REPORT

on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2020 (2021/2146(DEC))

Committee on Budgetary Control

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## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION</td>
<td>3</td>
</tr>
<tr>
<td>2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION</td>
<td>5</td>
</tr>
<tr>
<td>3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION</td>
<td>7</td>
</tr>
<tr>
<td>OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS</td>
<td>19</td>
</tr>
<tr>
<td>INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE</td>
<td>26</td>
</tr>
<tr>
<td>FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE</td>
<td>27</td>
</tr>
</tbody>
</table>
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 for the financial year 2020 (2021/2146(DEC))

The European Parliament,

– having regard to the final annual accounts of the European Border and Coast Guard Agency for the financial year 2020,

– having regard to the Court of Auditors’ annual report on EU agencies for the financial year 2020, together with the agencies' 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 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,

– having regard to the Council’s recommendation of 28 February 2022 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2020 (06003/2022 – C9-0101/2022),

– having regard to Article 319 of the Treaty on the Functioning of the European Union,


– having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵, and in particular Article 105 thereof,

¹ OJ C 439, 29.10.2021, p. 3.
² OJ C 439, 29.10.2021, p. 3.
– having regard to Rule 100 of and Annex V to its Rules of Procedure,
– having regard to the opinion of the Committee on Civil Liberties, Justice and Home Affairs,
– having regard to the report of the Committee on Budgetary Control (A9-0110/2022),

1. Postpones its decision on granting the Executive Director of the European Border and Coast Guard Agency discharge in respect of the implementation of the budget of the Agency for the financial year 2020;

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).
2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the closure of the accounts of the European Border and Coast Guard Agency for the financial year 2020
(2021/2146(DEC))

The European Parliament,
– having regard to the final annual accounts of the European Border and Coast Guard Agency for the financial year 2020,
– having regard to the Court of Auditors’ annual report on EU agencies for the financial year 2020, together with the agencies' replies⁴,
– 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 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
– having regard to the Council’s recommendation of 28 February 2022 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2020 (06003/2022 – C9-0101/2022),
– having regard to Article 319 of the Treaty on the Functioning of the European Union,
– having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵, and in particular Article 105 thereof,
– having regard to Rule 100 of and Annex V to its Rules of Procedure,

¹ OJ C 439, 29.10.2021, p. 3.
² OJ C 439, 29.10.2021, p. 3.
– having regard to the opinion of the Committee on Civil Liberties, Justice and Home Affairs,
– having regard to the report of the Committee on Budgetary Control (A9-0110/2022),

1. Postpones the closure of the accounts of the European Border and Coast Guard Agency for the financial year 2020;

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).
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 for the financial year 2020 (2021/2146(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 2020,

– having regard to Rule 100 of and Annex V to its Rules of Procedure,

– having regard to the opinion of the Committee on Civil Liberties, Justice and Home Affairs,

– having regard to the report of the Committee on Budgetary Control (A9-0110/2022),

A. whereas, according to its statement of revenue and expenditure\(^1\), the final budget of the European Border and Coast Guard Agency (the ‘Agency’) for the financial year 2020 was EUR 364 432 655, representing an increase of 10,40% compared to 2019; whereas the Agency’s budget derives mainly from the Union budget;

B. whereas all Union bodies, offices and agencies ought to be transparent and fully accountable to the citizens of the Union for the funds entrusted to them;

C. whereas Regulation (EU) 2019/1896 stipulates the requirements with which the Agency should comply, including in areas such as the respect for fundamental rights;

D. whereas the Court of Auditors (the ‘Court’), in its report on the annual accounts of the Agency for the financial year 2020 (the ‘Court's report’), states that it has obtained reasonable assurance that the Agency’s annual accounts are reliable and that the underlying transactions are legal and regular;

E. whereas since December 2019 the Agency has been implementing a new mandate with an essential scale-up that is significant in terms of missions and staff, that requires an adequate budget;

F. whereas the Court in its Special Report No 8/2021 on the Agency’s support to external border management concluded that there were several shortcomings related to the Agency’s primary activities, namely situation monitoring, risk analysis, vulnerability assessment, joint operations and rapid border interventions, return operations and the Agency’s training and the lack of needs and impact assessments prior to the exponential increase in the Agency’s expenses;

G. whereas Parliament’s Committee on Civil Liberties, Justice and Home Affairs established the Frontex Scrutiny Working Group (FSWG) that published a report on the

\(^1\) OJ C 143, 30.4.2020, p. 6.
fact-finding investigation on the Agency concerning alleged fundamental rights violations on 14 July 2021 (the ‘FSWG report’);

H. whereas the European Anti-Fraud Office (OLAF) closed part of its investigations on 15 February 2021 that looked at the handling of reports of fundamental rights incidents including push-backs; whereas OLAF is still investigating some allegations on other issues; whereas the OLAF report regarding the investigations has not been shared with the members of the Budgetary Control Committee or of the Committee on Civil Liberties, Justice and Home Affairs; whereas this hampers the scrutiny work of the Budgetary Control Committee in light of the high relevance of that report to the discharge procedure;

Budget and financial management

1. Notes that the budget-monitoring efforts during the financial year 2020 resulted in a budget implementation rate of 78,42 %, representing a decrease of 21,42 % compared to 2019; highlights that EUR 360 million of EUR 364 million of the budget were committed; takes note that EUR 95 million has been returned to the Union general budget; notes with concern that the payment appropriations execution rate was very low at 43,84 %, representing a decrease of 25,30 % compared to 2019;

