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## TEXTS ADOPTED

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### P9\_TA(2021)0191

#### **2019 discharge: European Border and Coast Guard Agency**

##### **1. European Parliament decision of 28 April 2021 on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2019 (2020/2167(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Border and Coast Guard Agency for the financial year 2019,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2019, 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 2019, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 1 March 2021 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2019 (05793/2021 – C9-0064/2021),
- 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,

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<sup>1</sup> OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: [https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES\\_2019/agencies\\_2019\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf).

<sup>2</sup> OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: [https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES\\_2019/agencies\\_2019\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf).

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

- having regard to Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC<sup>1</sup>, and in particular Article 76 thereof,
  - having regard to Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624<sup>2</sup>, and in particular Article 116 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 Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>3</sup>, and in particular Article 105 thereof,
  - having regard to Articles 32 and 47 of Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>4</sup>,
  - 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 (A9-0081/2021),
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 2019;
  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).

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<sup>1</sup> OJ L 251, 16.9.2016, p. 1.

<sup>2</sup> OJ L 295, 14.11.2019, p. 1.

<sup>3</sup> OJ L 122, 10.5.2019, p. 1.

<sup>4</sup> OJ L 328, 7.12.2013, p. 42.

## **2. European Parliament decision of 28 April 2021 on the closure of the accounts of the European Border and Coast Guard Agency for the financial year 2019 (2020/2167(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Border and Coast Guard Agency for the financial year 2019,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2019, 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 2019, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 1 March 2021 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2019 (05793/2021 – C9-0064/2021),
- 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) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC<sup>4</sup>, and in particular Article 76 thereof,
- having regard to Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624<sup>5</sup>, and in particular Article 116 thereof,

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<sup>1</sup> OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: [https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES\\_2019/agencies\\_2019\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf).

<sup>2</sup> OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: [https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES\\_2019/agencies\\_2019\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf).

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

<sup>4</sup> OJ L 251, 16.9.2016, p. 1.

<sup>5</sup> OJ L 295, 14.11.2019, p. 1.

- 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 Council<sup>1</sup>, and in particular Article 105 thereof,
  - having regard to Articles 32 and 47 of Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>2</sup>,
  - 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 (A9-0081/2021),
1. Postpones the closure of the accounts of the European Border and Coast Guard Agency for the financial year 2019;
  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).

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<sup>1</sup> OJ L 122, 10.5.2019, p. 1.

<sup>2</sup> OJ L 328, 7.12.2013, p. 42.

**3. European Parliament resolution of 29 April 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 (2020/2167(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 2019,
  - 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 (A9-0081/2021),
- A. whereas, according to its statement of revenue and expenditure<sup>1</sup>, the final budget of the European Border and Coast Guard Agency (the ‘Agency’) for the financial year 2019 was EUR 330 107 000, representing an increase of 14,36 % compared to 2018; whereas the Agency’s budget derives mainly from the Union budget;
- B. Whereas pursuant to Article 80(1) of Regulation (EU) 2019/1896<sup>2</sup> the European Border and Coast Guard is to guarantee the protection of fundamental rights in the performance of its tasks under that Regulation in accordance with relevant Union law, in particular the Charter of Fundamental Rights of the European Union (the ‘Charter’), and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of *non-refoulement*; whereas Regulation (EU) 2019/1896 has not only provided for new resources for the Agency in the area of fundamental rights but has also put in place a new comprehensive internal independent mechanism designed to monitor the compliance of the Agency’s operational activities with fundamental rights; whereas this mechanism is based on the reinforced role and the independence of the Agency’s fundamental rights officer reporting to the management board but also becoming a delegated appointing authority for his or her own staff;
- C. Whereas pursuant to Regulation (EU) 2019/1896 the fundamental rights officer is to be assisted by a deputy fundamental rights officer and at least 40 fundamental rights monitors acting under the hierarchical supervision of the fundamental rights officer as his or her “eyes and ears” on the ground;
- D. Whereas the Roadmap for the implementation of the European Border and Coast Guard 2.0 which the Agency and the Commission set up in July 2019, stressed the need to bring the relevant framework for fundamental rights monitoring in line with the letter and spirit

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<sup>1</sup> OJ C 143, 30.4.2020, p. 6.

