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Institutional aspects of Regulatory Agencies

P6_TA(2008)0495

European Parliament resolution of 21 October 2008 on a strategy for the future settlement of the institutional aspects of Regulatory Agencies (2008/2103(INI))

(2010/C 15 E/05)

The European Parliament,

- having regard to the Commission communication of 11 March 2008 entitled 'European Agencies — The way forward' (COM(2008)0135),
 - having regard to its resolution of 13 January 2004 on the Communication from the Commission: 'The operating framework for the European Regulatory Agencies' ⁽¹⁾,
 - having regard to the draft interinstitutional agreement of 25 February 2005 on the operating framework for the European regulatory agencies (COM(2005)0059),
 - having regard to the oral question with debate submitted jointly to the Council by the Committee on Constitutional Affairs and the Committee on Budgets, and to the answer given by the Council in plenary on 15 November 2005 (O-0093/05),
 - having regard to its resolution of 1 December 2005 on the draft interinstitutional agreement presented by the Commission on the operating framework for the European regulatory agencies ⁽²⁾,
 - having regard to the decision of the Conference of Presidents of 17 April 2008,
 - having regard to the letter of 7 May 2008 from the President of the Commission to the President of the European Parliament and to the President-in-Office of the Council on setting up an interinstitutional working group at political level,
 - having regard to Rule 45 of its Rules of Procedure,
 - 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 and the Committee on Industry, Research and Energy (A6-0354/2008),
- A. whereas the efforts of Parliament and the Commission to establish a legally binding framework for the operation of the European regulatory agencies have proved fruitless,
- B. whereas no substantial progress has been made on the draft interinstitutional agreement of 2005 owing to the Council's institutional and political opposition, and whereas the Commission decided to withdraw the proposal for an interinstitutional agreement and to replace it with an invitation to take part in an interinstitutional dialogue, which will result in a common approach,
- C. whereas, although at first sight the regulatory agencies appear to be 'micro-institutions', they nevertheless have a 'macro-impact' at the level of European governance,
- D. whereas there is still a need to define at least the fundamental structural characteristics of the regulatory agencies, in so far as they have become an accepted para-institutional component of the European Union,

⁽¹⁾ OJ C 92 E, 16.4.2004, p. 119.

⁽²⁾ OJ C 285 E, 22.11.2006, p. 123.

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- E. whereas the Commission proposes the setting-up of an interinstitutional working group to draw up a common framework for the regulatory agencies and to define the competence of each of the institutions of the European Union vis-à-vis those agencies,
- F. whereas the Commission is to carry out a horizontal evaluation of the regulatory agencies by 2009-2010 and is to submit a report on the conclusions of that evaluation as soon as possible to Parliament and the Council,
- G. whereas the Commission's decision not to propose setting up any new agencies until the interinstitutional working group has completed its work is to be welcomed,
- H. whereas the Commission should not depart from the guiding principles of the draft interinstitutional agreement of 2005 concerning amendments to the basic instruments governing the existing regulatory agencies, so that they are consistent with the new approach,
- I. whereas there is already a common regulatory framework ⁽¹⁾ for executive agencies which are entrusted with the management of Community programmes for a specific period of time,

General considerations

1. Considers that the Commission's proposal is a commendable initiative and is prepared to take part in the proceedings of the interinstitutional working group through its representatives, but considers that the 'common approach' falls short of its expectations of achieving an interinstitutional agreement; notes that this does not rule out the development of other forms of understanding as an outcome of the work of the working group;
2. Appeals to the Council, in its capacity also as one arm of the budgetary authority, to make a constructive contribution to the proceedings of this working group;
3. Calls on the Council and the Commission to draw up jointly with Parliament the work programme for the interinstitutional working group as soon as possible, so that it can begin its work in autumn 2008;
4. Considers that the work programme of the interinstitutional working group should, inter alia, encompass the following points:
 - a statement of the areas on which the horizontal evaluation to be carried out by the Commission by the end of 2009 is to focus,
 - the setting of objective criteria for assessing the need for the agencies, taking into account possible alternative solutions,
 - an assessment, regularly and in a coordinated and coherent manner, of the work and the performance of the agencies, including an external assessment, in particular by means of cost-benefit analyses,
 - an evaluation of whether the agency option is more cost-effective than having the relevant tasks performed by the Commission departments themselves,
 - an assessment of possible benefits lost through having certain activities performed by the regulatory agencies instead of by the Commission's departments,

⁽¹⁾ Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16.1.2003, p. 1).

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- the taking of measures to increase the transparency of the agencies, in particular through approximation of their fundamental structural characteristics,
 - the setting of boundaries in relation to the independence and supervision of the agencies, particularly the nature and extent of the Commission's responsibility for their activities, taking account of the fact that the degree of accountability of the Commission cannot exceed the degree to which it exerts actual influence over the activities of the agencies as such,
 - the appointment of representatives to the supervisory bodies for the agencies from the Council and the Commission and the interviewing of candidates by the competent parliamentary committee,
 - the appointment of the executive bodies of the agencies, in particular their director, and defining the role of Parliament in this respect,
 - the need for a standard approach among the agencies with regard to the presentation of their activities during the financial year in question, and of their accounts and reports on budgetary and financial management,
 - a standard requirement for directors of all agencies to draw up and sign a declaration of assurance, including reservations where necessary,
 - a harmonised model applicable to all agencies and satellite bodies clearly distinguishing between:
 - an annual report intended for a general readership on the body's operations, work and achievements,
 - financial statements and a report on the implementation of the budget,
 - an activity report along the lines of the activity reports of the Directors-General of the Commission,
 - a declaration of assurance signed by the body's director, together with any reservations or observations which the director considers it appropriate to draw to the attention of the discharge authority,
 - definition of the principles for determining whether and to what extent fees and payments should be a source of funding for agencies,
 - provision of a rolling review of the need for existing agencies, and the establishment of criteria to determine when a regulatory agency has achieved its purpose and can be wound up;
5. Regrets the absence of a general strategy for the creation of EU agencies; notes that new agencies are being created on a case-by-case basis, leading to a non-transparent patchwork of regulatory agencies, executive agencies and other Community bodies each constituting a *sui generis* creation;
6. Notes the Commission's position that the setting-up of the regulatory agencies, which is sometimes carried out with the collaboration of Parliament, is an expression of cooperation between the Member States, and the functioning of such agencies consists in the interlinking and exercise of responsibilities, which, if conferred exclusively on the EU institutions, would give rise to objections concerning centralisation;
7. Calls on the Council and the Commission to work jointly with Parliament to produce a clear, common and coherent framework for the future position of the agencies in the scheme of EU governance;
8. Is of the view that the transparency of the regulatory agencies must be ensured, in particular as regards their functioning, the disclosure and accessibility of information, and the programming and accountability of their actions;

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9. Believes that the priority of the common framework for interinstitutional understanding should be to rationalise the operation and maximise the added value of the regulatory agencies by creating greater transparency, visible democratic control and improved efficiency;
10. Considers it indispensable to adopt minimum common principles and rules concerning the structure, operation and control of all the regulatory agencies, irrespective of their nature;
11. Considers that participation in the activity of the regulatory agencies will have to be ensured by formally structuring the processes of consultation and dialogue with the stakeholders;
12. Considers that the structural and operational diversity of the agencies raises serious questions concerning regulatory parameters, good governance and institutional relations in terms of centralisation and decentralisation;
13. Advocates that the principles of good administration must be ensured by a common approach regarding personnel selection processes, budgeting and resource administration, efficient management and performance evaluation;
14. Will examine whether the Commission's undertaking to defer any proposal to set up new regulatory agencies should also cover the two proposals currently in abeyance in the fields of energy and telecommunications;
15. Stresses the need to establish parliamentary control over the formation and operation of regulatory agencies, which should consist principally in:
 - submission to Parliament of the annual report by the agencies themselves,
 - possibly inviting the director of each agency to appear before the competent parliamentary committee during the appointment process, and
 - Parliament granting discharge for the execution of the budgets of those agencies which receive Community funding;
16. Urges the Commission to submit the conclusions of the horizontal evaluation of the regulatory agencies promptly, before the end of the 2009-2010 period, so that the conclusions can be taken into account by the interinstitutional working group;
17. Asks the Commission to devise benchmarks in order to compare those results and to lay down clear rules for ending the mandate of agencies in the event of poor performance;
18. Calls on the President and the Conference of Presidents to give priority to the question of the composition of the working group proposed by the Commission, and considers it appropriate that Parliament be represented in that group by the chairs or rapporteurs of the Committee on Constitutional Affairs, the Committee on Budgets and two other committees with practical experience of oversight of the work of regulatory agencies;
19. Reiterates the call by both Parliament and the Commission in the draft interinstitutional agreement of 2005 to incorporate a decision on an agency's seat into the basic act;

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Budgetary considerations

20. Wishes to reiterate the importance of securing, on a systematic basis, at interinstitutional level the application of the procedure laid down in Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management ⁽¹⁾ (IIA of 17 May 2006) and stresses the need to ensure appropriate follow-up of the Joint Statement of 13 July 2007 by the Parliament, the Council and the Commission on decentralised agencies;

21. Is convinced that a detailed procedure for the application of that provision is an absolute necessity; considers that such a procedure might provide a possible opportunity to house some of the important aspects of the blocked draft interinstitutional agreement of 2005, perhaps in combination with some adaptations of the Framework Financial Regulation for agencies ⁽²⁾;

22. Concludes that, if evaluation exercises indicate that cost-effectiveness and efficiency of decentralised administration are not guaranteed, the European Union should not shy away from reversing the current tendency for outsourcing Commission tasks and should establish clear rules for terminating the mandate of decentralised agencies;

23. Supports the Commission's intention not to propose any new decentralised agencies until the evaluation process is completed, especially against the background that margins in the current Multiannual Financial Framework would make it extremely difficult, for the time being, to finance any new Community body without serious re-programming;

24. Considers, from the budgetary point of view, the following items key issues for the agenda of the interinstitutional working group on the future of EU agencies:

Establishment of a definition of 'agency'

25. Recalls, in this respect, the definition of an 'agency' established in the Trialogue of 7 March 2007, when it was agreed that, for the purposes of applying Point 47 of the IIA of 17 May 2006, the definition of an 'agency' would be determined by whether the body in question was set up pursuant to Article 185 of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾ (Financial Regulation);

26. Would like to emphasise the importance it attributes to a clear and coherent general terminology with regard to agencies that should be established for common usage; recalls that 'regulatory agencies' are merely a sub-group of decentralised agencies;

New agencies — Link between legislative procedures and budgetary prerogatives

27. Considers it important to discuss problems of calendar as well as legal and procedural aspects that could arise in the event that a timely agreement on the financing of a new agency, pursuant to Point 47 of the IIA of 17 May 2006, is not reached in parallel with the decisions taken by the legislator; considers it equally essential to reflect on some procedural safeguards in order to ensure the full involvement of the budgetary authority in all questions which have a budgetary impact, such as the extension of agencies' task lists;

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 72).

⁽³⁾ OJ L 248, 16.9.2002, p. 1.

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28. Recalls that as early as 2005 Parliament in its abovementioned resolution called for compulsory cost-benefit assessments before a new agency was proposed which should, in particular, concentrate on the question whether 'the agency option (including the likely costs of monitoring and coordination) is more cost-effective than having the relevant tasks performed by the Commission departments themselves', but also on issues such as the mandate and working methods of the agency or its degree of independence from the Commission as it is often of particular interest to the legislator;

Existing agencies — Monitoring

29. Underlines the need for a regular and coordinated evaluation and control exercise — avoiding duplication and overlapping — to assess the added value of already-existing decentralised agencies which no longer fall under the scope of Point 47 of the IIA of 17 May 2006; sees this as a follow-up to the work previously undertaken that resulted in the joint statement on Community agencies agreed at the Trialogue of 18 April 2007 according to which it was agreed to regularly evaluate the existing Community agencies, focusing particularly on their cost-benefit and giving detailed explanation of the criteria used for the selection of the agencies to be evaluated;