2. Notes the Court’s remark that, for the financial planning of its return operations, the Agency relies on estimates provided by the cooperating countries and that complete and timely availability of this information is crucial; notes the Court’s observation that in 2020 in one case a national authority included two previously unannounced return operations, totalling EUR 355 000, in a grant agreement at the financial closure of the action, resulting in a sudden budgetary deficit for the Agency, that forced the Agency to make an ex-post budgetary commitment, contravening the Agency’s Financial Regulation; acknowledges the dependence of the Agency on cooperating countries and calls on the Agency to be more strict in setting and enforcing standards related to completeness and timeliness for the receipt of information related to financial planning of operations, including the return operations; recalls that rules and principles of the Agency's Financial Regulation must be observed and respected in all situations;

3. Highlights the fact that the Agency started an upgrade of the Frontex Applications for Return (FAR) and Integrated Return Management Application (IRMA) systems to take steps towards an interoperable system of costs connected to activities, to ensure sound financial management of grants; highlights that the Member States will be obliged to insert operational and financial details of the activities carried out; calls on the Commission to strengthen the relationship between the Agency and the Member States and to ensure binding rules for the Member Stated for financial and operational protection and monitoring;

4. Notes the Court’s observation that the contribution of Schengen Associated Countries is understated, as it made up 6,91 % of the Agency’s initial budget, whereas this should have been 7,43 %, without overstating the Union’s contribution since that is budgeted irrespective of the participation of the Schengen Associated Countries; echoes the Court’s observation that this is an indication of the need for additional guidance from the Commission to Union bodies on how to calculate contributions from non-Union countries consistently;
5. Notes the Court’s observation that the pandemic has affected the Agency’s operations and budget implementation in 2020, with the Agency reducing its initial budget by EUR 95 000 000, through two amending budgets; notes that a provisional budgetary commitment of EUR 18 100 000 for the preparation of field deployments in 2021 was carried forward without the Agency having entered into legal commitments within the time limit laid down in Article 75 of the Agency’s Financial Regulation; notes that the Agency acknowledges the observation whilst working on remedial measures to prevent future occurrence, which entails the verification of carry-forward tables for the associated legal commitments; acknowledges that the Agency issued an administrative notice with guidance on the annuity principle which explained the carry-over rules in detail;

6. Notes that the Union funding to the Agency increased by EUR 10 million by means of Amending budget No 1/2020; deplores that that amount was not visible in the budgetary accounts of the Agency; agrees with the Court’s opinion that this reduces transparency as it makes it harder to see how much Union funding was available to the Agency in 2020 and how that amount changed over time; emphasises the need to ensure transparency as a priority;

7. Recalls the Court’s conclusion that the Agency’s operational reporting fails to inform decision-makers adequately as it lacks information on actual costs and performance; reiterates its request to the Court to assess the progress of the Agency on recommendations 1 to 4; calls on the Agency to inform the discharge authority on the results of the suggested contacts with the Court and the Commission and to urgently solve the issue of lacking supporting evidence;

**Performance**

8. Notes that the Agency uses certain measures as key performance indicators (KPIs) to assess the performance of its activities, adopted by the Agency’s management board, stemming from the single programming document 2020-2022; notes in particular the KPIs on the vacancy rate, the availability and adequacy of human resources pools, the availability of technical equipment for the Agency’s mission and the detections of illegal border crossing;

9. Notes that the Agency implemented two rapid border interventions at the external land and maritime borders of Greece with Turkey that required deployment of technical equipment from the rapid reaction equipment and technical equipment pools, as well as human resources;

10. Notes that the Agency’s surveillance aircraft services performed a total of 1 068 missions in 2020 out of which 1030 were surveillance flights and 38 related to fishery control; welcomes the fact that the number of surveillance aircraft services increased over the past years with a number of 177 missions in 2017 and a number of 1068 missions in 2020;

11. Notes that the Agency’s assets in maritime operations have helped to rescue more than 3 408 migrants during patrolling activities, which also resulted in the detection of 790 facilitators, four traffickers of human beings and a wide variety of other types of cross-border crimes, such as smuggling of illegal goods and substances (1 463 litres of
alcohol, 4 013 pieces of ammunition, approximately 361 kilogrammes of cocaine, more than 144 tonnes of hashish and marijuana, and 40 kilogrammes of heroin);

12. Notes that the Agency’s return operations, despite being impacted by the restrictions of the COVID-19 pandemic, continued with 21 Member States taking part as either organisers or participants in return operations by charter flights coordinated and co-financed by the Agency, with overall 7 952 persons handed over, reaching 28 third countries of return, significant lower numbers than in 2019; notes that voluntary returns made up for 18 % of all supported flights; notes that 26 Member States carried out returns by scheduled flights with the Agency’s support, returning 3 981 third country nationals to 83 countries of return, with among the returnees 2 173 (55 %) unescorted and 1 532 (38%) returning in a voluntary manner;

13. Notes that in 2020 COVID-19 related measures included the closure of borders and suspension of air traffic, which affected all operational activities coordinated by the Agency; notes that the number of return operations drastically dropped in 2020; calls on the Commission to introduce, in close cooperation with the Agency, an emergency plan that sets out certain safety measures, ensuring the safe continuation of return operations;

