

2006 discharge: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

1. European Parliament decision of 22 April 2008 on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006 (C6-0389/2007 – 2007/2214(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006¹,
- having regard to the Court of Auditors' report on the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006, together with Agency's replies²,
- having regard to the Council's recommendation of 12 February 2008 (5843/2008 – C6-0084/2008),
- having regard to the EC Treaty, and in particular Article 276 thereof,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³, and in particular Article 185 thereof,
- having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union⁴, and in particular Article 30 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002⁵, and in particular Article 94 thereof,
- having regard to Rule 71 of and Annex V to its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the

¹ OJ C 261, 31.10.2007, p. 7.

² OJ C 309, 19.12.2007, p. 29.

³ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

⁴ OJ L 349, 25.11.2004, p. 1. Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council (OJ L 199, 31.7.2007, p. 30).

⁵ OJ L 357, 31.12.2002, p. 72.

Committee on Civil Liberties, Justice and Home Affairs (A6-0126/2008),

1. Grants the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union discharge in respect of the implementation of the Agency's budget for the financial year 2006;
2. Sets out its observations in the resolution below;
3. Instructs its President to forward this Decision and the resolution that forms an integral part of it to the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the Official Journal of the European Union (L series).

2. European Parliament decision of 22 April 2008 on the closure of the accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006 (C6-0389/2007 – 2007/2214(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006¹,
 - having regard to the Court of Auditors' report on the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006, together with Agency's replies²,
 - having regard to the Council's recommendation of 12 February 2008 (5843/2008 – C6-0084/2008),
 - having regard to the EC Treaty, and in particular Article 276 thereof,
 - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³, and in particular Article 185 thereof,
 - having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union⁴, and in particular Article 30 thereof,
 - having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002⁵, and in particular Article 94 thereof,
 - having regard to Rule 71 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0126/2008),
1. Notes that the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union are as annexed to the Court of Auditors' report;

¹ OJ C 261, 31.10.2007, p. 7.

² OJ C 309, 19.12.2007, p. 29.

³ OJ L 248, 16.9.2002, p. 1. . Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

⁴ OJ L 349, 25.11.2004, p. 1. Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council (OJ L 199, 31.7.2007, p. 30).

⁵ OJ L 357, 31.12.2002, p. 72.

2. Approves the closure of the accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006;
3. Instructs its President to forward this Decision to the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the Official Journal of the European Union (L series).

3. European Parliament resolution of 22 April 2008 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006 (C6-0389/2007 – 2007/2214(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006¹,
 - having regard to the Court of Auditors' report on the final annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2006, together with Agency's replies²,
 - having regard to the Council's recommendation of 12 February 2008 (5843/2008 – C6-0084/2008),
 - having regard to the EC Treaty, and in particular Article 276 thereof,
 - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³, and in particular Article 185 thereof,
 - having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union⁴, and in particular Article 30 thereof,
 - having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002⁵, and in particular Article 94 thereof,
 - having regard to Rule 71 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0126/2008),
- A. whereas the Court of Auditors stated that it has obtained reasonable assurance that the annual accounts for the financial year 2006 are reliable, and the underlying transactions are

¹ OJ C 261, 31.10.2007, p. 7.

² OJ C 309, 19.12.2007, p. 29.

³ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

⁴ OJ L 349, 25.11.2004, p. 1. Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council (OJ L 199, 31.7.2007, p. 30).

⁵ OJ L 357, 31.12.2002, p. 72.

legal and regular,

B. whereas 2006 was the Agency's first year of financial autonomy,

General points which relate to horizontal issues affecting the EU agencies and which therefore also have a bearing on the discharge procedure for each individual agency

1. Notes that the budgets of the 24 agencies and other satellite bodies audited by the Court of Auditors totalled EUR 1 080,5 million in 2006 (the biggest being that of the European Agency for Reconstruction at EUR 271 million and the smallest being that of the European Police College (CEPOL) at EUR 5 million);
2. Points out that the range of external EU bodies subject to audit and discharge now includes not only traditional regulatory agencies but also executive agencies set up to implement specific programmes, and will in the near future also extend to joint undertakings set up as public-private partnerships (joint technology initiatives);
3. Observes as regards the Parliament that the number of agencies subject to the discharge procedure has evolved as follows: financial year 2000: 8; 2001: 10; 2002: 11; 2003: 14; 2004: 14; 2005: 16; 2006: 20 regulatory agencies and 2 executive agencies (not including 2 agencies which are audited by the Court of Auditors but subject to an internal discharge process);
4. Concludes therefore that the auditing / discharge process has become cumbersome and disproportionate compared to the relative size of the agencies' / satellite bodies' budgets; instructs its competent committee to undertake a wide-ranging review of the discharge process as regards agencies and satellite bodies with a view to devising a simpler and more rational approach, bearing in mind the ever-growing number of bodies each requiring a separate discharge report in future years;

Fundamental considerations

5. Requests that the Commission provide clear explanations regarding the following elements before the creation of a new agency or reform of an existing agency: agency type, objectives of the agency, internal governance structure, products, services, key procedures, target group, clients and stakeholders of the agency, formal relationship with external actors, budget responsibility, financial planning, and personnel and staffing policy;
6. Requests that each agency be governed by a yearly performance agreement which is formulated by the agency and the responsible DG and which should contain the main objectives for the coming year, a financial framework and clear indicators to measure performance;
7. Requests that the performance of the agencies be regularly (and on an ad hoc basis) audited by the Court of Auditors or another independent auditor; considers that this should not be limited to traditional elements of financial management and the proper use of public money, but should also cover administrative efficiency and effectiveness and should include a rating of the financial management of each agency;
8. Takes the view that in the case of agencies which are continually overestimating their respective budget needs, technical abatement should be made on the basis of vacant posts; is

of the opinion that this will lead in the long run to less assigned revenue for the agencies and therefore also to lower administrative costs;

9. Notes that it is a serious problem that a number of agencies is criticised for not following rules on public procurement, the Financial Regulation, the Staff Regulations, etc.; considers that the principal reason for this is that most regulations and the Financial Regulation are designed for bigger institutions and that most of the small agencies do not have the critical mass to be able to cope with these regulatory requirements; therefore asks the Commission to look for a rapid solution in order to enhance the effectiveness by grouping the administrative functions of various agencies together, in order to achieve this critical mass (taking into consideration the necessary changes in the basic regulations governing the agencies and their budgetary independence), or urgently to draft specific rules for the agencies (in particular implementing rules for the agencies) which allow them to be in full compliance;
10. Insists that the Commission, when drafting the Preliminary Draft Budget, take into consideration the results of budget implementation by the individual agencies in former years, in particular in year *n-1*, and revise the budget requested by the particular agency accordingly; invites its competent committee to respect this revision and, if not undertaken by the Commission, to revise itself the budget in question to a realistic level matching the absorption and implementation capacity of the agency in question;
11. Recalls its decision on discharge in respect of the financial year 2005, in which it invited the Commission to present every five years a study on the added value of every existing agency; invites all relevant institutions in the case of a negative evaluation of the added value of an agency to take the necessary steps by reformulating the mandate of that agency or by closing it; notes that there has not been one single evaluation undertaken by the Commission in 2007; insists that the Commission should present at least 5 such evaluations before the decision on discharge in respect of the financial year 2007, starting with the oldest agencies;
12. Is of opinion that recommendations of the Court of Auditors should be promptly implemented and the level of subsidies paid to the agencies should be aligned with their real cash requirements; considers further that the amendments to the general Financial Regulation should be incorporated into the agencies' framework financial regulation and into their various specific financial regulations;

Presentation of reporting data

13. Notes that there is no standard approach among the agencies with regard to the presentation of their activities during the financial year in question and of their accounts and reports on budgetary and financial management, nor to the question as to whether a declaration of assurance should be drawn up by the agency's director; observes that not all agencies clearly distinguish between (a) presenting the agency's work to the public and (b) technical reporting on budgetary and financial management;
14. Notes that while the Commission's standing instructions for the preparation of activity reports do not expressly require the agency to draw up a declaration of assurance, many directors have nonetheless done so for 2006, in one case including an important reservation;

