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## **DRAFT REPORT**

on discharge in respect of the implementation of the budget of the European  
Border and Coast Guard Agency (Frontex) for the financial year 2016  
(2017/2164(DEC))

Committee on Budgetary Control

Rapporteur: Bart Staes

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## 1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### **on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency (Frontex) for the financial year 2016 (2017/2164(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Border and Coast Guard Agency (the Agency) for the financial year 2016,
- having regard to the Court of Auditors' report on the annual accounts of the European Border and Coast Guard Agency for the financial year 2016, together with the Agency's reply<sup>1</sup>,
- having regard to the statement of assurance<sup>2</sup> 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 2016, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of ... February 2018 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2016 (00000/2018 – C8-0000/2018),
- 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 1605/2002<sup>3</sup>, 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 Union<sup>4</sup>, and in particular Article 30 thereof,
- having regard to Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC<sup>5</sup>, in particular Article 76 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

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<sup>1</sup> OJ C 417, 6.12.2017, p. 233.

<sup>2</sup> OJ C 417, 6.12.2017, p. 233.

<sup>3</sup> OJ L 298, 26.10.2012, p. 1.

<sup>4</sup> OJ L 349, 25.11.2004, p. 1.

<sup>5</sup> OJ L 251, 16.09.2016, p. 1.

Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>1</sup>, and in particular Article 108 thereof,

- 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 (A8-0000/2018),
1. Grants the executive director of the European Border and Coast Guard Agency discharge in respect of the implementation of the Agency's budget for the financial year 2016 / Postpones its decision on granting the executive director of the European Border and Coast Guard Agency discharge in respect of the implementation of the Agency's budget for the financial year 2016;
  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 Border and Coast Guard Agency, 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).

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<sup>1</sup> OJ L 328, 7.12.2013, p. 42.

## 2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### **on the closure of the accounts of the European Border and Coast Guard Agency (Frontex) for the financial year 2016 (2017/2164(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Border and Coast Guard Agency (the Agency) for the financial year 2016,
- having regard to the Court of Auditors' report on the annual accounts of the European Border and Coast Guard Agency for the financial year 2016, together with the Agency's reply<sup>1</sup>,
- having regard to the statement of assurance<sup>2</sup> 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 2016, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of ... February 2018 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2016 (00000/2018 – C8-0000/2018),
- 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 1605/2002<sup>3</sup>, 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 Union<sup>4</sup>, and in particular Article 30 thereof,
- having regard to Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC<sup>5</sup>, in particular Article 76 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

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<sup>1</sup> OJ C 417, 6.12.2017, p. 233.

<sup>2</sup> OJ C 417, 6.12.2017, p. 233.

<sup>3</sup> OJ L 298, 26.10.2012, p. 1.

<sup>4</sup> OJ L 349, 25.11.2004, p. 1.

<sup>5</sup> OJ L 251, 16.09. 2016, p. 1.

Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>1</sup>, and in particular Article 108 thereof,

- 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 (A8-0000/2018),
1. Approves the closure of the accounts of the European Border and Coast Guard Agency for the financial year 2016 / Postpones the closure of the accounts of the European Border and Coast Guard Agency for the financial year 2016;
  2. Instructs its President to forward this decision to the executive director of the European Border and Coast Guard Agency, 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).

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<sup>1</sup> 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 Border and Coast Guard Agency (Frontex) for the financial year 2016 (2017/2164(DEC))**

*The European Parliament,*

- having regard to its decision on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2016,
  - 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 (A8-0000/2018),
- A. whereas in the context of the discharge procedure, the discharge authority wishes to stress the particular importance of further strengthening the democratic legitimacy of the Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources;
- B. whereas, according to its statement of revenue and expenditure<sup>1</sup>, the final budget of the European Border and Coast Guard Agency (“the Agency”) for the financial year 2016 was EUR 232 757 000, representing an increase of 62,43 % compared to 2015; whereas, in response to the migration crisis faced by the Union, the mandate of the Agency was considerably extended in 2016;
- C. whereas, according to its financial statements, the overall contribution of the Union to the Agency's budget for 2016 amounted to EUR 218 686 000; representing an increase of 63,78 % compared to 2015;
- D. whereas the Court of Auditors (“the Court”), in its report on the annual accounts of the European Border and Coast Guard Agency for the financial year 2016 (“the Court's report”), has stated that it has obtained reasonable assurances that the transactions underlying the Agency's annual accounts for the financial year 2016 are legal and regular; whereas the comments from the Court are to be read in the context of the challenges the Agency had to face in 2016;

#### *Follow up to the 2013, 2014 and 2015 discharges*

1. Notes with concern the number of outstanding issues and corrective measures in response to the Court's comments in 2013, 2014 and 2015 related to suppliers' statements at year-end, the headquarters agreement, ex-ante and ex-post verifications of expenditure claimed by cooperating countries under grant agreements, the increasing number of grant agreements, the need to refine the calculation of contributions from Schengen-associated countries, the recovery of irregular payments from the Icelandic coast guard, the risk of double funding by the Internal Security Fund; calls on the

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<sup>1</sup> OJ C 12, 13.01.2017, p.27

Agency to complete corrective actions as soon as possible in 2018 and report on their implementation to the discharge authority;

### ***Comments on the legality and regularity of transactions***

2. Notes from the Court's report that the Agency's previous founding Regulation which was in force until 5 October 2016 provided for the funding of joint return operations carried out with participating countries; notes that national return operations only became eligible under the new founding Regulation; notes however that, in the period January to October 2016, the Agency funded national return operations for an amount of EUR 3 600 000; takes note that these payments are irregular;
3. Notes from the Agency's reply that in 2016, given the disproportionate migratory pressure towards Member States and following the EU Action Plan for return from October 2015, the European Council conclusions from 15 June 2015 and 16/17 March 2016, the executive director of the Agency adopted the Decision 2016/36, which provided a broader interpretation of (co)-financing modalities of a joint return operation to the extent that also a national return operation carried out by just one single Member State facing a disproportionate migratory pressure would be (co)-financed from the Agency's budget; acknowledges furthermore that the budgetary authority had amended the budget for 2016 specifically to implement the Action Plan on return mentioned before;

### ***Budget and financial management***

4. Notes with satisfaction that the budget-monitoring efforts during the financial year 2016 resulted in a budget implementation rate of 97,90 %; notes that the payment appropriations execution rate was 66,07%, representing a decrease 3,40% compared to 2015;
5. Notes from the Court's report that under the Agency's extended mandate, high importance is attached to return operations and EUR 63 000 000 had been assigned to that in its 2016 budget; notes however that EUR 23 000 000, i.e. 37,5 % were repaid to the Union budget since fewer return operations were carried out than envisaged; observes that the significant delay of the procurement procedure for a EUR 50 000 000 framework contract to charter aircraft and related services for the Agency return operations contributed to this situation and continues to affect the number of return operations arranged by the Agency; regrets that, while the launch of this procurement procedure was planned for March 2016, it had not been started by the year end; notes from the Agency's reply that it has drastically increased the number of joint return flights (232 in 2016 compared to 66 in 2015); notes however that the EUR 23 000 000 could not be used mainly because the framework contract for chartering aircrafts and related services for return operations faced delays generated by the deprioritisation of the project in favour of the efforts taken for ensuring the logistical support (ferries and busses) for the implementation of the EU-Turkey Statement; notes that a tender procedure for establishing a four-year framework contract has in the meantime been published, however with a lower estimated budget (EUR 20 000 000);
6. Notes from the Court's report that on 22 December 2015 the Commission and the Agency, co-beneficiary and coordinator of three other co-beneficiaries - the European



Asylum Support Office (EASO), the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) - signed a grant agreement amounting to EUR 5 500 000 on regional support to protection-sensitive migration management in the Western Balkans and Turkey for a three year period starting on 1 January 2016; notes, however, that cooperation agreements with those three partners which amounted to EUR 3 400 000 were only signed between August and November 2016; takes note that, in two of those agreements, the budgetary commitments, which should have released the funds before entering in the legal commitments, were only signed in October and in December 2016; notes moreover that the budget commitments amounted to EUR 1 200 000, covering only the pre-financing payments; notes that such a procedure is in breach of the Financial Regulation's rules on budgetary management and the late signature of the agreements caused uncertainty for the operational cooperation between partners; notes from the Agency's reply that in order to document the fact that the legal commitment for all three project partners was made prior to the budgetary commitment, the Agency duly documented this as an exception;

7. Acknowledges that the Agency is revising in 2017 its entire financial scheme aiming at simplifications, switching from grants to service contracts and introducing flat rates; calls on the Agency to report to the Discharge Authority on the implementation of the new scheme;

#### ***Commitments and carryovers***

8. Notes that the level of carry-overs for committed appropriations for Title II (administrative expenditure) was at EUR 6 400 000 (43 % of committed appropriations), compared to EUR 3 200 000 (38 %) in 2015; notes moreover that the carry-overs for Title III (operational expenditure) were at EUR 67 300 000 (37 %), compared to EUR 40 200 000 (35 %) in 2015; notes that the main reason is because contracts and operations extended beyond the year-end and that the Agency may consider introducing differentiated budget appropriations to better reflect inevitable delays between legal commitments, contract implementation and operations and the related payments;
9. Notes from the Court's report that the level of cancelled carry-overs from 2015 was high for Title III (operational expenditure) at EUR 6 400 000, i.e. 16 %, due to an overestimation of 2015 costs that still had to be reimbursed to participating countries in 2016; considers that there is a need to obtain more precise cost estimations and more timely cost reporting from cooperating countries;
10. Points out that carry-overs may often be partly or fully justified by the multiannual nature of the agencies' operational programmes, do not necessarily indicate weaknesses in budget planning and implementation and are not always at odds with the budgetary principle of annuality, in particular if they are planned in advance and communicated to the Court;

#### ***Staff policy***

11. Observes from the establishment plan that 197 temporary posts (out of 275 posts authorised under the Union budget), compared to 149 in 2015 were occupied on 31

December 2016; notes that in addition the Agency was employing (in full-time equivalent) 77 seconded national experts, 83 contractual staff and 15 interim staff;

12. Notes with appreciation that, by the number of all posts occupied, gender balance has been met since the ratio is 50 % female to 50 % male; observes with great concern, on the other hand, that for senior posts it is only 15 % female to 85 % male; calls on the Agency to take all necessary measures and, in cooperation with the Member States, improves the gender balance in the management board and among the senior management;
13. Notes from the Agency that in order to start with the implementation of its new and enhanced mandate additional staff needed to be recruited already during the last quarter of 2016; notes that a needs assessment has identified 50 posts but that not all recruitment procedures could be completed by year-end; notes that at the end of 2016 the Agency had reached a total of 365 members of staff;
14. Notes from the Court's report that, following the extension of its mandate, the Agency's staff will more than double from 365 in 2016 to 1 000 in 2020; notes moreover that the planned increase in staff will require additional office space; notes from the Agency's reply that at the beginning of 2017 it had asked the budgetary authority and received green light to expand in its current premises in order to accommodate the additional staff numbers; notes that the headquarters' agreement has entered into force on 1 November 2017;
15. Notes from the Court's report that the Agency traditionally experiences difficulties in finding staff with the required profile, partly because of the salary correction coefficient (66,7 %); calls on the Agency to reflect on possible mitigating measures and that it reports on its reflections to the discharge authority;
16. Notes from the Court's report that the Staff Regulations provide that in the case of an external selection procedure, temporary staff can only be recruited at grades SC 1 to SC 2, AST 1 to AST 4 or AD 5 to AD 8; notes that in 2016 the Agency recruited 14 staff at higher AST grades; takes note that the recruitments at these grades are irregular; notes from the Agency's reply that the motivation for upgrading of 5 AST4 posts to 5 AST5 posts was due to the business needs to run the 24/7 Duty Officers' service; acknowledges that, given the level of responsibilities in the context of the migratory flows and security challenge at the Union's external borders, the Agency had to attract qualified and experienced candidates with relevant prior working experience;
17. Notes that the Agency has not received any complaint, law-suits or otherwise reported cases of non-transparent hiring or dismissal of staff in 2016;
18. Observes with some concern that in 2016 the average sick leave of the Agency's staff was 11,4 days although the Agency in its calculation did not include the staff who did not take any day off due to sick leave; calls on the Agency to consult with the medical service on how to lower the absence from work due to sick leave;
19. Notes from the Agency's replies that members of staff spent one day on well-being activities in 2016; notes that the Agency has an internal policy on health and safety at work and contributes to the well-being of the staff in three ways:

- a) rental of sport fields for team sports and partial contribution to participation of staff in interagency sport tournaments;
  - b) as part of preventive measures in health and safety the Agency reimburses a portion of costs of sport activities undertaken by the staff (up to a ceiling of 45 EUR per month per member of staff).
  - c) every year the Agency organises seasonal flu vaccinations for volunteering members of staff;
20. Observes that the Agency used Articles 12 and 12a of the Staff Regulations and the specific provisions of ‘Code of Conduct for all persons participating in Frontex activities’ and of ‘Frontex Staff Code of Conduct’; observes that there was no harassment case reported or taken to court in 2016;
21. Notes that the Office of the Agency has two official vehicles for which only official use is allowed and that these vehicles are not used for personal purposes;

***Prevention and management of conflicts of interests, transparency and democracy***

22. Observes that the Agency adopted an anti-fraud strategy and action plan on 17 December 2015, which identifies four strategic objectives with 22 actions to be implemented during the period 2015-2018; notes with appreciation that more than 50 % of the actions identified were implemented in 2016;
23. Notes that the Agency prepared draft internal rules on whistleblowing and communicated them to the European Data Protection Supervisor in March 2017; notes that the issue is whether to implement the internal rules or take a decision to implement the Commission model rules once they have been notified to the agencies; calls on the Agency to report to the discharge authority on the decision taken;
24. Observes that the Agency has replied that they do not make the approved minutes of its management board meetings available to the public and that those minutes are not available even after three months of the date of the meeting; calls on the Agency to report to the discharge authority on the reasons for such a decision in view of the Union’s policy on greater transparency of its operations;
25. Observes that the Agency did not reply if their meetings with lobbyists (i.e. persons not officially representing the Agency’s stakeholders but having any pecuniary or economic interest in relation to its operational remit), in the event that such meetings were held, had been registered and made public; calls on the Agency to provide the discharge authority with an answer;
26. Notes that in 2016 the Agency received 67 requests for access to documents to which the Agency granted a full access to 15 requests, while for 38 requests access was only partially granted and further 10 requests were refused mostly due to “Protection of public security” and “Protection of privacy and the integrity of the individual”;
27. Notes that four of the refusals were subject to a confirmatory application resulting in two confirmations of previously refused access, one request was given partial access

and one full access to documents; notes also that one of the refusals was transmitted to the European Ombudsman; calls on the Agency to inform the discharge authority of the Ombudsman's decision and the subsequent procedure;

### ***Performance-based budgeting***

28. Welcomes the three main achievements identified by the Agency in 2016, namely:
- the adoption of the European Border and Coast Guard Regulation (EU) 2016/1624 which defines its expanded mandate;
  - the assistance to 232 Return Operations (+251% comparing with the operation assisted in 2015) returning in total 10 698 people;
  - the launch in January 2017 of the first step of the common vulnerability assessment methodology;
29. Acknowledges that the Regulation on the European Border and Coast Guard Agency opened up new possibilities for cooperation with other Agencies in relation to the coastguard function, resulting in a trilateral working arrangement between Frontex, the European Fisheries Control Agency (EFCA) and the European Maritime Safety Agency (EMSA); notes furthermore that close cooperation with the nine justice and home affairs (JHA) agencies continued, the cooperation with European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) was strengthened, regular exchange with European Asylum Support Office (EASO) was facilitated and a cooperation agreement with Europol was tested throughout 2016;
30. Notes that the Agency shares offices with Europol and EASO in the framework of the European Regional Task Forces in Italy and Greece;

### ***Internal control***

31. Notes that the 2016 annual review of the internal control system provided reasonable assurance to the Agency management as to the level of compliance with all internal controls; acknowledges that it identified space for improvements in eight ICS and developed a strategy to address the weaknesses; it assessed the efficiency of its internal control system at the end of 2015; notes moreover that, according to the assessment, the Internal Control Standards (ICS) were implemented and functioning; notes however that, since the substantive increase in the Agency's budget allocation (financial and human resources) and the expansion of the tasks and responsibilities that are assigned to the Agency, the internal control system requires further improvements in 2017; calls on the Agency to report to the discharge authority on the measures taken to improve the internal control system;

### ***Internal audit***

32. Notes that in 2016 the Internal Audit Service (IAS) conducted an audit on "Data Validation and Quality Assurance for the Risk Analysis", which resulted in four recommendations rated as "important"; acknowledges from the Agency that it prepared

an action plan to address these recommendations; calls on the agency to report to the discharge authority on the implementation of that action plan;

33. Takes note of the IAS' conclusions that no recommendations rated as "critical" were issued in 2016;
34. Notes with satisfaction that to ensure a cost-effective and environment-friendly working place and to further reduce or offset CO2 emissions the Agency has a new policy on printer and printing solutions that has reduced the consumption of paper, has implemented video conferences, and is aiming at improving water and energy efficiency as well as increasing recycling; the canteen uses biodegradable cleaning and disinfection products as well as provides eco-friendly take-away packaging methods and recyclable cups, plates and cutlery; meals served in the canteen are prepared using locally produced and seasonal products as well as ingredients sourced from ecological farmers;
35. Notes with satisfaction that the Agency is committed to promoting the use of public and eco-friendly transportation as the Agency helps covering the costs of public transportation costs for its staff;
36. Further notes that the Agency's premises has been designed and constructed according to the eco-requirements of the Building Research Establishment Environmental Assessment Method (BREEAM) certification and is now described as one of the most sustainable buildings in Poland;
37. Notes that the Agency sees no financial risks influencing its operations caused by the Brexit;
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38. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of ...2018<sup>1</sup> on the performance, financial management and control of the agencies.

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<sup>1</sup> Texts adopted of that date, P8\_TA-PROV(2018)0000.