<sup>2</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

of Regulation (EU) 2019/1896, in particular as regards the recruitment of 40 fundamental rights monitors by 5 December 2020;

- E. Whereas the Court of Auditors (the ‘Court’), in its report on the annual accounts of the Agency for the financial year 2019 (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; whereas the Court recently launched an audit to examine whether the Agency has so far provided effective support to Member States in the implementation of European integrated border management which will be finalised in 2021;
- F. Whereas the European Ombudsman has opened an inquiry (CASEOI/5/2020/MHZ) to assess how the Agency deals with alleged breaches of fundamental rights, in particular to assess the effectiveness and transparency of the Agency's complaints mechanism for those who believe their rights have been violated in the context of the Agency's border operations, as well as the role and independence of Agency's fundamental rights officer;
- G. Whereas the European Anti-Fraud Office (OLAF) has opened an investigation over allegations of harassment, misconduct and migrant pushbacks concerning the Agency;
- H. Whereas since December 2019 the Agency is implementing a new mandate with an important and essential scale-up in terms of missions and staff, requiring an adequate budget;

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

1. Notes with satisfaction that the budget-monitoring efforts during the financial year 2019 resulted in a budget implementation rate of 99,84 %, representing an increase of 1,46 % compared to 2018; notes with concern that the payment appropriations execution rate was low at 69,13 %, representing a decrease of 0,56 % compared to 2018;
2. Notes from the Court’s report that in 2019 the Agency had financing agreements with cooperating countries for operational activities, representing 55 % of the Agency’s budget; notes that the Agency has taken steps to improve the *ex ante* verifications and has re-introduced *ex post* verifications on reimbursements in 2019; expresses concern over the Court’s emphasis that the reimbursement of equipment-related expenditure is still based on actual costs and deeply deplores the fact that the project to move to unit-cost based reimbursements is still not completed; highlights that the procedure has not been completed in spite of this being a recurrent situation that had been raised in the previous discharge procedure; notes with great concern from the Court’s report that cooperating countries had not always presented cost claims supported by invoices, or by other evidence, duly substantiating the actual costs incurred in operations and that there were delays for providing supporting documents; at the same time, the Court’s report stresses that the duty to submit accurate and timely supporting evidence together with the cost claims lies with the cooperating countries; notes from the Agency’s reply that during *ex post* control the Agency ascertained the questioned expenditure with bank statements and the beneficiary was notified that pro-forma invoices would no longer be accepted as supporting documents even if such invoices respected the applicable national regulatory framework; furthermore, delays in providing supporting documents were associated with the implementation of a simplified grant scheme for the deployment of officers, and the final payment procedure in 2019 was therefore much extended in order to ensure sound

financial management; is deeply unsatisfied with the lack of commitment to addressing this situation from the side of the Agency's leadership; calls on the Agency to cease all remaining reimbursements for any cost claims not supported by invoices; urges the Agency to finalise the move to unit-cost based reimbursements immediately and to fully apply all principles of sound financial management;

3. Deplores the fact that according to the Court's report the Agency had modified the contractual arrangements of reconstruction works carried out on the Agency's premises at a late stage of the project and introduced the possibility of a pre-financing for works still to be completed, although initially payments were to be made only when works were accepted, notes with great concern that as a result a key element of control was forfeited and the consumption of funds did not reflect the real progress of the works; notes from the Agency's reply that the pre-financing was a solution that enabled the reconstruction of the building to continue and that the Agency's key control remained since the pre-financing was paid to the landlord, who could not make a payment to the contractor before a portion of completed works had been accepted by the Agency and any unused funds were returned to the Agency by the landlord, all of which was guaranteed by contractual safeguards; calls on the Agency to review its mechanisms concerning such payments and ensure compliance with the principles of sound financial management;
4. Considers the explanation of the Agency particularly weak, in light of information on a possible fraud case involving Polish IT software where a similar modus operandi was applied;
5. Points to recent media reports on expensive annual events, the costs of which amounted to almost half a million euros in 2019; recalls that the Agency is financed by Union taxpayers' money; welcomes in this respect the Agency's decision to stop the costly annual event; calls on the Agency to be more prudent in its implementation of the budget, when it comes to the organisation of events;

