



Plenary sitting

A8-0105/2017

29.3.2017

REPORT

on discharge in respect of the implementation of the budget of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015 (2016/2193(DEC))

Committee on Budgetary Control

Rapporteur: Inés Ayala Sender

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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 Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015
(2016/2193(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015,
- having regard to the Court of Auditors' report on the annual accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015, together with the Agency's reply¹,
- 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 2015, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 21 February 2017 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2015 (05873/2017 – C8-0079/2017),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- 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 1605/2002³, and in particular Article 208 thereof,
- having regard to Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice⁴, in particular Article 33 thereof,
- 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 Council⁵, and in particular Article 108 thereof,

¹ OJ C 449, 1.12.2016, p. 173.

² OJ C 449, 1.12.2016, p. 173.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 286, 1.11.2011.

⁵ OJ L 328, 7.12.2013, p. 42.

- having regard to Rule 94 of and Annex IV 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 (A8-0105/2017),
1. Grants the Executive Director of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice discharge in respect of the implementation of the Agency's budget for the financial year 2015;
 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 Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice, 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).

2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the closure of the accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015
(2016/2193(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015,
- having regard to the Court of Auditors' report on the annual accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015, together with the Agency's reply¹,
- 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 2015, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 21 February 2017 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2015 (05873/2017 – C8-0079/2017),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- 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 1605/2002³, and in particular Article 208 thereof,
- having regard to Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice⁴, in particular Article 33 thereof,
- 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 Council⁵, and in particular Article 108 thereof,

¹ OJ C 449, 1.12.2016, p. 173.

² OJ C 449, 1.12.2016, p. 173.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 286, 1.11.2011.

⁵ OJ L 328, 7.12.2013, p. 42.

- having regard to Rule 94 of and Annex IV 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 (A8-0105/2017),
1. Approves the closure of the accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015;
 2. Instructs its President to forward this decision to the Executive Director of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice, 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).

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 Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015
(2016/2193(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 Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015,
 - having regard to Rule 94 of and Annex IV 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 (A8-0105/2017),
- A. whereas, according to its financial statements, the final budget of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (“the Agency”) for the financial year 2015 was EUR 67 559 100, representing an increase of 13,77 % compared to the year 2014; whereas the entire budget of the Agency derives from the Union budget,
- B. whereas the Court of Auditors (“the Court”), in its report on the annual accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom for the financial year 2015 (“the Court’s report”), has stated that it has obtained reasonable assurances that the annual accounts of the Agency are reliable and that the underlying transactions are legal and regular,
- C. whereas in the context of the discharge procedure, the discharge authority stresses the special importance of further strengthening the democratic legitimacy of the institutions of the Union by improving transparency and accountability, implementing the concept of performance based budgeting and good governance of human resources,

Comments on the legality and regularity of transactions

1. Notes that, according to the Court’s report, the Agency signed a framework contract amounting to EUR 2 000 000 for procurement services, including training, coaching and learning services, by a contractor and that the framework contract did not specify that the procurement services should have been in compliance with the procurement provisions in the Agency’s financial rules; acknowledges that the framework contract in question was awarded through an open procedure under the Agency’s financial rules; acknowledges furthermore that while there was no explicit provision that the contractor was bound to those financial rules, the specifications of the contract included a mandatory requirement that the lowest price on the market would be provided, as well as that the Agency had the right to impose a price review if a lower price could be found;

2. Notes that, according to the Court's report, the Agency launched a call for expressions of interest and pre-selection of candidates for participation in a negotiated procedure with an estimated value of EUR 20 000 000 without a delegation by the authorising officer; notes that no pre-selection, within the meaning of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹ and its rules of application, took place before the launch of the negotiated procedure; notes furthermore that the call for expressions of interest was used as a means of market prospection and not as a tender procedure; understands that the market prospection was carried out by the operational initiating agent, under the supervision of his line manager, by applying a two-step approach assisted by an external consultant for the technical aspects, which consisted of a desk survey and a call for expressions of interest;

