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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Recommendations of the Interinstitutional Working Group on decentralised agencies' resources

1. In the framework of the negotiations on the 2014 budget, the European Parliament, the Council and the Commission agreed on a joint statement on *"decentralised agencies"* establishing a specific Interinstitutional Working Group (IIWG) to define a clear path for decentralised agencies to progressively reduce their staffing levels by 5 % over five years.[1]

2. On 9 April 2014, the Permanent Representatives Committee took note of the IIWG's terms of reference, laying down its composition, its mandate and scope, and its working methods and calendar.[2]

[1] Doc. 16106/13.
[2] Doc. 8539/14.

In line with the mandate laid down in its terms of reference, *"the working group will formulate recommendations, which the European Parliament and the Council as the two arms of the budgetary and legislative authority, and the Commission in its proposals, may take into account as appropriate in their deliberations, without prejudice to their respective prerogatives. In light of progress made, the working group may also suggest recommendations in relation to the annual budgetary procedure"*.

3. The IIWG met eight times between 2014 and 2017. It went through a number of analytical fiches submitted by the Commission, covering the thematic scope of the Group. In accordance with the IIWG's terms of reference, a final meeting of the Group will be convened in 2018.

4. At the meeting on 18 October 2017, the three institutions reached an agreement *ad referendum* on the recommendations proposed by the Commission.

5. On 26 October 2017, the Budget Committee was able to support the recommendations set out in the ANNEX.

6. The Permanent Representatives Committee is invited to advise the Council to endorse these recommendations.

ANNEX

Inter-Institutional Working Group on decentralised agencies' resources

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Recommendations

Introduction

As part of the agreement reached on the adoption of the 2014 budget, the European Parliament, the Council and the Commission set up an Inter-Institutional Working Group to discuss EU decentralised agencies resources, in particular in view of exploring alternative ways to pursue a 5% staff reduction among agencies.

According to its Terms of Reference, the Working Group would look at ways to define a clear development path for agencies, based on objective criteria, to progressively reduce the staffing levels of decentralised agencies by 5% over five years. It is also specified that the Working Group would examine possible ways of achieving synergies and efficiency gains.

The Terms of Reference state that "*the Working Group will formulate recommendations which the European Parliament and the Council as the two arms of the budgetary and legislative authority, and the Commission in its proposals, may take into account in their deliberations, without prejudice to their respective prerogatives*".

It was envisaged that the Working Group would continue its work until the end of 2017, at which point the reduction was to be achieved with the adoption of the 2018 budget. A final meeting was envisaged for 2018 to assess the accomplishment of the target.

In line with the working method laid down in the Terms of Reference, the Working Group identified four areas for exploring ways to pursue staff reductions:

1. agencies' establishment plan posts;

2. treatment of new tasks of agencies;

3. efficiency gains and synergies among agencies;

4. partially and fully self-financed agencies.

The Commission presented analytical fiches on all four areas which were discussed in the Working Group.

In addition, the Commission submitted the following contributions for the purposes of subsequent discussions in the Working Group:

1. Staffing of fee-financed agencies: pilot case on the European Aviation Safety Agency (EASA);

2. EASA pilot case for fee-financed agencies: EASA procedures on issuing certificated and policy on conflicts of interest;

3. Evolution of the number of agency posts: state of play.

Further to a proposal by the Commission, the Working Group confirmed six particular topics under its mandate on which it decided to issue recommendations:

1. Lessons learned from the approach to achieving the 5% staff reduction target;

2. Treatment of new tasks (financial statement);

3. Regular evaluation of agencies;

4. Sharing of services;

5. Evaluation of agencies with multiple locations;

6. Model for fee-financed agencies.

This document sets out the recommendations of the Working Group. The recommendations are addressed to the European Parliament, the Council, the Commission and the agencies. The European Parliament and the Council may take account of these recommendations when acting as the two arms of the budgetary and legislative authority.