### ***Performance***

6. Notes that the Agency uses certain measures as key performance indicators to assess the added value provided by its activities and also uses other measures to improve its budget management, such as satisfaction level by means of online surveys, late payment evaluation and vacancy rate; calls on the Agency to clarify why "refusal of entry" is part of the key performance indicators;
7. Stresses the essential role of the Agency as the cornerstone of the Union's efforts to safeguard the area of freedom, security and justice and to guarantee the freedom of movement without internal borders checks; underlines that the Agency, by mutualising resources and means at a Union level in the field of migration policy, is the main tool of Union solidarity in that field;
8. Notes that Regulation (EU) 2019/1896 was adopted on 13 November 2019 and entered into force on 4 December 2019, with an extended mandate and resources, including the creation of the standing corps with executive powers; notes that the Agency had to implement major internal restructuring and faced the challenge of designing new tasks in order to fulfil the provisions of the new mandate; notes that the Agency was faced with an unforeseen reduction in the number of administrators to be employed in 2020 that led to adjustments in the Agency's establishment plan; is concerned by the length of the ongoing

discussion between the Agency and the Commission concerning those adjustments; calls on the Commission and the Agency to quickly find an adequate solution to ensure a proper and timely implementation of the Agency's new mandate;

9. Underlines the challenges posed for the Agency by the long planning cycle leading to the adoption of the single programming document in light of the volatile environment in which it is operating;
10. Notes that the first technical and operational European integrated border management strategy was adopted in March 2019;
11. Notes that the Agency has taken the lead in the initiative to establish a common liaison office space in Brussels for Justice and Home Affairs agencies, in order to benefit from an efficient use of resources, to share facilities and services and to foster the networking effect; further notes that an administrative arrangement with requirements related to the common office space and the terms of cooperation among partners is being finalised and the next steps, envisaged for the period from 2020 to 2021, will be procuring, fitting out and eventually relocating to the new premises;
12. Expresses great concern over the Court's findings of the previous year that, although the Agency moved to its current premises in 2014, the Agency still has no comprehensive business continuity plan approved by the management board; notes from the Agency's reply that an ad interim business continuity policy and business continuity plan is being developed and that the adoption of the business continuity plan was envisaged in 2020; calls on the Agency to report to the discharge authority with regard to the adoption and implementation stages of the business continuity plan;
13. Notes that in line with Article 80(1) of Regulation (EU) 2019/1896 the Agency, with the contribution of and subject to the endorsement by the fundamental rights officer, is to draw up, implement and further develop a fundamental rights strategy and action plan, including an effective mechanism for monitoring respect for fundamental rights in all the activities of the Agency; notes that the action plan should implement the strategy by ensuring practical fundamental rights safeguards that guide the implementation of the Agency's operational activities; deplores the fact that this action plan has yet not been adopted;
14. Deplores the fact that despite repeated calls of Parliament and a significant overall staff increase for the Agency, the fundamental rights officer still lacks adequate human resources and is therefore clearly hampered to properly conduct the tasks that are entrusted to him or her; 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; reminds the Agency of the importance of adhering to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>; calls on the Agency to establish a regular mechanism by which the Agency briefs Members of the European Parliament about ongoing operations including about serious incidents and other reports about violence and non-respect of fundamental rights at the external borders;

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1.



