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THE EUROPEAN MEDICINES AGENCY: A PUBLIC HEALTH EUROPEAN AGENCY?

Aurélie Mahalatchimy[*,,***], Emmanuelle Rial-Sebbag[****], Nathalie De Grove-Valdeyron[***], Virginie Tournay[*], Anne Cambon-Thomsen[**], Anne-Marie Duguet[**], Florence Taboulet[**]**

Abstract: The European Medicines Agency (EMA) is a European Agency as it is a decentralized body governed by European public law; it has its own legal personality and is also distinct from the European Union institutions (Council, Parliament, Commission, etc.).

The EMA presents itself, and is commonly recognised, as a public health agency. This is notably supported by its recent transition from the Regional Direction of Research to the Regional Direction of Public Health. Four recognized principles of public health can be identified as such: assessment, transparency, precaution and independence. These principles appear to be closely linked to those forming the basis of good European governance regarding agencies: efficacy, coherence, openness, participation and responsibility. Thus, it is interesting to study how these principles are applied by the EMA in order to assess the reality of its qualification as a Public Health European Agency. The principles of assessment and transparency seem to be largely applied whereas the principles of precaution and independence are more problematic.

Keywords: European Medicines Agency; Assessment; Transparency; Precaution; Independence.

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INTRODUCTION

The European Medicines Agency (EMA) was established by Regulation (EC) No 726/2004[1] - in order to *"foster scientific excellence in the evaluation and supervision of medicines"* to protect and promote public and animal health. It is a European Agency as it is a decentralized *"body governed by European public law, it is distinct from the European Union institutions (Council, Parliament, Commission, etc.) and has its own legal personality"* as provided by article 71 of Regulation (EC) No 726/2004. It was set up in the context of good European Governance[2] to manage medicinal products at the European Union (EU) level. Its efficiency has been a method of legitimizing the EU action in this field, while making patients more confident through safer medicinal products assessed by the best experts within EU. The basis of good European Governance is made up of several principles regarding agencies (including the EMA): efficacy, coherence, openness, participation and responsibility. These principles can be linked to those of health related safety, and extensively to public health, as established by Didier Tabuteau[3]: assessment, transparency, precaution and independence. These principles have been widely recognised as health safety principles.

Therefore, the EMA is an EU Agency. More specifically, it presents itself, and it is commonly recognised, as a public health agency due to its missions. It was created to answer safety questions in the framework of a new safety governance approach through new connection patterns with Member States and close interaction with interested parties[4].

Regarding these principles and their implementation within the EMA, one major issue can be raised. That of the difficulty of combining two EU objectives: to foster competitiveness of European undertakings and guarantee a high level of protection of human health. Although they are not totally incompatible, it can be underlined that, most particularly at the EMA level,

1 European Parliament and Council, 2004, Regulation (EC) N° 726/2004 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, OJ L 136 of 30/04/2004, p. 1-33.

2 European Commission, 2001, European Governance: a White Paper, COM (2001) 428 final.

3 Tabuteau D., 2002, *La sécurité sanitaire*, Ed. Berger-Levrault.

4 Blanquet M. and Valdeyron N., 2010, Le recours à des agences de l'Union en réponse aux questions de sécurité, Conference organized by l'IRDEIC, 3ème Journées Guy Isaac, Les Agences de l'Union Européenne, *In press*, under the direction of J. Molinier, Ed. Bruylant.

their conciliation requires a lot of rigour in respect of the aforementioned principles. If the main task of the EMA is to promote and protect human and animal health, its actions have a huge impact on the competitiveness of European pharmaceuticals industries. Moreover, the necessity of enhancing this competitiveness is strongly and regularly encouraged by EU institutions[5]. The difficulty to conciliate these two objectives could be emphasised by the fact EMA belongs to the Regional Direction of Research at the European Commission. This could be interpreted as a prioritisation of innovative institutions and companies in the domain of health rather than the promotion of health protection as devoted to public health by the European Commission. However, the EMA is now moving under the responsibility of the Regional Direction of Public Health directed by Commissioner John Dalli. This change could mean a shift of priority at the EU level: *"While members of industry are disappointed by the change, health lobby groups point out that in almost every Member State, policy for medicinal products is the responsibility of the country's health department, and thus expect that the switch will yield a more 'consistent and coherent' approach to public health policy"*[6].

While having to conciliate these two main EU objectives, how does the EMA apply the Public Health and European Governance principles as a European Public Health Agency?

The aim of this study is to emphasize how the EMA implements these principles. On the one hand, principles of assessment and transparency which could correspond to efficacy, coherence, openness and participation in the context of good governance seem to be largely applied (1). On the other hand, principles of precaution, independence and responsibility appear to be more problematic (2).

1. ASSESSMENT AND TRANSPARENCY: THE EMA "WINNING COMBINATION"

The principle of assessment and the principle of transparency are those which are the most visibly applied by the EMA. Even though the protection of

5 European Commission, 2008, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Safe, Innovative and Accessible Medicines: a Renewed Vision for the Pharmaceutical Sector, COM/2008/0666 final.

6 OrphaNews Europe, 2009, Newsletter of the Rare Disease Task Force, EU Policy News.

human health and the promotion of undertaking competitiveness could imply opposite actions on the part of the EMA, it is recognised as managing well, and even enhancing, its capacity to implement these two principles.

1.1 The Recognition of the EMA Assessment's High Quality

The quality of the assessment provided by the EMA appears from a substantive as well as an organisational point of view. In this context, the principle of assessment rejoins the principles of effectiveness and coherence of European governance. Indeed, it can be considered that the principle of assessment, or "good assessment", requires the efficiency, the effectiveness and the coherence of the system according to the main objectives of EMA, i.e. the protection and promotion of human and animal health. According to the European Commission, the principle of effectiveness means that *"policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience"*. It also requires implementation of EU policies in a proportionate manner and taking decisions at the most appropriate level[7]. Moreover, the principle of coherence is achieved where policies and actions are *"coherent and easily understood"*. *"Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system"*[8].

The assessment of the EMA is required through several processes which are also the EMA tasks and the reason for its creation. The high quality of its assessment is fostered by the qualification of its experts and the setting up of specialised committees and working groups which interact.

Without being exhaustive, the main EMA tasks of assessment will be considered.

Firstly, the EMA scientifically assesses human and animal medicinal products for marketing authorisation through a centralised procedure. According to this procedure, companies submit a single marketing authorisation application to the EMA. Once granted by the European Commission, after the EMA's assessment on the basic requirements of quality, safety and efficacy, the authorised medicinal products can be marketed in the entire European Union

7 European Commission, 2001, European Governance: a White Paper, COM (2001) 428 final.

8 Cf. Supra European Commission, 2001

and in EEA-EFTA States. Medicinal products, which have to be approved via the centralised procedure are mainly the following: all medicinal products for human and animal use derived from biotechnology and other high technology processes; all human medicines intended for the treatment of HIV/AIDS, cancer, diabetes, neurodegenerative diseases, auto-immune and other immune dysfunctions, and viral diseases; all designated orphan medicines intended for the treatment of rare diseases; all veterinary medicines intended for use as performance enhancers in order to promote the growth of treated animals or to increase yields from treated animals. Moreover, companies can submit a marketing authorisation application to the EMA where the medicinal product constitutes a significant therapeutic, scientific or technical innovation, or the product is in any other respect in the interest of patient or animal health.

The main Committees involved in the scientific assessment of medicinal products are the Committee for Medicinal Products for Human Use (CHMP)[9] and the Committee for Medicinal Products for Veterinary Use (CVMP)[10]. However, other more specialised Committees have been established by EU Regulations and concretely set up by the EMA: the Committee for Orphan Medicinal Products (COMP)[11], the Committee on Herbal Medicinal Products (HMPC)[12], the Paediatric Committee (PDCO)[13] and the Committee for Advanced Therapies (CAT)[14]. These committees have then been concretely set up by the EMA in accordance with their foundation's regulations. Moreover,

9 EMA, 2007, Committee for Medicinal Products for Human Use, rules of procedures, EMEA/ 45110/2007, EMEA/MB/87146/2007.

10 EMA, 2007, Committee for Medicinal Products for Veterinary Use, EMEA/CVMP/422/04-Rev.1, EMEA/MB/47098/2007.

11 European Parliament and Council, 1999, Regulation (EC) N° 141/2000 on orphan medicinal products, OJ L 18 of 22/01/2000, p. 1-5.

12 European Parliament and Council, 2004, Regulation (EC) N° 726/2004 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, OJ L 136 of 30/04/2004, p. 1-33 and European Parliament and Council, 2004, Directive 2004/24/EC amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use, OJ L 136 of 30/04/2004, p. 85-90.

13 European Parliament and Council, 2006, Regulation (EC) N° 1901/2006 on medicinal products for paediatric use and amending Regulation (EEC) N° 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) N° 726/2004, OJ L 378 of 27/12/2006, p. 1-19.

14 European Parliament and Council, 2007, Regulation (EC) N°1394/2007on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) N°726/2004 OJ L324, 10/12/2007, p.121-137

several standing and temporary Working Parties (WP) have been established by the EMA' s Committees[15] to get high quality scientific and regulatory input in a number of areas based on growing and new scientific needs. Given a rise in the creation of new committees and the increase of complexity and workload of the system, the EMA decided to reorganise the structure, composition and mandate of CHMP WPs in order to improve their efficiency and avoid overlapping and unnecessary competition among them. This reorganisation took effect in September 2010 and was published on the EMA's website on the 25th of October 2010. The main changes were: the *"replacement of the Efficacy Working Party with a number of temporary working parties with narrower fields of expertise; the establishment of drafting groups to draw up and review guidelines that do not fall within the remit of existing working parties; the establishment of a Co-ordination Group to co- ordinate the activities of the working parties and drafting groups"*[16]. Therefore, two main types of WPs have been identified. On the one hand, standing WPs (i.e. Biologicals, Safety and Quality WPs) with transversal competences are *"responsible for keeping a regular ongoing activity in their respective fields as per their mandate"*[17]. On the other hand, temporay WPs with more specific competences linked to a particular therapeutic class or kind of products are convened to deliver guidelines or address issues in a concrete and specific task over a defined timeline[18]. Moreover, the CHMP/CVMP can create specific ad hoc Drafting Groups which deal with very particular and short term matters[19]. Next to the WPs which are mainly composed of experts belonging to national agencies, the CHMP/CVMP establish scientific advisory groups (SAGs) which consist of European independent experts to answer specific questions related to the evaluation of particular types of medicines or treatments. Committees can also be supported by committee-associated groups providing expertise in

15 In accordance with Article 56 (2) of Regulation (EC) n° 726/2004, cf. supra.

16 EMA, 2010, News, CHMP working parties reorganized: http://www.ema.europa.eu/ema/index.jsp?curl=pages/news_and_events/news/2010/10/news_detail_001137.jsp&murl=menus/news_and_events/news_and_events.jsp&mid=WC0b01ac058004d5c1

17 EMA, 2010, Reflection paper on working parties (WP) CHMP/EMA group analysis and proposals, EMA/315270/2010.

18 According to the implementation plan, the final distribution of temporary WPs is as follows: Blood Products, Biosimilar, Vaccines, Pharmacogenomics, Pharmacokinetics, Biostatistics, Cardiovascular, Central Nervous System, Infectious diseases, Oncology Working Parties. Cf. supra EMA, 2010, Reflection paper on working parties.

19 According to the implementation plan, the final distribution of Drafting Groups is as follows: Endocrinology, Rheumatology/Immunology, Respiratory, Gastroenterology Drafting Groups. Cf. supra EMA, 2010, Reflection paper on working parties.

their respective areas[20]. Finally, the CHMP has established other groups: a Co-ordination Group to ensure integrated management of the operation of the scientific committees, WPs and Drafting Groups[21], and a Consistency Group which conducts peer reviews of all draft guidelines before they are discussed at the CHMP in order to maintain regulatory and scientific consistency.

The EMA is also involved in referral procedures related to medicinal products approved by Member States through the mutual-recognition procedure[22] and the decentralised procedure[23]. In accordance with those procedures, the Co-ordination Group for Mutual Recognition & Decentralised Procedures-Human (CMD(h))[24] and the Co-ordination Group for Mutual Recognition & Decentralized Procedures - Veterinary (CMD(v))[25] were set up to examine any question relating to marketing authorization of a medicinal product in two or more Member States. They hold their monthly meetings at the EMA which is responsible for their secretariat.

Secondly, the EMA constantly monitors the safety of medicinal products through a pharmacovigilance network. In 1995, a Pharmacovigilance Working Party[26] was established to provide advice to the CHMP on any scientific issues directly or indirectly related to pharmacovigilance for medicinal products submitted for centralized marketing authorisation. It also provides

20 Healthcare Professionals' Working Group, (Invented) Name Review Group, Working Group on quality Review of Documents.

21 EMA, Co-ordination Group: http://www.ema.europa.eu/ema/index.jsp?curl=pages/contacts/CHMP/people_listing_000080.jsp&murl=menus/about_us/about_us.jsp&mid=WC0b01ac05802327cf&jsenabled=true

22 The mutual recognition procedure is "compulsory for all medicinal products to be marketed in a Member State other than that in which they were first authorized". For more information on this procedure, see the European Commission's website, Public health, The Mutual Recognition Procedure: http://ec.europa.eu/health/authorisation-procedures-mutual-recognition_en.htm

23 As the mutual recognition procedure, the decentralized procedure "is also based on recognition by national authorities of a first assessment performed by one Member State. The difference lies in that it applies to medicinal products which have not received a marketing authorization at the time of application". For more information on this procedure, see the European Commission's website, Public health, The Decentralized Procedure: http://ec.europa.eu/health/authorisation-procedures-decentralised_en.htm

24 Co-ordination Group for Mutual Recognition and Decentralized Procedures- Human: http://www.hma.eu/cmdh.html

25 Co-ordination Group for Mutual Recognition and Decentralized Procedures- Veterinary: http://www.hma.eu/cmdv.html

26 EMA, 2005, Mandate, objectives and rules of procedures for the CHMP Pharmacovigilance Working Party, EMEA/CHMP/PhWP/88786/04.

recommendations for non-centrally authorized products upon request of national competent authorities.

Thirdly, the EMA promotes innovation and research in the pharmaceutical sector by giving scientific advice and protocol assistance to companies for the development of new medicinal products. It adopts guidelines on quality, safety and efficacy requirements and on European processes for centrally-authorised medicinal products. A specific assistance is also provided for small and medium-sized enterprises.

For each process, relevant Committees, Working Parties and Scientific Advisory Groups are involved. Their members are nominated for their high qualification and experience in the considered matters.

One of the difficulties of the EMA is that its assessments should attain a high level of scientific quality and rigour, despite the fact, for instance, that a refusal for marketing authorisation would imply slowing down the competitiveness of the applying undertaking. The numerous exchanges between the EMA and the applicants aim to avoid such negative opinions.

The European Commission Evaluation of the EMA ascertains that the organisation system of the EMA (being defined as the combination of EMA Secretariat and the contribution of 44 National Competent authorities) is recognised as being very effective by all stakeholders, i.e. pharmaceutical companies, healthcare professionals and patient and consumer organisations. Indeed, it is especially noticed that the *"best available experts in Europe"* contribute to the assessments for centralised authorisation of human and veterinary medicinal products. In addition, *"the European authorisation system provides complete, clear and highly valued opinions within regulatory tight deadlines"* even if the EMA workload has been enhanced[27]. However, the chosen system with numerous different committees and groups within the EMA appeared to complicate attaining a quality assessment as all the procedures between these groups have to be validated and efficient. That is why it has been reorganized as explained above.

1.2 The Improvement of the EMA Level of Transparency

The principle of transparency can be linked to the principles of openness

27 European Commission, 2010, Evaluation of the European Medicines Agency, Final Report, Evaluation conducted by Ernst & Young et Associés.

and participation of European governance. On the one hand, the principle of openness means: *"The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex situations"*[28]. On the other hand, according to the participation principle, *"the quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy claim - from conception to implementation. Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies"*[29].

From its creation, and according to article 80 of the Regulation (EC) N° 726/2004, the Management Board of the EMA shall ensure an appropriate level of transparency with the adoption of rules providing *"the availability to the public of regulatory, scientific or technical information concerning the authorisation or supervision of medicinal products which is not of a confidential nature"*. This has notably been ensured through the development of the EMA's website and the numerous public consultations.

However, due to increasing stakeholders' expectations and the European Ombudsman's recommendation to increase transparency (it was drafted following a complaint by an Irish citizen in 2008 as the EMA had refused a request to access individual adverse drug reaction reports for a nationally authorised medicine used to treat acne)[30], the EMA is developing a wide transparency policy.

In this context, one can refer to the main recent activities of the EMA to improve its level of transparency.

On 19 June 2009, EMA launched a public consultation process on a new transparency policy intended to provide for greater clarity and openness in all its operations. The three main objectives of this policy are the following: *"to*

28 Cf. Supra European Commission, 2001.
29 Cf. Supra European Commission, 2001.
30 European Ombudsman, P. Nikiforos Diamandouros, 2010, Draft recommendation of the European Ombudsman in his inquiry into complaint 2493/2008 (BB) TS against the European Medicines Agency.

apply a more proactive approach to transparency in the daily operations of the Agency", "to further strengthen interaction with the Agency's stakeholders", and *"to promote cooperation transparency issues within the European medicines network"*[31]. The EMA also organised two workshops on the development of an Agency's Transparency Policy on 22 January 2009 and on 19 October 2009 where members from patients', consumers' and healthcare professionals' organisations and learned societies, and farmers' unions were invited.

Moreover, the EMA opened public consultations such as on the EMA's draft Eudravigilance access policies in relation to human and veterinary medicines[32]. Following its public consultation on the EMA's draft policy on access to documents[33], it widens public access to documents through its new policy on this subject[34], adopted at the end of November 2010.

The EMA also published a report on patients', consumers' and healthcare professionals' expectations concerning information on the benefit-risk balance of medicines and initiated a study on its benefit-risk communication activities[35].

Finally, it can be noted that the EMA has a new visual identity since the 8th of December 2008, notably through a new motto, *"to communicate to the public a clearer message about its role and activities"*. It has also developed a new website *"providing better access to information on public health issues"* and its members also published articles in scientific journals[36].

Although the EMA's respect of principles of assessment and transparency is widely recognised, through its regular and increasing efforts, the implementation by this Agency of principles of precaution and independence

31 EMA, 2009, The EMA Transparency Policy, Draft for public consultation, London, EMEA/232037/2009-rev

32 EMA, 2008, Draft, Eudravigilance access policy for medicines for human use, London, EMEA/187439/2006/Final.

33 EMA, 2008, Draft, EMEA Policy on the practical operation of access to EMEA documents, London, EMEA/110196/2006/Final.

34 EMA, 2010, European Medicines Agency policy on access to documents (related to medicinal products for human and veterinary use), London, EMA/110196/2006.

35 EMA, 2009, Information on benefit-risk of medicines: patients', consumers' and healthcare professionals' expectations, London, EMEA/40926/2009.

36 EMA, 2010, Annual Report 2009 adopted by the Management Board, EMA/MB/69923/2010.

has to be considered in another context. Consequently it becomes more arguable.

2. PRECAUTION AND INDEPENDENCE: AN ARGUABLE SITUATION FOR THE EMA

The EMA implementation of principles of precaution and independence reveals an arguable situation as long as it does not depend on the internal organisation of the EMA. Indeed it rather relies on its relations with relevant actors such as the European Institutions, Member States[37] and European Pharmaceutical companies.

2.1 The "Secondary" Role of the EMA for the Principle of Precaution Implementation

"The precautionary principle has been politically accepted as a risk management strategy in several fields"[38] including notably the protection of human and animal health. According to the European Commission, the structured approach of the analysis of risk comprises three elements: risk assessment, risk management, risk communication.

In the context of EU central marketing authorisation, risk assessment and risk communication are tasks of the EMA whereas risk management where the implementation of the precautionary principle is particularly relevant would mainly be the task of the European Commission.

Thus, there is a sharing of competencies between the European Commission and the EMA regarding risks. On the one hand, the EMA scientifically assesses medicinal products regarding quality, safety and efficacy criteria. It compares the benefits and risks of the medicinal products to be placed on the market. Where EMA identifies potentially dangerous effects deriving from a product, it shall, where possible, identify the degree of scientific uncertainty at each stage. On the other hand, regarding scientific uncertainty, the European Commission, which is the decision-maker, has the responsibility to choose whether or not to authorise a medicinal product by judging the "acceptable" level of risk for society. Its action measures should be, inter alia: proportional

37 Saurugger S., 2009, Théories et concepts de l'intégration européenne, Paris, Presses de Sciences Po.

38 European Commission, 2000, Communication on the precautionary principle, COM (2000) 1 final.

to the chosen level of protection, non-discriminatory in their application, consistent with similar measures already taken, based on an examination of the potential benefits and costs of action or lack of action, subject to review and capable of assigning responsibility for producing the scientific evidence necessary for a more comprehensive risk assessment.

Thus, according to the European Commission, the precautionary principle has two aspects: the decision to act and the manner to act which are both a European Commission's prerogative.

It could be thought that the EMA also applies the precautionary principle through its benefits/risks scientific assessment. However, the European Commission has specified the difference between a prudential approach and the application of the precautionary principle which are complementary aspects. They should not be confounded as *"the prudential approach is part of risk assessment policy which is determined before any risk assessment takes place [...], it is therefore an integral part of the scientific opinion delivered by the risks evaluators"*.

But this theoretical distinction could appear confusing in practice and would necessitate a study of the EMA assessments.

2.2 The Limited Independence of the EMA

The principle of independence can be linked to the principle of accountability of the European governance. According to the White Paper on European governance, accountability implies that *"roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level"*.

The term "accountability" is often assimilated into the notion of "control" and the notion of "independence" has been used as identical to that of "formal institutional separation" whereas these notions are interrelated and should not be considered identical[39].

For this study, the two dimensions of independence provided by Pollitt et al.

39 Busuioc M., 2009, "Accountability, Control and independence: the case of European Agencies", European Law Journal, Vol. 15, N°5, pp. 599-615.

shall be considered: on the one hand, separation or disaggregation means the degree to which an organisation is institutionally separated from the parent body, and on the other hand, autonomisation entails discretion and autonomy in decision-making[40]. However, to be complete, a third dimension to the notion of independence should be added: its separation and autonomy from Member States and from companies which 'benefit' from its services.

Firstly, regarding the European Commission, the level of independence of the EMA appears almost non existent. Two members of the EMA's management board are representatives of the European Commission. According to the Committee considered, the European Commission can be represented (for instance, it is the case at the COMP), or it participates in the nomination of representatives of patients associations and health professionals. In any cases, representatives of the European Commission may attend all meetings of the EMA's Committees, their working parties and their scientific advisory groups. The influence of the European Commission shall not be underestimated as long as it plays an important role regarding the financial contribution of the EU to the EMA. For instance, it enters what deems necessary in the estimate of revenue and expenditure of the EMA for the following year established by the Management Board. Then it forwards it to the budgetary authority, i.e. the European Parliament and the Council for adoption. Thus, when the representatives of the European Commission give a warning on a particular scheme they do not want to give money for, it is often not pursued[41]. On the other hand, the EMA does not have real discretion and autonomy in decision-making, in so far as, for instance, when granting marketing authorisation, the EMA's Committees only provide opinions and the final decision is adopted by the European Commission. However, it seems that opinions of the EMA are most of the time supported by the European Commission. Therefore, what is the real value of the lack of EMA's legal autonomy for decision-making if it has it in practice?

Secondly, regarding the European Parliament and the Council, as budgetary authority, they have a direct influence on the actions to be undertaken by the EMA when adopting its establishment plan and authorising appropriations for the subsidy to the EMA. Moreover, two representatives of the European Parliament are members of the Management Board. The European Parliament

40 Pollitt C. et al., 2004, "Agencies. How governments do things through semi-autonomous organizations", pp. 34-38, Palgrave Macmillan.

41 Cf. Supra.

is also consulted by the European Commission when appointed members of the PDCO and the CAT who represent healthcare professionals and patients associations.

Thirdly, Member States are very well represented at the EMA. Representatives and alternates of each Member State are members of the Management Board and of the six EMA's Committees[42].

Fourthly, the EMA's link with pharmaceutical industries is particular as the EMA's revenue also consists of fees paid for undertaking the services it provides. It represents more than 70% of the EMA's revenue[43]. Can we really consider that the EMA is independent from these companies? Furthermore, especially when there are only few competent experts in a specific area, the evaluated industry, the external expert and the members of the EMA's Committee often know each other. Thus, the question of the degree of impartiality around a procedure can be raised. The conflicts of interest are envisaged at the EMA through declarations and specific procedures within each committee. However, the links and influences of the pharmaceuticals industries on EMA's experts is a much more complex issue. If the numerous exchanges between pharmaceuticals industries and EMA's experts are always a source of influence risks, they could also contribute to the adoption of opinions which further guarantee the protection of human health[44].

CONCLUSION

Even though the EMA is commonly recognised as a European Public Health Agency, its way of implementing principles of public health and principles of European governance make it a particular Agency. While its efforts concerning the respect of principles of assessment and transparency and its continuous improvements are widely appreciated, its implementation of precaution and independence has to be considered in a particular context. On the one hand, precaution is a Commission's prerogative. On the other hand,

42 Urfalino P. et Hauray B., 2007, "Expertise scientifique et intérêts nationaux. L'évaluation européenne des médicaments 1965-2000", Annales. Histoire, Sciences Sociales 2007/2, 62e année, p. 273-298.

43 European Commission, 2010, Evaluation of the European Medicines Agency, Final Report, Evaluation conducted by Ernst & Young et Associés.

44 Greene J., 2007, "Prescribing By Numbers: Drugs and the Definition of Disease", Baltimore, Johns Hopkins University Press.

the EMA could not be considered as an independent agency. Regarding the European Institutions and Member States, the dependence of the EMA relies on a governance choice. However, concerning European pharmaceutical companies, the EMA should be independent. The assessment of the real degree of autonomy of the EMA concerning European pharmaceutical undertakings requires further studies.

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