



**2022/2124(DEC)**

2.3.2023

## **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 2021  
(2022/2124(DEC))

Rapporteur for opinion: Saskia Bricmont

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## 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 outcome of the European Court of Auditors (the ‘Court’) Annual Report on EU Agencies for the financial year 2021<sup>1</sup>, which states that the European Border and Coast Guard Agency (‘Frontex’ or the ‘Agency’) accounts for the year ended 31 December 2021 present fairly, in all material respects, Frontex financial position at 31 December 2021; notes that the Agency’s accounts for the year ended 31 December 2021 cover the results of its operations, its cash flows, and the changes in net assets, in accordance with its financial regulation and with accounting rules adopted by the Commission’s accounting officer; notes that, according to its statement of revenue and expenditure, the budget of the Agency increased to EUR 535.2 million (+ 46.87 %) in 2021 and that the Agency's staff was increased from 1 234 to 1 554 (+ 26 %) in the same period;
2. Underlines that Frontex is the EU decentralised agency that received the most significant budget increases over the last years, bringing it to €535.2 in 2021; recalls that Frontex started with a budget of €6 million in 2005, and that in 2021 it is receiving €741 million; recalls that the Agency has been strengthened in terms of staff and technical equipment with its new mandate in 2019; further notes that the budgetary allocation is planned to grow to an annual average of €900 million for the 2021-2027 period; while acknowledging the importance of tasks and corresponding responsibilities entrusted upon Frontex, considers that the increase in the budget must be proportionate and not exceed what is necessary for the implementation of the extended mandate of the Agency, and should reflect the observations issued by accountability mechanisms to ensure the correct implementation of the agency mandate, including with regard to respect of fundamental rights;
3. Notes the Court's emphasis on matters related to: the reliability of the accounts concerning the incorrect calculation of contributions from non-EU Schengen area countries, which caused an overstatement of the EU contribution to the Frontex’ budget of EUR 2,6 million and an understatement of contributions by the non-Schengen area countries, the reliability of the accounts regarding the carry-over to 2021 of a budgetary commitment dated 21 December 2020 “Preparatory measures for 2021 deployments SC Cat 1 and 2” without the backing of a legal commitment before the end of 2020, the legality and regularity of payments concerning certification of the accounts, where the Accounting Officer declares a lack of necessary information for the validation of a new system laid down by the authorising officer and used for supplying accounting information; takes note of the Court’ observations on management and control systems in the Agency; highlights that the contract concluded at the end of December 2021 with a single contractor for the provision of travel services including the deployment of the standing corps had to be suspended in February 2022 and terminated in May 2022 for incorrect performance of the contract; further notes the Court’s observation that the technical, professional and financial capacity requirements could have been set higher

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<sup>1</sup> [https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES\\_2021/AGENCIES\\_2021\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2021/AGENCIES_2021_EN.pdf)

by the Agency to avoid exposure to such a risk;