15. Stresses the importance of increasing the digitalisation of the Agency in terms of internal operations and management procedures; stresses the need for the Agency to continue to be proactive in that regard in order to avoid a digital gap between the agencies at all costs; draws attention, however, to the need to take all the necessary security measures to avoid any risk to the online security of the information processed;
16. Notes from the Agency's reply that an internal ICT security and cybersecurity team has been established; encourages the Agency to finalise its Cybersecurity action plan 2020–25 without undue delay; calls on the Commission to support the Agency in finding solutions to advance the digitalisation of the Agency;
17. Welcomes the creation of a register of documents but considers that the current register does not fulfil the legal requirements of Regulation (EC) No 1049/2001<sup>1</sup> as all documents produced or held by the Agency should be listed in the register; acknowledges that in line with Article 4 of that Regulation, the Agency is to refuse access to documents where it is in the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Union or a Member State; reiterates its call on the Agency to ensure full transparency in all its activities; more particularly, given the expected further significant overall increase of the Agency's budget in the coming years and its enhanced responsibilities, calls on the Agency to provide it with more detailed information on the implementation of its budget on operational activities per chapter listing the precise activities financed under the articles and items; regrets that the Court's report assesses only legality and regularity of the Agency's spending; given the size and scope of the Agency's budget, calls on the Court to conduct a more qualitative assessment of the Agency's performance in the future, which would allow the discharge authority to better assess how the Agency's budget is being spent;

### ***Staff policy***

18. Regrets that, on 31 December 2019, the establishment plan was only 75,83 % implemented, with 367 temporary agents appointed out of 484 temporary agents authorised under the Union budget (compared to 418 authorised posts in 2018); notes that, in addition, 214 contract agents and 168 seconded national experts worked for the Agency in 2019;
19. Notes the ongoing recruitment procedure of the fundamental rights officer, the deputy fundamental rights officer and fundamental rights monitors; underlines the close cooperation between the Agency and the European Union Agency for Fundamental Rights in 2019 on the establishment of the specific selection criteria for the recruitment of the fundamental rights officer and 40 fundamental rights monitors; regrets, however, the delays in the recruitment procedures; recalls that under Regulation (EU) 2019/1896 the Agency was obliged to have recruited at least 40 fundamental rights monitors by 5 December 2020; notes that the first group of fundamental rights monitors was expected to be recruited in March 2021; notes that the scope of duties of the fundamental rights officer has been increased by Regulation (EU) 2019/1896 and the post thus had to be defined as a middle management function requiring a specific selection procedure; notes that those organisational and personnel changes have raised ambiguities regarding legal implications

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

and implementation; calls on the Agency to prioritise handling of fundamental rights; insists therefore that the Agency recruit the 40 fundamental rights monitors at the appropriate AD level as required under Article 110(6) of Regulation (EU) 2019/1896 without any undue delay and ensure that the future fundamental rights monitors have the necessary standing to perform their duties independently;

20. Is concerned by the lack of gender balance reported for 2019, in particular at the level of the management board (48 men and 8 women); calls on the Agency to improve the significant gender imbalance at management board level; asks the Commission and the Member States to take into account the importance of ensuring gender balance when nominating their members to the Agency's management board;
21. Notes that the Agency has adopted a policy on protecting the dignity of the person and preventing harassment on 1 August 2019; expresses its concern about the five cases of harassment reported by the Agency in 2019 and notes that further allegations of harassment have been made more recently by whistleblowers; calls on the management board to assess whether the Agency's policy on protecting the dignity of the person and preventing harassment is correctly implemented and effective;
22. Expresses concern about reports from journalistic investigations regarding the attitude of high ranking officials towards lower ranking staff; highlights in particular its concerns about reports of insulting and disrespectful behaviour towards staff, as well as remarks that allegedly control mechanisms at the Agency are becoming less effective; notes that the Agency had not reported any official complaints about those actions; notes that, according to its mandate, the Frontex Scrutiny Working Group will monitor the Agency's internal management, including procedures for reporting and handling of complaints; encourages the Agency to cooperate with the Frontex Scrutiny Working Group to clarify any concerns in this regard and follow up on future recommendations made regarding this aspect on the functioning of the Agency;
23. Notes from the Court's report that in 2019, the Agency continued to recruit new staff in line with its enlarged mandate, with an intake for the year of 218 newcomers; notes that, although the recruitment procedure is deemed successful, the Agency should improve the guidance given to selection committee members and verify more closely candidates' financial entitlements for the salary payments; notes from the Agency's reply that the Agency organises training for selection committee members to ensure they have proper knowledge to fulfil their role, respecting the margin of discretion and independence every selection committee holds; furthermore, the rights and entitlements established for staff members were communicated on 6 February 2020, after the payroll was published and executed; notes that newcomers' salaries are checked against the decisions and, where discrepancies are discovered, the newcomer must be informed by the twelfth day of the month; notes with concern the recent media reports according to which the Agency did not properly communicate on the status of recruitment procedures to candidates; calls on the Agency to improve its communication in this regard;
24. Notes that 2019 was the fourth year of the five-year growth plan following the adoption of Regulation (EU) 2016/1624<sup>1</sup> that significantly increased the Agency's budget and staff;