15. Recalls its resolution of 12 April 2005¹, inviting the directors of the agencies from now on to accompany their annual activity report, which is presented together with financial and management information, with a declaration of assurance concerning the legality and regularity of operations, similar to the declarations signed by the Directors-General of the Commission;
16. Asks the Commission to amend its standing instructions to the agencies accordingly;
17. Suggests in addition that the Commission should work with the agencies towards producing a harmonised model applicable to all agencies and satellite bodies clearly distinguishing between
 - an annual report intended for a general readership on the body's operations, work and achievements;
 - financial statements and a report on implementation of the budget;
 - an activity report along the lines of the activity reports of the Directors-General of the Commission;
 - a declaration of assurance signed by the body's director, together with any reservations or observations which he considers it appropriate to draw to the attention of the discharge authority;

General findings by the Court of Auditors

18. Notes the Court's finding (Annual Report, paragraph 10.29²) that the disbursement of subsidies paid by the Commission from the Community budget is not based on sufficiently justified estimates of the agencies' cash requirements and that this, combined with the size of carry-overs, leads them to hold sizeable cash balances; notes further the Court's recommendation that the level of subsidies paid to the agencies should be in line with their real cash requirements;
19. Notes that at the end of 2006 14 agencies had still to implement the ABAC accounting system (Annual Report, footnote to paragraph 10.31);
20. Notes the Court's remark (Annual Report, paragraph 1.25) concerning accrued charges for untaken leave which are accounted for by some agencies; points out that the Court of Auditors has qualified its statement of assurance in the case of three agencies (European Centre for the Development of Vocational Training (CEDEFOP), CEPOL and the European Railway Agency) for the financial year 2006 (2005: CEDEFOP, European Food Safety Authority, European Agency for Reconstruction);

Internal audit

21. Recalls that in accordance with Article 185(3) of the Financial Regulation the Internal Auditor of the Commission is also the internal auditor of the regulatory agencies receiving grants charged to the EU budget; points out that the Internal Auditor reports to each agency's management board and director;

¹ All resolutions regarding the agencies were published in OJ L 196, 27.7.2005.

² OJ C 273, 15.11.2007, p. 1.

22. Draws attention to the reservation entered in the Internal Auditor's Annual Activity Report for 2006 as follows:

"The Internal Auditor of the Commission is not in a position to properly fulfil his obligation assigned by Article 185 of the Financial Regulation as internal auditor of the Community bodies due to a lack of staff resources.";

23. Notes, however, the Internal Auditor's remark in his activity report for 2006 that as from 2007, with the additional staff resources granted by the Commission to the Internal Audit Service (IAS), all regulatory agencies in operation will be subject to internal audit work on an annual basis;
24. Notes the ever-growing number of regulatory and executive agencies and joint undertakings required to be audited by the IAS under Article 185 Financial Regulation; asks the Commission to inform its competent committee as to whether the staff resources at the IAS's disposal will be sufficient to conduct an annual audit of all such bodies in the coming years;
25. Observes that Article 72(5) of Regulation (EC, Euratom) No 2343/2002 requires each agency to send each year to the discharge authority and the Commission a report drawn up by its director summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations; asks the agencies to indicate whether this is done and, if so, how;
26. Takes note, as regards internal audit capability, especially in relation to the smaller agencies, of a proposal made by the Internal Auditor before Parliament's competent committee on 14 September 2006 that smaller agencies should be authorised to buy in internal audit services from the private sector;

Evaluation of agencies

27. Recalls the joint statement by the Parliament, the Council and the Commission¹ negotiated at the conciliation before the ECOFIN budget Council of 13 July 2007 calling for (i) a list of agencies which the Commission intends to assess, and (ii) a list of the agencies already assessed, together with a summary of the major findings;