Budget and financial management

3. Notes that budget monitoring efforts during the financial year 2015 resulted in a budget implementation rate of 99,68 % and that the payment appropriations execution rate was high at 99,4 %;
4. Acknowledges that the Agency introduced a budget ownership model in 2016 as planned; takes note of the fact that the budget ownership model formalised and distributed budgetary responsibility for planning, implementation and monitoring among managers in the Agency, at the level of Head of Unit and above;
5. Recalls that, according to Regulation (EU) No 1077/2011 of the European Parliament and of the Council², countries associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures (Schengen Associated Countries) must make a contribution to the Agency's budget; notes that the arrangements with Schengen Associated Countries defining detailed rules for their participation in the work of the Agency, including provisions on voting rights and their contribution to the Agency's budget, have still not been concluded; notes with concern that, in the absence of such arrangements, Schengen Associated Countries contribute to Title III (operational expenditure) of the Agency's budget following a provision in the association agreements signed with the Union, but they do not yet contribute to activities under Titles I and II (salaries and other administrative expenditure) of the Agency's budget; acknowledges that all legally possible actions have been taken in order to acquire financial contributions from Schengen Associated Countries to the Agency's budget; recalls that the negotiations with Schengen Associated Countries on budgetary contributions are led by the Commission rather than the Agency;

Procurement and recruitment procedures

6. Notes that, further to its audit of the Agency's procurement procedures, the Court concluded that the Agency in 2015 entered into contractual agreements or engaged in

¹ 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 1605/2002 (OJ L 298, 26.10.2012, p. 1).

² Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

negotiations with a single contractor without precisely defining the services requested; is deeply concerned as the agreements signed in 2015 ran a high risk of acting contrary to the principle of economy and damaging the cost-effectiveness of such procurements and are much more exposed to the risk of corruption; observes that such agreements could also further limit competition and increase dependence upon the contractor; acknowledges that, in particular for the systems under management, factors outside the control of the Agency limit the possibility to systematically re-open competitions; encourages the Agency to conclude agreements with multiple suppliers or to define the services required more precisely, whenever possible; awaits the Court's audit of the Agency's procurement procedures for 2016 and trusts that the Agency has improved on the observed procurement procedures in 2016;

7. Notes that in 2015 the total staff of the Agency consisted of 135 members (117 temporary agents, 12 contract agents and 6 seconded national experts); notes furthermore that the staff consisted of 33 % female members and 67 % male members;

Commitments and carry-overs

8. Notes that the committed appropriations for Title II (administrative expenditure) carried over amounted to EUR 9 000 000 (50 % of committed appropriations), compared to EUR 15 000 000 (87 %) in 2014; notes furthermore that these carry-overs were mainly due to a large contract for the extension of the Agency's Strasbourg building and services provided under multi-annual contracts; acknowledges that the Agency deployed a considerable effort in planning and coordination in order to verify that all business cases for the carry-overs of non-differentiated appropriations were indeed justified;
9. Notes that carry-overs may often be partly or fully justified by the multiannual nature of agencies' operational programmes and do not necessarily indicate weaknesses in budget planning and implementation nor are they always at odds with the budgetary principle of annuality, in particular if they are planned in advance and communicated to the Court;

Internal controls

10. Recognises the efforts of the Agency in the implementation of the Internal Control Standards (ICS), which enabled significant progress towards the full implementation of the baseline requirements within the relatively short timeframe since the Agency was granted its financial autonomy in May 2013; notes, however, that the implementation of the ICS does not yet correspond in all respects to the baseline requirements, as well as the fact that four ICS were yet to be implemented, six were considered as largely implemented, and six were fully implemented;
11. Notes that the Commission's Internal Audit Service (IAS) issued 14 recommendations regarding the implementation of the ICS of which five were rated as 'Very Important' and nine as 'Important'; notes furthermore that the IAS identified no critical issues;
12. Acknowledges the fact that the Agency acquired necessary insurance coverage for fixed tangible assets, as requested by the discharge authority and the Court in 2014;

13. Regrets that two data breach incidents were reported in 2015 related to the internal administrative process in the Agency; welcomes the strengthening of data protection and data security in the Agency by additional awareness sessions, training for staff and by the production of data breach policy and procedures, and the action plan and work programme;

Internal audit

14. Notes that the Internal Audit Capability (IAC) conducted an audit on the effectiveness of the internal control system as regards contract management in the Agency; takes note of the fact that the IAC identified no critical issues; notes moreover that the IAC issued five recommendations regarding the definition and organisation of contract management, as well as regarding contract governance;