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<sup>1</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC)

notes that the Agency started shifting to a paperless, cloud-based e-recruitment system which was expected to be operational in the summer of 2020; notes furthermore that the Agency faces challenges in attracting suitable external candidates and achieving a sound geographical balance mainly due to the low correction coefficient; underlines that the correction coefficients vary significantly from one Member State to another, having a serious impact on the ability of agencies located in Member States with lower correction coefficients to recruit and retain staff and expertise; stresses that agencies located in countries where a low correction coefficient is applied should receive further support from the Commission in implementing complementary measures in order to make them more attractive to current and prospective staff; calls on the Commission to assess the impact and viability of applying salary correction coefficients based on a regional rather than national assessment; highlights that usually the headquarters of agencies located in Member States with lower correction coefficients are in capital cities where living and subsistence costs are significantly higher than in other parts of the countries;

25. Expresses great concern that in spite of being aware, as early as March 2019, of the changes that entered into force in December 2019 with regard to the role and competences of the fundamental rights officer and the fundamental rights monitors, the executive leadership of the Agency did not take the necessary measures to adapt to those changes, resulting in repeated delays in the implementation of provisions concerning the respect for fundamental rights within the Agency; deeply deplores the manner in which the executive director decided to bypass the management board in the replacement procedure of the fundamental rights officer at the end of 2019; notes with concern that the procedure had started just as the fundamental rights officer was returning from an extended illness, informing the incumbent on a very short notice; highlights that the Agency had to suspend the publication of the vacancy note for the post of fundamental rights officer due to the lack of compliance with relevant legislation; underlines the comments made by the Commission with regard to that situation as "plain and simply unlawful"; takes note that currently the post of fundamental rights officer is occupied ad interim by a former member of the cabinet of the executive director; is seriously concerned over media reports that the executive director had repeatedly ignored reports and advice coming from the fundamental rights officer, concerning its operations in several Member States; underlines that up until February 2021 the Agency had not recruited a single person for the post of fundamental rights monitor; expresses serious concerns over the Commission remarks concerning the Agency's reluctance to implement guidance provided by the Commission with regard to recruitment, including the recruitment of the fundamental rights officer and monitors, further obstructing and delaying this process; urges the Agency to fully comply with all obligations stemming from Regulation (EU) 2019/1896 and to report to the discharge authority on the progress made;
26. Acknowledges that the fundamental rights officer was selected at the management board meeting in March and will take up duties on 1 June 2021; notes that, as of April 2021, 15 applicants for the Fundamental Rights Monitors' positions have accepted the Agency's job offer, of which 10 will be employed as AST 4 and 5 will be employed as AD 7, with anticipated starting dates being in mid-June and the beginning of July 2021;
27. Notes that the implementation of Regulation (EU) 2019/1896 brought changes to organisational structure of the Agency; notes that the portfolio of the three deputy

executive directors had to be defined and assessed; notes that the management board adopted in December 2020 an amended organisational structure of the Agency; emphasises that the three deputy executive directors need clearly defined competences and areas of responsibilities to increase transparency and capacity to act;

28. Encourages the Agency to pursue the development of a long term human resources policy framework which addresses the work-life balance, the lifelong guidance and career development, the gender balance, teleworking, the geographical balance and the recruitment and integration of people with disabilities;