Recommendation No 1: Lessons Learned

I. Background

The Inter-Institutional Agreement of 2 December 2013 on budgetary discipline[1] sets out a 5% staff reduction target for all EU institutions, agencies and bodies, to be achieved in five years. In order to implement this requirement in the agencies, the Commission adopted in July 2013 a Communication setting out a programming of human and financial resources for decentralised agencies 2014-2020[2]. In short, the Commission's approach was to differentiate between individual agencies, depending on their classification as "cruising speed", "new tasks" or "start-up phase" agencies, so as to allow certain agencies to grow in light of their new mandates, within the overall 5% staff reduction target.

In parallel, the Inter-Institutional Working Group to discuss EU decentralised agencies resources was created in November 2013, in order to explore alternative ways to achieve the staff reduction target in the agencies.

II. Discussion

The IIWG has discussed on numerous occasions the issue of the evolution of the number of agency posts.

The current state of play shows a mixed picture: whereas the voted budgets 2014 and 2015 were broadly in line with the global annual staff reduction targets set for those years as set out in the Commission Communication, the major new developments which have occurred since the beginning of 2015, mostly in the area of migration and security, have required a large number of additional posts in frontline agencies, to enable them to cope with significantly expanded mandates and workload.

[1] Interinstitutional Agreement of 2.12.2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management.

[2] COM(2013) 519 final.

The discussions in the Working Group and the annual budget procedures have shown broad support for the additional posts authorised for the new developments, in particular as regards migration and security. Differences of opinion, however, concern the question whether or not these additional posts would need to be offset by further reductions in other agencies. This feeds into the general discussion about staff development and the need to make sure that new tasks are met with additional resources.

Apart from the emerging need to accommodate the major new developments, which were not foreseen at the time of the IIA in 2013, the global approach to agency resources to assess the needs of individual agencies within a framework applicable to all agencies, as proposed by the Commission, has helped to meet the requirements of the agencies with new or recently expanded mandates, within an overall staff reduction target. In doing so, the existence of a global framework within which to assess the resources needs of individual agencies has kept the long-term trend of increasing numbers of establishment plan posts in the agencies under control.

III. IIWG Recommendation

It is recommended to the Commission and to the European Parliament and the Council as the two arms of the budgetary authority, to propose and authorise adequate agency resources allocations in the remaining years of the 2014-2020 MFF, while efforts to achieve efficiency gains should be pursued across the board.. In that context, proper planning should be organised by the agencies, in close cooperation with the relevant Commission services, and the level of staff should be kept under continuous monitoring to make sure that it is adequate, that new tasks can be properly handled, that efficiency gains are constantly sought and that agencies strive to fill vacant positions rapidly and effectively and enhance their ability to attract experts.

Recommendation No 2: Treatment of new tasks (financial statement)

I. Background

The Commission's assessment of agency resources traditionally groups agencies as "cruising speed", "new tasks" or "start-up phase" agencies, depending on their stage of development. This classification impacts on the evolution of EU contributions and staffing levels: typically, agencies which have been recently created or have recently been assigned new tasks require additional appropriations and additional staff, to carry out tasks related to their new or newly extended mandates, whereas cruising speed agencies have stable structures and budgets.

The 2013 Commission Communication on programming of human and financial resources for decentralised agencies[1] confirmed and continued the approach of grouping agencies in light of their degree of development.

As a general rule, the classification as "new tasks" requires a modification of the legal base extending the scope of the agency's responsibilities set out in the founding Regulation. In this regard, "new tasks" should be distinguished from growing workload at constant responsibilities. The period during which an agency can be classified as having "new" tasks depends essentially on what has been announced in a legislative financial statement when presenting its extension.

The legislative procedure itself, however, frequently results in modifications of the initial Commission proposal, which to some extent may impact on the resources needs of the agency in question. Despite the requirement set out in Article 31 of the Financial Regulation, it appears that these amendments to the initial Commission proposals are not systematically accompanied by financial statements outlining the implications of amendments on resources, in particular in terms of changes to the number of posts. In practice, updated financial statements only become available at the end of the legislative procedure if at all. This also touches upon the twin roles of the European Parliament and the Council as legislative authority and budgetary authority.

