



**2021/2140(DEC)**

17.1.2022

## **DRAFT REPORT**

on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2020  
(2021/2140(DEC))

Committee on Budgetary Control

Rapporteur: Tomáš Zdechovský

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## 1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### **on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2020 (2021/2140(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) 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' replies<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 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of [...] 2022 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2020 (00000/2022 – C9-0000/2022),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012<sup>3</sup>, and in particular Article 70 thereof,
- having regard to Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011<sup>4</sup>, and in particular Article 47 thereof,
- having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December

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<sup>1</sup> OJ C 439, 29.10.2021, p. 3. ECA annual report on EU agencies for the 2020 financial year: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59697>.

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<sup>3</sup> OJ L 193, 30.7.2018, p. 1.

<sup>4</sup> OJ L 295, 21.11.2018, p. 99.

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 Council<sup>5</sup>, and in particular Article 105 thereof,

- 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 (A9-0000/2022),
1. Grants the Executive Director of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) discharge in respect of the implementation of the Agency's budget for the financial year 2020 / Postpones its decision on granting the Executive Director of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) discharge in respect of the implementation of the Agency's budget 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 Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), 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>5</sup> OJ L 122, 10.5.2019, p. 1.

## 2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### **on the closure of the accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2020 (2021/2140(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) 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' replies<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 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of [...] 2022 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2020 (00000/2022 – C9-0000/2022),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012<sup>3</sup>, and in particular Article 70 thereof,
- having regard to Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011<sup>4</sup>, and in particular Article 47 thereof,
- 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

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<sup>1</sup> OJ C 439, 29.10.2021, p. 3. ECA annual report on EU agencies for the 2020 financial year: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59697>.

<sup>2</sup> OJ C 439, 29.10.2021, p. 3. ECA annual report on EU agencies for the 2020 financial year: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59697>.

<sup>3</sup> OJ L 193, 30.7.2018, p. 1.

<sup>4</sup> OJ L 295, 21.11.2018, p. 99.

Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>5</sup>, and in particular Article 105 thereof,

- 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 (A9-0000/2022),
1. Approves the closure of the accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2020 / Postpones the closure of the accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2020;
  2. Instructs its President to forward this decision to the Executive Director of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), 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>5</sup> OJ L 122, 10.5.2019, p. 1.

### 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 Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2020 (2021/2140(DEC))**

*The European Parliament,*

- having regard to its decision on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) 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 (A9-0000/2022),
- A. whereas, according to its statement of revenue and expenditure<sup>1</sup>, the final budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) (the ‘Agency’) for the financial year 2020 was EUR 240 119 000, representing a decrease of 16,74 % compared to 2019, when the Agency’s budget was increased by 40,23 % compared to 2018; whereas the Agency’s budget derives almost exclusively from the Union budget;
- B. 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 as regards revenue are legal and regular in all material aspects; whereas the Court identified a total amount of payments of EUR 10 405 074,69 which it considered not to be compliant with the provision of the relevant framework agreement, representing 4,1 % of the payment appropriations available in 2020, thereby exceeding the materiality threshold set for the audit and resulting in a qualified opinion on the legality and regularity of payments underlying the accounts; whereas, except for those non-compliant payments, the Court concludes that the underlying transactions as regards payments for the year ended 31 December 2020 are legal and regular in all material respects;

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

1. Regrets that budget-monitoring efforts during the financial year 2020 resulted in a budget implementation rate of 75,61 % which, although it represents an increase of 31,10 % compared to 2019, it is still well below the target; notes, furthermore, that the

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<sup>1</sup> OJ C 114, 31.3.2021, p. 199.

payment appropriations execution rate was 96,24 %, representing an increase of 3,96 % compared to 2019;

2. Notes the observations of the Court on the high amount of carry-overs for Titles II and III of the Agency's budget, notes that the Agency used automatic carry-overs of non-differentiated appropriations for Title II of EUR 10 200 000 (59,4 %) of a total amount of automatic carry-overs of EUR 17 200 000; notes that the Agency also used non-automatic carry-overs of commitment appropriations for Title III of EUR 56 300 000 (23 % of the appropriations in the final adopted budget), mainly related to the ECRIS, ETIAS and interoperability systems and notes that these non-automatic carry-overs are significantly lower than the EUR 159 000 000 of carry-overs in 2019 (55 % of appropriations in the final adopted budget) but still represents a substantial amount compared to the total budget; notes the Court's conclusion that, although the nature of the Agency's operations may spill over to the following year, the excessive amount of carry-overs for Titles II and III is indicative of various structural issues affecting compliance with Articles 9, 12 and 28 of the Agency's financial rules; calls on the Agency to address those issues;

### *Performance*

3. Welcomes the fact that the Agency uses certain tools as key performance indicators to assess the added value provided by its activities and to improve its budget management; notes that the Agency updated its corporate key performance indicators in 2020 with ten out of 30 indicators not changed or only changed editorially, one indicator deleted, one new indicator introduced and other indicators updated for various reasons, such as changes in the regulatory environment of the Agency, insights gathered from audits or availability of better metrics;
4. Notes that, according to the statement of the Agency, it has achieved its objectives for 2020 as set out in its establishing regulation, progressed towards the goals and objectives established in the Agency's long-term strategy and delivered the results defined in its 2020 annual work programme, both in terms of outcomes and performance; notes that the performance and availability of the IT systems operated by the Agency was in accordance with the relevant service-level agreements; notes that the implementation of new IT systems, as well as the development of interoperability between the new and the existing systems, continued; notes that the implementation of the new Entry/Exit System faced a delay of two months with the Justice and Home Affairs deciding to postpone the entry into operation to allow the Member States more time to prepare; welcomes that for the other new IT-systems the Agency reports that implementation timetables were not negatively affected;
5. Notes that in 2020 the Agency signed a transversal engineering framework (TEF) in order to move away from the silo approach in systems development and operation; notes that the TEF is aimed at setting up a contractual shell for the design, development, testing and implementation of new IT-systems;

### *Staff policy*

6. Notes that, on 31 December 2020, the establishment plan was 89,60 % implemented, with 181 temporary agents appointed out of the 202 temporary agents authorised under the Union budget (compared to 172 authorised posts in 2019); notes that, in addition, 83



contract agents and 10 seconded national experts worked for the Agency in 2020, out of 111 contract agents and 11 seconded national experts authorised;

7. Notes with concern the composition of the Agency's senior management with respect to gender, with two men (100 %) and no women, of the management board with 44 men (81,5 %) and 10 women (18,5 %), and within the staff overall with 184 men (69,7 %) and 80 women (30,3 %);
8. Notes the difficulties faced in the Agency's recruitment procedures caused by the COVID-19 pandemic which slowed down the recruitment and onboarding of new staff considerably, with the Agency reporting that 50 % of its finalised recruitments that reached the final phase were directly affected or delayed in taking up duties due to COVID-19 related restrictions; notes that the Agency reports to have launched 25 selection procedures with 19 procedures closed by year-end, resulting in 21 issued and accepted job offers;
9. Notes that the Agency reported that its confidential counsellors received seven forms to informally seek information and advice or guidance and support in an action on psychological harassment and situations of conflict; notes that no cases of formal harassment following the information were reported, and that there were no harassment cases brought before the court in 2020; notes that the confidential counsellors of the Agency are regularly trained and receive support from external experts;

### ***Procurement***

10. Notes the signature of the TEF, the largest tender ever signed by the Agency; notes that the Agency presents the TEF as a significant innovation to the operational sourcing model of the Agency that is expected to generate important gains in the vendor and contract management process, including better value for money, economies of scale and faster procurement processes, while also reducing the Agency's dependence on a relatively small number of vendors; welcomes the innovative approach, encourages the Agency to continue with that approach and calls on the Agency to inform the discharge authority of whether the gains are materialising and on how the risks, inherent to the innovative approach, are being managed by the Agency;
11. Notes that the preparation of the specifications for the call for tenders related to the TEF was completed in January 2020 and that the tender procedure was launched on 29 January 2020 for four lots and associated services, namely Lot 1: design, coordination, quality assurance and integration support, Lot 2: development services, Lot 3: infrastructure (hardware, software, related services), and Lot 4: testing and qualification; notes that the offers for Lots 1, 2 and 3 were signed in 2020, while Lot 4 was signed in July 2021; notes that it is a significant achievement for the Agency to have completed these procedures, in particular considering the restrictions caused by the COVID-19 pandemic;
12. Notes that the Court found that the Agency signed a specific contract for software that was different from the software offered by the contractor in its tender for the associated framework contract; notes that the Agency did not modify the framework contract; notes that, according to the Court's observation, acquiring a different product that is not included in the price offer, at a different price than the product originally offered, is a deviation from the framework contract; notes the Court's conclusion that the specific

contract is non-compliant with the framework contract as is the associated payment of EUR 10 399 834; notes that the Agency acknowledges the Court's observations and states that it has taken measures to strengthen the alignment of the evolution of the Agency's IT architecture with its contractual framework; notes that the Agency states that the non-compliance did not result in any prejudice to the financial interests of the Agency or the Union as it considers that the expenditure was justified; regrets that the Agency did not follow the appropriate procedures, especially given the substantial amount concerned; notes the extensive considerations that the Agency's executive director presented in a hearing with Parliament's Committee on Budgetary Control on 29 November 2021, stating that the decision to acquire the software in question was a conscious decision of the Agency's management that presented cost-saving opportunities for the Agency; emphasises that, even though cost-saving opportunities can be assumed, the applicable procurement rules must be followed at all times to ensure that the Union taxpayer gets full value for money through transparent and competitive procurement procedures; calls on the Agency to make sure that procurement rules are respected at all times;

13. Notes that the Court found that the Agency signed an order form for maintenance services covering the period from 7 November 2020 to December 2024 (four years), contravening the provisions of the related framework contract that allowed services to be invoiced in advance for one year; notes that the Court concluded that the amount of EUR 5 241 paid to the contractor for services to be provided after 7 November 2021 is irregular; notes that, although it concerns a relatively small amount, the reputational risks of non-respect of procurement rules should be accounted for;

#### ***Prevention and management of conflicts of interest, ethics and transparency***

14. Acknowledges the Agency's existing measures and ongoing efforts to secure the transparency, prevention and management of conflicts of interest, and the protection of whistleblowers; notes that the Agency has in place rules on the prevention and management of conflicts of interest for members of staff; notes that the Agency's management board on 23 December 2020 adopted implementing rules on the prevention and management of conflicts of interests of members of staff in order to ensure in a transparent and consistent manner the handling of situations where conflicts of interest may arise; notes that these implementing rules are applicable to the Agency's staff, including the executive director and the deputy executive director, seconded national experts, and paid and unpaid interns;
15. Notes with appreciation that the Agency publishes for the members of its management board and its senior management the declarations of interest on its website; regrets, however, that CVs for the members of its management board are not presented on its website; recalls the discharge authorities resolution to publish also CVs on the Agency's website in order to increase transparency;

#### ***Internal control***

16. Welcomes the Agency's annual assessment of its internal control system that concluded that its internal control system is present, functioning and effective, although some improvements are needed; calls on the Agency to incorporate the Court's observations regarding non-respect of procurement procedures in its assessment and to evaluate the

impact of the identified weaknesses on the internal control principles and components;

17. Notes that at the end of 2020 the implementation rate of audit recommendations was 65 % (24 recommendations implemented and 37 recommendations due); notes that in total 31 recommendations were open at the end of 2020 out of which none were ‘critical’; notes with concern that 13 recommendations were past the due date, meaning that the implementation of the recommendation was ongoing though the deadline for implementation had lapsed;

### ***COVID response and business continuity***

18. Notes the disruption caused by the COVID-19 pandemic that challenged the Agency’s business continuity and the availability of the existing large-scale IT systems and the implementation of the new systems entrusted to it; notes that the Agency managed to reduce the negative impact by taking mitigating measures;
19. Notes that the Agency reduced the physical presence of staff at the Agency’s sites and took measures to maintain healthy workplaces for critical staff, thus ensuring business continuity for the Agency’s systems; notes that the Agency also had to take mitigating measures to reduce the impact of the COVID-19 crisis on the development and deployment of systems due to disrupted supply chains in the second half of 2020 and due to travel and access restrictions that prevented the availability of staff and contractors to work on site; notes that the Agency, notwithstanding those difficulties, made significant progress on key projects such as the implementation of the second generation Schengen Information System (the “SIS II”) and phase 2 of the Automated Fingerprint Information System, and the integration of new users to SIS and the Visa Information System;

### ***Other comments***

20. Notes that the Agency drafted, negotiated and signed bilateral cooperation plans with the European Asylum Support Office (now the European Union Agency for Asylum), the European Union Agency for Fundamental Rights and the European Union Agency for Cybersecurity (ENISA); notes that the Agency also continued its cooperation with other partner agencies, for example with the European Union Agency for Law Enforcement Training (CEPOL) on training activities, with the European Border and Coastguard Agency on SIS, the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS) and interoperability, with CEPOL on the Visa Information System (VIS), the Supplementary Information Request at the National Entries (SIRENE), SIS, EES, ETIAS and interoperability; and with the European Union Agency for Criminal Justice Cooperation (Eurojust) on the European Asylum Dactyloscopy database (Eurodac) and SIS;
21. Welcomes the Agency’s active online presence in 2020, inter alia through the ‘discover eu-LISA’ campaign, the Agency’s participation in 16 joint actions and campaigns with the Union’s justice and home affairs agencies, and the interactive game [quiz.eulisa.europa.eu](https://quiz.eulisa.europa.eu); encourages the Agency to continue promoting its work, research and activities to increase its public visibility;
22. Welcomes that the Agency made significant progress on the project for building a second extension to its technical site in Strasbourg with the formal land transfer, from

French authorities to the Agency, of the 20 000 m<sup>2</sup> plot adjacent to its current building complex that will serve as the site for the new extension;

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23. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of [...] 2022<sup>2</sup> on the performance, financial management and control of the agencies.

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<sup>2</sup> Texts adopted, P9\_TA(2022)0000.