### ***Procurement***

29. Notes that the Agency, through its inspection and control office, is participating in the performance-developing network of the European Union Agencies Network; notes that the Agency also participates in the European Union Agencies Network of Procurement Officers, assessing inter-institutional tenders in terms of needs and financial resources;
30. Notes the Agency's procurement of remotely piloted aircraft systems for medium altitude long endurance maritime aerial surveillance within a framework contract totalling a maximum of EUR 50 million and a maximum total duration of the contract of four years for each of the respective contractors in 2020; recalls that both to rescue migrants in distress at the external border and to procure technical equipment to ensure border management are essential parts of the Agency's mission and encourages the Agency to continue following the applicable procurement rules when acquiring technical equipment;

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

31. Notes the deficiency of the Agency's existing measures regarding transparency, prevention and management of conflicts of interest, and whistleblower protection; notes that the whistleblowing policy was adopted on 18 July 2019 and entered into force on 1 August 2019; regrets that not all management board member CVs and declarations of interest are published on the Agency's website; urges the Agency, with the aim of increasing transparency, to publish the CVs and declarations of interest for all members of its management board, the executive director, and the deputy executive director and to report to the discharge authority on the measures taken in that regard;
32. Highlights the increased involvement of the Agency in new types of procurements and tenders for services, equipment, outsourced projects and studies in order to fulfil the provisions of Regulation (EU) 2019/1896; recalls that the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation<sup>1</sup> (the '2014 Interinstitutional Agreement') is based on Article 295 of the Treaty on the Functioning of the European Union; recalls that the 2014 Interinstitutional Agreement binds the Parliament and the Commission; recalls that paragraph 35 of the 2014 Interinstitutional Agreement invites the European Council and the Council to join the register and encourages other Union institutions, bodies, offices and agencies to use the framework created by that agreement; notes that the Agency never officially informed the Joint Secretariat about a decision to use the transparency register; calls on the Agency to establish a coherent and official register to provide transparency regarding its

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<sup>1</sup> OJ L 277, 19.9.2014, p. 11.

interactions with third-party stakeholders as provided for in Article 118 of Regulation (EU) 2019/1896; welcomes the fact that the Agency is currently developing its own transparency register in order to avoid ambiguities regarding its interactions with third-party stakeholders related to procurements and tenders for services, equipment or outsourced projects and studies; calls on the Commission to assist the Agency in defining an adequate framework for the register that provides legal clarity regarding transparency rules while taking into account the special sensitivity and security requirements that the nature of activities of the Agency demands;

33. Notes with great concern that according to journalistic investigations based on documents made available by the Agency under the relevant legislation on the freedom of information, between 2018 and 2019 the Agency has conducted several meetings with representatives of industries relevant to its field of work, 70 % out of which being meetings with representatives of companies that are not listed in the Union transparency register; notes that the Agency held meetings with multiple companies in the field of military technology, surveillance and biometrics industries during its so-called Industry Days in 2019, including with companies that have failed to register in the Union transparency register; deplores the fact that the Agency failed to provide Parliament with the correct information regarding meetings with lobbyists in 2019; calls on the Agency to update its transparency policy to ensure systematic publication of information on meetings with the representatives of relevant industries, listing the scope, duration and occasion of the meetings and to refrain from meeting with companies that are not registered in the Union transparency register; calls on the Agency to report to the discharge authority on the progress made in this regard by June 2021;
34. Underlines the fact that the current ethical framework applicable to the Union institutions, bodies, offices and agencies suffers from considerable drawbacks due to its fragmentation and lack of coordination between existing provisions; highlights that those issues should be addressed by setting up a common ethical framework, ensuring the application of high ethical standards for all Union institutions, bodies, offices and agencies;
35. Underlines that certain officials fill in declarations of absence of conflicts of interest and provide self-assessments with regard to respect for ethical standards; highlights, however, that such self-declarations and self-assessments are not sufficient and that additional scrutiny is therefore needed;