[1] COM(2013) 519 final.

II. Discussion

The IIWG has discussed the issue of assigning "new tasks" to agencies in the context of agency resources. The Working Group finds that deviations from stable staff levels should be based on objective criteria, notably as regards new legislative developments: "new tasks" imply that a Commission proposal has been made to extend the tasks of the agency. This proposal must be accompanied by a legislative financial statement setting out the impact on human and financial resources (including an analysis of the room for redeployment), which may have to be updated in the course of the legislative procedure.

III. IIWG Recommendation

It is recommended to the Commission to systematically update the financial statements in case of substantive amendments during the legislative procedure to reflect changes in the attribution of tasks, and to present the updated financial statements to the budgetary authority in good time before the conclusion of the legislative procedure. This is without prejudice to the exceptional need to adjust staff levels in front of demonstrated and sudden increase in workload before a new legislative proposal can be made, as happened for the migration and security crisis or as result of periodic evaluation[1].

In turn, it is recommended to the Commission and to the European Parliament and the Council as the two arms of the budgetary authority, to propose and authorise additional resources allocations to agencies on the basis of updated legislative financial statements, so as to enable the agencies concerned to carry out their new tasks.

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1 See also recommendation No 3.

Recommendation No 3: Regular evaluation of agencies

I. Background

The Inter-Institutional Agreement on Better Regulation recognises evaluation as a tool to ensure that EU initiatives achieve their objectives at minimum cost and administrative burden. Regular evaluation of agencies, more specifically, can point to new efficiency gains and synergies in the EU agencies.

The Common Approach on Decentralised Agencies also recognises evaluation as a tool to achieve coherence, effectiveness, accountability and transparency in agencies:

"60. Each agency's founding act should provide for a periodic overall evaluation, to be commissioned by the Commission. The first evaluation should take place five years after the agency has started its operational phase. Subsequent evaluations should be conducted every five years and on the occasion of every second evaluation the sunset/review clause should be applied. Evaluations should be conducted in a manner that provides solid grounds for a decision to continue or discontinue the agency's mandate. The feasibility of a common template for agencies' evaluation should be explored."

Evaluations can gather evidence to assess how well individual agencies have performed or are working and can assess whether an agency continues to be relevant in the EU context. Evaluations hence provide the institutions with a factual basis for deciding whether the founding act of a particular agency should be modified to improve the agency's effectiveness, relevance and coherence or whether it should be repealed.

An evaluation can clarify which agency tasks are essential to deliver on the policy priorities, which agency tasks are necessary to continue to implement existing obligations under the Treaties and EU legislative framework or which agency tasks have become redundant or could be implemented in a more efficient way. An evaluation can also identify all actors contributing to a concerned policy and options for optimising task allocation at EU level.

In addition to identifying efficiency gains and synergies in a policy context, an evaluation can lead to optimisation of resources by exposing ratios in resource-attribution for administrative and operational tasks, assessing the effectiveness of agencies operating from more than one location, identifying scopes for provision of new services to and between agencies, exploring possible efficiency gains in agencies' internal structures, monitoring agencies' use of strategic objectives and performance indicators to organise their work, and building supervisory mechanisms, etc.

II. Discussion

In accordance with its terms of reference, the Working Group on agencies' resources discussed possible areas of action to achieve synergies and efficiency gains in EU decentralised agencies.

Evaluation of agencies was discussed specifically in the context of reviewing the mandates of the agencies for the purpose of re-assessing their activities and also to examining whether any rationalisation among them could be possible.

The Working Group finds that in order for an evaluation to contribute to addressing inefficiencies in the setting up of decentralised agencies, it has to be performed on a regular basis. Regularity can ensure that agencies' mandates and tasks reflect evolving EU priorities and needs and that Union resources are allocated accordingly. On the basis of regular agency evaluations, either in the form of individual agency evaluations, cross-cutting evaluations covering more agencies working in the same or related areas or evaluations of agencies in the context of an overall policy evaluation, the institutions can ensure the most appropriate design and number of agencies and the most efficient use of Union resources, taking also into account the effects of decentralisation and the minimum resources required for complying with administrative and financial rules. The Working Group confirms the principle set out in the Common Approach that evaluation of all agencies should be conducted every five years, regardless of whether the founding act includes an evaluation clause.

It is for the Commission to lead the work on evaluation of agencies, following both the rules prescribed in agencies' founding act and principles of better regulation, including consultation of the beneficiaries of the agencies' work. The Commission should ensure the most efficient use of financial and human resources on evaluations and should seek to avoid undue overlaps between its own evaluations and those commissioned by the agencies. Institutions and agencies should have access to the Commission's evaluation planning and should be given the opportunity to contribute to evaluations of agencies as relevant stakeholders.

III. IIWG Recommendation

In accordance with the Common Approach, the IIWG recommends to the Commission to carry out regular evaluations of all EU decentralised agencies based on a consistent approach, in principle every five years, either as individual or across-agency evaluations or in the context of an evaluation of the policy concerned, and propose the necessary initiatives including potential structural measures such as mergers, closures or transfers of tasks aiming at achieving synergies and efficiency gains in EU decentralised agencies using clear and transparent criteria.

Recommendation No 4: Sharing of services

I. Background

The Common Approach[1] states that improving or extending the services provided by the Commission and sharing services between agencies are options that can be envisaged in order to deliver the administrative support that agencies need to operate in the most efficient manner. The Roadmap on the implementation of the Common Approach thus includes a number of actions susceptible to bring efficiency gains and synergies, including the sharing of services among agencies and between the agencies and the Commission (cf. action points 12-14).

Commission sharing of services with agencies

The Commission regularly provides services to other EU institutions, agencies and bodies. It is in fact the biggest provider of services to agencies. Examples of such services include IT services, public procurement services, accounting, human resource management, training courses, medical services, security services, translation and interpretation as well as services related to pensions, payroll and mission claims, etc.

The provision of services to agencies is normally agreed between the Commission and the agency in question via individual Service-Level Agreements, regulating the provision of the service in exchange for a fee. This fee reflects the real costs incurred for the service provision. In March 2017, the Commission adopted a guidance document[2] as part of the Internal Rules on the budget implementation. This guidance document confirms the *no-profit rule*, namely that the cost recovery must reasonably ensure that the provision of services does not result in a surplus for the service provider nor for the client. Commission departments which regularly provide services make available the catalogues of services offered to the agencies.

[1] Pt. 25.
[2] C(2017) 2113 final.

Sharing of services and synergies among agencies

Agencies have worked to identify and develop shared services and capabilities among agencies which has led to a catalogue of around 200 services and capabilities which can be used by agencies further to bilateral agreements or are open to all agencies (e.g. IT cloud, the intra-agency extra-net, and a joint procurement portal).

One example of existing synergies among agencies is the cooperation between the different EU scientific bodies which leads to scientific outputs of a higher quality and allows for a coherent scientific overview of transversal issues. Another example of increased synergies is the case of JHA agencies, which have intensified their cooperation and have worked in a joined-up manner to address the challenges of the migration crisis.

Development of shared services and synergies is undertaken, therefore, by all the agencies together or by agencies and joint undertakings operating in the same Member State or in the same policy areas, with the aim of achieving synergies and economies of scale, which in turn can help to keep costs under control and to focus scarce resources on core tasks.

II. Discussion

Together with the agencies, the Commission has made and continues to make substantial efforts to improve and increase the sharing of services. However, there is for instance still scope to extend the Commission's IT, human resource, accounting and treasury services to more agencies.

In addition, the potential to establish synergies among agencies should be explored. For agencies working in the same policy area, a means to build synergies and avoid duplication of activities is to ensure that the agencies coordinate from early on, in cooperation with the Commission, the content of their annual and multiannual planning and programming documents. In order to ensure a stronger focus of agencies activities on the EU's current policy priorities, coordination activities may be developed even further. Evaluations and impact assessments of agencies' activities could identify the potential for synergies among agencies and cost-efficiency of their activities could be addressed in a systematic and cross-cutting way.

Finally, certain smaller agencies may find it difficult to carry out the administrative tasks imposed by the legislation as well as their operational tasks. Seeking synergies with others could possibly alleviate the burden of administrative tasks. Conversely, however, providing services to other agencies should not impact negatively on the ability of agencies to deliver on their own core operational tasks as set out in their founding Regulations.

The Working Group finds that as set out in the Roadmap on the implementation of the Common Approach, the Commission and the agencies must continue their efforts to share services with a view to creating synergies and to reducing the human and financial resources needed for the functioning of the agencies. The provision of services among agencies should however be without prejudice to their operational tasks, and agencies must ensure that they obtain services from the most relevant and cost-efficient service provider.

III. IIWG Recommendation

The IIWG recommends to the agencies and to the Commission to continue exploiting the potential of sharing of services, either among agencies or between the Commission and agencies, with the aim of creating new synergies and optimising existing ones, for the purpose of reducing public spending and increasing the quality of the administration, as well as in order to allow agencies to focus on their core tasks. In addition, where possible, agencies should coordinate from early on, in cooperation with the Commission, the content of their annual and multiannual planning and programming documents. When carrying out evaluations and impact assessments of agencies and their activities, the Commission is invited to identify the potential for synergies and increased cost-efficiency among agencies.

Recommendation No 5: Evaluation of agencies with multiple locations

I. Background

There are currently 33 European Union decentralised agencies, spread beyond Brussels and Luxembourg to add to the visibility of the Union in the different Member States. Agencies' seats are determined by common accord by the representatives of the Member States meeting at Head of State or governmental level. Without prejudice to the political decision on an agency's seat, the Common Approach lays down objective criteria for agencies' locations.

While most agencies have one official seat, some agencies have been required to have double seats or to function from more than one location.[1] In addition, agencies have taken autonomous decisions to establish offices or locate staff outside headquarters, for instance in Brussels or in EU delegations in third countries[2]. The setting up of local offices or secondment of staff outside headquarters is not addressed explicitly in the Common Approach and is generally not regulated in agencies' founding acts. Consequently, as a matter of practice, the decision to locate staff and to set up offices in another location has been taken by the relevant agency's Director or Management Board.

1 According to the founding act of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (EU-LISA), the agency has its seat in Tallinn (Estonia). However, tasks relating to the operational management of the systems it operates and to the development and operational management of any new systems are to be carried out in Strasbourg (France) and a backup site for those IT systems has been installed in Sankt Johann in Pongau (Austria).
Pursuant to a decision taken by common agreement between the Representatives of the Member States, meeting at Head of State or Government level, of 13 December 2003, the Union's Railway Agency ERA has its headquarters in Valenciennes and conference centre in Lille.
The European Union Agency for Network and Information Security (ENISA) has offices both in Athens and in Heraklion

2 Examples include EASO office in Brussels, EASA office in Brussels, EUIPO office in Brussels. Furthermore, it would appear that ACER, EEA, ETF, Cedefop, EU-OSHA, Eurofound and EU-LISA have liaison officers sitting in Brussels. EASA has staff located in diverse EU delegations in third countries.

While decisions to establish double seats or multiple offices may be justified, both the Court of Auditors[1] and the Parliament have identified scope for efficiency gains in looking at individual agencies' locations. The Parliament has, in particular, suggested that "all dual seats which do not offer any operational added value should be done away with at the earliest opportunity"[2].

II. Discussion

In accordance with its terms of reference, the Working Group has discussed possible efficiency gains and synergies among agencies and in this context touched upon multiple locations of agencies.

As multiple locations would normally give rise to extra costs and require extra resources decisions on double seats, local offices or the secondment of staff outside headquarters should be of an operational and tangible added value, based on the principle of sound financial management and taking into account scopes of efficiency gains and synergies.

The Working Group notes that in order to develop further principles on multiple locations (double seats, existence of technical sites in addition to the seat, local offices or the secondment of staff outside headquarters) and explore alternative efficiency gains, the institutions require a comprehensive overview of existing agencies functioning from more than one location. More particularly, the institutions require information on agencies' local offices and seconded staff outside headquarters, on the reasons for having more than one location, and on the resources required for having more than one location.

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[1] In its report on the annual accounts of the European Railway Agency for the financial year 2014, together with the Agency's reply (2015/C 409/27), the Court repeated its observation that it is likely that costs could be reduced if all agency operations were centralised in one location, instead of being spread in Valenciennes and Lille.

[2] See European Parliament Resolution on the discharge of agencies' 2014 budget.

The Commission could conduct an evaluation of agencies' multiple locations, assessing, in particular, their added value, the management and operational effectiveness of agencies operating from more than one location, the HR policies employed for relocating staff, the additional funds approved for setting up second locations, any associated indirect costs, such as the accumulation of working hours due to travelling or additional administrative work, etc.

III. IIWG Recommendation

The IIWG recommends to the Commission to carry out an evaluation of multiple locations of agencies (double seats, existence of technical sites in addition to the seat, local offices and secondment of staff outside headquarters) based on a consistent approach and using clear and transparent criteria, in particular with a view to assessing their added value, also in light of the costs incurred.

Recommendation No 6: Fee-Financed Agencies

I. Background

Fee-financed agencies are partially or fully financed from fees from industry. As a general rule, fee-financed agencies should ensure a balance between the expenditure related to the provision of tasks and services which generate fees, and income from the fees and charges it levies. The specific character of fee-financed agencies raises two particular issues: the treatment of fee income in agency budgets (as well as the resulting annual budget outturn), and the adjustment of staff needs to fluctuating workload from industry.

The treatment of fee income in agency budgets currently varies considerably across the partially fee-financed agencies: some agencies have a strict distinction between fee-financed activities and EU-budget funded activities (with fee income treated as assigned revenue), whereas the EU contribution in other agencies has a clear balancing character (with fee income treated as general revenue, in the same way as the EU contribution). Substantial differences also exist as regards fee setting and the accumulation of significant/recurrent surpluses or deficit in agency budgets. However, all agencies are moving more closely to supporting the full costs of their staff working on fees activities through their fee incomes, including pension contributions and the costs for schooling of the children of their staff in the European schools.

The fully and partially fee-financed agencies are expected to provide timely and high-quality services to industry, and to adapt to variations in market demand. With this in mind, the Commission has proposed a pilot case for fee-financed agencies, in the first instance applied to the European Aviation Safety Agency (EASA). The aim of the pilot case is to allow some flexibility in the number of posts related to fee-financed activities to respond to fluctuations of workload from industry in particular in cases where the year-on-year increases in workload are above 2%, provided that the agencies have solid workload, efficiency and quality indicators in place, while they should also continue achieving efficiency gains.

II. Discussion

The IIWG has discussed the issue of the specific case of fee-financed agencies, together with a pilot case for the European Aviation Safety Agency.

The discussions in the IIWG and the annual budget procedures have shown support for the EASA pilot case. Differences of opinion, however, concern the questions whether the EASA case could be extended to other fee-financed agencies, and whether additional posts resulting from growing workload in fee-financed agencies would need to be offset by further reductions in other agencies.

III. IIWG Recommendation

It is recommended to the Commission to assess the experience gained so far with the EASA pilot case, bearing in mind that the pilot will enter its second year in the draft budget 2018, and to continue working in parallel on identifying solid workload, efficiency and quality indicators for the other fee-financed agencies and/or propose a further pilot case applied to another fee-financed agency, if the outcome of an evaluation of the EASA pilot case provides the basis for it.

Furthermore, it is recommended to the Commission to assess whether it is appropriate to harmonise the treatment and allocation of fee income in agency budgets (e.g. as assigned revenue or as general revenue) or when setting up possible new agencies.

The Commission should continue addressing the risk of conflicts of interests potentially arising in fee financed agencies.