4. Notes the Court's observation concerning weaknesses in recruitment procedures, which undermine the principles of transparency and equal treatment of the candidates; notes that the Court, in two audited recruitment procedures, found that the selection committees applied the arithmetical average of their members' individual assessments, instead of the consensual method prescribed by the Agency internal guidelines; further notes the lack of clear standards or instructions to selection committee members on how to assess the individual selection criteria; acknowledges that these weaknesses undermine the principles of transparency and equal treatment of the candidates in recruitment procedures and may expose Frontex to reputational and legal risks; also takes note that Frontex acknowledged room for improvement in the implementation of the defined rules on selection procedures, and that in January 2022, the Agency provided clearer instructions to the selection committee members with the aim of ensuring harmonised procedures and more consistent assessments of the candidates;
5. Reiterates its strong concern regarding media reports in August 2022 according to which the Agency made use of a contractor who allegedly exploited cultural mediators, offering them working conditions that violate European standards on pay and working conditions; points the petition initiated by cultural mediators in this regard as well as their complaint to the European Ombudsman; takes notes of Frontex replies to the media that, following the petition, the Agency contacted the contractor to remind them about their obligations; deplores that information about the implementation of the contract and respect of conditions for the workers could not be found in the information provided by the Agency to the Parliament;
6. Notes with regret the serious internal control weaknesses in the Agency's delegation process, ex-ante controls and procurement procedures, but acknowledges that issues concerning the delegation process were corrected in 2022 with the delegation and sub-delegation of powers signed for all authorising officers; deplores the many payment delays; notes that the Agency is taking action to tackle the issue of late payments and that reminders are sent to authorising officers responsible for the delayed payments; points with concern to the procurement procedure signed in December 2021 for the provision of travel agency services that is currently being investigated by the European Anti-Fraud Office (OLAF), as reported by the media; takes note of Frontex decision to terminate the travel services contract due to lack of performance; highlights that following an OLAF investigation into the mismanagement of the Agency and the resignation of its former Executive Director, Frontex is currently undergoing a transition process; calls on the Agency to continue addressing these issues and to report on the progress achieved to the discharge authority;
7. Notes the ongoing actions of the Agency in response to the Court's observations from previous years, including the corrective steps in addressing the risk of double funding from the Internal Security Fund; calls on the Agency to continue undertaking corrective actions, including the adoption and implementation of a sensitive post policy in line with its own internal control standards, and addressing the high level of carry-overs; to inform the discharge authority about the progress made on those matters;
8. Notes that the current occupancy rate in the Agency is 79%, the highest occupancy rate

since the new European Border and Coast Guard Regulation in 2019; acknowledges that timely recruitment and achieving geographical balance remain challenging mainly due to a low coefficient rate for Poland; further notes that the low coefficient rate for Poland is a long standing challenge for the Agency, which has been exacerbated in recent months by record high inflation in the country, reaching 16,6% in December 2022;

9. Notes the drawing up of a fundamental rights strategy and action plan; deeply regrets the significant delays in complying with the obligation included in Article 110(6) of Regulation (EU) 2019/1896 to deploy at least 40 fundamental rights monitors; highlights the personal role played by the former Executive Director of the Agency in this delay as well as his lack of cooperation with the Fundamental Rights Officer (FRO), against obligations set by the European Border and Coast Guard Regulation; recalls that the executive director is responsible for assessing, on an annual basis, whether the number of fundamental rights monitors needs to be increased, in consultation with the FRO; notes that since mid-October 2022 the number of fundamental rights monitors (FRMs) stands at 46; highlights nevertheless that while 31 FRMs are recruited at AD level, 15 remain recruited at AST level; calls on the Agency and the Commission to find a solution towards ensuring that all FRMs are recruited at AD level; further calls for any further FRM recruitments to be conducted at AD level only; deeply deplores that despite the significant overall staff increase for the Agency, the Fundamental Rights Officer still lacks adequate human resources; urges the Agency and the Commission to provide the FRO with adequate resources and staff;
10. Recalls that, in its fact-finding investigation on Frontex, the European Parliament Frontex Scrutiny Working Group (FSWG) concluded that the Agency failed to adequately respond to internal observations about certain cases of probable fundamental rights violations in Member States; also recalls the FSWG's position according to which the Management Board of Frontex should have played a much more proactive role in acknowledging the serious risk of fundamental rights violations; takes note of the Agency actions taken in the follow up to the FSWG recommendations, and calls upon the Agency to regularly report on the progress in their implementation;
11. Stresses that Frontex direct and indirect involvement in border management and border surveillance activities must go hand in hand with preventing and combating fundamental rights violations, and with securing compliance with the principle of non-refoulement, in accordance with the Union acquis; calls upon the Agency's Management Board to further strengthen internal oversight structures, and reiterates the importance to constantly review and control the activities of the management team, towards the timely identification and resolution of any mismanagement situations, as well as to implement the standard operating procedures to withdraw the financing of, or suspend or terminate, or not launch Frontex activities in cases where such risks arise; welcomes the Agency's decision of 25 January 2022 detailing standard operating procedures for the implementation of Article 46 of Regulation (EU) 2019/1896 drafted in accordance with the comments and observations of the Member States and Schengen Associated Countries, the FRO, and the Frontex Consultative Forum on Fundamental Rights;
12. Takes note of the amendment of the standard operating procedure on the Serious Incident Report (SIR) mechanism to define the role of the FRO in this process; stresses