Prevention and management of conflicts of interest and transparency

15. Notes that the Agency has not yet adopted its internal whistleblowing policy; notes also that the Agency intends to adopt those rules during the course of 2017; calls on the agency to effectively adopt and implement its internal whistleblowing policy in order to foster a culture of transparency and accountability in the workplace, to regularly inform and train employees on their duties and rights, to ensure the protection of whistleblowers from reprisals, to follow up on the substance of whistleblowers' alerts in a timely manner and to put into place a channel for anonymous internal reporting; requests that annual reports on the number of whistleblower cases and the follow-up they received be published and provided to the discharge authority; asks the Commission to provide further guidance to the Agency and calls on the Agency to report to the discharge authority on the establishment and implementation of its whistleblowing rules;
16. Notes with concern that the curricula vitae (CVs) of the Agency's Management Board members and the CVs and declarations of interest of the members of its Advisory Groups are not published on the Agency's website; regrets that the Agency did not check the factual correctness of the declarations of interest, nor did it provide a process for updating them; urges the Agency to adopt guidelines for a coherent policy on the prevention and management of conflicts of interest and to adopt and implement a clear policy on conflicts of interest, in accordance with the Commission's Roadmap on the follow-up to the Common Approach on EU decentralised agencies and to publish those policies in order to ensure necessary public oversight and scrutiny of its management;
17. Notes that the first annual monitoring report on the implementation of the Agency's anti-fraud strategy was issued in April 2016 and that it showed a level of implementation close to 60 %; notes that the next monitoring report was to be issued by March 2017; ask the Agency to inform the discharge authority of the results of that report; notes that the Agency's Management Board adopted the Agency's anti-fraud strategy and an action plan in November 2015; notes furthermore that the Agency aims to adopt the new rules resulting from the action plan by the end of 2017 and to start implementing them immediately after their adoption;

Communication and cooperation with other agencies

18. Notes with satisfaction that 12 major awareness and visibility activities were carried out by the Agency in 2015; notes that these included the annual conference, two roundtables with industry, Europe Day celebrations, activities for border guards at the Europe Day celebrations, three information sessions with stakeholders and information multipliers, a film about the Justice and Home Affairs Agencies' cooperation and their role in implementing Union policies for the benefit of citizens, and an information campaign on the Smart Borders pilot project, resulting in the production and dissemination of information material in various linguistic versions, as well as enhanced visibility and media coverage;

Other comments

19. Notes with satisfaction that the Agency concluded the negotiations and signed the headquarters agreement with France for its operational site in Strasbourg; notes that the agreement has yet to be ratified by the French Parliament;
20. Notes with satisfaction that the Agency, at the end of 2014, concluded the negotiations and signed the headquarters agreement with Estonia for its seat in Tallinn; notes that the Estonian Parliament ratified the Agency's headquarters agreement on 18th February 2015;
21. Takes note of the fact that, in light of the reform of the Dublin system and as provided in the European Agenda on Migration, the Agency performed an initial assessment of the possible impact of the reform on the management of the Eurodac system; acknowledges that the results of the assessment have been provided to the Commission and incorporated into the proposal for reform of the Dublin system;
22. Notes with concern a significant gender imbalance in the composition of the Agency's management board; urges the Agency to correct this imbalance and to communicate the results to the Parliament promptly;
23. Takes note of the fact that the Agency's available office space is at maximum occupancy, which has consequently minimised the unit cost per workstation; expects, nevertheless, that the legal requirements for a healthy and safe workplace for its employees are fully respected;
24. Takes note of the fact that in 2015 the Agency's 97 staff members participated in away days for which the cost was EUR 9 227 (EUR 95,13 per person), as well as the fact that 448 staff members participated in "other events" for which the cost was EUR 29 807,65 (EUR 66,54 per person);
25. Welcomes the adoption by the Management Board in March 2015 of a set of performance indicators for the work of the Agency; takes the view that such indicators should better reflect the effects and impact of its actions on security, migration, border management and fundamental rights; looks forward to seeing the results of the implementation of such indicators for the year 2016; invites the Agency to improve the visibility of its work through online platforms;
26. Welcomes efforts to keep Justice and Home Affairs systems aligned with evolving political priorities and unforeseen events through the year; acknowledges the growing

importance of the Agency for the functioning of the Schengen area; calls on the Agency to closely monitor its financial and human resources and, if needed, to submit timely and justified requests for adjustments;

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27. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of [xx xxxx 2017]¹ [on the performance, financial management and control of the agencies].).

¹ Texts adopted of that date, P[8_TA(-PROV)(2016)0000].