14. Notes that the activities of the Agency’s fundamental rights officer (FRO) were hampered by the restrictions caused by the COVID-19 pandemic, particularly its on-site monitoring role of the Agency’s operational areas due to general travel restrictions and the closure of Union borders; notes that monitoring was conducted exclusively through maintaining contacts with the Agency’s operational response division and the situational awareness and monitoring division, accessing briefings provided to deployed officers and incoming reports, gathering information from the media, cooperating with the consultative forum and other international organisations; notes that the FRO formally registered ten serious incident reports (SIRs) with three final FRO reports issued closing the SIRs and three more considered closed pending the publication of the FRO reports; notes that the concerned SIRs involve alleged violations of fundamental rights in the course of operational activities, including return operations, coordinated by the Agency (i.e. relating to Member States’ and Agency staff);

Fundamental rights and follow up to the 2019 discharge cycle

15. Reminds that, Parliament, through its resolution of 21 October 2021 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 for the financial year 2019, called on the budgetary authority to place a part of the Agency's 2022 budget in a reserve, to be released upon completion of seven conditions; regrets that following negotiations for the 2022 budget that reserve was not implemented; reiterates, however, that the Agency’s discharge of the 2019 financial year has made explicit that a failure to meet those conditions increases the risk of a refusal to grant the discharge for the financial year 2020; emphasises the need to evaluate the performance of the Agency on each of the 2019 conditions in the 2020 discharge, to nurture consistency between the discharges across the years, and as a means to assess the Agency’s performance, including on legal compliance; takes note in this context of the recent input received from the Commission in its letter addressed to the Committee on Budgetary Control on 24 March 2022 and of the state of play of the implementation of the conditions set in

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Parliament’s resolution of 21 October 2021, provided by the Agency at the same date;

16. Notes that, with respect to the seven conditions established by Parliament in its resolution of 21 October 2021, the Commission assesses that the Agency has made ‘significant progress over the last 1,5 years’, but ‘more still needs to be done’; considers for each of the seven conditions the following:

(a) is disappointed that the Agency is still unable to fulfil the requirement of Regulation (EU) 2019/1896, which provided for the recruitment of at least 40 fundamental rights monitors (FRMs) by December 2020; notes with regret that to the present date only a total of 20 FRMs have taken office, out of which 5 at AD level and 15 at AST level, hence facing a significant delay in complying with the first condition as set out in the 2019 discharge; notes that the subsequent steps of the recruitment are under the control of the FRO, conducted independently from the office of the executive director; notes that the FRO finalised, at the end of February 2022, the procedure for the recruitment of the second batch of 20 FRMs in the AD function group, who, however, have not yet taken office to the present date; notes with regret that 8 out of these 20 additional FRMs were already employed in the AST function group, and that therefore a complementary call for applications has to be launched; welcomes the cooperation between the Agency and the European Union Agency for Fundamental Rights in that recruitment;

(b) notes that all three deputy executive directors have been recruited and have joined the Agency;

(c) notes that the executive director signed, on 25 February 2022, the standard operating procedure on the mechanism to withdraw the financing of, or suspend or terminate, or not launch Agency’s activities; notes that Article 46 of Regulation (EU) 2019/1896 requires the Agencies’ executive director to suspend, terminate, or not launch activities when there are risks to violations of fundamental rights; notes that the Agency did not evaluate its activities in Greece, even though reports by institutions of Member States, the Council of Europe, and the United Nations show that the Agency was carrying out operations in sections where simultaneously, fundamental rights violations were taking place; stresses that meeting condition referred to in point (g) of this paragraph (on the suspension of operations in Hungary) is a relevant part of the proper implementation of Article 46 of Regulation (EU) 2019/1896 as formulated in that condition;

(d) notes that the executive director signed, in April 2021, the revised standard operating procedure on the SIR mechanism defining the role of the FRO in the process; notes that a report on the practical implementation of this procedure has been presented by the executive director and the FRO, concluding that there is a need to further revise the procedure; stresses furthermore that the SIR mechanism, though not automatically triggering an investigation, are followed up and enable the FRO to be in the lead; notes that the Agency has not yet fixed deadlines with Member States as to when they need to respond to a SIR;

(e) the Agency has adopted special rules to guarantee the independence of the FRO, it has recruited and adopted a new FRO as well as a deputy FRO; notes that the Agency has drawn up a fundamental rights strategy and action plan, it has adopted
a specialised fundamental rights training curriculum for FRMs and has also revised its complaints mechanism;

(f) notes that the Agency has completed the implementation of a competency management project and has adopted a value-adding knowledge management and need-to-know policy, which is currently upgraded with new improvements, while the implementation of the situational awareness and monitoring division’s transformation programme and a human resources capacity assessment are still in progress; notes that the Agency has postponed the deadline to fully implement recommendation 5 to 30 June 2022, beyond the timeframe for the implementation set out in the Court’s special report, in the context of a formal analysis to identify the Agency’s staff needs, especially in the areas risk analysis and vulnerability assessment;

(g) notes that the Agency continues to operate in Hungary, though the Court of Justice of the European Union (‘Court of Justice’) concluded in a case initiated by the Commission that Hungary’s activities are incompatible with the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals and the Charter of Fundamental Rights of the European Union; notes that the Agency is providing operational assistance on these return operations; notes that additional safeguards have been put in place and all requests from Hungary for support are assessed on a case-by-case basis; notes that the FSWG called upon the Agency to suspend its support-related activities in Hungary; emphasises that the Court of Justice judgment gives clear guidance on the executive director to implement Article 46 of Regulation (EU) 2019/1896 and suspend the activities in Hungary.