### ***Internal controls***

36. Notes that, in line with the 2019-2020 plan for the *ex post* controls of the grants completed, the inspection and control office of the Agency has performed inspections in eight Member States and 10 institutions;
37. Notes that, in 2019, the Commission's Internal Audit Service (IAS) performed an audit on IT governance and project management, which resulted in two 'very important' and two 'important' recommendations that were accepted by the Agency, and that an action plan for the implementation of those recommendations was adopted and presented to the IAS;
38. Notes that, as of 5 February 2020, five recommendations have the status "ready for a review" and are awaiting a final decision from the IAS and that 11 recommendations have the status "pending" and must still be implemented;

39. Deplores the fact that regarding follow-up from the Court's findings of the previous year that the Agency does not have a "sensitive post" policy that would identify sensitive functions, keep them updated and define appropriate measures to mitigate the risks of vested interests; acknowledges from the Agency's reply that a draft policy was finalised in 2019 but in view of a possible reassessment was suspended and was to be considered for adoption in the third quarter of 2020; urges the Agency to adopt and implement the policy as soon as possible in order to comply with the Agency's internal control standards; calls on the Agency to report to the discharge authority on the progress made in that field by June 2021;
40. Calls on the Agency to urgently take corrective action with regard to all outstanding observations of the Court, including the adoption and implementation of a sensitive posts policy in line with its own internal control standards, addressing the risk of double funding from the Internal Security Fund, managed by the Commission, and the Agency's funding, and addressing the level of carry-overs, which remains high;
41. Reiterates its call on the Agency to ensure in all its activities, full transparency and full respect for fundamental rights; stresses that the reinforced mandate of the Agency should go hand in hand with strengthening of mechanisms to ensure full respect of fundamental rights; notes that law enforcement relies on public trust and requires transparency; stresses furthermore that the exercise of power is commensurate with a high level of responsibility and due diligence; reminds all parties involved to mutually respect their competences and engage in constructive cooperation to overcome challenges related to the fast expansion of the Agency and to fulfil further the mission and strategic objectives of the Agency;

#### ***Other comments***

42. Observes, in light of comments and observations from the discharge authority related to the construction of the new headquarters building and the establishment of a European school in Warsaw, that in 2019 an adequate plot of land was attributed to the Agency by the Polish authorities and planning is ongoing to build purpose-designed premises for the Agency's headquarters by the end of 2024, and that the European school accreditation was ongoing in 2020 with the school announcing its readiness to commence partly operating from the academic year 2020/2021;
43. Calls on the Agency to continue to increase cooperation and exchange of good practices with other Union bodies, offices and agencies with a view to improve efficiency as regards human resources, building management, IT services and security;
44. Notes that all four pending legal cases reached a resolution by the end of 2019 and that for all of the cases the result was in the Agency's favour; is deeply concerned that the Agency has ordered to recover legal fees in the amount of EUR 23,700 from two individuals in the General Court case T-31/18 regarding requests for access to documents; notes that the Court has reduced that amount to EUR 10,520; highlights that charging civil society with excessively high legal fees has a chilling effect on civil society's access to justice in the field of access to documents which is a fundamental right laid down in Article 42 of the Charter and undermines their right to an effective remedy under Article 47 of the Charter; calls on the Agency to withdraw its demand for recovering of the costs in this case and to refrain from seeking to recover the costs of external lawyers from applicants in court cases based on access to information requests in the future;

45. Notes the repeated allegations of complicity of the Agency in fundamental rights violations by the Greek authorities concerning its involvement in migrant pushbacks; recalls that the Agency is mandated to control borders while ensuring that border controls are conducted in accordance with the fundamental rights, the Convention relating to the Status of Refugees, as provided in Regulation (EU) 2016/399<sup>1</sup> and Regulation (EU) 2019/1896, which in its Article 46 obliges the executive director to suspend, terminate or not launch activities in case of fundamental rights violations; notes the establishment of the Working Group on Fundamental Rights and Legal Operational Aspects in the Aegean Sea (WG FRaLO); notes that WG FRaLO identified 13 relevant incidents which were later examined - 8 were clarified according to the final report<sup>2</sup> of the Frontex Management Board Working Group and 5 still under consideration; stresses the need to involve the Frontex Scrutiny Working Group, established by the Parliament's Committee on Civil Liberties, Justice and Home Affairs, to fully clarify the incidents; calls on the Agency to regularly inform Parliament about the Agency's work at the external borders; welcomes the adoption by the Agency of a Roadmap implementing the recommendations of WG FRaLO and responding to the allegations with a clear timetable and very specific objectives<sup>3</sup>;
46. Welcomes the Agency's decision to suspend its operations at the Hungarian border, following the judgment of the Court of Justice of 17 December 2020 in Case C-808/18<sup>4</sup>; notes, however, that the allegations concerned widespread illegal pushbacks of migrants by the Hungarian authorities were already well-documented by the NGO Hungarian Helsinki Committee; regrets therefore the slow pace of action taken by the Agency;
47. Takes note of the investigation on the Agency launched by OLAF; takes note of the fact that the Frontex Scrutiny Working Group will monitor all aspects of the functioning of the Agency; calls on the Agency to immediately brief Members of the European Parliament about the outcome of the OLAF investigation in an appropriate and legal manner respecting the confidential nature of information and the rules of data protection;
48. Finds disconcerting the Commission's reaction to allegations of fundamental rights violations by the Agency; expresses its uneasiness about the apparent lack of constructive and effective communication as well as cooperation between the Commission and the Agency; urges the Commission and the Agency to enhance their communication and cooperation without undue delay; calls on the Commission to provide legal guidance to

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<sup>1</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

<sup>2</sup> Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea, Final Report of the Frontex Management Board Working Group, 1 March 2021 ([https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Documents/Agenda\\_Point\\_WG\\_FRaLO\\_final\\_report.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Documents/Agenda_Point_WG_FRaLO_final_report.pdf)).

<sup>3</sup> Frontex news release 2021-03-05 Roadmap addressing the recommendations of the preliminary report of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations: <https://frontex.europa.eu/media-centre/news/news-release/roadmap-addressing-recommendations-of-management-board-working-group-1BZxAh>.

<sup>4</sup> Judgment of the Court of Justice of 20 December 2020, Commission v Hungary, C-808/18, ECLI:EU:C:2020:1029.

ensure appropriate, lawful and timely procedures for critical situations at external (sea) borders given the complex geopolitical challenges of those operations;

49. Observes, that besides the significant growth in size of the Agency, both in terms of its budget and staff, the Agency has also undergone a fundamental change in nature, which is best characterised by the ability of Category 1 staff of the standing corps to carry weapons and wear uniforms; notes that those unique attributes make the Agency distinct among all other Union bodies, offices and agencies; therefore calls on the Commission and Member States in coordination with Schengen associated countries to define a profound legal framework that provides clear guidance regarding all aspects of those specific and unique activities of the Agency;
50. Notes that the European Ombudsman opened an inquiry on her own initiative into the Agency's complaints mechanism for those who believe their fundamental rights have been breached in the context of an Agency operation; calls on the Agency to fully cooperate with that inquiry and to report on how it will implement recommendations of the European Ombudsman;
51. Points out that a complex approach is needed in order to make the websites of the Union institutions, bodies, offices and agencies accessible to persons with all kinds of disabilities as provided for in Directive (EU) 2016/2102<sup>1</sup>, including the availability of national sign languages; suggests that organisations representing disabled persons are involved in that process;

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52. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 29 April 2021<sup>2</sup> on the performance, financial management and control of the agencies.
53. Highlights that the concerns identified in the management of the Agency in 2019 do not question the existence, legitimacy or mandate of the Agency; continues to consider the Agency as an essential tool in the management of Union's external borders with a duty to ensure the proper functioning of the Schengen area and the freedom of movement within the Union; expects the Agency to fully implement the recommendations of WG FRaLO and to present to the discharge authority concrete actions with a clear timetable to address the problems identified; considers these steps to be a mandatory condition for granting the discharge to the Agency;

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<sup>1</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).

<sup>2</sup> Texts adopted, P9\_TA(2021)0215.