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DRAFT 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 2014
(2015/2181(DEC))

Committee on Budgetary Control

Rapporteur: Derek Vaughan

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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 2014
(2015/2181(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 2014,
- 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 2014, 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 2014, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of xx February 2016 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2014 (xxxxx/2016 – C8-xxxx/2016),
- 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 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 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

¹ OJ C 409, 9.12.2015, p. 342.

² OJ C 409, 9.12.2015, p. 342.

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.

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 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 (A8-0000/2016),
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 2014;
 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 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 2014 (2015/2181(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 2014,
- 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 2014, 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 2014, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of xx February 2016 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2014 (xxxxx/2016 – C8-xxxx/2016),
- 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 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 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 409, 9.12.2015, p. 342.

² OJ C 409, 9.12.2015, p. 342.

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 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 (A8-0000/2016),
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 2014;
 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 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 2014
(2015/2181(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 2014,
 - 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 (A8-0000/2016),
- 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 97 945 077, representing an increase of 4,25 % 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 86 810 000, representing an increase of 1,53 % compared to 2012,

Comments on the legality and regularity of transactions

1. Acknowledges from the Court's report that considerable improvements were noted in both ex-ante and ex-post verifications of expenditure claimed by cooperating countries under grant agreements; acknowledges from the Agency that it introduced in June 2013 a more comprehensive, risk-based system of ex-ante controls which include the requirement to submit selected supporting documents together with the request for final payment; notes, furthermore, that the system of ex-ante controls is complemented by ex-post controls carried out at the beneficiaries' location or in the form of a desk review, and that the payments not subject to ex-ante controls are subject to ex-post controls;
2. Observes that Court finds the documentation supporting the expenditure claimed by those countries to be not always sufficient; takes note from the Court's report that the audit certificates, which would add further assurance on the legality and regularity of grant transactions, were not requested by the Agency; acknowledges from the Agency that such certificates were already made in 2010; takes note that, despite a briefing organised for the Agency's beneficiaries, the audit certificates were not issued by independent audit bodies and the delay in receiving the final claim was significantly extended; acknowledges that the Agency will explore the possibility of cooperation with the audit authorities set up under the External Border Fund and the Internal Security Fund; calls on the Agency to report to the discharge authority on the evaluation of such cooperation;

Budget and financial management

3. Notes that the budget monitoring efforts during the financial year 2014 resulted in a budget implementation rate of 98,65 %, representing an increase of 0,9 % compared to 2013; notes, furthermore, that the payments appropriations execution rate was 68,79 %, representing an increase of 4,81 % compared to 2013;

Commitments and carryovers

4. Notes that the Agency reduced the overall level of committed appropriations carried over from 35 % in 2013 to 30 % in 2014; acknowledges 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; notes that the level of carryovers was EUR 4 500 000 (36 %) for Title II (administrative expenditure) and related mainly to year-end purchases associated with the move to the Agency's new building in December 2014; takes note that the carryovers for Title III (operational expenditure) were EUR 29 200 000 (47 %) and resulted mainly from the multiannual nature of the Agency's operations and the approval of an additional budget in October 2014 amounting to EUR 4 200 000;
5. Points out that the Agency's operational expenditure depends to a significant extent on the timely submission of reimbursement claims for grants by Member States; acknowledges that the time elapsing between the final date of the deployment of an officer, aircraft or vessel to a coordinated joint operation and the submission of the claim ranges on average between four and six months;

Prevention and management of conflicts of interests and transparency

6. Acknowledges that the Agency developed and adopted rules governing the transparency and the possible conflicts of interests of its Management Board, staff and seconded national experts, in particular the "Frontex Staff Code of Conduct", the "Code of Conduct for all persons participating in Frontex activities", and the "Code of Conduct for joint return operations coordinated by Frontex"; acknowledges, furthermore, that the Agency's Executive Director approved its "Anti-fraud Strategy and Action Plan" in August 2015; notes that that anti-fraud strategy was drafted using both the guidelines for the agencies and those of the European Anti-Fraud Office;
7. Notes that the annual public statements of commitment were published on the Agency's website for the majority of members of its Management Board; takes note that the CVs of the Agency's Executive Director and Deputy Executive Director have been published on the Agency's website; urges the Agency and its Management Board members to make the remaining unpublished statements available as soon as possible;
8. Takes note that the Agency created a draft set of whistleblowing rules which is expected to be adopted by the end of the first half of 2016; calls on the Agency to report to the discharge authority on the final adoption of those rules;

