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REPORT

on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013
(2014/2113(DEC))

Committee on Budgetary Control

Rapporteur: Ryszard Czarnecki

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1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013
(2014/2113(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013,
- having regard to the Court of Auditors' report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013, together with the Agency's replies¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2013, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 17 February 2015 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2013 (05304/2015 – C8-0054/2015),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002⁴, and in particular Article 208 thereof,
- having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union⁵, and in particular Article 30 thereof,

¹ OJ C 442, 10.12.2014, p. 308.

² OJ C 442, 10.12.2014, p. 308.

³ OJ L 248, 16.9.2002, p. 1.

⁴ OJ L 298, 26.10.2012, p. 1.

⁵ OJ L 349, 25.11.2004, p. 1.

- having regard to 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 Communities¹,
 - having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council², and in particular Article 108 thereof,
 - having regard to Rule 94 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0094/2015),
1. Grants the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union discharge in respect of the implementation of the Agency's budget for the financial year 2013;
 2. Sets out its observations in the resolution below;
 3. Instructs its President to forward this decision, and the resolution forming an integral part of it, to the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

¹ OJ L 357, 31.12.2002, p. 72.

² OJ L 328, 7.12.2013, p. 42.

2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the closure of the accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013
(2014/2113(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013,
- having regard to the Court of Auditors' report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013, together with the Agency's replies¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2013, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 17 February 2015 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2013 (05304/2015 – C8-0054/2015),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002⁴, and in particular Article 208 thereof,
- having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union⁵, and in particular Article 30 thereof,

¹ OJ C 442, 10.12.2014, p. 308.

² OJ C 442, 10.12.2014, p. 308.

³ OJ L 248, 16.9.2002, p. 1.

⁴ OJ L 298, 26.10.2012, p. 1.

⁵ OJ L 349, 25.11.2004, p. 1.

- having regard to 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 Communities¹,
 - having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council², and in particular Article 108 thereof,
 - having regard to Rule 94 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0094/2015),
1. Notes that the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union are as annexed to the Court of Auditors' report;
 2. Approves the closure of the accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013;
 3. Instructs its President to forward this decision to the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the *Official Journal of the European Union* (L series).

¹ OJ L 357, 31.12.2002, p. 72.

² OJ L 328, 7.12.2013, p. 42.

3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013 (2014/2113(DEC))

The European Parliament,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013,
- having regard to Rule 94 of and Annex V to its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0094/2015),
- A. whereas, according to its financial statements, the final budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (“the Agency”) for the financial year 2013 was EUR 93 950 000, representing an increase of 4,88 % compared to 2012,
- B. whereas, according to its financial statements, the overall contribution of the Union to the Agency's budget for 2013 amounted to EUR 85 500 000, representing an increase of 1,79 % compared to 2012,
- C. whereas the Court of Auditors, in its report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013 (“the Court’s report”), has stated that it has obtained reasonable assurances that the Agency's annual accounts are reliable but could not obtain sufficient appropriate audit evidence on the legality and regularity of the underlying transactions,

Follow-up of 2012 discharge

1. Notes from the Court’s report regarding four comments made in the Court's 2011 report and marked as "Ongoing" in the Court's 2012 report, that corrective actions were taken and one comment is now marked in the Court's 2013 report as “Completed” while three are still marked as “Ongoing”; notes furthermore that regarding the six comments made in the Court’s 2012 report, three corrective actions were taken and three comments are now marked as “Completed” while three as "Ongoing";
2. Acknowledges from the Agency that:
 - several measures were put in place to manage and prevent situations of conflicts of interests including the development of a detailed disciplinary procedure; calls on the Agency to inform the discharge authority on whether or

not a specific policy for the prevention and management of conflicts of interests based on the Commission's guidelines will be adopted;

- the results and impact of the Agency's work on Union citizens is made publicly available on the Agency's website, mainly through its annual report and through contacts with the media and civil society organisations;
- the recruitment procedures examined showed significant shortcomings affecting transparency and the equal treatment of candidates; welcomes the fact that the Agency has implemented procedures aiming to reduce the mentioned shortcomings;

Basis for a qualified opinion on the legality and regularity of the underlying transactions

3. Regrets that for two consecutive years, the Court found no reasonable assurances as to the legality and regularity of the Agency's transactions; notes that in order to verify the expenditure claimed by the cooperating countries, the Agency performed the reasonableness checks prior to payment for joint return operations and joint land/sea/air operations; expresses its deep concern that for the grant agreements signed before June 2013, the Agency did not usually request documentation supporting the cooperating countries' entitlements; stresses the need for the effective analysis of the use of Union funds in joint land/sea/air operations;
4. Notes that the majority of 2013 transactions resulted from grant agreements signed before June 2013; notes furthermore that 2013 grant transactions were not subject to ex post controls as only the grants relating to transactions from previous years are subject to such controls;
5. Notes with concern that due to a lack of sufficient and appropriate evidence on the effectiveness of ex ante and ex post verifications in the 2013 grant transactions, the Court found insufficient insurance as to the legality and regularity of the 2013 grant transactions related to joint land/sea/air operations;
6. Welcomes the introduction of a reinforced and more comprehensive system of ex ante verifications which was introduced for grant agreements signed after June 2013 as acknowledged by the Court; notes furthermore from the Agency that the statistical sample used by the Court in its 2013 audit did not include transactions falling under the reinforced ex ante control system; calls on the Agency to provide the discharge authority with a report on ex post verifications undertaken under the improved verification system and with a detailed analysis of the system's improvements;