Concludes that the Agency has only partially met the conditions set out in Parliament’s resolution of 21 October 2021; calls upon the Agency to present a detailed roadmap to the discharge authority on how it intends to fulfil the outstanding concerns, together with a clear and detailed timeframe for these actions; urges moreover the Agency to rapidly take all necessary measures suggested by the OLAF investigation, in accordance with the legislation in place, and inform the discharge authority without delay about the scope and timeline of these proceedings; underlines that the response of the Agency constitutes an essential element to be evaluated in the discharge procedure for the financial year 2020;


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(EU) 2019/1896; recalls that the Court made five recommendations to the Agency and Commission, with deadlines for implementation by the end of 2021 (recommendation 5), the middle of 2022 (recommendation 1) and by the end of 2022 (recommendations 2, 3 and 4); notes that recommendations are addressed to the Agency and to the Commission, and that also Member States are involved in the implementation; underlines the importance the discharge authority attaches to the proper implementation of the recommendations made by the Court; recalls that recommendation 5 is included in the conditions formulated in the 2019 discharge report of the Agency and is still not fully fulfilled, and that implementation of the other recommendations is still pending; requests the Court to conduct an evaluation once the deadlines of recommendations 1 to 4 have passed (by the end of 2022) in the framework of the Court’s annual report for the Agency, in order to assess whether and if so to what extent and how the Agency has implemented Court’s recommendations adequately and in time; calls on the Agency and the Commission to keep the discharge authority informed about the implementation of the recommendations and expresses its commitment to reflect this in future discharge reports;

18. Notes that in October 2020, journalistic investigations presented several allegations against the Agency regarding its possible complicity in illegal migrant pushbacks in the Mediterranean Sea; notes that these allegations were supported by video footage of the Agency’s assets allegedly participating in such actions; recalls that on the basis of these allegations, the Parliament’s Committee on Civil Liberties, Justice and Home Affairs conducted an investigation by its FSWG; recalls the conclusions of the FSWG report that were extensively covered in the 2019 discharge report of the Agency; recalls in this context that the FSWG concluded that the Agency ‘did not find conclusive evidence on the direct performance of pushbacks and/or collective expulsions by the Agency in the serious incident cases that could be examined by the FSWG’; recalls that FSWG also concluded that the Agency had ‘evidence in support of allegations of fundamental rights violations in Member States with which it had a joint operation, but failed to address and follow-up on these violations promptly, vigilantly and effectively’ and that ‘as a result, Frontex did not prevent these violations, nor reduced the risk of future fundamental rights violations’; recalls that the FSWG report included recommendations to the Agency, Commission and Council, on issues concerning fundamental rights compliance of the Agency and governance, oversight, procedures for reporting, and the handling of complaints; notes that those recommendations are addressed to the Agency, its management board, Parliament, the Commission and the Council; notes that the executive director of the Agency reports in each management board meeting on progress implementing the recommendations made by the FSWG on fundamental rights and legal operations aspects of operations, the European Ombudsman and the Court; notes that there are no deadlines for the implementation of the recommendations, and calls upon the Agency to provide clarity to the discharge authority on the follow-up envisaged by the recommendations; calls on the FSWG to perform a follow-up inquiry into the implementation of the recommendations from the FSWG report and to communicate the findings to the discharge authority in order for them to be reflected in the discharge for the Agency;

19. calls on the executive director to strengthen his relationship with the FRO and the consultative forum by taking consistently into account their recommendations, ensuring that the FRO is properly consulted before operations, and before operations, and following up on the FSWG recommendations in a timely manner, and report to the
discharge authority about the progress made;

20. notes that the Agency’s FRO formally registered ten SIRs with three final FRO reports issued closing the SIRs and three more considered closed pending the publication of the FRO reports; notes that the concerned SIRs involve alleged violations of fundamental rights in the course of operational activities, including return operations, coordinated by the Agency (i.e. relating to Member States’ and Agency staff); stresses that the FSWG expressed concern ‘about the lack of cooperation of the Executive Director to ensure compliance with some of the provisions of the EBCG Regulation, notably on fundamental rights’;

21. Recalls that all of the Agency's operations and activities must be conducted in full compliance with Regulation (EU) 2019/1896, as well as the EU Staff Regulation and the Agency’s Financial Regulation;

Staff policy

22. Regrets that, on 31 December 2020, the establishment plan was 63.01 % implemented, with 662 temporary agents appointed out of 1 050 temporary agents authorised under the Union budget (compared to 484 authorised posts in 2019); notes that, in addition, 387 contract agents and 185 seconded national experts worked for the Agency (with 730 contract agents and 220 seconded national experts authorised for the Agency in 2020);

23. Notes with concern the gender balance reported for 2020 at senior management level with 15 men (75 %) and 5 women (25 %), at the level of the management board with 50 men (83,3 %) and 10 women (16,7 %), and for the Agency’s staff overall, with 870 men (70,5 %) and 364 women (29,5 %); calls upon the Agency to improve the gender balance in its top management and staff, and report to the discharge authority about the progress made; reiterates its call on the Commission and the Member States to take the importance of ensuring gender balance into account when nominating their members to the management board of the Agency;

24. Recalls that OLAF opened an investigation in 2019 over allegations of harassment, misconduct and migrant pushbacks involving the Agency, pinpointing irregularities; notes that OLAF closed the first part of its investigation into the handling of fundamental rights incidents on 15 February 2022 with a disciplinary recommendation and that its outcome was partially presented to the Members of Parliament's Committees on Budgetary Control and on Civil Liberties, Justice and Home Affairs on 28 February 2022; notes, however, that the report has not yet been provided in writing to the Members, nor has other written evidence of the outcomes of the investigation been provided; notes with concern that this investigation refers to allegations in relation to the exercise of professional duties and non-compliance with the rules in place and that the report has been sent to the Agency’s management board under a secure reading room procedure; calls on OLAF and the Commission to make sure that the full investigation report will be shared with the discharge authority and the Committee on Civil Liberties, Justice and Home Affairs as soon as possible, while fully respecting Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor’s Office and the effectiveness of the
European Anti-Fraud Office investigations and all legal requirements on the protection of sensitive data and of the rights of the persons concerned, such as access to information on the allegations, preparation of their defence, and sufficient time to react;

25. Recalls that it is necessary to have clarity on all elements of the investigation; underlines that the findings outlined in the partial presentation raise serious concerns as regard the performance of the Agency for the financial year 2020 and urges the management board and the Commission to take rapid action to address all issues raised, as the credibility of the Agency has to be beyond any doubt, in order for it to be able to fully fulfil its tasks and prerogatives, also in the context of the war in Ukraine; considers that the discharge authority has at the moment incomplete information to take a fully informed decision on discharge for the financial year 2020; reiterates its call on the Agency to fully cooperate with OLAF and to keep the discharge authority informed on any developments that are relevant for the discharge procedure;

26. Reminds the importance of the Agency and of its role as a border and coast guard of the Union; calls therefore on the Agency to step up its efforts to follow up and appropriately address all OLAF recommendations with a view to ensure full functionality, as well as effectiveness and credibility of its actions, especially in the context of the current situation in Ukraine, when the border control of the Union and proper management of the increasing migration flows become of paramount importance;

27. Notes with concern the Agency’s replies to Parliament’s written questions to the effect that in total 17 cases of harassment were reported to the Agency’s competent entities in 2020; calls on the Agency to carefully assess each case, taking a zero-tolerance approach to psychological, sexual or any other kind of harassment, and to proceed swiftly with holding those responsible for this misconduct accountable; welcomes the training received by the confidential counsellors and the actions undertaken to raise awareness among staff and inform staff on the confidential counsellors; welcomes the online awareness-raising sessions for executive, senior, and middle managers and team leaders, and that dedicated awareness sessions were organised to staff members that signed up for such sessions; calls on the Agency to inform the discharge authority about the outcome of these cases;

**Procurement**

28. Notes that the Agency launched 23 open tenders in 2020, with five resulting in signed contracts for a total value of EUR 9 309 000,00, and 18 of these are still ongoing, with a the total value of EUR 153 294 000,00; further notes that the Agency launched 30 low- and medium-value procedures (negotiated with three and five candidates) with a total value of EUR 2 764 706,46, with out of the 30 procedures, 21 resulting in signed contracts in 2020 for a total value of EUR 1 992 904,00, while nine of these are still ongoing, for a total value of EUR 771 802,46; further notes that 213 very low-value procedures (negotiated with one candidate) for a total value of EUR 1 347 649,76 were handled by the Agency in 2020; notes finally that 776 procedures under existing framework contracts for a total value of EUR 91 451 075,83 have been handled in 2020 with 696 resulting in signed specific contracts or order forms, with a total value of EUR

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80 895 932,89, while 80 of them for a total value of EUR 10 555 142,94 are still ongoing;

29. Notes that the Agency led the inter-institutional tender for purchase of personal protective equipment with around 50 other Union institutions, agencies and bodies participating and a total value of EUR 60 580 000,00;

30. Welcomes that the Agency introduced guidelines for green procurement for cleaning and canteen services and furniture delivery; encourages the Agency to evaluate the experience with green procurement and share it with the EU Agencies Network, and, where appropriate, to extend the scope of green procurement in the Agency;

Prevention and management of conflicts of interest, and transparency;

31. Regrets that not all management board member CVs and declarations of interest are published on the Agency’s website; calls on the Agency, with the aim of increasing transparency, to publish the missing CVs and declarations of interest on its website and to report to the discharge authority on the measures taken in that regard;

32. Recalls the discharge authority’s concerns in the 2019 discharge regarding transparency and interest representation for the Agency; notes the establishment and operationalisation of the Agency's transparency register; calls on the Agency to comply with the highest standards of transparency and to have the transparency register regularly updated; notes that the Agency implemented a new process to increase transparency; notes that all industry meetings (i-days) were organised online with presentation of more than 60 solutions by 50 companies, with the participation of 430 representatives of the Agency, Member States and Union partners, as well as international organisations; notes that the Agency, in addition to the i-days, organised an online demonstration of technological solutions back-to-back with the International Conference on Biometrics for Borders, showcasing over 100 solutions, with 23 industry presentations to over 470 conference attendees; notes that very few meetings appear however to be registered in the newly established transparency register; calls on the Agency to inform the discharge authority about which private parties it met during its biannual industry days in 2020; calls on the Agency to update the discharge authority on the progress made in this regard;

33. Stresses that the European Ombudsman urged the Agency to ‘ensure a more proactive approach to transparency’; recalls the call of the FSWG on the Agency ‘to further increase its transparency by acting in accordance with the practice of the AsktheEU portal and not resort to any copyright clause’ and ‘that SIRs, reports on the use of force and individual complaints should only be classified as restricted documents when necessary and on a case-by-case basis’;

34. Emphasises the need for the Agency to cooperate with all its internal and external stakeholders in good faith, as embedded in Article 11 of Regulation (EU) 2019/1896;

35. Notes recent media reports that the Agency spent EUR 8,500 to send its executive director on a private jet to attend a meeting in Brussels on 4 March 2020, even though it was notified a day in advance that the Brussels meeting would be scheduled, at the same day there was a commercial flight available; stresses that this is in contrast with a responsible handling of taxpayers’ money and urges the executive director to change his
approach in this regard;

**Internal control**

36. Notes the assessment of the internal control system performed by the Agency in 2020, concluding that, although the system is deemed overall effective, some improvements are needed; notes that this relates in particular to internal control principles 10 (control activities), 15 (communication with external parties about matters affecting internal control) and 16 (annual and ongoing assessment of the internal control system); calls on the Agency to also take into account of the Court’s observations in the annual assessment of the internal control system; notes that the Agency has formulated an action plan to address the identified shortcomings and that it is committed to a swift implementation of the actions; calls on the Agency to keep the discharge authority informed about the progress made;

37. Notes the ongoing actions of the Agency on the observations of the Court; notes that the Agency has created an action plan to address the shortcomings identified by the Court; calls on the Agency to continue undertaking corrective actions, including the adoption and implementation of a sensitive posts policy in line with its own internal control standards, drafting a business continuity plan and obtaining the approval of its management board, addressing the risk of double funding from the Internal Security Fund and addressing the high level of carry-overs; calls however on the Agency to step up its efforts into reaching the required occupancy levels laid down in the staff establishment plan; welcomes the corrective steps taken by the Agency to address the issue of reimbursements to cooperating countries without the necessary supporting documentation; calls on the Agency to inform the discharge authority about the progress made on those matters;

38. Notes the Court’s observation that the Agency had failed to record an exception note in the central register for exceptions; calls on the Agency to maintain its high standards of transparency and timely and complete registration of exceptions and non-compliance events and their underlying documentation;

39. Notes the Court’s finding that on 1 September 2020 the Agency asked the Commission for permission to upgrade 100 AST posts into advanced-level posts (grade AD 7 or higher), for the standing corps and new tasks under the new mandate; notes with concern that the Agency, in anticipation of the Commission’s reply, on 9 September 2020, sent out 47 offers to advanced-level candidates with the Commission informing the Agency that it had no legal authority to upgrade the posts, resulting in the Agency immediately withdrawing the 47 job offers; emphasises that the Agency should have obtained legal assurance from the Commission before it proceeded, as this would have prevented unnecessary disturbance that resulted from the withdrawal; recalls that this has exposed the Agency at an unnecessary risk of reputational damage and litigation; calls on the Agency to prevent taking such actions without legal clarity in the future to avoid such situations from re-occurring;

**COVID-19 response and business continuity**

40. Notes the establishment of a crisis cell within the Agency that supported its executive management throughout the COVID-19 pandemic, by providing support on business continuity, ensuring staff health, safety and wellbeing, and minimising disruption to the
Agency’s operations; notes that the crisis cell was empowered with a temporary allocation of functions and staff from entities across the Agency to ensure efficient and sustainable management of processes and tasks;

41. Notes that the Agency drafted specific guidelines on teleworking during the COVID-19 pandemic as well as an exit strategy; notes that, to facilitate teleworking and contribute to creating appropriate working conditions for staff, all staff, as well as external personnel in case of justified business needs, were allowed to take home certain office and ICT equipment they normally use at the office with an internal procedure developed to ensure control over the equipment and orderly pick up from the premises;

42. Notes the Agency’s report that a new paperless workflow was launched for financial and procurement processes, including new implementing tools, such as online interpretation; notes the Agency’s remark that the impact of the pandemic in some cases can be positive, as it accelerated much-needed innovations and it simplified some procedures;

43. Notes that the Agency’s training plan was significantly affected the pandemic, with travel restrictions imposed by Member States and the Schengen Associated Countries leading to the unavailability of both trainers and training locations, as well as restricted possibility to travel to the training sites; notes the Agency’s efforts to ensure business continuity by re-designing the entire training process, adjusted to remote learning;

Other comments

44. Recalls that on 15 June 2021, the European Ombudsman concluded that there had been delay on the part of the Agency in implementing the important changes introduced by Regulation (EU) 2019/1896; notes that the European Ombudsman handled 13 cases that relate to the Agency, six on public access to documents, six on human resources management and one related to fundamental rights; notes that the European Ombudsman did not provide recommendations in six cases, that the implementation of four recommendations is ongoing and that in three cases the recommendation has already been implemented;

45. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of […] 2022ª on the performance, financial management and control of the agencies.

ª Texts adopted, P9_TA(2022)0000.
17.2.2022

**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 Border and Coast Guard Agency for the financial year 2020
(2021/2146(DEC))

Rapporteur for opinion: Ramona Strugariu

**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 fact that the Court of Auditors (the ‘Court’) has declared the transactions underlying the annual accounts of the European Border and Coast Guard Agency (the ‘Agency’) for the financial year 2020 to be legal and regular in all material aspects; notes that the budget of the Agency was increased from EUR 446 million to EUR 495 million (+ 11%); takes note of the increase in the Agency's staff in 2020 from 749 to 1 234 (+ 64.8%); recalls that the budget of the Agency increased from EUR 118 million in 2011 to EUR 460 million in 2020, and to an annual average of EUR 900 million for the 2021-2027 period;

2. Notes that the Union funding to the Agency increased by EUR 10 million by means of Amending budget No 1/2020; deplores that that amount was not visible in the budgetary accounts of the Agency; agrees with the Court opinion that this reduces transparency as it makes it harder to see how much Union funding was available to the Agency in 2020 and how that amount changed over time; emphasises the need to ensure transparency as a priority;

3. Notes the Court's remark that in one case a national authority conducted two unannounced return operations, costing EUR 355 000 overall, which resulted in a sudden budgetary deficit for the Agency; notes that as a result, the Agency was forced to make an ex-post budgetary commitment, in violation of the Agency's financial regulation;

4. Notes the ongoing actions of the Agency on the observations of the Court; notes that the Agency has created an action plan to address the shortcomings identified by the Court; calls on the Agency to continue undertaking corrective actions, including the adoption and implementation of a sensitive posts policy in line with its own internal control standards, drafting a business continuity plan and obtaining the approval of its management board, addressing the risk of double funding from the Internal Security
Fund and addressing the high level of carry-overs; calls however on the Agency to step up its efforts into reaching the required occupancy levels laid down in the staff establishment plan; welcomes the corrective steps taken by the Agency to address the issue of reimbursements to cooperating countries without the necessary supporting documentation; calls on the Agency to inform the discharge authority about the progress made on those matters;

5. Acknowledges that the Agency has adopted a new process to increase transparency and equal opportunities by streamlining industry dialogues through the establishment and operationalisation of the Agency's transparency register, thus addressing Parliament’s recommendation from the European Parliament resolution of 21 October 2021 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 for the financial year 2019; calls on the Agency to comply with the highest standards of transparency and to have the transparency register regularly updated;

6. Notes the Court's remark that the Agency asked the Commission on 1 September 2020 for permission to upgrade 100 AST posts into advanced-level posts (AD7 or higher); regrets that the Agency, in anticipation of the Commission's reply, on 9 September 2020 sent out 47 offers to advanced-level candidates which consequently had to be withdrawn because the Agency did not have legal authority for such an action, exposing the Agency at an unnecessary risk of reputational damage and litigation; calls on the Agency to ensure principle of legality in all its activities; recalls however that the allocation of posts at the appropriate grade is essential for the optimal functioning of the Agency; calls on the Agency and the Commission to improve mutual communication, taking into consideration the specifics of the operational nature of the Agency and ensure that future posts are allocated at the appropriate grade corresponding to the post requirements;

7. Notes the gender balance reported for 2020 at senior management level with 15 men (75 %) and 5 women (25%) and at the level of the management board with 50 men (83,3 %) and 10 women (16,7 %); notes that the staff overall is composed of 870 men (70,5 %) and 364 women (29,5 %); underlines that the responsibility of nominating members of the Agency's management board lies with national authorities; calls, therefore, on the Agency to remind Member States proactively of the importance of gender balance and calls on Member States to ensure gender balance when nominating their members to Agency's management board; urges that that imbalance be addressed and remedied as soon as possible;

8. Recalls of the fact that the European Anti-Fraud Office has initiated an investigation on the Agency over allegations of harassment, misconduct and migrant pushbacks; notes that according to the Agency’s reply, it is fully committed and cooperates closely with the European Anti-Fraud Office; underlines that the outcome of the investigation was still pending by early February 2022; reminds that the Ombudsman conducted two own-initiative inquiries into the effectiveness and transparency of the complaints mechanism of the Agency and on the role and independence of the fundamental rights officer, as well as into the compliance by the Agency with its fundamental rights obligations and its ability to ensure accountability; recalls that the Ombudsman’s first inquiry was followed by nine suggestions for improvement to the Agency, including suggestions on how to make it easier for potential victims of fundamental rights violations to be aware
of redress possibilities and to report incidents; notes that the Ombudsman’s second inquiry, concluded on 17 January 2022, was followed by a new series of suggestions to the Agency, with a view to improving its accountability; notes the findings of the Court in its special report 08/2021 entitled ‘Frontex’s support to external border management: not sufficiently effective to date’; recalls of the recommendations of the Parliament’s Frontex Scrutiny Working Group (FSWG) as laid down in its ‘Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations’ and the conclusions of the 13 internal inquiries by the Agency’s management board; notes the Agency’s report on the implementation of the conclusions of the extraordinary management board meeting of 6 October 2021 which reflects the 71 recommendations received from the aforementioned reports and audits, which subsequently were translated by the Agency into 115 actions; calls on the Agency to take all necessary measures towards implementing all the remaining recommendations and to report to the discharge authority over the progress achieved; stresses in that context the need for a full clarification of alleged violations of fundamental rights at the external borders;

9. Notes that the FSWG "did not find conclusive evidence on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined by the FSWG", but concluded "that the Agency found evidence in support of allegations of fundamental rights violations in Member States with which it had a joint operation, but failed to address and follow-up on these violations promptly, vigilantly and effectively"; notes that the "Agency also failed to adequately respond to internal observations about certain cases of probable fundamental rights violations in Member States" and "that Frontex generally disregarded" reports from "several reliable actors"; notes that the FSWG “found deficiencies in Frontex’s mechanisms to monitor, report and assess fundamental rights situations and developments, and makes concrete recommendations for improvement", but "also identified gaps in the framework of cooperation with Member States, which may hamper the fulfilment of Frontex’s fundamental rights obligations"; notes that the FSWG expressed concern "about the lack of cooperation of the Executive Director to ensure compliance with some of the provisions of the EBCG Regulation, notably on fundamental rights"; notes that the "FSWG takes the position that the Management Board should have played a much more proactive role in acknowledging the serious risk of fundamental rights violations and in taking action to ensure that Frontex fulfils its negative and positive fundamental rights obligations as enshrined in the Regulation"; notes that the FSWG welcomes the new internal procedures and rules developed by the Agency in the months preceding the report to comply with the Regulation but urges the executive director and the management board "to further increase the fundamental rights compliance of the Agency by reconsidering its internal structures and communication, as well as the cooperation with the host Member States"; notes that the FSWG “highlights the responsibility of the Member States and the Commission, outside their role in the Management Board as well”;

10. Notes that an analysis of respect for fundamental rights by the Agency was not included in the scope of the Court’s special report 08/2021 entitled ‘Frontex' support to external border management: not sufficiently effective to date’; asks the Court to carry out a

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1 European Ombudsman, Decision of 17 January 2022 in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities.
specific audit about the Agency’s activities regarding the respect for and the protection of fundamental rights in future reports; calls the Agency to swiftly implement recommendation 5 of the Court’s special report, respecting the indicated timeline set out therein; remains concerned that some weaknesses identified in the Court's special report 08/2021 remain present;

11. Acknowledges the Agency’s efforts following the Parliament’s recommendations made in the European Parliament resolutions of 29 April 2021 and 21 October 2021 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 for the financial year 2019; recalls the conditions formulated in the Parliament’s resolution of 21 October 2021 for release of a budgetary reserve; reminds that this reserve was not made in the budget of the Agency for 2022 asks nevertheless the Agency to inform the discharge authority on the progress made towards fulfilling the six conditions formulated in that resolution, namely: (1) the recruitment of the fundamental rights officer, who took office on 1 June 2021, and the appointment of the first 20 fundamental rights monitors; regrets the fact that 15 of those appointments were made at AST level; reiterates that Regulation (EU) 2019/1896 provides for the recruitment of at least 40 fundamental rights monitors by 5 December 2020; deplores that the Agency is still unable to fulfil that requirement; urges the Agency to swiftly recruit the remaining 20 fundamental rights monitors and to appoint them at AD level; deeply regrets the delay in the recruitment of the fundamental rights monitors and recalls that this poses a serious risk to operations and reputation of the Agency; deplores the fact that the fundamental rights officer still lacks adequate human resources to properly conduct the tasks that he is entrusted with; urges the Agency to provide its fundamental rights officer with adequate resources and staff, in particular in relation to further developing and implementing the Agency’s strategy to monitor and ensure the protection of fundamental rights; welcomes the cooperation between the Agency and the European Union Agency for Fundamental Rights towards completing the recruitment of the remaining fundamental rights monitors; (2) the appointment of the three deputy executive directors in 2021; (3) the update of the Standard Operating Procedure for Serious Incident Reporting in May 2021; (4) the adoption by the Agency’s management board of a detailed procedure for the implementation of Article 46 of Regulation (EU) 2019/1896; (5) the establishment of a fully functioning fundamental rights monitoring system, in line with Article 110 of Regulation (EU) 2019/1896 and (6) the implementation of recommendation 5 of the Court’s Special Report 08/2021 by the end of 2021;

12. Recalls that the Agency is mandated to control borders while ensuring that border controls are conducted in accordance with the fundamental rights applicable in the Union, including those enshrined in the Convention relating to the Status of Refugees, Regulation (EU) 2016/399 and Regulation (EU) 2019/1896; deeply regrets, in that regard, that the Agency continues to carry out returns from Hungary; regrets the fact that the Agency has also still not established a detailed procedure for the

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implementation of Article 46 of Regulation (EU) 2019/1896; notes, moreover, the assessment of the Agency’s own fundamental rights officer that the Agency’s role in supporting Member States implicated the Agency to some extent in their actions; calls on the Agency to immediately adopt such a procedure; calls on the Commission to support the Agency in that regard; calls on the Agency to suspend its operations supporting return-related operations from Hungary as long as, and as concluded by the Court of Justice of the European Union, the return decisions issued by the Hungarian authorities are incompatible with Directive 2008/115/EC and the Charter of Fundamental Rights of the European Union;

13. Reiterates that the increased competences and budget of the Agency need to be accompanied by a corresponding increase in accountability and transparency; stresses that the granting of discharge in respect of the implementation of the budget of the Agency is conditional on such accountability and transparency, and especially on the Agency's commitment to comply with Union law.

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### INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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Key to symbols:
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# FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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**Key to symbols:**
- **+**: grants discharge
- **-**: postpones discharge
- **0**: abstention