs

on implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies
(2018/2114(INI))

Rapporteur for opinion: Peter Simon

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Stresses that, while making sure that all assignments resulting from the regulatory framework are carried out in full and within deadline, Union agencies should carefully adhere to their tasks and act in accordance with the mandates assigned to them by Parliament and the Council; considers it imperative that the Union agencies are transparent when carrying out their mandates;

2. Requests that the Union agencies, in order to improve their level of accountability, should reply to questions addressed to them by Parliament or the Council no later than five weeks after receiving them; suggests, furthermore, that upon request, the Chairperson of a Union agency should hold confidential oral discussions behind closed doors with the Chair, Vice-Chairs and Coordinators of Parliament’s competent committee;

3. Considers that Union agencies should seek to regularly involve relevant stakeholders and to apply the principles of better regulation, including conducting open public consultations on their draft proposals for secondary and tertiary legal acts;

4. Suggests that the attendance of Parliament representatives at meetings of boards of supervisors and agency stakeholder groups would facilitate mutual understanding of the issues at stake by Parliament, the Member States and the Commission, in the same way that attendance at the Commission’s expert group meetings does;

5. Underlines that Parliament’s prerogatives should be respected at all times; believes,
therefore, that Parliament should systematically be involved, and on equal terms with the Commission and Council, in defining and weighting the criteria for the location of all Union bodies and agencies; recalls, in this regard, the Council’s commitment to engage in the revision of the Joint Statement of 19 July 2012 on decentralised agencies, with the aim of ensuring the joint and deep involvement of all EU institutions; believes that ensuring the best value for money for the European citizen, as represented by Parliament, should be an important factor in this decision-making process;

6. Calls on the Commission, in its in-depth analysis of the implementation of the Joint Statement and Common Approach of 19 July 2012, to see to it that it assess, by April 2019, the arrangements that should be revised and enforced to ensure proper scrutiny by Parliament and the extent to which the provisions reflect the reality of the legal and institutional landscape of decentralised agencies, notably as regards structure and governance-related aspects, and whether they allow sufficient flexibility to cater for the agencies’ diverse nature;

7. Recalls its prerogative as co-legislator and insists on complete respect for the ordinary legislative procedure as to decisions regarding the location of the seats of its bodies and agencies;

8. Notes that the number of agencies and the resources allocated to them has been growing in recent years; calls for a clear and common understanding between the EU institutions on the role of the agencies;

9. Stresses that the location of the seat of an agency should not affect the execution of its powers and tasks, its governance structure, the operation of its main organisation or the main financing of its activities; underlines, however, that the location of an agency should allow for better budgetary efficiency through the implementation of shared services among Union agencies, notably joint premises, since shared infrastructure, administrative support and facility management services deliver significant efficiency gains.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Substitutes present for the final vote | Matt Carthy, Ashley Fox, Sophia in ‘t Veld, Ramón Jáuregui Atondo, Syed Kamall, Paloma López Bermejo, Thomas Mann, Romana Tomc, Lieve Wierinck, Roberts Zīle |
**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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Key to symbols:
+ : in favour
- : against
0 : abstention
22.1.2019

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Constitutional Affairs

on implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies
(2018/2114(INI))

Rapporteur: Ivo Belet

SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas the Joint Statement and Common Approach are legally non-binding, and were agreed without prejudice to the legislative powers of the Institutions;

1. Believes that representatives appointed by Parliament have an important role to play in Management Board meetings as they reinforce Parliament’s legitimate role of democratic scrutiny by representing the Union’s citizens and ensure more transparent governance; is of the opinion that the Joint Statement should not indicate how many members Parliament should be able to appoint; believes that Parliament should also appoint representatives to the Management Board of EFSA;

2. Notes that the Joint Statement and Common Approach are of a legally non-binding character;

3. Regrets that Parliament, as the lead guarantor of respect for the principle of democracy in the EU, was not fully involved in the procedure to select the new seat of the European Medicines Agency (EMA), a matter ultimately settled, despite the importance of the decision, by drawing lots; notes that decisions in relation to the location of the decentralised agencies need to be taken, in full respect of the European Parliament’s prerogatives, under the ordinary legislative procedure whereby Parliament and the Council
are equal co-legislators; insists that, in line with the Council’s commitment in this regard\(^1\), the procedure that was followed for the selection of the new location for EMA, a critical agency in which disruption should have been kept to a minimum, was specific to the situation, did not constitute a precedent and must not be used again;