Disciplinary procedures

28. Notes that, because of their size, individual agencies have difficulty in setting up ad hoc disciplinary boards composed of staff at the appropriate career grade and that the Commission's IDOC (Investigation and Disciplinary Office) is not competent for agencies; calls on the agencies to consider an inter-agency disciplinary board;

Draft Interinstitutional Agreement

29. Recalls the draft Interinstitutional Agreement on the operating framework for the European regulatory agencies presented by the Commission (COM(2005)0059), which was intended to create a horizontal framework for the creation, structure, operation, evaluation and control of the European regulatory agencies; notes that the draft represents a useful

¹ Council document DS 605/1/07 Rev1.

initiative in the effort to rationalise the creation and running of agencies; notes the statement in the Commission's 2006 synthesis report (paragraph 3.1, COM(2007)0274) that although progress in negotiations stalled after publication of the draft, discussions on substance were relaunched in the Council at the end of 2006; regrets that it has not been possible to make further progress towards adoption;

30. Welcomes therefore the Commission's commitment to bring forward a Communication on the future of the regulatory agencies during the course of 2008;

Self-financed agencies

31. Recalls that for the two self-financing agencies, discharge is given to the director by the administrative board; notes that both have significant accumulated surpluses from fee income carried over from previous years figures, as follows:
- Office for Harmonisation of the Internal Market cash and cash equivalents: EUR 281 million¹;
 - Community Plant Variety Office cash and cash equivalents: EUR 18 million²;

Specific points

32. Notes the Court of Auditors' observation in its 2006 report that for the financial year 2006 the rate of commitment was 85 %; the rate of carry-over was more than 70% overall and nearly 85 % for operating expenditure; transfers of appropriations between chapters or titles during the year exceeded the total ceiling of 10 % provided for in the Financial Regulation; therefore, the budgetary principle of specification was not strictly observed;
33. Notes further that legal commitments were entered into before budgetary commitments, contrary to the Agency's Financial Regulation, and that the criteria and procedures used for recruiting staff were not in line with the general provisions of the Staff Regulations;
34. Acknowledges the Agency's reply that the rate of carry-over to 2007 was due to difficulties inherent in the start-up period of the Agency and to the fact that sizeable resources were made available only very late in 2006; the Agency was not able to fully implement normal procedures for most of the recruitment procedures launched during 2006 because of a lack of resources in the start-up period and difficulties in attracting potential staff;
35. Regrets the fact that the Agency had to use recruitment procedures which were not fully in line with the general provisions for implementing the Staff Regulations in order to attract staff and make the Agency operational as rapidly as possible;
36. Calls on the Agency and the Commission to improve the planning of the budgetary and personnel needs of the Agency in the future;
37. Notes from the Agency's accounts (balance sheet) that at 31 December 2006 the Agency held EUR 14,3 million in cash (for a Community subsidy of EUR 15,2 million and an

¹ Source: report on the annual accounts of the Office for Harmonisation in the Internal Market for the financial year 2006, together with the Office's replies (OJ C 309, 19.12.2007, p. 141).

² Source: report on the annual accounts of the Community Plant Variety Office for the financial year 2006, together with the Office's replies (OJ C 309, 19.12.2007, p. 135).

annual budget of EUR 19,2 million);

38. Recalls that, while in the first year of its existence the budget of the Agency was EUR 6,2 million, the budget in 2006 was twice amended by the budgetary authority, increasing it from EUR 12,3 million to EUR 19,2 million; notes the statement in the annual report that the late availability of the additional funds granted to the Agency in October 2006 led to spending problems beyond the limits of the absorption capacity of the Agency;
39. Notes further from the accounts that at 31 December 2006 only 9 of 18 AD posts had been filled;
40. Takes note of the statement in the Agency's annual report for 2006 that the Agency was granted full financial autonomy only from 1 October 2006, and that before that date all expenditure relating to administrative matters was authorised by the Commission's DG JLS in Brussels;
41. Calls on the Agency to improve its financial management, especially as regards the increase in its budget for the financial years 2007 and 2008.