15.2.2017

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 Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2015
(2016/2193(DEC))

Rapporteur: Petr Ježek

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. Welcomes the Court of Auditors' (the "Court") conclusions that the annual accounts of EU-LISA fairly present its financial position on 31 December 2015 and that its transactions are legal and regular;
2. Welcomes improvements with regards to budget planning and monitoring; notes that the level of execution of the budget exceeded 99 % for both commitments and payment appropriations;
3. Regrets that the agency outsourced procurement of non-operational training services to a third party without ensuring that it acted in compliance with the financial regulation of the Union under this subcontract; regrets that a call for expression of interest for participation in a negotiated procedure took place without a formal delegation by the authorising officer; notes the Court's finding that the agency engaged in contractual agreements or negotiations with a single contractor without precisely defining the services requested, as well as the agency's reply that this was due to outside factors; acknowledges that the agency acted in compliance with its own financial regulation; requests however that given the very high financial amounts involved with the development and maintenance of JHA systems and the associated risks, the agency continues to develop its internal control system in order to ensure compliance with the financial regulation of the Union;
4. Welcomes efforts to keep JHA systems aligned with evolving political priorities and unforeseen events through the year; acknowledges the growing importance of the agency

for the functioning of the Schengen area; calls for the agency to closely monitor its financial and human resources and, if needed, to submit timely and justified requests for adjustments;

5. Regrets that two data breach incidents were reported in 2015 related to the internal administrative process in the agency; welcomes the strengthening of data protection and data security in the agency by additional awareness sessions, trainings for staff and by the production of data breach policy and procedures, the action plan and work programme;
6. Welcomes the adoption by the management board in March 2015 of a set of performance indicators for the work of the agency; takes the view that such indicators should better reflect the effects and impact of its actions on security, migration, border management and fundamental rights; looks forward to seeing the results of the implementation of such indicators for the year 2016; invites the agency to improve the visibility of its work through online platforms.

RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

Date adopted	9.2.2017
Result of final vote	+: 41 -: 2 0: 0
Members present for the final vote	Heinz K. Becker, Michał Boni, Caterina Chinnici, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Kinga Gál, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Monika Hohlmeier, Eva Joly, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Monica Macovei, Roberta Metsola, Péter Niedermüller, Soraya Post, Judith Sargentini, Birgit Sippel, Branislav Škripek, Csaba Sógor, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský
Substitutes present for the final vote	Petr Ježek, Jeroen Lenaers, Nadine Morano, Morten Helveg Petersen, Emil Radev, Barbara Spinelli, Anders Primdahl Vistisen, Axel Voss
Substitutes under Rule 200(2) present for the final vote	Josu Juaristi Abaunz, Georg Mayer

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	22.3.2017
Result of final vote	+: 22 -: 7 0: 0
Members present for the final vote	Inés Ayala Sender, Dennis de Jong, Tamás Deutsch, Martina Dlabajová, Luke Ming Flanagan, Ingeborg Gräßle, Cătălin Sorin Ivan, Jean-François Jalkh, Bogusław Liberadzki, Monica Macovei, Notis Marias, José Ignacio Salafranca Sánchez-Neyra, Petri Sarvamaa, Claudia Schmidt, Bart Staes, Hannu Takkula, Derek Vaughan, Joachim Zeller
Substitutes present for the final vote	Richard Ashworth, Gerben-Jan Gerbrandy, Benedek Jávor, Karin Kadenbach, Julia Pitera, Patricija Šulin
Substitutes under Rule 200(2) present for the final vote	Raymond Finch, Jens Geier, Susanne Melior, Piernicola Pedicini, Janusz Zemke

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

22	+
ALDE	Martina Dlabajová, Gerben-Jan Gerbrandy, Hannu Takkula
ECR	Monica Macovei
PPE	Tamás Deutsch, Ingeborg Gräßle, Julia Pitera, José Ignacio Salafranca Sánchez-Neyra, Petri Sarvamaa, Claudia Schmidt, Joachim Zeller, Patricija Šulin
S&D	Inés Ayala Sender, Jens Geier, Cătălin Sorin Ivan, Karin Kadenbach, Bogusław Liberadzki, Susanne Melior, Derek Vaughan, Janusz Zemke
VERTS/ALE	Benedek Jávor, Bart Staes

7	-
ECR	Richard Ashworth, Notis Marias
EFDD	Raymond Finch, Piernicola Pedicini
ENF	Jean-François Jalkh
GUE/NGL	Luke Ming Flanagan, Dennis de Jong

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention