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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of the Joint Statement and Common Approach on the location of
the seats of decentralised agencies**

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1. INTRODUCTION

This report responds to a Council statement of October 2018¹ inviting the Commission to provide an analysis by the end of April 2019 of the implementation of the Joint Statement and Common Approach on decentralised agencies ('the Common Approach')² on the specific topic of the location of the seats of the agencies.

The request was made in the context of the relocation of the European Medicines Agency and the European Banking Authority. These two EU decentralised agencies previously based in London have had to move to a new host Member State as a result of the United Kingdom's decision to withdraw from the Union. The 27 remaining Member States used a specific procedure to select the new seats of these two agencies, based on the principles enshrined in the Common Approach, a 2012 agreement between the European Parliament, the Council and the Commission.

Following the selection by the 27 Member States to relocate the European Medicines Agency to Amsterdam and the European Banking Authority to Paris, the European Parliament and the Council adopted, on a proposal from the Commission, legislation providing for the new seats in the agencies' founding acts. During the negotiations, the European Parliament requested that the Common Approach be revised, expressing its disagreement with the procedure used to select the seats of the two agencies and calling for a new procedure to be introduced in the Common Approach. The Council then invited the Commission to draft this report to serve as a '*basis to assess the way forward in engaging with the process of such a revision*'.

As requested by the Council, the subject of this Commission report is limited to the part of the Common Approach concerning the location of decentralised agencies. It presents statistical and factual information on the implementation of the relevant elements of the Common Approach since its adoption on 19 July 2012. The report therefore constitutes a one-off initiative, separate from earlier Commission progress reports on the implementation of the Common Approach, or Commission evaluations of individual decentralised agencies. The report does not aim to evaluate the Common Approach, nor does it propose recommendations for the future.

¹ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2018-0427>

² https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf.

The report is based on data concerning all 33 decentralised agencies to which the Common Approach applies³. However, when it comes to the part of the analysis on selecting the location of decentralised agencies, the report covers only the agencies for which a seat has been selected since 19 July 2012.

To conduct its assessment, the Commission received input from the Council Secretariat General and from 28 decentralised agencies via the Network of EU Agencies.

2. PRINCIPLES OF THE COMMON APPROACH ON THE SEATS OF AGENCIES

2.1. Inter-institutional dialogue leading to the Common Approach

The location of the seats of agencies is not a new topic for the EU institutions. The European Parliament, the Council and the Commission discussed this matter already in 2009, when the Commission published an evaluation⁴ serving as the basis for a debate on the future of the Union agency system, which later resulted in the Common Approach.

That evaluation considered the location of the seats as an important element in the creation of agencies and one that ultimately contributes to their good governance. It found, in particular, that the accessibility of locations in terms of travel cost and time could affect agencies' resources and effectiveness. The timing and the nature of decisions on the seats of agencies were also considered important elements in determining the conditions for the seats. The evaluation linked the existence of a headquarters agreement between an agency and its host state to the ability of an agency to benefit from certain privileges associated with its seat and to attract new staff to its location.

In 2010, the three institutions again discussed the matter in a detailed analytical paper on '*Agencies' seat & role of host country*'⁵ as part of the inter-institutional work on the future of the Union agency system. This analysis fiche built on the 2009 evaluation, taking note of the state of play for the selection of agency seats and making a critical analysis of the issue at hand.

The analysis observed that the seats of the EU agencies existing at the time were selected by common agreement between the representatives of the Member States meeting at the level of heads of state or government⁶, or by the Council. The fiche noted, however, that there were no fixed criteria for selecting a seat; the seat of an agency was often selected later than the agency's constituent act was adopted; and practices among the Member States in hosting agencies strongly varied.

³ See list in annex.

⁴ https://europa.eu/european-union/sites/europa.eu/files/docs/body/synthesis_and_prospects_en.pdf.

⁵ https://europa.eu/european-union/sites/europa.eu/files/docs/body/fiche_3_sent_to_ep_cons_2010-12-15_en.pdf

⁶ In application by analogy of Article 341 of the Treaty on the Functioning of the European Union, which says that: '*The seat of the institutions of the Union shall be determined by common accord of the governments of the Member States*'.

On 19 July 2012, the European Parliament, the Council and the Commission issued a Joint Statement to which the Common Approach was annexed, which was based on the conclusions reached by an Inter-Institutional Working Group.

The Common Approach sets out agreed principles which are divided into five sections: role and position of agencies in the EU's institutional landscape; structure and governance of agencies; operation of agencies; programming of activities and resources; accountability, controls and transparency and relations with stakeholders.

2.2. Principles relating to agency seats in the Common Approach

In the first section entitled '*Role and position of agencies in the EU's institutional landscape*', the Common Approach sets out the main principles relating to agency seats.

2.2.1. Selection of the location of decentralised agencies

Point 6 of the Common Approach lays down several principles for selecting the location of decentralised agencies. However, it indicates upfront that this is without prejudice to the state of play at the time of its conclusion, i.e. that '*the political decision on an agency's seat [is] taken by common agreement between the representatives of the Member States meeting at Head of State or government level or by the Council*'.

The Common Approach further recalls the Member States' agreement that there is a '*desirability for the geographical spread*' of agencies, and that '*priority should be given to new Member States*'.

The Common Approach then indicates how seats should be selected, laying down the main principles. It stipulates that such decision should be taken:

- (1) '*before the end of the legislative process, in order to allow the agency to be set up directly in the location of its seat*';
- (2) on the basis of '*objective criteria*' (which '*may*' include the '*assurance that the agency can be set up on site upon the entry into force of its founding act, the accessibility of the location, the existence of adequate education facilities for the children of staff members, appropriate access to the labour market, social security and medical care for both children and spouses*');
- (3) on the basis of offers to host an agency presented by Member States which '*should address those criteria in a transparent way*'.

The Common Approach also notes that the Commission is available to help assess the offers of the Member States, if necessary.

Point 8 of the Common Approach goes on to require that the host Member States make two commitments towards the agencies that they will host:

- (1) to ensure that all conditions necessary for the operation of the agencies are in place by the time they start their operational phase;

- (2) to continue to respond to the agencies' needs and provide the necessary conditions for the long-term smooth operation of the agencies.

2.2.2. Relations between host Member States and agencies

Point 7 of the Common Approach encourages Member States currently hosting an agency to consider if and how agencies can be made more accessible and therefore more efficient and more interactive with stakeholders. The Common Approach also recommends that the issue of accessibility be addressed in the regular evaluations of the agencies⁷.

Point 9 of the Common Approach states that all agencies should have headquarters agreements, and they should be concluded in a timely manner (before the agency begins its operational phase). This point applies to new agencies and to agencies already set up in their host State.

Headquarters agreements lay down the necessary arrangements that need to be provided for an agency in its host Member State. In order to guide future headquarters agreements, the Commission has been asked in the Common Approach to put together a set of provisions based on existing best practices. The Commission finalised these provisions in December 2013.

3. IMPLEMENTING THE PRINCIPLES OF THE COMMON APPROACH ON AGENCY SEATS

3.1. Selecting the location of decentralised agencies

Four agency seats⁸ have been selected since the Common Approach's adoption.

The first was selected in 2014. Following the United Kingdom's unilateral decision that it no longer wished to host **the European Union Agency for Law Enforcement Training**⁹ (CEPOL) on its territory, it was decided that the Agency would be relocated to Budapest. Then, that same year, it was decided that **the Single Resolution Board** (SRB) would be set up in Brussels. Finally, in 2018, in the context of the United Kingdom's withdrawal from the Union, it was decided that **the European Medicines Agency** (EMA) would be relocated to Amsterdam and **the European Banking Authority** (EBA) to Paris.

Further to the examination of the available information on these four agencies, the following observations can be made about how the locations of decentralised agencies have been selected since the Common Approach's adoption.

3.1.1. Offers to host an agency

⁷ As the Common Approach itself recommends that accessibility should be addressed in these evaluations, this report will not explore this aspect of seat locations.

⁸ At the time of writing this report, the creation of the European Labour Authority is still being discussed.

⁹ At the time, this agency was called 'the European Police College'.

In its July 2013 legislative proposal for the creation of **the Single Resolution Board**, the Commission proposed Brussels as the location of the seat of the Board. No Member State offered to host the Agency. From the outset, the Commission considered that its location should be Brussels, given the important interactions between the functions of the Agency and those of the Commission¹⁰. It was felt, in particular, that having both bodies and institutions involved in the resolution process located in the same place would improve the overall efficiency of the policy framework.

In October 2013, the representatives of the Governments of the Member States reached a common accord on the relocation of **the European Union Agency for Law Enforcement Training** from London to Budapest. Upon a request by the Council's General Secretariat, seven Member States submitted offers to host the Agency. These offers addressed the following criteria: (1) detailed information about the proposed premises (including the actual office/conference space and other facilities to be made available to the Agency); (2) the location's accessibility; (3) the regime of privileges and immunities of agency staff; (4) the existence of adequate education facilities for the children of agency staff.

In 2018, the 19 offers submitted for the relocation of **the European Medicines Agency** and the 8 offers submitted for the relocation of **the European Banking Authority** addressed the following criteria: (1) the assurance that the agency can be set up on site and take up its functions at the date of the United Kingdom's withdrawal from the Union; (2) the location's accessibility; (3) the existence of adequate education facilities for the children of agency staff; (4) appropriate access to the labour market, social security and medical care for both children and spouses; (5) business continuity; (6) geographical spread.

3.1.2. Process for selecting the location of an agency

On 8 October 2013, the seat of **the European Union Agency for Law Enforcement Training** in Budapest was selected by common accord of the representatives of the Governments of the Member States. On 15 May 2014, the Council adopted, on the initiative of twenty-five Member States¹¹, Regulation (EU) No 543/2014¹² amending the original Council Decision in order to state that the seat of the Agency was to be in Budapest.

The proposed location of the seat of **the Single Resolution Board**, Brussels, was included in the Commission proposal for its creation and remained unchanged during the legislative process. The European Parliament and the Council adopted Regulation (EU) No 806/2014¹³ in July 2014.

¹⁰ The Single Resolution Board is entrusted with the tasks of preparing resolution decisions related to banks in the Banking Union. Afterwards, the Commission acts, often with urgency, either as resolution or State aid authority if the resolution decision implies the use of the Single Resolution Fund.

¹¹ As the Regulation is based on Article 87(2) of the Treaty on the Functioning of the European Union, not only the Commission, but also a quarter of the Member States had the right of initiative (Article 76 of the Treaty on the Functioning of the European Union).

¹² OJ L 163, 29.5.2014, p. 5.

¹³ OJ L 225, 30.7.2014, p. 1.

Because of the specific context of the United Kingdom's withdrawal from the Union, the Heads of State or Government of the 27 Member States had first agreed on 22 June 2017 on a detailed procedure¹⁴ for selecting the future seats of **the European Medicines Agency** and **the European Banking Authority**. Following successive voting rounds by the EU27 ministers, with the final votes cast by secret ballot, Paris and Amsterdam were selected in accordance with this procedure, on 20 November 2017, as the new locations of the seats of the two respective agencies. Following this, the Commission tabled two legislative proposals to incorporate the agencies' new seats into their founding acts. In November 2018, the Council and the European Parliament adopted Regulations (EU) No 2018/1717¹⁵ and 2018/1718¹⁶.

3.1.3. *Necessary conditions for the operation of an agency*

An independent evaluation report¹⁷ covering the period 2011-2015 found that **the European Union Agency for Law Enforcement Training** was relocated in a timely manner. According to the report, the Agency and its host Member State, Hungary, '*managed the whole project in less than four months. Evidence gathered shows that the relocation had little to no impact on business continuity, despite the fact that a number of staff chose not to relocate to the new seat of the Agency*'. The report also highlights that the relocation was cost-efficient with an estimated reduction of '*administrative costs by €200,000 a year, due to the agreement with the Hungarian administration. Indeed, the use of the offices in CEPOL's new headquarters is free of charge and the infrastructure will be provided for at least ten years.*' According to the Agency itself, the designated building was refurbished and equipped in accordance with the offer made by Hungary and was handed over to the Agency by the set deadline. Several agreements are in place for the Agency to use certain public services. Overall, the Agency indicates that the host State's responsiveness to its needs is a positive experience.

According to the 2015 annual report of **the Single Resolution Board**¹⁸, the Agency '*became operational in resolution planning for more than 120 banking groups in the Euro area and 15 other cross-border banking groups on January 2015. It de facto started its operations in March 2015.*' This suggests that all conditions necessary for the Agency to operate were in place by the time it began its operational phase. The Agency moved to its permanent premises in the centre of Brussels in April 2016 where it says that its overall operation runs smoothly.

For **the European Medicines Agency** and **the European Banking Authority**, it is too early to assess whether and how the two host Member States will have ensured that all conditions necessary for the operation of the agencies were in place by the time they relocated to their new seat. The European Medicines Agency indicates that it '*immediately began working with the Dutch authorities to prepare for the move and take up its operations in Amsterdam on 30 March 2019 at*

¹⁴ <https://www.consilium.europa.eu/media/21503/22-euco-conclusions-agencies-relocation.pdf>.

¹⁵ OJ L 291, 16.11.2018, p. 1.

¹⁶ OJ L 291, 16.11.2018, p. 3.

¹⁷ <https://www.cepola.europa.eu/sites/default/files/five-year-evaluation-report-2011-2015.pdf>.

¹⁸ https://srb.europa.eu/sites/srbsite/files/srb_annual_report_2015_en_0.pdf.

*the latest.*¹⁹ Both agencies have signed a headquarters agreement with their new host Member State ahead of their relocation.

3.2. Relations between host Member States and agencies

3.2.1. Requirement for a headquarters agreement

In the Common Approach, the three institutions recognised the need for all agencies to have headquarters agreements. In order to observe this principle and ensure long-term operating conditions, the requirement for such an agreement is now systematically inserted in the Commission proposals on agencies' founding regulations. To date, out of 33 founding acts, 16 contain provisions requiring agencies and their host Member States to reach such an agreement.

Since the Common Approach's adoption, eight decentralised agencies have concluded headquarters agreements with their host Member States. Thus, to date, 29 of the 33 existing decentralised agencies have concluded headquarters agreements with their host Member States. Almost half of these agreements were signed within 2 years after the seat was selected.

3.2.2. Commission guidelines for headquarters agreements

On 10 December 2013, the Commission issued guidelines²⁰ for agencies and their host Member States to consider when negotiating a new headquarters agreement. According to the information provided by the decentralised agencies, around three quarters of the agreements were prepared and signed before the Commission guidelines were issued. However, the guidelines were used as a basis for negotiating the remaining quarter.

These guidelines were also issued for revising existing headquarters agreements. Five headquarters agreements have been updated since their signature with no major modifications to the original headquarters agreements.

3.2.3. Nature of the provisions in headquarters agreements²¹

For aspects such as immunities, access to medical care, entry and stay, tax, social security contributions and custom duties exemptions, the provisions in most of the existing headquarters agreements are similar.

For the provisions on **immunities**, the vast majority of headquarters agreements include the inviolability of the agencies' premises, its assets and archives, diplomatic treatment of official communications and documents, and immunity from jurisdiction. In any event, even in cases where headquarters agreements do not provide for such conditions, all agencies benefit from the

¹⁹ <https://www.ema.europa.eu/en/about-us/uks-withdrawal-eu/relocation-amsterdam#tracking-tool-section> .

²⁰ https://europa.eu/european-union/sites/europaeu/files/docs/body/2013-12-10_guidelines_hq_agreements_en.pdf .

²¹ On the basis of the information provided by the 28 agencies who contributed to the input from the Network of EU Agencies.

provisions of the Protocol (No 7) on the privileges and immunities of the European Union²², as it is applicable in all Member States.

Moreover, most headquarters agreements contain provisions offering **exemptions from tax and custom duties**. Under such conditions the agency's premises, revenues and vehicles are exempt from taxes as is the supply of goods and services. Exemptions from custom duties apply to the agency's articles for official use, publications and vehicles.

For **social security and medical care**, almost all headquarters agreements exempt staff from making compulsory contributions to national social security systems. Around half of these agencies also have access to public services without discrimination.

Entry and stay provisions are offered in most headquarters agreements with facilitated entry, stay and exit from host Member State's territory, a prompt issuing of visas, exemptions from immigration restrictions or formalities or special identity cards.

For other conditions concerning, for example, the agency's premises and schooling facilities, the situation varies greatly, with less than half of the agencies benefiting from such conditions.

As for the **agencies' premises**, a minority of agencies have in their headquarters agreement a provision offering a suitable location, a location free of charge, all necessary services to the agency or an upkeep of the premises.

Only a few agencies have in their headquarters agreement provisions offering **schooling facilities** such as European schools or facilities similar to the European schools. In practice, 12 of the 33 decentralised agencies have access to such schooling facilities.

4. CONCLUSION

EU decentralised agencies are key players of the European Union. Thanks to their specialised expertise, they help to shape Union policies and implement them. As they are located across the Member States, they also give more public visibility to the Union. For the functioning of the Union itself, it is therefore essential to select appropriate locations and provide the conditions for their smooth operation.

As part of the Common Approach, the European Parliament, the Council and the Commission agreed in July 2012 on several principles for a more efficient and coherent system in the Union for agencies, including for the location of their seats. While the Common Approach is without prejudice to what was already established practice for the selection of the location of seats when the Common Approach was adopted, it puts forward a single framework for making these decisions. The principles of the framework cover the criteria for choosing the seats, the timing for the selections, and uniform hosting conditions.

²² OJ C 326, 26.10.2012, p. 266.

However, since 2012, there have been limited opportunities to test these principles. Only four agency seats have been selected in that period and two of the agencies concerned have only just been relocated to their new host Member State. In these few instances, the report nevertheless shows that objective considerations have guided the selection of the seats' locations, notably by using the objective criteria set out in the Common Approach or by taking into account the specific nature of an agency's functions.

The report also shows that once the location of a seat was selected, host Member States remained overall committed to ensuring the long-term smooth functioning of the agencies and in most cases to laying down their dynamic relationships with agencies in headquarters agreements.

The Commission therefore considers that the principles of the Common Approach provide a good framework for the decision-making process on agency seats and for ensuring that the host Member States respond to the agencies' specific needs.