30. Notes that the analysis performed should respond to some basic cost-benefit questions and could be carried out in accordance, inter alia, with the following criteria:

- Relevance: to what extent were the objectives foreseen by the founding regulation of an agency relevant for the level of public spending authorised in the budget?
- Effectiveness: what effects (impact) have been achieved by the activity of the agency?
- Efficiency (cost-effectiveness): how economically have the various inputs been converted into output and results? Were the (expected) effects achieved at a reasonable cost, in particular with regard to the staff deployed and the internal organisation?

31. Points out that, given the agencies' overall budgetary impact, the Commission has to demonstrate convincingly that European governance via the agencies is the most cost-effective, efficient and appropriate option to implement European policies at present and in the near future;

General common framework

32. Insists on the need to establish minimum common standards with regard, amongst other things, to the role and political responsibility of the Commission in relation to the agency, the support to be granted by host countries and the timely and transparent decision on the seat of an agency which could be referred to in the agencies' founding regulations;

33. Recalls that the agencies' actions need to be governed by clear lines of accountability, in line with the provisions of the Financial Regulation; highlights the agencies' obligations concerning the discharge procedure;

34. Considers it, in addition, of the highest importance to try to define some common rules for the presentation of the agencies' budgets with the aim of making budgetary indicators, such as implementation rates of the agencies or the individual shares making up their revenue and expenditure, more transparent and comparable; believes that the general presentation of the subsidy to agencies in the EU budget might need to be adapted to the tasks and the roles of the new generation of agencies;

35. Points out that, according to the figures provided by the Commission in its abovementioned Communication, there are currently 29 regulatory agencies, which employ some 3 800 staff, with an annual budget of around EUR 1 100 million, including a Community contribution of around EUR 559 million;

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36. Insists that the auditing/discharge process must be proportionate to the overall budget of the agencies; notes in particular that the resources available to the European Court of Auditors have not increased in line with the number of agencies in recent years;

37. Reiterates the wish expressed in paragraph 7 of its resolutions of 22 April 2008 concerning discharge in respect of the implementation of the budget of the agencies that the performance of the agencies be regularly (and on an *ad hoc* basis) audited by the European Court of Auditors or another independent auditor; considers that this should not be limited to traditional elements of financial management and the proper use of public money, but should also cover administrative efficiency and effectiveness and should include a rating of the financial management of each agency;

38. Is of the opinion that all agencies should, together with their establishment plan, give an overview of their permanent and temporary staff and national experts, as well as indicate any changes in relation to the previous two years;

39. Draws attention to the European Court of Auditors' special report No 5/2008 on the sound financial management of agencies with particular reference to performance audits;

40. Calls on the Commission to merge the administrative functions of the smaller agencies in order to create the critical mass required to enable the agencies to satisfactorily comply with current rules on public procurement and with the Financial Regulation and the Staff Regulations ⁽¹⁾;

41. Urges the Commission to undertake a critical examination of the agencies' budget requests since the majority of the agencies do not utilise the funds requested;

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42. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States.

⁽¹⁾ Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

Indictment and bringing to trial of Joseph Kony at the International Criminal Court

P6_TA(2008)0496

European Parliament resolution of 21 October 2008 on the indictment and bringing to trial of Joseph Kony at the International Criminal Court

(2010/C 15 E/06)

The European Parliament,

— having regard to the Rome Statute of the International Criminal Court (ICC), in particular Article 86 thereof, and the entry into force of the Statute on 1 July 2002,

— having regard to the ratification of the Rome Statute by Uganda on 14 June 2002,

— having regard to the referral in 2003 by Ugandan President Yoweri Museveni to the ICC of the situation concerning the Lord's Resistance Army (LRA), which was the first referral by a State Party to the ICC since its establishment,