4. Expects the prerogatives of Parliament and Council as co-legislators to be fully respected in future decisions on the location or relocation of agencies; considers that Parliament should be systematically involved, throughout the legislative process and on equal terms with the Council and the Commission, in defining and weighting the criteria for the location of all Union bodies and agencies, in a transparent manner; points out that Parliament, the Council and the Commission have made a commitment, in the Interinstitutional Agreement on Better Law-Making of 13 April 2016\(^2\), to sincere and transparent cooperation, and that the agreement highlights the principle of equality between the two co-legislators, as enshrined in the Treaties; underlines the value of enhanced exchange of information from the initial stages of future processes for the location of agencies, stressing that such early exchange of information would make it easier for the three Institutions to exercise their rights and prerogatives;

5. Calls on the Commission to provide, by April 2019, an in-depth analysis of the implementation of the Joint Statement and Common Approach – particularly as regards the location of the decentralised agencies and increased transparency in their governance – in order to initiate the revision of these texts once the Members of the next Parliament have taken their seats;

6. Notes that the Joint Statement can act as a useful tool to strengthen and streamline mechanisms for dealing with conflict of interests, in particular for fee-financed agencies; stresses that, while making sure that all assignments resulting from the regulatory framework are carried out in full and within the deadline, Union agencies should carefully stick to their tasks and should not go beyond the mandates assigned to them by Parliament and the Council;

7. Stresses that, in the event of budgetary and staffing decisions regarding decentralised agencies, the specificities, extra tasks and workload of the agency must be taken into account and that possible budgetary and personnel cuts cannot be taken on a one-size-fits-all basis; stresses furthermore the need to take into account the new climate, sustainability and environmental protection priorities within the next multiannual financial framework (MFF) and the tasks attributed to particular agencies for its implementation, as well as the needs of agencies that are undergoing potentially business-disrupting events and processes such as relocation;

8. Notes that the principles of desirability of geographical spread of agency seats and of prioritising new Member States as hosts, as stated in the Joint Statement, were not respected in the case of new seats for the EMA and EBA;

9. Points out that the Joint Statement advises that, when the legislative authority decides to

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assign additional tasks to agencies as compared to the initial Commission proposal, the reprioritisation of their activities should always be considered as an alternative to granting additional resources; believes that the reprioritisation of activities in the remit of the European Medicines Agency should be avoided as much as possible due to the fact that its core mission is safeguarding public health in the EU.

1 Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, paragraph 43.
# INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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<td>Olle Ludvigsson</td>
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## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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|    | ALDE   | Catherine Bearder, Jan Huitema, Anneli Jäättteenmäki, Valentin Mazuronis, Frédérique Ries, Nils Torvalds |
|    | EFDD   | Sylvie Goddyn |
|    | ENF    | Jean-François Jalkh |
|    | GUE/NGL | Stefan Eck, Anja Hazekamp, Kateřina Konečná |
|    | PPE    | Pilar Ayuso, Ivo Belet, Cristian-Silviu Buşoi, Birgit Collin-Langen, José Inácio Faria, Karl-Heinz Florenz, Francesca Gambus, Elisabetta Gardini, Jens Gieseke, Julie Girling, Françoise Grossetête, Christophe Hansen, Peter Liese, Miroslav Mikolášik, Annie Schreijer-Pierik, Ivica Tolić, Adina-Ioana Vălean |
|    | VERTS/ALE | Margrete Auken, Bas Eickhout, Martin Häusling, Benedek Jávor, Tilly Metz, Bart Staes |

| 4  |  
|----|---------------------------------------------------------------|
|    | ECR   | Arne Gericke, Urszula Krupa, Boleslaw G. Piecha, Jadwiga Wiśniewska |

| 2  |  
|----|---------------------------------------------------------------|
|    | ECR   | Mark Demesmaeker, John Procter |

**Key to symbols:**
- + : in favour
- - : against
- 0 : abstention
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Constitutional Affairs

on the implementation of the legal provisions and the Joint Statement ensuring parliamentary scrutiny over decentralised agencies (2018/2114(INI))

Rapporteur for opinion: Maria Grapini

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes that EU agencies are established by the co-legislators for specific tasks under Union law, such as contributing to the implementation of EU policies or supporting cooperation between the EU and national governments; considers therefore that agencies are primarily accountable to Parliament and the Council, which must ensure that adequate scrutiny mechanisms are in place in the legislative acts governing those agencies and that those mechanisms are subsequently properly implemented; points out that certain policy areas require the close involvement of national parliaments in the scrutiny of agencies (for example, the Joint Parliamentary Scrutiny Group on Europol);

2. Points out that the mechanisms to ensure the accountability of agencies are incorporated in the Treaties, in the founding regulations of agencies, in the case-law of the European Court of Justice, as well as in the joint Statement and Common Approach;

3. Considers that the Common Approach to decentralised agencies – which lays down common principles for the establishment and functioning of EU agencies – could be updated to take account, on the one hand, of the need to have common rules governing EU agencies and, on the other hand, of the differences between agencies in terms of staff size, budget and operational responsibility; considers that the process leading to such an update has to be fully inclusive of all relevant actors and be undertaken in compliance with the principles of loyal cooperation and transparency;

4. Considers that the EU agencies must live up to the highest standards of transparency
towards the general public, thereby facilitating scrutiny of their activities;

5. Considers that the nature of scrutiny mechanisms may vary depending on the actual role and operational impact of the agency, including factors such as the agency’s mission, budget and staff numbers, and the political sensitivity of its activities; believes that agencies granted greater operational competence, larger budgets and a larger staff must be subject to greater democratic oversight and scrutiny mechanisms, particularly where they are active in politically sensitive fields; calls therefore for those factors to be taken into account when streamlining governance and accountability mechanisms;

6. Believes that it is imperative to continue to improve relations between operational EU agencies and Member States to help bring greater efficiency and effectiveness both to the work of the agency and to national policies;

7. Points out that the Common Approach has not always been followed in the adoption or amendment of the founding acts of agencies; considers therefore that thought should be given to a binding agreement on the establishment and functioning of agencies;

8. Considers the current rules for missions to agencies (three Members every two years with missions strictly limited to green weeks and to the seat of an agency) as too rigid to allow for regular political contact between Parliament and an agency, this contact being a precondition for successful scrutiny by Parliament; proposes that committees should be given greater flexibility to organise scrutiny or information visits to agencies, and in particular for visiting locations in which the agency carries out operational activities; proposes that at least one Member from each political group should be able to attend such missions;

9. Considers that the cooperation with the Joint Parliamentary Scrutiny Group on Europol should be strengthened; proposes that the Co-Chair or other relevant members of the Group should be invited to participate in Parliament’s missions to Europol and to other agencies, where relevant;

10. Proposes that, given the problems encountered in obtaining sufficient, relevant and timely information from agencies, Parliament should, as a rule, be entitled to send an observer to the management board meetings of operational agencies; underlines that this proposal does not exclude the fact that agencies should have sufficient budgetary resources and qualified staff to carry out their mandates effectively.
### INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Substitutes present for the final vote |
| Carlos Coelho, Ignazio Corrao, Pál Csáky, Miriam Dalli, Gérard Deprez, Maria Grapini, Anna Hedh, Teresa Jiménez-Becerril Barrio, Jean Lambert, Gilles Lebreton, Jeroen Lenaers, Innocenzo Leontini, Angelika Mlinar, Emilian Pavel, Barbara Spinelli, Geoffrey Van Orden |
| Substitutes under Rule 200(2) present for the final vote |
| Wajid Khan, Anthea McIntyre, Mylène Troszczynski |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
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| **Substitutes present for the final vote** | Ashley Fox, Sylvia-Yvonne Kaufmann, Rainer Wieland |
| **Substitutes under Rule 200(2) present for the final vote** | John Howarth, Verónica Lope Fontagné, Renate Weber |
## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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- - : against
- 0 : abstention