Internal audit

9. Observes that in 2014, the Commission's Internal Audit Service (IAS) carried out an audit

on “Stakeholder Relations and External Communication in Management of pooled resources”, which showed the overall management of stakeholders relations and external communication as effectively and efficiently supporting the management of pooled resources; acknowledges from the Agency that it undertook improvement actions while the audit was still under way and that it has prepared the formal action plan to ensure the timely implementation of recommendations; notes, furthermore, that the IAS carried out an audit in the area of human resources which resulted in two recommendations marked “Very important” and two recommendations marked “Important”;

Other comments

10. Takes note from the Court’s report that there is a need to refine the calculation of contributions from the non-EU countries that are parties to the “Schengen agreement” (Switzerland, Liechtenstein, Iceland and Norway), in order to better reflect the related legal provisions¹; acknowledges from the Agency that it will review the methodology for calculating the contributions from those countries and lay it down in a proper legal format; calls on the Agency to inform the discharge authority of the outcome of this review;
11. Takes note from the Court’s report that the contributions to the Agency’s budget from the United Kingdom and Ireland have remained stable for many years despite the considerably extended range of activities in which the United Kingdom and Ireland are involved; acknowledges from the Agency that its “Management Board Working Group on budget and accounts” is reviewing this issue and is to submit to the Agency’s Management Board a recommendation and way forward with regard to those contributions; calls on the Agency to inform the discharge authority of the outcome of the review;
12. Notes with concern from the Court’s report that the high and constantly increasing number of grant agreements, as well as the magnitude of related expenditure to be verified and reimbursed by the Agency, raises the question whether a more efficient and cost-effective alternative funding mechanism could be used to finance Agency’s operational activities; acknowledges from the Agency that one of the recommendations made by its Management Board following the external evaluation of the Agency relates to the facilitation of financial management and calls for the limitation introduced by the Agency’s founding regulation to be abandoned by mentioning grants; notes that contractual relationships between the Agency and the Member States’ authorities could pave the way for more efficient and transparent financial management;
13. Notes that, when a Member State deploys officers and/or technical equipment to the Agency’s coordinated operations, the Member State signs the Operational Plan drafted by the Agency and the host Member State, which clearly indicates the terms of the operational cooperation; recalls that no provision is laid down granting participating Member States the freedom to use different ways and means to achieve a given policy

¹ Arrangement between the European Community of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 243, 16.9.2010, p. 4); Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 188, 20.7.2007, p. 19).

objective, as the grant instrument suggests, because the Operational Plan needs to be implemented in the manner agreed upon without deviation unless amended; points out that the new proposal for establishing a Border and Coast Guard¹ goes even further and that it proposes a proactive role for joint operations and return activities, which does not go hand in hand with the features of a grant as a financial instrument; urges the Commission to consider this when proposing founding regulations in future;

14. Notes that, although the Agency became operational as long ago as 2005 and has pursued its operations since then, it has only worked on the basis of correspondence and exchanges with the host Member State rather than on the basis of a comprehensive headquarters agreement between the Agency and the host Member State, which has never been signed; observes that such an agreement would further promote transparency in respect of the conditions under which the Agency and its staff operate; recalls that the requirement to establish a headquarters agreement was introduced in the Agency's amended regulation in 2011²; notes that the negotiations are still ongoing with the Government of the host Member State; urges the Agency and the Government of the host Member State to conclude a headquarters agreement as soon as possible; requests that the Agency inform the discharge authority of the progress and outcome of these negotiations;

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15. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of [xx xxxx 2016]³ [on the performance, financial management and control of the agencies].).

¹ Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard (COM(2015)0671 final).

² Article 15a introduced by 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).

³ Texts adopted of that date, P[8_TA(-PROV)(2016)0000].