



Brussels, 24.4.2015  
COM(2015) 179 final

**REPORT FROM THE COMMISSION**

**Progress report on the implementation of the Common Approach on EU decentralised agencies**

The Common Approach on EU decentralised agencies agreed in July 2012 by the European Parliament, the Council and the Commission defines a more coherent and efficient framework for the functioning of agencies.

The Commission committed to follow-up on this agreement, where relevant in cooperation with the agencies. The Commission's main objectives for the implementation of the Common Approach are: more balanced governance, improved efficiency and accountability and greater coherence. These objectives are of particular importance at a time when efficient and responsible use of resources is paramount.

In its Roadmap of December 2012, the Commission set out in detail how it intended to follow-up on the Common Approach: it listed a number of initiatives for which action was needed on its side, and/or on the side of agencies, the Member States, the European Parliament and the Council. The initiatives are a direct translation of the provisions of the Common Approach into concrete deliverables. The Roadmap sets deadlines for those deliverables for which the Commission is responsible (30 initiatives) and highlights 5 initiatives that the Commission considers priorities. In addition, it indicates when cooperation with agencies is necessary and when agencies have already started implementing the Common Approach.

In parallel to the actions listed in the Roadmap, the implementation of the Common Approach requires the adaptation of the founding acts of existing agencies following a case by case analysis, as well as the adaptation or adoption of other legislative acts (Staff Regulations<sup>1</sup>, Framework Financial Regulation<sup>2</sup>).

This is the second report on the implementation of the Roadmap presented by the Commission. It focuses in particular on progress made since the adoption of the first report<sup>3</sup>, in December 2013, in respect of Roadmap actions under Commission responsibility. In the previous year, the Commission already made substantial progress in the implementation of the roadmap, including, *inter alia*, the adoption of guidelines on standard provisions for headquarters agreements of EU decentralised agencies, Communication Handbook for the EU decentralised agencies, guidelines on the prevention and management of conflicts of interest in EU decentralised agencies and guidelines on performance budgeting and decentralized agencies.

## **1. Good progress in the implementation of the Roadmap**

In the Roadmap, the Commission set an ambitious agenda for 2013 and beyond. Substantial efforts have been made jointly by the Commission services and the decentralised agencies.

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<sup>1</sup> OJ L 287, 29.10.2013, p. 15

<sup>2</sup> OJ L 328, 7.12.2013, p. 42

<sup>3</sup> [http://europa.eu/agencies/documents/2013-12-10\\_progress\\_report\\_on\\_the\\_implementation\\_of\\_the\\_common\\_approach\\_en.pdf](http://europa.eu/agencies/documents/2013-12-10_progress_report_on_the_implementation_of_the_common_approach_en.pdf)

### **a. Setting up of agencies**

In 2014 Commission services, with input provided by agencies, put together a start-up toolkit covering the procedures to be followed when an agency is being set up<sup>4</sup>. This guidance is available to the agencies and partner DGs alike and is subject to continuous update.

This exercise is particularly useful in the framework of setting-up the Single Resolution Board (SRB), a new EU Union body created in 2014<sup>5</sup>. The SRB is the resolution authority for the Banking Union and will work in close cooperation with the national resolution authorities of participating Member States. It will start working on developing resolution plans of credit institutions from 1 January 2015 and is planned to be fully operational from 1 January 2016. In line with the Common Approach, a headquarters' agreement should be signed with the least possible delay between the SRB and the Belgian authorities, based on the guidelines provided to that effect by the Commission in 2013.

At present, another 7 agencies<sup>6</sup> are still lacking a proper headquarters' agreements. The Commission therefore invites again the relevant Member States<sup>7</sup> and agencies to proceed as soon as possible with the signature of these agreements.<sup>8</sup>

### **b. Operation of agencies**

Based on feedback from the agencies, the Commission issued guidelines for agencies' programming document<sup>9</sup> (applicable as from 2016) as well as a template for agencies' consolidated annual activity report<sup>10</sup> (applicable as from 2015), in line with the requirements set by the new Framework Financial Regulation. These documents<sup>11</sup> will support the agencies in preparing these two key instruments, i.e. the reporting document the first time for the 2014 financial year and the programming document from 2017 financial year onwards, and thereby help enhance coherent governance and accountability across agencies.

In the context of constrained financial and human resources, the Commission and the agencies continued their efforts to identify and put in place structural measures to rationalise the functioning of the latter:

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<sup>4</sup> Roadmap action no. 10

<sup>5</sup> Article 64 of SRB's Founding Regulation (Regulation (EU) No 806/2014 of 15.7.2014, OJ L 225/1, 30.7.2014) foresees that as far as is compatible with the particular nature of the Board, the financial provisions shall be based on the framework financial Regulation adopted for bodies set up under the TFEU in accordance with Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council.

<sup>6</sup> CPVO, EASA, EMA, ERA, ESMA, Eurofound, FRONTEX

<sup>7</sup> France, Germany, UK, Ireland, Poland

<sup>8</sup> Roadmap action no. 8

<sup>9</sup> Roadmap action no. 26

<sup>10</sup> Roadmap action no. 31

<sup>11</sup> C(2014) 9641

- Provision of services<sup>12</sup>: in March 2014, the Commission services adopted the 'Guidance on charge-back of services' among its Directorates General and services. Although the Guidance does not apply to decentralised agencies, it sets up basic principles for internal charge-back, e.g. equal treatment of clients, transparency and no-profit rule. To ensure consistency, it also proposes a basic costing model and an annual reporting template. The Commission is preparing similar Guidance to other institutions, decentralised agencies and bodies. In this context, the Commission has taken good note of the general principles proposed by the agencies in relation to services provided by the Commission (e.g. transparency, support-oriented approach, efficiency, timeliness, coherence and accountability).
- Review of Service Level Agreements (SLAs)<sup>13</sup>: the SLAs between agencies and the Paymaster's Office (PMO) have been re-negotiated, resulting in streamlined conditions based on a transparent cost-calculation method of actual average costs. Other Service Level Agreements will be reviewed in the future in accordance with the new guidance.
- Support in the field of public procurement<sup>14</sup>: additional guidance has been developed in view of agencies' participation in calls for tenders and contracts launched by the Commission, whenever there is a potential for realising efficiency gains. The Commission also provides general support to the agencies in this field. In particular, the Commission provides customised financial training to the agencies having signed a Service Level Agreement with the Commission. The Commission also makes available its financial helpdesk function, where about a third of the questions related to financial management come from agencies. Furthermore, all information about procurement and contract management may be accessed by the agencies on a dedicated intranet website.
- Support in the field of the certification of the annual accounts of the entities: Article 208 (4) Financial Regulation states that "An independent external auditor shall verify the annual accounts of each of the bodies". To this end, the Commission has made its framework contract on audit and controls available to the agencies. Whereas each agency remains fully accountable of the signed specific contract, the specifications have been prepared in close cooperation with the European Court of Auditors in order to ensure the consistency with the practices of the Court and the added value of the report provided by the external contractor.

As regards streamlining agencies' international activities, working arrangements have been signed or are being signed between most partner DGs and the agencies to ensure that the latter operate within their mandate and the institutional framework<sup>15</sup>, in particular in those instances where the relevant provisions on international activities included in agencies' founding acts are of a more general nature. The Commission will keep this process under review.

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<sup>12</sup> Roadmap action no. 12

<sup>13</sup> Roadmap action no. 13

<sup>14</sup> Roadmap action no. 14

<sup>15</sup> Roadmap action no. 17

On the important issue of the prevention and management of conflicts of interest<sup>16</sup> the Commission issued guidelines in December 2013. The Commission invites the agencies to adopt without delay respective frameworks on conflicts of interest in line with these guidelines. Agencies hereby need to strike an adequate balance between managing conflicts of interest and preserving their capability to obtain best possible scientific advice. The Commission recalls the fact that as the agencies are legally independent entities, they alone are responsible for the way they handle the issue of conflicts of interest in practice and notably, how they enforce and control that the key principles in this domain are respected, as well as for reporting on it.