that every operational plan should include a transparent reporting mechanism ensuring that every incident in the operational area is reported and properly followed up; stresses that this reporting mechanism should apply regardless of the way these assets are being financed, in order to ensure that Frontex, and in particular the FRO, can monitor the whole operational area and investigate all SIRs or other indications of non-compliance;

13. Notes the shared responsibilities that the Agency and the Member States have in the fulfilment of fundamental rights obligations; urges the Agency and the Member States to further develop structures of cooperation, information-sharing and exchange of best practices;
14. Expresses its great concerns with regard to allegations of push backs in the context of Frontex operations in Lithuania, Latvia, Croatia, Bulgaria and Greece; recalls the conclusion of the Court of Justice of the European Union (CJEU) that return decisions issued by the Hungarian authorities are incompatible with Directive 2008/115/EC and the Charter of Fundamental Rights of the European Union (Charter); takes notes that Frontex performed verifications and concluded that the Agency had never been involved in returns related to the Hungarian legislation deemed incompatible with EU law by the CJEU (HU national Act LXXXIX of 2007 and Act LVIII of 2020); notes that the Agency requires Hungary to confirm special disclaimers concerning procedural aspects when requesting Frontex' support; further notes that the Agency increased monitoring activities in Hungarian returns and strengthened consultation and cooperation with the FRO on Hungary; demands the Agency to closely monitor the correct implementation of return procedures by the Hungarian authorities and to ensure the respect of fundamental rights in returns carried out with Frontex assistance, in line with the FRO recommendations;
15. Recalls that, in its judgement of 30 June 2022, the CJEU found that Lithuanian legislation allowing to deny international protection and to place in automatic detention applicants solely on the grounds that they have irregularly crossed the border is incompatible with Union law; notes that as of July 2022, Frontex no longer participated or supported Lithuania with border surveillance; notes however that the Agency maintained its operation in Lithuania, with agents working on border checks, even after the judgment of the CJEU; calls on the Agency to verify it is not involved in activities related to the Lithuanian legislation declared incompatible with EU law by the CJEU, and to refrain from participating in any operations that are incompatible with EU law;
16. Takes note that the Progress Lawyers Network (Front-LEX) and the Greek Helsinki Monitor have submitted a legal action against Frontex on behalf of two asylum seekers before the CJEU; notes that the CJEU was requested to determine whether Frontex failed to act in accordance with Article 46(4) of the Agency Regulation by refraining from taking the decision to withdraw the financing of all or of part of its activities in the Aegean Sea region, to suspend those activities or to terminate them in whole or in part; calls on the Agency to provide to the European Parliament all relevant documentation in this regard, including the FRO opinion of 1st September 2022, SIRs from 2021 and 2022 as well as information about the investigation into the case of the Agency's cultural mediator that was forcibly expelled to Turkey with at least 130 third country nationals, as reported in November 2021 to the Management Board;

17. Welcomes that following the opinions and recommendations of the FRO regarding his assessment of the situation in Greece, the former Executive Director ad interim and the FRO engaged with the Hellenic authorities in operational activities carried out in Greece; notes that further to these discussions, the Hellenic authorities drew up an Implementation Plan for the implementation of the safeguards, which was recognized as a good achievement by and the Management Board;
18. Reiterates its profound concerns about the findings of the OLAF report of 15 February 2022 on investigations into Frontex and the misconduct of several individuals employed by the Agency, and expresses its utter dismay in the behaviour and actions described in the findings presented and the lack of accountability; takes notes that media reports revealed the findings of the OLAF investigation, and notably the existence of serious misbehaviour of individual former employees, as well as of other three key issues, namely the fact that the FRO was prevented from accessing operational information, the fact that the FRO was not assigned as case handler for reports on serious incidents with alleged violations of fundamental rights, and the fact that staff members who reported serious incidents to the hierarchy were ignored by the individuals investigated by OLAF; deplores the long delay for Members of the European Parliament as well as members of the senior management and the FRO to be granted access to the OLAF report; takes note that in October 2022 some media organisations have released the report; considers that the findings of the OLAF report that represent a matter of public interest should be made public as soon as possible, while fully respecting Regulation (EU, Euratom) 2020/2223(5) and all legal requirements on the protection of sensitive data and of the rights of the persons concerned; underlines that the decision not to make the OLAF report on Frontex' activities promptly available to all Members of the European Parliament contradicted the need for democratic scrutiny over the Agency's responsibilities for human rights violations; points out that two additional OLAF reports are expected to be presented this year in relation to Frontex; calls on OLAF to promptly make the upcoming reports on Frontex available to Members of the European Parliament when they will be finalised;
19. Notes with concern the media reports in expansion of Processing of Personal Data for Risk Analysis Programme (PEDRA), leading to an intrusive collection of personal data from migrants and refugees to feed into Europol's criminal databases; notes from the Agency's reply that the project had been implemented between 2015 and 2017; takes note of the Agency's Management Board decisions 56/2021, 68/2021 and 69/2021, upon the receipt of the European Data Protection Supervisor (EDPS) opinions on the Agency's data protection rules, leading to the Agency's Data Protection Officer to prepare an Action Plan for the implementation of the EDPS recommendations; stresses the importance to address this situation and ensure full compliance with EU data protection rules; calls upon the Agency to regularly consult the EDPS and to keep the discharge authority informed about the status and progress of the reform;
20. Notes the serious problems affecting Frontex' internal oversight mechanisms, and highlights the Agency's serious shortcomings regarding fundamental rights protection of asylum seekers and migrants, transparency, data protection, and alleged sexual harassment within Frontex that led the European Parliament to refuse discharge of the Agency's 2020 budget;



21. Takes note of the steps taken the Agency to improve the management culture and promote staff well-being, including the decentralization of decision-making to distribute responsibility and ownership of decisions, encouragement of open dialogue through Agency's Management meetings, the development of a comprehensive internal communication strategy, strengthening of internal communications team, the enlargement of the network of Confidential Counsellors, whose aim is to foster a safe and inclusive working culture where there is zero tolerance for harassment, discrimination or inappropriate behaviour; further welcomes the decision of the Management Board of July 2022 on the obligations of the Management Board and Executive Director to inform the Consultative Forum on the follow-up of its recommendations and to ensure that action is taken with regard to the recommendations of the FRO; welcomes the establishment of an Internal Audit Capacity and the adoption of the internal Audit Charter; notes that the first Internal Audit Capacity internal audit is foreseen for Q-4 2022 - Q-1 2023 focusing on Frontex codes of conduct; notes the strengthening of Inspection and Control Office of the Agency;
22. Acknowledges the various actions taken by the ad interim management to improve its activities and standards in the past months; recalls however the repeated criticism from Parliament concerning the Agency's failure, under the former executive leadership, to protect the fundamental rights of migrants and asylum seekers, particularly among numerous reports and journalistic investigations of its complicity in illegal pushbacks, which led to the resignation of the former executive director; reaffirms that this situation should not happen again;
23. Reminds that the Agency is accountable to the European Parliament, and that the Parliament is resolved to ensure that the Agency contributes to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, in particular the Charter; highlights that, in order to achieve this goal, an enhanced cooperation with the Frontex Management Board by strengthening the transparency, accountability and democratic oversight of the Agency is needed;
24. Reiterates that the increased competences and budget of the Agency need to be accompanied with a corresponding increase in accountability and transparency, as well as full respect for and protection of fundamental rights; 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 fundamental rights compliance; takes note, in this regard, of the establishment of the Public Register of Documents; notes that to process the increasing number of applications for public access to document in a timely manner, the Transparency Office has been strengthened;
25. Takes note of the decision of the Management Board in its extraordinary meeting on 20 December 2022, to appoint Mr Hans Leijtens as the new Executive Director of the European Border and Coast Guard Agency; encourages the Agency to step up ongoing efforts and take all actions needed to ensure full respect of EU standards, in particular in the field of budgetary and financial management, fundamental rights, organisational culture and transparency; reiterates its call upon the Agency to present a detailed roadmap on how it intends to fulfil the outstanding concerns, together with a clear and detailed timeframe for those actions, as well as to complete corrective actions to address all outstanding concerns raised by the European Ombudsman, by the Parliament's