Qualified opinion on the legality and the regularity of the underlying transactions

7. Notes that according to the Court, except for the matters described above, the transactions underlying the annual accounts for the year 2013 are legal and regular in all material respects;

Comments on the reliability of accounts

8. Expresses concern that according to the Court's report, the suppliers' statements at year-end were reconciled with considerable difficulty; points out the need to monitoring supplier balances more regularly and to analyse differences in a timelier manner;
9. Takes note from the Agency, however, that the reconciliation process is a lengthy and time consuming exercise, requiring cooperation and accounting information systems on both sides; acknowledges, furthermore, that most of the public entities which cooperate with the Agency have neither centralised accounting systems nor implement accrual based accounting; acknowledges that the Agency launched an additional reconciliation exercise in 2014 in order to improve the quality of the reconciliation;

Prevention and management of conflict of interests

10. Regrets that the Agency did not adopt a clear, comprehensive and objective policy for the prevention and management of conflicts of interests; acknowledges that even though the Agency has not yet signed the headquarters agreement, this does not prevent it from adopting internal laws, codes and guidelines that state the necessary definitions, principles and essential requirements for a policy on conflicts of interests; urges the Agency, in addition, to take concrete steps in order to resolve and manage cases concerning conflicts of interests; calls upon the Agency to adopt the abovementioned measures until the end of September 2015 and to inform the discharge authority about the concrete outcome of the conflict of interests policy;
11. Acknowledges that the Agency is operational since 2005 and has still not published any CVs and declarations of interests of the Management Board, staff and experts; stresses the need for the publication of the abovementioned documents that would enable the identification and disclosure of private interests, which could potentially conflict with the duties of the officials;
12. Urges the Agency to proceed with a rapid, complete and in-depth disclosure of CVs and declarations of interests until the end of September 2015;
13. Calls upon the Agency to adopt comprehensive policies for the management of situations concerning conflicts of interests such as: the divestment of the interest by the public official, recusal of the public official from involvement in an affected decision-making process, restriction of access by the affected public official to particular information, re-arrangement of the public official's duties or resignation of the public official from their office;

Budget and financial management

14. Notes that budget monitoring efforts during the financial year 2013 resulted in a budget implementation rate of 97,75 %, and that the payment appropriations execution rate was 63,98 %;

Commitments and carry-overs

15. Is concerned that EUR 32 million, or 35 % of committed appropriations in 2013, were carried over to 2014; acknowledges from the Court's report that the multiannual nature of the Agency's operations and the heightened risk of unexpected events represent a particular challenge in respect of annual budget planning and implementation and that late amending budgets remain beyond the Agency's control; points out, however, that there is still scope to improve budget monitoring in order to help reduce the level of carry-overs; asks the Agency to take swift actions aimed at improving control over the financing of its operational multiannual activities;
16. Takes note that the carry-overs include global commitments of EUR 5 200 000, which is the leftover balance of an additional subsidy of EUR 8 200 000; notes that the subsidy was made available by the budgetary authorities towards the end of 2013 to deal with unexpected and urgent operational needs; observes that the Agency's financial regulation does not provide a clear basis for such carry-overs although the global commitment was made to cover the related operations in 2014; regrets that the Agency's Financial Regulation, which follows the revised Framework Financial Regulation, remains vague in this matter, even after its revision in 2013;

Transfers

17. Notes from the Court's report that 20 budgetary transfers amounting to EUR 12 200 000 were made in 2013; acknowledges that this is partly due to the fact that funds needed for operations had been transferred from other budget lines until additional subsidies were made available; acknowledges furthermore that the Agency reduced the number of transfers compared to 2012 by 30 % and will continue its efforts; observes that the operational needs will continue to steer the allocation of appropriations to the budget lines most in need;

Internal audit

18. Takes note that the Commission's Internal Audit Service (IAS) did not carry out any new audit engagement in the Agency in 2013; notes furthermore that the IAS followed up the status of implementation of the accepted recommendations from the IAS Audits on "Grant Management" and "Operational planning based on internal and external stakeholders input"; acknowledges that the IAS concluded that out of the five recommendations reported as ready for review, four are adequately implemented and one "Very Important" recommendation stemming from the audit on "Grant Management" (2009) is downgraded to "Important";

Other comments

19. Notes that although the Agency became operational as early as in 2005 to present it has only worked on the basis of correspondence and exchanges with the host Member State rather than a comprehensive headquarters agreement between the Agency and the host Member State, which has never been signed; agrees therefore with the Court that such

an agreement would further promote transparency in respect of the conditions under which the Agency and its staff operate; asks the authorities to remedy the situation and asks the Agency to include in its next annual report the implications of the missing agreement;

20. Acknowledges from the Agency that its repeated requests to the authorities of its host Member State were unsuccessful and that the entry into force of Regulation (EU) No 1168/2011 of the European Parliament and of the Council¹ in December 2011 did not change the situation; notes from the Agency that the authorities of the host Member State recently expressed willingness to start negotiations and that exchanges are under way; calls on the Agency to provide the discharge authority with an update on the state of play of the negotiations;

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21. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of ... 2015² on the performance, financial management and control of the agencies.

¹ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 304, 22.11.2011, p. 1).

² Texts adopted of that date, P8_TA-PROV(2015)0000.

6.2.2015

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Budgetary Control

on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) for the financial year 2013
(2014/2113(DEC))

Rapporteur: Sylvie Guillaume

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes the Court of Auditors' conclusions that the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) present fairly, in all material respects, its financial position as at 31 December 2013 and the results of its operations and its cash flows for the year then ended, and that, setting aside the problems concerning the 2013 grant agreements in the area of joint land/sea/air operations, the transactions underlying the annual accounts of Frontex for the financial year 2013 are legal and regular in all material respects;
2. Notes the Court of Auditors' opinion that there is insufficient assurance of the legality and regularity of grant transactions in the area of joint land/sea/air operations, but that, unlike in 2012, the impact was confined to certain areas; applauds, therefore, in that connection, the introduction by Frontex as from June 2013 of a more comprehensive system of ex ante verifications for grant agreements;
3. Takes note of the Court of Auditors' observation that none of the 2013 grant transactions was subject to ex post control;
4. Stresses the need for the effective analysis of the use of Union funds in joint land/sea/air operations;

5. Emphasises that, although the multiannual nature of Frontex operations and the greater likelihood that unforeseen events will occur make the planning and implementation of the annual budget that much more difficult, budgetary control can still be improved, in order to reduce the carryover rate;
6. Notes the Court of Auditors' comments that a comprehensive seat agreement with the host Member State would serve to make the conditions under which Frontex and its staff operate more transparent; notes Frontex's reply that talks are under way with the Polish authorities and that the follow-up and corrective measures required in that connection fall largely outside its remit;
7. Considers, in general, that Frontex should pay greater attention to the principle of sound financial management in respect of the budgetary principle of annuality, i.e. to using appropriations economically, efficiently and effectively in carrying out its remit.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.2.2015
Result of final vote	+: 46 -: 7 0: 2
Members present for the final vote	Martina Anderson, Heinz K. Becker, Bodil Ceballos, Caterina Chinnici, Ignazio Corrao, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Laura Ferrara, Monika Flašíková Beňová, Lorenzo Fontana, Mariya Gabriel, Nathalie Griesbeck, Sylvie Guillaume, Monika Hohlmeier, Brice Hortefeux, Filiz Hyusmenova, Sophia in 't Veld, Eva Joly, Sylvia-Yvonne Kaufmann, Timothy Kirkhope, Barbara Kudrycka, Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Vicky Maeijer, Claude Moraes, József Nagy, Soraya Post, Judith Sargentini, Birgit Sippel, Csaba Sógor, Traian Ungureanu, Marie-Christine Vergiat, Harald Vilimsky, Cecilia Wikström, Kristina Winberg, Tomáš Zdechovský
Substitutes present for the final vote	Hugues Bayet, Andrea Bocskor, Pál Csáky, Daniel Dalton, Dennis de Jong, Petra Kammerevert, Ska Keller, Andrejs Mamikins, Maite Pagazaurtundúa Ruiz, Christine Revault D'Allonnes Bonnefoy, Jaromír Štětina, Kazimierz Michał Ujazdowski, Axel Voss
Substitute(s) under Rule 200(2) present for the final vote	Eugen Freund, Elisabetta Gardini, Charles Tannock

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	23.3.2015
Result of final vote	+: 20 -: 9 0: 0
Members present for the final vote	Nedzhmi Ali, Inés Ayala Sender, Ryszard Czarnecki, Dennis de Jong, Tamás Deutsch, Martina Dlabajová, Ingeborg Gräßle, Rina Ronja Kari, Bernd Kölmel, Bogusław Liberadzki, Verónica Lope Fontagné, Monica Macovei, Dan Nica, Georgi Pirinski, Petri Sarvamaa, Claudia Schmidt, Igor Šoltes, Bart Staes, Michael Theurer, Marco Valli, Derek Vaughan, Anders Primdahl Vistisen, Joachim Zeller
Substitutes present for the final vote	Caterina Chinnici, Iris Hoffmann, Monika Hohlmeier, Andrey Novakov, Julia Pitera, Miroslav Poche
Substitutes under Rule 200(2) present for the final vote	Laura Ferrara