In order to foster the exchange of best practices on the exchange of EU classified information (EUCI)<sup>17</sup>, the Commission set up a network of officials of the EU decentralised agencies with security responsibilities. The network aims at having regular (at least once a year) interactive meetings which serve as a platform for thorough exchange of best practice and experience on the handling of EUCI in general and on the exchange of EUCI in particular. In addition, via the established service level agreements the Commission provides support to a number of agencies in other security domains, such as production of service badges, security training, advice on physical protection of buildings, etc.

### **c. Evaluations, audit and OLAF**

The Commission continues its work to revise its evaluation guidelines<sup>18</sup>. The agencies have contributed to this process. These Guidelines which apply to all evaluations performed by Commission Services will form the basis for the Handbook for agencies' evaluations which had been developed within the framework of their Performance Development Network.

With regards to the establishment of its audit programme, the Internal Audit Service (IAS) has adopted a risk assessment approach at the portfolio level. Each agency is assigned a risk rating based on a number of defined criteria. The audited entities' risk ratings are reviewed annually. The frequency, type of audits and the processes covered are decided in function of the risk rating of the entity, complemented with specific risk information at process level. Additionally, appropriate provisions are developed to ensure minimum audit coverage for the lower-risk entities. As regards the monitoring of the implementation of recommendations, it is shifting the focus from a periodical/annual exercise to continuous monitoring and follow-up of the outstanding recommendations. In line with the new IAS Charter for Agencies and other autonomous bodies, IAS offers co-operation and co-ordination with the Internal Audit Capabilities (IACs), as appropriate, for the purpose of providing optimal audit coverage.

OLAF organised two workshops for the agencies in January 2014 to provide them with an additional step-by-step guide on how to prepare their Anti-Fraud Strategy. OLAF also gave customised help to different agencies later. To date, EFCA, CEDEFOP, EASA, EIGE, EIOPA, ESMA and OHIM have already adopted their Anti-Fraud Strategies. The Anti-Fraud Strategy of EBA is being finalised.

### **d. Management of financial and human resources and budgetary process**

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<sup>16</sup> Roadmap actions no. 33 to 35

<sup>17</sup> Roadmap action no. 37

<sup>18</sup> Roadmap action no. 45

In 2013, the European Parliament, the Council and the Commission agreed to set up an inter-institutional working group on agencies' resources in the framework of the conciliation for the 2014 EU budget. As provided for by the Multi-Annual Financial Framework 2014-2020, the three Institutions committed to progressively reducing the staffing levels of all EU institutions, bodies and agencies by 5% over five years and agreed on the need for a closer and more permanent scrutiny of the development of decentralised agencies to ensure a coherent approach. The Inter-institutional Working Group on agencies' resources met twice in 2014 and is expected to continue its work until the end of 2017, when the 2018 budget is expected to be adopted and the 5% target achieved.

Following the new Framework Financial Regulation, the programming tool on human resources management (i.e. the Multi-annual Staff Policy Plan) is part of the new Single Programming Document which brings together the annual and multi-annual work programmes along with human and financial resources programming. This new tool<sup>19</sup> will be used by the agencies starting with the 2017 programming exercise. In addition, new reporting guidelines were developed, with the aim of streamlining the reporting requirements, i.e. bringing together aspects of HR reporting with financial and activity reporting.

After thorough consultation with the agencies, Commission services issued guidelines<sup>20</sup> on tailored performance indicators to assess the results achieved by agencies' Executive Directors<sup>21</sup>. These indicators feed into the work of the European Parliament and the Council in the framework of the agencies' discharge procedure.

The last reform of the Staff Regulations enabled a simplified procedure as regards the application of implementing rules in agencies. In addition, further simplification was generated with new guidelines<sup>22</sup> developed by the Commission services for the adoption of the implementing rules, allowing to save time and resources involved in the process. Furthermore, model implementing rules in the area of employment and career staff in agencies has been developed to avoid multiplication of different rules among agencies. These were the result of a collaborative work between the Commission services and the agencies.

As regards administrative inquiries and disciplinary procedures, the Commission services worked in close co-operation with agencies to create an inter-agency disciplinary pool of investigators. This included also the organisation of intensive trainings by the Commission.

Finally, Commission services will continue to work on developing a guide on agencies' internal planning and revenue forecasting, on the basis of best practices, to help the agencies reduce carry over and cancellation rates, where this is the case<sup>23</sup>.

## **2. The revision of agencies' founding acts**

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<sup>19</sup> Roadmap action No. 26

<sup>20</sup> SWD(2015)62

<sup>21</sup> Roadmap action no. 89

<sup>22</sup> Roadmap action no. 87

<sup>23</sup> Roadmap action no. 82

The Commission proposed in 2014 to adapt the founding act of CEPOL to the principles set out in the Common Approach. The proposal also takes into account the relevant provisions in the revised Framework Financial Regulation. The revision was needed in order to give CEPOL the appropriate legal mandate and the necessary resources to implement the EU Law Enforcement Training Scheme. The proposal is in line with the decision taken by the co-legislators to move CEPOL to Budapest. The Commission's initial proposal to merge CEPOL and Europol was rejected by the co-legislators.

In the case of the revision of CEPOL's, Eurojust's, Europol's and OHIM's founding acts, the Commission has proposed important elements of reform to ensure the full implementation of the Common Approach. The Commission recalls the inter-institutional commitment to use such revisions of agencies' founding acts as opportunities to implement and hence comply with the Common Approach, such as the reinforcement of the supervisory role of the Management Board (including by ensuring full participation by the Commission), ensuring a transparent selection procedure for Directors and the necessary adoption of a programming document with a multi-annual component, the possible setting up of an executive board where this ensures more efficiency and the obligation to better follow-up on evaluations and audits. Considering the ongoing inter-institutional 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 Commission welcomes the adoption in 2014 of a revised European GNSS Agency (GSA) founding regulation<sup>24</sup>, which has been to a great extent aligned to the principles set out in the Common Approach.

### **3. The role of Commission representatives in agencies' boards**

As in 2013, Commission representatives in agencies' boards did not activate the alert/warning system set up by the Common Approach. It is recalled that this tool has a political and not a legal dimension. The Commission representative has no legal possibility to suspend a decision taken by the management board. The system however enables Commission representatives to formally oppose a decision of the boards with a view to ensuring coherence with EU policies and compatibility of the agencies' activities with their mandate and relevant EU legislation and subsequently alert the European Parliament and Council.

Commission representatives in agencies' boards continued to support the implementation of the Common Approach by the agencies, by following-up on the implementation of the Roadmap in each individual agency, by reviewing progress and alerting the partner DG and central services in case of difficulties.

In particular if agencies are exceptionally entrusted with budget implementation tasks by the Commission's respective authorising officers by delegation (AOD), they should be able to rely on the control results and the indicators reported by the agency and by consequence to gain assurance on the achievement of the internal control objectives as regards the budget

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<sup>24</sup> OJ L 150, 20.05.2014, p. 72

implementation involved. In this context the respective AODs may also draw on information gathered by Commission's representatives in the agency's board.

#### **4. Conclusions**

In line with its previous commitments, throughout 2013 and 2014, the Commission has invested considerable efforts to deliver on the actions under its responsibility in the roadmap to follow-up to the Common Approach on EU decentralised agencies. The Commission has also performed a thorough case by case analysis upon preparation of its legislative proposals to make sure they are in line with the Common Approach. The main objective of its work has been to ensure more balanced governance, improved efficiency and accountability and greater coherence.

Implementation of the Roadmap on the Common Approach was based on extensive work on the side of Commission, but also on the side of the decentralised agencies, which actively contributed throughout the process. The Commission welcomes the proactive approach of the agencies and takes note of the report endorsed by the EU agencies network in February 2015 on the Roadmap actions that fall under the agencies' responsibility.

The reforms undertaken in the framework of the Common Approach remain highly relevant in the years to come. The Commission will continue to defend the principles set out in the Common Approach and invites the European Parliament, the Council, the Member States and the agencies themselves to do the same, particularly on issues that are under their direct responsibility.