FSWG and by the Consultative Forum; calls on the Agency to fully implement the necessary reforms, also after the appointment of a non-interim Executive Director, and to report to the discharge authority about the progress achieved;

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	1.3.2023
<b>Result of final vote</b>	<div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;">+:</div> <div>54</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;">-:</div> <div>10</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;">0:</div> <div>0</div> </div>
<b>Members present for the final vote</b>	<p>Magdalena Adamowicz, Abir Al-Sahlani, Malik Azmani, Katarina Barley, Pietro Bartolo, Vladimír Bilčík, Vasile Blaga, Ioan-Rareș Bogdan, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Patricia Chagnon, Caterina Chinnici, Clare Daly, Lena Düpont, Lucia Ďuriš Nicholsonová, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Evin Incir, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Assita Kanko, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Erik Marquardt, Nuno Melo, Maite Pagazaurtundúa, Karlo Ressler, Diana Riba i Giner, Birgit Sippel, Sara Skytvedal, Vincenzo Sofo, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Yana Toom, Milan Uhrík, Tom Vandendriessche, Jadwiga Wiśniewska, Javier Zarzalejos</p>
<b>Substitutes present for the final vote</b>	<p>Susanna Ceccardi, Gwendoline Delbos-Corfield, Loucas Furlas, Beata Kempa, Philippe Olivier, Dragoș Tudorache, Petar Vitanov, Tomáš Zdechovský</p>
<b>Substitutes under Rule 209(7) present for the final vote</b>	<p>Gheorghe Falcă, Jean-François Jalkh, Petra Kammerevert, Marisa Matias, Martina Michels, Ljudmila Novak, Stanislav Polčák, Mick Wallace, Bernhard Zimniok</p>

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

54	+
ID	Susanna Ceccardi, Patricia Chagnon, Jean-François Jalkh, Philippe Olivier, Annalisa Tardino, Tom Vandendriessche, Bernhard Zimniok
PPE	Magdalena Adamowicz, Vladimír Bilčík, Vasile Blaga, Ioan-Rareș Bogdan, Karolin Braunsberger-Reinhold, Lena Düpont, Gheorghe Falcă, Loucas Fourlas, Andrzej Halicki, Jeroen Lenaers, Nuno Melo, Ljudmila Novak, Stanislav Polčák, Karlo Ressler, Sara Skytvedal, Tomas Tobé, Javier Zarzalejos, Tomáš Zdechovský
Renew	Abir Al-Sahlani, Malik Azmani, Lucia Ďuriš Nicholsonová, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Ramona Strugariu, Yana Toom, Dragoș Tudorache
S&D	Katarina Barley, Pietro Bartolo, Caterina Chinnici, Maria Grapini, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Petra Kammerevert, Łukasz Kohut, Juan Fernando López Aguilar, Birgit Sippel, Petar Vitanov
Verts/ALE	Patrick Breyer, Saskia Bricmont, Gwendoline Delbos-Corfield, Alice Kuhnke, Erik Marquardt, Diana Riba i Giner, Tineke Strik

10	-
ECR	Patryk Jaki, Assita Kanko, Beata Kempa, Vincenzo Sofo, Jadwiga Wiśniewska
NI	Milan Uhrík
The Left	Clare Daly, Marisa Matias, Martina Michels, Mick Wallace

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention