



EUROPEAN COMMISSION

## COMMISSION ASSESSMENT\*

### **of 27 offers submitted by Member States under the procedure leading up to a decision on the relocation of the European Medicines Agency and the European Banking Authority in the context of the United Kingdom's withdrawal from the Union**

#### **BACKGROUND**

In the margins of the European Council (Art. 50) held on 22 June 2017, the Heads of State or Government of 27 Member States endorsed the Procedure leading up to a decision on the relocation of the European Medicines Authority and the European Banking Authority in the context of the United Kingdom's withdrawal from the Union, as set out in document XT 21045/17 ('the procedural note') on the basis of a proposal from the President of the European Council and the President of the European Commission.

According to point 2 of the procedural note '*[a]ll interested Member States have the opportunity to submit their offer to host one or both of the Agencies by 31 July 2017 at the latest. [...] The Commission will examine the Member State offers that have been received within the deadline and provide an **assessment** of these on the basis of the stipulated unweighted criteria. The assessment serves the purpose of informing the decision-making process.*'

Furthermore, under point 5 of the procedural note, '*[t]he Commission will carry out an examination of all the offers received within the deadline on the basis of the six objective criteria mentioned under point 3 as well as the specific issues set out under point 4. The Commission will consult the Agencies regarding technical requirements. For each Agency, the Commission will analyse the extent to which each offer meets the criteria and how it addresses the stipulated specific issues. By 30 September 2017 at the latest, the Commission will submit its assessment of the offers to the Secretary-General of the Council for distribution to the Member States and will also make it publically available.*'

The six criteria and six specific issues as defined in the procedural note are set out in Attachment A.

\* Prepared by the Secretary-General of the Commission on the basis of the offers submitted by the Member States.

## **THE OFFERS RECEIVED**

By the expiry of the 31 July 2017 deadline, 27 offers had been received by the Council and the Commission. Eight of these concerned the European Banking Authority and 19 concerned the European Medicines Agency. The Council issued a full list of the offers in document XT 21050/17, and all the offers were published on the Council website.

16 of the offers contained information which the submitting Member States considered to be confidential. These offers were published in a non-confidential version.

## **CONSULTATION OF THE AGENCIES**

With reference to point 5 of the procedural note, the Commission consulted the respective Agencies by letters of 22 August 2017, asking them to provide by 8 September 2017:

(i) their technical comments on whether the proposed building(s) with layout and facilities in the Agencies' view meet the technical requirements set out in the factsheets annexed to the procedural note; and

(ii) their technical comments on each of the relocation plans set out in the offers as regards the proposed time frames and modalities for planning tasks, any necessary adaptation works to the premises and the physical removal of the Agency to the proposed new premises, having regard to the need to ensure that the Agency remains operational.

Following the consent from the Member States concerned, all information identified as confidential by the Member States and relevant for the consultation of the Agencies was made available to the Agencies which explicitly committed to respect the confidentiality of the information and use it only for the reply to the consultation.

Both Agencies submitted their technical comments to the Commission on 8 September 2017 and further clarifications and corrections on 14 September 2017<sup>1</sup>. The Commission has taken note of the information provided by the Agencies for the purposes of its assessment of the technical requirements.

## **THE ASSESSMENT DOCUMENTS**

The Commission's assessment consists of:

1. **the present note;**
2. **27 individual assessment summaries**, one for each offer, containing the general assessment of the six criteria and the six specific issues;
3. **a general assessment summary for each of the two Agencies** containing the general assessments from the assessment grids on the six criteria and the six specific issues that allows comparisons to be made more easily; and

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<sup>1</sup> The Agencies' contributions are provided separately for information and do not form part of the Commission's assessment.

4. **27 complete assessment grids**, one for each individual offer, based on the criteria and specific issues set out in the procedural note and the factsheets annexed to the latter. Explanations for the reading of the grids are provided in Attachment B to this note.

### *Methodology*

The Commission has examined all the (27) offers received within the deadline on the basis of the information provided by the Member States in their offer documents for the Agency concerned as submitted by the deadline. Due to the limited time available and in order to treat all offers fairly, the Commission has decided for its examination to rely solely on the offers as presented by the Member States. The Commission has not asked Member States to clarify or complete their offers in order to put all of them on the same footing. Furthermore, for Member States having submitted offers for both Agencies, the Commission has only taken into account information provided in each individual offer.

For its assessment, the Commission has relied on the accuracy and completeness of the offers and has therefore not undertaken any steps to verify the information provided in the offer. The Commission services have not made any inspections on the spot or taken other action, for instance to verify the existence of buildings or building projects, the availability of transport connections or education and healthcare facilities. The Member States whose offers are finally accepted, will have to honour their offers in their entirety.

For the majority of the matters concerned, the extent to which each offer meets the criteria and how it addresses the stipulated specific issues cannot be answered with a simple ‘yes’ or ‘no’, nor can it be expressed in any other comparable qualitative and/or quantitative format. Therefore, the Commission has found it appropriate to express its assessment in a short descriptive text for each criterion and for each specific issue.

In order for the Member States to compare the offers, which is one of the purposes of the Commission’s assessment, general assessment summaries are provided, setting out the Commission’s general conclusions for each Agency across the offers.

It is apparent from the assessment grids and the assessment summaries that the offers provide varying levels of information about the different criteria and specific issues. As a consequence, the extent to which the offers can be ascertained to meet the criteria and address the specific issues, judged on the basis of the information provided, differs. In accordance with its mandate, the Commission is however not providing any ranking or shortlisting of offers, and the assessment is based on the Member States’ decision that the criteria should be unweighted.

### *Terminology*

In order to ensure an equal and coherent treatment of the offers, the Commission has applied a specific terminology in the assessment. Furthermore, where the wording of the procedural note has left room for interpretation as regards criteria and specific issues, the Commission has on specific points interpreted the note in order to be able to assess the offers consistently (see the explanations set out in Attachment B to this note).

As regards general terminology, the Commission has summarised what the offer ‘*indicates*’ or ‘*provides information*’ on. The word ‘*availability*’ is generally used where the offer indicates that certain facilities or services are or will be available. Where a

distinction between what exists and what is available is relevant, e.g. in relation to schools and school places, the words ‘*existence*’ and ‘*availability*’ are used. Where an offer makes statements that in the Commission’s view must be considered to be arguments rather than facts, the phrase ‘*the offer argues*’ is used.

### *Confidentiality*

Considering some Member States’ request to treat some information as confidential, the Member States were asked to object by 13 September 2017, if they did not wish the identified information to be shared with the other Member States. None of the Member States concerned have objected to such information being shared with the other Member States,<sup>2</sup> and hence the Commission assessment includes such information, in particular in relation to proposed premises, the financial terms for the use of these and benefits offered. Those of the documents mentioned above under 2) to 4) of the Commission’s assessment, which contain information that the Member States consider to be confidential, are submitted in a version which should be handled as **confidential** as well as in a version of the same document from which information identified as confidential by the Member State has been taken out in view of its publication.

### COMMISSION COMMENTS

Having regard to the comments from the Agencies received during the assessment phase in reply to specific Commission questions and on the basis of its examination of the offers, the Commission finds it useful to make the following additional comments.

The first four criteria set out in the procedural note are those which were identified in the Joint Statement and Common Approach of the European Parliament, the Council of the EU and the European Commission on Decentralised Agencies<sup>3</sup> in relation to all decentralised agencies. However, as the relocation of the two existing Agencies is a particular case, the procedural note has also determined that business continuity is a fifth criterion. In addition, a sixth criterion on the geographical spread has been agreed.<sup>4</sup>

The Commission notes that the need for **business continuity** concerns the ability for the Agencies to operate during the transition and immediately after relocation as well as in the longer term. Due to the particular relocation context, the Commission however finds it relevant to point out the elements that are essential for ensuring business continuity during the relocation phase and in the immediate term. If the Member States wish to ensure that the Agencies remain operational throughout the process, the following elements should be taken particularly into account in their decision on the new locations:

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<sup>2</sup> France and the Netherlands have however requested that some information submitted in the offer should be altered (reduced) for the purposes of sharing of the relevant information with the other Member States. The Commission has adapted its assessment documents according to these requests.

<sup>3</sup> [https://europa.eu/european-union/sites/europa.eu/files/docs/body/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](https://europa.eu/european-union/sites/europa.eu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf)

<sup>4</sup> The criterion relates to the agreed desirability of geographical spread of the agencies’ seats, and to the objective set in December 2003 by the representatives of the Member States, meeting at Head of State or Government level and confirmed in 2008.

- 1) **The availability of appropriate premises** will in the Commission's view be one of the key elements for ensuring business continuity in the transitional period. This covers two aspects:
  - a. **The proposed new premises should fulfil the Agencies' requirements**, both as regards lay-out and facilities in conformity with the specifications in the factsheets annexed to the procedural note, and hence allow the Agencies to continue their operations, including their extensive meetings activities.
  - b. **The proposed new premises should be ready in time** to ensure that relocation has been completed in due time before the date of the withdrawal of the United Kingdom from the Union. Most premises, whether new or already existing, would require adaptation or refurbishment to meet the Agencies' requirements, and it is therefore essential that such works are completed in time to allow for the physical removal from London and installation in the new premises. It should also be noted that a solution with removal to temporary premises may be less desirable than direct relocation to permanent premises, due to possible extra work and other inconveniences such as a succession of moves for the whole staff in a relatively short period of time (first move from London to the temporary premises followed by a move from the temporary premises to the definitive premises).
- 2) **The possibility for the Agencies to maintain the current staff** is also essential for business continuity and will in the Commission's view depend on many different factors. Apart from the general attractiveness of the location, the availability of education facilities and job opportunities for children and spouses of the Agencies' staff are likely to play important roles. The Commission also notes that personalised support that the Member States would provide to the Agencies' staff for the relocation should be regarded as a significant facilitating measure. In case that not all current staff members wish to relocate, **the ability to attract new staff** is also important. The presence of people with the relevant expertise in the area around the location will be an advantage, but it should be noted that recruitment in principle is possible from all over Europe.
- 3) **The accessibility of the Agencies' new seats** will from the outset be of great importance for the continued functioning of the Agencies, given the very significant number of meetings held with experts coming from across Europe and abroad. In light of experience from other agencies where accessibility issues have caused practical difficulties as well as additional costs, the Commission advises not to overlook the importance of the availability of direct flights from and to EU capitals and the connections from airports to the location.
- 4) In addition to the factors mentioned above, it will be crucial to have an **appropriate organisation of the relocation process** in place. The Commission sees two key elements as necessary for a smooth relocation process:
  - a) **A comprehensive and realistic relocation plan** which covers the adaptation of the building, the physical removal and the installation with all facilities in the new premises and which sets out the time frames and schedules the relevant steps in this process to be completed by the withdrawal date at the very latest; and

- b) **a relocation and business continuity support/governance structure** to organise and supervise the process in collaboration with the Agencies, for instance by the Member States concerned setting up a dedicated task force or similar other support function to assist an support the Agencies.

In addition to these aspects regarding business continuity, the Commission also highlights **the financial conditions attached to the offers** and points out the budgetary implications of the decisions to be taken on the Agencies' new locations. The following budgetary aspects should be in particularly considered as set out under specific issues c) to f):

- 1) The **rental or leasing costs of the proposed premises** as indicated in the offers as well as the additional costs related, for example, maintenance, car parking, upgrading and service charges, vary significantly.
- 2) Several **Member States offer to pay the rent for a shorter or longer time** or even indefinitely, with some also offering to pay fit-out costs for the new premises. Such coverage by the Member State may represent considerable savings for the Union budget.
- 3) A number of Member States offer other **special conditions in relation to operational costs, including maintenance, or other benefits**, such as payment of removal costs or VAT deductibility of costs, which may also represent a certain budgetary advantage.

**Criteria and specific issues as set out in the procedural note (Council document XT 21045/17)**

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**

This criterion concerns in particular the availability of appropriate office premises in time for the Agency to be able to take up its functions at the new location at the withdrawal date. This should include the necessary logistics and sufficient space for offices, meeting rooms and off-site archiving, high-performing telecommunication and data storage networks as well as appropriate physical and IT security standards.

**2) The accessibility of the location**

This criterion concerns the availability, frequency and duration of flight connections from the capitals of all EU Member States to the airports close to the location, the availability, frequency and duration of public transportation connections from these airports to the location, as well as the quality and quantity of accommodation facilities. In particular, the criterion implies the capacity to allow for the continuation of the volume and intensity of current meeting activities of the Agency.

**3) The existence of adequate education facilities for the children of agency staff**

This criterion concerns the availability of multi-lingual, European-oriented schooling that can meet the needs for education facilities for the children of the current staff as well as the capacity to meet also the future education needs.

**4) Appropriate access to the labour market, social security and medical care for both children and spouses**

This criterion concerns the capacity to meet the needs of the children and spouses of the current as well as of future staff for social security and medical care as well as the availability to offer job opportunities for these.

**5) Business continuity**

This criterion is relevant given the critical nature of the services provided by the Agencies and the need therefore to ensure continued functionality at the existing high level. The criterion relates to the timeframe required to fulfil the four criteria above. It concerns amongst other things the ability to allow the Agencies to maintain and attract highly qualified staff from the relevant sectors, notably in case not all current staff should choose to relocate. Furthermore, it concerns the capacity to ensure a smooth transition to the new locations and hence to guarantee the business continuity of the Agencies which should remain operational during the transition.

**6) Geographical spread**

This criterion relates to the agreed desirability of geographical spread of the agencies' seats, and to the objective set in December 2003 by the representatives of the Member States, meeting at Head of State or Government level and confirmed in 2008.”

## Specific issues

- “a) **The Member State’s plan for when and how the relocation should take place** and how this plan would ensure that the Agency remains operational;
- b) **The premises that would be offered to be rented or put at the disposal of the Agency and how these premises would meet the specific needs of the Agency** as indicated in the factsheet;<sup>3</sup>
- c) **The financial terms for the Agency’s use of these premises**, specifying in particular if the Member State would pay the rent for a given period of time or indefinitely;
- d) **The terms concerning maintenance of the building including upgrading and future extensions if needed;**
- e) **Any special conditions offered with regard to all costs and dedicated infrastructures;** and
- f) **Any benefits that would be granted to the Agency and/or its staff** in addition to those following from Protocol No 7 on the privileges and immunities of the European Union.”

<sup>3</sup> *If the offered permanent premises will not be available in time for the Agency to take up its functions at the new location on the date of the United Kingdom’s withdrawal, the offer should specify which temporary premises are offered and on which terms, when and how the further transition to the final premises would be ensured and who will pay the costs of the additional removal.*



## THE ASSESSMENT GRIDS

### *General comments*

The assessment grids, which are specific for the European Banking Authority and the European Medicines Agency respectively, are divided into three columns and a significant number of rows.

The first column ‘**Criterion/Specific issue**’ sets out the criteria, complemented with information from the factsheet about the Agency and the specific requirements under each criterion. Likewise, the specific issues are listed and, where relevant, divided into sub-elements. For each criterion, there is a row ‘Other’ with additional information on the topic provided in the offer. After each criterion and where a specific issue has sub-elements, a general conclusion for the criterion/specific issue is provided.

The second column ‘**Information provided in the offer**’ includes for each element or sub-element quotes in *italics* from the offer. Summaries of tables and illustrations are provided in plain text. For both, a page reference is provided. Duplications of quotes are avoided by the provision of references to other points, except where it seems useful for the understanding of the reader that a specific quote is repeated in another context. If a quote covers more sub-elements it may be provided at the level of the main element rather than the sub-element (e.g. general information about meeting rooms is quoted at point 1.1.2 and not repeated under the different sizes of meeting rooms, and general description of education facilities may be provided under 3.1 and a reference to this point is provided under the different levels of education).

The third column ‘**Commission assessment**’ includes the Commission’s description of what it considers to be relevant information in the offer under a particular point. If there are sub-elements the Commission’s comments are normally provided at that level. For each criterion and specific issue with sub-elements, the column contains the Commission’s general assessment of the criterion or specific issue concerned. This general assessment only includes additional information (from the rows ‘Other’) to the extent that the Commission finds it relevant having regard to the definition of the criterion. Some arguments of the Member States, in particular those set out under point 5.4, have been included, but without the Commission taking a position on their foundedness.

### *Specific comments to the criteria and specific issues*

#### **Criterion 1:**

Where several building options are proposed, the different options are indicated under point 1.1. In the sub-points, in order to avoid unnecessary repetitions, the different buildings are referred to as 1), 2), 3) etc.

#### **Criterion 2:**

‘*Flight connections*’: The text of the criterion refers to flight connections to other EU capitals. In the Commission’s view, this relates to direct flights as it should always be possible to find connecting flights to EU capitals. The Commission comments therefore concern direct flights, unless something else is specified. Given the forward-looking nature of the relocation issue, flights to London have not been taken into account.

*‘Public transportation connections from these airports to the location’*: Some offers only provide the information about public transportation connections to the city centre, some with indication elsewhere in the offer of the proximity of the location to the centre. The Commission has sought to reflect the entire information in its comments.

*‘Quality of accommodation facilities’*: As no range is indicated in the procedural note, the Commission comments reflect the wording of the offer without any attempt to harmonise the terminology.

**Criterion 3:**

*‘Multi-lingual, European-oriented schooling’*: The procedural note does not define what this notion covers. The Commission comments therefore concern the linguistic offer in European languages. For third level education/ universities specifically, given possible access requirements and the multitude of possible studies, the Commission does not comment on the number of available places.

**Criterion 4:**

*‘Access to social security and medical care’*: Even though there is a certain overlap between these two elements, given that medical care is normally part of the social security system, the Commission has commented on the two separately. It should also be noted that EU rules on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States apply to spouses and children of EMA staff.

**Criterion 5:**

*‘Timeframe required to fulfil the four criteria’ above’*: Given that on this point, most of the offers only refer to the availability of the building and the relocation, the Commission has abstained from commenting on whether information has been provided on the time frames for the other criteria.

**Criterion 6:**

*‘Geographical spread’*: Relevant quotes from the offer are provided, and the Commission comment is a factual statement on the EU decentralised agencies, if any, hosted by the Member State in question.

**Specific issue a), b), d), f)**: No comment.

**Specific issue c)** (*Financial terms for the Agency’s use of these premises*):

Where information is provided on fit-out costs, they are indicated under this point in addition to information on rent and charges.

**Specific issue e)** (*Any special conditions offered with regard to all costs and dedicated infrastructures*):

In order to avoid overlap with specific issue c) only special conditions other than offered rent, charges and fit-out costs are indicated under this point.

Please note that due to certain common features, there may be certain overlaps between criterion 1 and specific issue b) as well as between criterion 5 and specific issue a).

Outside the main part, the grid contains a row on the signing of a headquarters agreement as well as a selection of other quotes which do not directly concern any of the criteria, but may be considered relevant by the Member States in relation to the offer.