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Plenary sitting

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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 2012
(C7-0318/2013 – 2013/2230(DEC))

Committee on Budgetary Control

Rapporteur: Petri Sarvamaa

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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 2012
(C7-0318/2013 – 2013/2230(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 2012,
- 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 2012, together with the Agency's replies¹,
- having regard to the Council's recommendation of 18 February 2014 (05849/2014 – C7-0054/2014),
- 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 Communities², and in particular Article 185 thereof,
- 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 (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 Union⁴, and in particular Article 30 thereof,
- 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 Communities⁵,
- 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

¹ OJ C 365, 13.12.2013, p. 251.

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 349, 25.11.2004, p. 1.

⁵ OJ L 357, 31.12.2002, p. 72.

Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹, and in particular Article 108 thereof,

- having regard to Rule 77 of, and Annex VI 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 (A7-0181/2014),
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 2012;
 2. Sets out its observations in the resolution below;
 3. Instructs its President to forward this Decision and the resolution that forms 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 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 2012
(C7-0318/2013 – 2013/2230(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 2012,
- 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 2012, together with the Agency's replies¹,
- having regard to the Council's recommendation of 18 February 2014 (05849/2014 – C7-0054/2014),
- 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 Communities², and in particular Article 185 thereof,
- 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 (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 Union⁴, and in particular Article 30 thereof,
- 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 Communities⁵,
- 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

¹ OJ C 365, 13.12.2013, p. 251.

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 349, 25.11.2004, p. 1.

⁵ OJ L 357, 31.12.2002, p. 72.

Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹, and in particular Article 108 thereof,

- having regard to Rule 77 of and Annex VI 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 (A7-0181/2014),
1. 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 2012;
 2. 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 328, 7.12.2013, p. 42.

3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with observations forming an integral part of 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 2012
(C7-0318/2013 – 2013/2230(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 2012,
- 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 2012, together with the Agency's replies¹,
- having regard to the Council's recommendation of 18 February 2014 (05849/2014 – C7-0054/2014),
- 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 Communities² ("the Financial Regulation"), and in particular Article 185 thereof,
- 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 (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 Union⁴, and in particular Article 30 thereof,
- 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 Communities⁵,

¹ OJ C 365, 13.12.2013, p. 251.

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 349, 25.11.2004, p. 1.

⁵ OJ L 357, 31.12.2002, p. 72.

- 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 Council¹, and in particular Article 108 thereof,
 - having regard to its previous discharge decisions and resolutions,
 - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on the Civil Liberties, Justice and Home Affairs (A7-0181/2014),
- A. whereas, according to its financial statements, the 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 2012 was EUR 89 578 000, representing a decrease of 24,21 % compared to 2011,
- B. whereas, according to its financial statements, the overall contribution of the Union to the Agency's budget for 2012 amounted to EUR 84 000 000, representing a decrease of 24,32 % compared to 2011,
- C. whereas the Court of Auditors has stated that it has obtained reasonable assurances that the Agency's annual accounts for the financial year 2012 are reliable, but could not obtain sufficient appropriate audit evidence on the legality and regularity of the underlying transactions,

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

1. Regrets that because of the materiality and pervasiveness of the matter described on the basis of a disclaimer of opinion, the Court of Auditors was not able to express an opinion on the legality and regularity of the transactions underlying the accounts;

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

2. Regrets that in the absence of effective *ex ante* and *ex post* verifications, there is no reasonable assurance as to the legality and regularity of transactions; regrets that the Court of Auditors could not obtain sufficient appropriate audit evidence on the legality and regularity of the audited grant transactions related to the Agency's activities in 2012, which amount to EUR 56 000 000, representing 63 % of the operating expenditure;
3. Regrets that the Court of Auditors found that, notwithstanding the *ex post* audit strategy adopted in 2012 and three audits carried out, no 2012 expenditure has yet been verified;
4. Acknowledges from the Agency that its beneficiaries are the national Border Guard authorities of Member States and Schengen associated countries, who have to sign declarations that all information provided is full, reliable and true and certify that their requests for payment are substantiated by adequate supporting documents, when claiming

¹ OJ L 328, 7.12.2013, p. 42.

reimbursement; notes that the Agency does not, therefore, consider that effective *ex ante* controls are absent, but that they are based on declarations made by public authorities and plausibility checks;

5. Notes that the Agency undertook measures to strengthen the *ex ante* control framework and has put in place a risk based *ex ante* control system since June 2013; calls on the Agency and the Court of Auditors to come up with a mutually acceptable solution, which takes into account the Court of Auditors' audit standards, as well as the Agency's particular situation;

Budget and financial management

6. Notes that budget monitoring efforts during the financial year 2012 resulted in a budget implementation rate of 98,86 % and that the payment appropriations execution rate was 75,23 %;

Commitments and carryovers

7. Notes that the Court of Auditors' annual audit found that EUR 21 800 000 (25 % of committed appropriations) was carried over to 2013, whereas carry-overs related to title III amounted to EUR 19 600 000; recalls that the level of carry-overs is mostly related to the operational and multiannual nature of the Agency's activities;
8. Notes with concern that the level of carry-overs is excessive, as it was in 2011, and is at odds with the budgetary principle of annuality; acknowledges, however, that the carry-overs are an inevitable result of the Agency performing its duties;

Transfers

9. Notes that according to the annual activity report, as well as the Court of Auditors' audit findings, the Agency made 39 budgetary transfers, amounting to EUR 11 500 000, affecting 70 of the 79 budgetary lines; acknowledges that this is mostly due to the fact that the second budgetary amendment for 2012 addressing increased demands in autumn 2012 was only approved in October 2012; is of the opinion, therefore, that those transfers were necessary and well justified;

Procurement and recruitment procedures

10. Notes that for the year 2012, neither sampled transactions nor other audit findings have led to any comments on the Agency's procurement procedures in the Court of Auditors' annual audit report;
11. Notes with concern that the Court of Auditors identified in its annual audit report for 2012 shortcomings in the Agency's recruitment procedures which affect transparency and equal treatment of candidates, namely that questions for written tests and interviews were set after applications had been examined by the selection board and that the selection board did not document all its meetings and decisions;

Prevention and management of conflicts of interests and transparency

12. Acknowledges that the Agency has put in place several measures to manage and prevent situations of conflicts of interests and developed a detailed disciplinary procedure; calls on the Agency to indicate whether or not it has established a specific policy for the prevention and management of conflicts of interests based on the Commission's guidelines;
13. Observes that the CVs and Declarations of Interests of the members of the Management Board, as well as the Declarations of Interests of the Executive Director and senior management, are not publicly available; calls on the Agency to remedy the situation as a matter of urgency;

Internal controls

14. Regrets that according to the Court of Auditors' findings, the Agency's physical inventory was incomplete and did not cover all assets owned and that assets under construction and assets purchased near the end of the year were not taken into account; regrets, moreover, that there was no procedure for the disposal of fixed assets; acknowledges from the Agency that a complete physical inventory has been established, including tangible assets which were written-off;

Internal audit

15. Acknowledges from the Agency that in 2012 the Commission's Internal Audit Service (IAS) conducted a risk assessment, which resulted in a Strategic Audit Plan 2013-2015 listing future audit topics;
16. Notes that the IAS also carried out a follow-up of its earlier audit recommendations to the Agency, and found that two very important recommendations were closed; notes that according to the IAS, the action plan developed by the Agency in order to address the remaining outstanding recommendations will mitigate the risks if it is implemented in a timely manner;

Performance

17. Requests that the Agency communicate the results and impact its work has on European citizens in an accessible way, mainly through its website.

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18. Refers, in respect of the other observations accompanying its Decision on discharge, which are of a horizontal nature, to its resolution of ... 2014¹ on the performance, financial management and control of the agencies.

¹ Texts adopted, P7_TA-PROV(2014).

24.2.2014

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 for the financial year 2012
(7-0318/2013 – 2013/2230(DEC))

Rapporteur: Véronique Mathieu Houillon

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 finding of the Court of Auditors that the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (Frontex) present a true and fair view of the Agency's financial position; regrets, however, that the Court was unable to confirm the legality and regularity of the transactions underlying the accounts;
2. Notes the Court's comment that, while the agency carries out plausibility checks, it does not generally demand supporting documents, and highlights Frontex's reply to the effect that, as the beneficiaries are the national border guard authorities, their statements are reliable; calls on Frontex to remedy this state of affairs and consider applying more effective measures to deal with such financing situations; welcomes the efforts made by the director of the agency to reach a compromise whereby a lump sum system is put in place to satisfy all sides;
3. Notes that, as in past years, the Court of Auditors described the amount of carry-overs as 'excessive' and at odds with the annuality principle;
4. Takes the view that, in general, greater attention should be paid to checking the sound financial management and internal controls of Frontex, and in particular, the agency should make an effort to reduce carry-overs.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.2.2014
Result of final vote	+: 48 -: 1 0: 0
Members present for the final vote	Jan Philipp Albrecht, Roberta Angelilli, Rita Borsellino, Arkadiusz Tomasz Bratkowski, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Kinga Gál, Kinga Göncz, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu Houillon, Anthea McIntyre, Nuno Melo, Roberta Metsola, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Nils Torvalds, Kyriacos Triantaphyllides, Wim van de Camp, Axel Voss, Tatjana Ždanoka, Auke Zijlstra
Substitute(s) present for the final vote	Alexander Alvaro, Silvia Costa, Franco Frigo, Mariya Gabriel, Siiri Oviir, Zuzana Roithová, Salvador Sedó i Alabart, Sir Graham Watson
Substitute(s) under Rule 187(2) present for the final vote	Françoise Castex, Knut Fleckenstein, Anne E. Jensen, Luis Yáñez-Barnuevo García

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.3.2014
Result of final vote	+: 15 -: 4 0: 1
Members present for the final vote	Marta Andreasen, Jean-Pierre Audy, Zuzana Brzobohatá, Martin Ehrenhauser, Jens Geier, Gerben-Jan Gerbrandy, Ingeborg Gräßle, Rina Ronja Kari, Monica Luisa Macovei, Jan Mulder, Eva Ortiz Vilella, Paul Rübig, Petri Sarvamaa, Bart Staes, Georgios Stavrakakis, Derek Vaughan
Substitute(s) present for the final vote	Amelia Andersdotter, Philip Bradbourn, Markus Pieper
Substitute(s) under Rule 187(2) present for the final vote	Thomas Ulmer