

**RESOLUTION (EU) 2021/1657 OF THE EUROPEAN PARLIAMENT
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 Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2019

THE EUROPEAN PARLIAMENT,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 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 (A9-0098/2021),

- A. whereas, according to its statement of revenue and expenditure ⁽¹⁾, the final budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) (the 'Agency') for the financial year 2019 was EUR 288 403 000, representing a significant increase of 40,23 % compared to 2018; whereas the increase was related to the amount carried forward from 2018 and an increase in workload and staff; whereas the Agency's budget derives almost exclusively from the Union budget;
- B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the Agency for the financial year 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;

Budget and financial management

1. Regrets that budget-monitoring efforts during the financial year 2019 resulted in a budget implementation rate of 44,51 %, representing a decrease of 30,67 % compared to 2018; observes that the low implementation rate was caused by a lack of alignment between the budgetary planning for new tasks as presented in the respective legislative financial statements prepared by the Commission and the actual date of the entry into force of the relevant legal acts or the completion of subsequent acts, as well as the late adoption and entry into force of certain legal acts; notes that because of the low budget implementation rate, the Agency returned EUR 66 million to the Commission in payment appropriations, including EUR 23 million not requested when the budget was established, and carried forward EUR 159 million in commitment appropriations which was authorised by the management board; notes that this calls into question the planning assumptions in the legislative financial statements prepared by the Commission; notes that the incorporation of a significant amount of resources in the budget for the implementation of legislation not yet adopted presents a serious risk to the efficient use of appropriations, in particular to those appropriations not requested by the Agency itself; notes that the budget implementation problem was also reported by the Court for the financial year 2018; notes that according to the Agency's reply, risks associated with the incorporation of resources in the Agency's budget for legislation not yet adopted are systematically reported to the management board; calls on the Agency, together with the Commission, to improve the alignment of budgetary planning with the timing of legal acts; calls on the Commission to involve the Agency in the preparation of the respective legislative financial statements at the earliest possible stage; notes, furthermore, that the payment appropriations execution rate was 92,28 %, representing a decrease of 1,80 % compared to 2018;
2. Notes with regard to the follow-up of the discharge authority's comment made in the previous year concerning the agreement to construct the Agency's new premises in Strasbourg, that the Agency registered statements of defence with the Court of First Instance of Strasbourg on 15 May 2018 and on 15 February 2019 and that the talks that aimed to reach an out-of-court settlement were restarted in April 2019; notes that, between December 2019 and April 2020, a second exchange of pleadings took place in both cases at the Administrative Court of Strasbourg (a financial claim and a judicial take-over claim), and that on 20 May 2020, the Administrative Court confirmed that the pre-trial phase was over for both cases; notes that hearings for both cases took place on 23 July 2020 and that

⁽¹⁾ OJ C 107, 31.3.2020, p. 172.

the Administrative Court fully dismissed both claims; notes that, on 22 September 2020, two appeals were filed by the applicant before the Administrative Court of Appeal of Nancy; notes that the deadline for the Agency to submit the statements of defence before the Administrative Court of Appeal of Nancy was 10 February 2021; calls on the Agency to inform the discharge authority as soon as the judgements of the Administrative Court of Appeal of Nancy are issued;

Performance

3. Welcomes the fact that the Agency uses certain tools such as key performance indicators to assess the added value provided by its activities and to improve its budget management, such as the number of identified critical shortcomings during security tests, the percentage of identified security risks treated by assured security controls and the ratio of activities identified in the annual work programme carried out or on schedule;
4. Reminds the Agency of the need to regularly review and update its performance measurement system and key performance indicators to ensure the Agency's efficient contribution to Union policies and its expertise at Union level; encourages the Agency to carefully analyse the outcomes of its performance measurement and use this analysis to improve its strategy and activity planning;
5. Stresses that the Agency offers an important contribution to a safer Europe by ensuring the highest levels of information security and data protection to the information entrusted to it, providing high-quality services and helping to align Member States' technological capabilities with their needs; draws attention to the need to take all necessary measures to avoid any risk to the information processed; recalls that the Agency's capacity to both improve existing and develop new information systems was enhanced by its new mandate which entered into force in December 2018; recalls that 2019 was the first full year after the entry into force of Regulation (EU) 2018/1726 ⁽²⁾ and welcomes the efforts made by the Agency to adapt to these new rules;
6. Notes with appreciation that the Agency is aiming to ensure cost efficiency and economy of scale through pooling resources with and via other agencies through participation in interinstitutional calls for tenders and contractual arrangements with other service providers to reduce administrative costs and to avoid duplication of horizontal services; encourages the Agency to expand its participation in interinstitutional collaboration also to the fields of cybersecurity or ecological transition; notes that the Agency is working closely with the agencies in the justice and home affairs domain and that working arrangements and cooperation plans are in place with the European Asylum Support Office, the European Union Agency for Criminal Justice Cooperation, the European Union Agency for Law Enforcement and Cooperation, the European Union Agency for Law Enforcement Training, the European Union Agency for Fundamental Rights, the European Union Agency for Cybersecurity and the European Border and Coast Guard Agency; encourages and calls on the Agency to continue to actively seek further and broader cooperation and exchange of good practices with other Union agencies with a view to improve efficiency, particularly with respect to human resources, building management, IT services and security;
7. Notes in light of the observations and comments made by the discharge authority as part of the 2018 discharge, that the Agency manages three separate, non-integrated, large-scale IT systems, and that the different development timelines and constraints stemming from the separate legal frameworks governing these systems have caused the IT systems to be built separately in a non-integrated way; notes that the Agency has launched the transversal engineering framework tender that is meant to significantly increase efficiency and economies of scale and more closely reflect the new organisational structure of the operations department and calls on the Agency to report to the discharge authority on the progress made;
8. Notes that in 2019, the Agency launched a corporate transformation programme named eu-LISA 2.0 with the aim of aligning the Agency's organisation with its new mandate and responsibilities while ensuring that the reorganisation project is open, transparent and involves the Agency's staff; notes that the Agency concluded a change of its organisational structure on 1 September 2019 and that completely new organisational matrix structures for the operations department and the corporate governance department have been designed and implemented;
9. Welcomes the new organisational structure put in place by the Agency that reinforces the capabilities needed for operational planning and the underlying procurement, including the provision of legal and technical input; calls, however, for further efforts to ensure compliance with procurement rules and for more accurate internal controls and reporting;

⁽²⁾ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

10. Welcomes the progress made regarding the Court's recommendations from previous years and that, since the beginning of 2019, the Agency publishes vacancy notices on the European Personnel Selection Office website;

Staff policy

11. Notes with concern that, on 31 December 2019, the establishment plan was only 89,53 % implemented, with 154 temporary agents appointed out of 172 temporary agents authorised under the Union budget (compared to 136 authorised posts in 2018); notes that, in addition, 61 contract agents and 8 seconded national experts worked for the Agency in 2019;
12. Notes with concern the lack of gender balance reported for 2019 for senior managers, the management board (50 men and 8 women) and staff; invites the Agency to increase its effort to achieve gender balance at all levels; 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;
13. Encourages the Agency to pursue the development of a long-term human resources policy framework which addresses work-life balance, lifelong guidance and career development, gender balance, teleworking, geographical balance, and the recruitment and integration of people with disabilities;
14. Notes that, according to the Court's report, the audit of the recruitment procedures showed that the assessment of applications against the eligibility criteria was not always rigorous enough, in one case leading to the unequal treatment of candidates; notes from the Agency's reply that it acknowledges that observation and commits to ensuring that all applicants are treated equally;
15. Notes that the workload of the Agency has increased significantly over the years and that the limited number of staff remains one of the main challenges for the Agency from both a short and a long-term perspective; notes that the Agency expected the number of staff to increase to over 300 by the end of 2020; acknowledges that staff increase is subject to approval by Parliament and the Council, and that the Agency is trying to mitigate the impact of this limited number of staff through the reprioritisation of tasks and quick recruitment; points out that the current practice of recruiting the staff necessary for the implementation of a legal act only once that legal act is in force relies on existing staff to conduct the preparatory measures for the implementation of that legal act, thus stretching the Agency's core team capacity, and, therefore, carries the risk of affecting the Agency's performance of its daily tasks; calls on the Commission to allow for the frontloading of some of the staff foreseen in a proposal for a legal act in order to allow the Agency to efficiently prepare for the implementation of such legal act;
16. Notes the difficulties faced by the Agency in the recruitment of qualified staff and the retention of such staff over a longer period of time; highlights the important role played in this issue by the annual decision concerning the correction coefficient applicable to the remuneration and pensions of officials and other servants of the Union; underlines that the correction coefficients vary significantly from one Member State to another which has a serious impact on the ability of agencies located in Member States with lower correction coefficients to recruit and retain staff and expertise; calls on the Commission to consider the possibility of setting up different correction coefficients based on a regional rather than a national assessment; highlights that the headquarters of agencies located in Member States with lower correction coefficients are usually in capital cities where living and subsistence costs are significantly higher than in other parts of those Member States;
17. Notes that in light of the scale and complexity of its operations, the Agency cannot avoid using private contractors and that the Agency retains the services of 96 external service providers, not including the members of staff of the companies contracted to support the Agency in the operational management of the existing systems or for the development of the new ones; notes that in 2019, the Agency sought approval for additional members of staff (17 contract agents) but that the Commission did not give such approval; notes that the dependency on private contractors can only be reduced by a further substantial staff increase within the Agency beyond the figures of its present establishment plan;
18. Notes that the Agency has adopted a policy on protecting the dignity of persons and preventing harassment; notes that following a request by a member of staff in October 2018, the Agency opened an administrative inquiry in 2019 that was completed in September 2019 with a disciplinary measure; acknowledges that a complaint was issued against that disciplinary measure and that the Agency replied on 3 August 2020; notes that a court case was lodged before the General Court by the member of staff concerned; calls on the Agency to report to the discharge authority by June 2021 with regard to the progress made and, if applicable, correction measures taken following a final decision of the General Court; notes that based on the data from the confidential counsellors, there were nine harassment cases reported during 2019 but none of these cases resulted in members of staff requesting support through either formal or informal procedures;

Procurement

19. Notes that according to the Court's report, a payment of EUR 284 000 regarding the provision of 'corrective maintenance in working order of the Schengen Information System' under a framework contract (the 'MWS contract') referred to a time period not covered by the duration of the MWS contract and, as a result, was not in compliance with the contractual provisions; notes that according to the Agency's reply that finding concerns the extension of the Schengen Information System corrective maintenance for unavoidable operational reasons which was already included in a report on the Agency's accounts for the year 2018, and that no corrective action could be taken;
20. Notes with regard to the follow-up of the Court's findings for the previous year that the evaluation formula stipulated in the tender specifications for the MWS contract was different from the one communicated in the question and answer document for bidders and that the Agency should strengthen procurement-related internal controls; notes that according to the Agency's follow-up, *ex post* assessment is not deployed as a function within the procurement process due to the lack of allocated human resources but that the Agency took steps aimed at mitigating the risk highlighted in the observation by strengthening contract and vendor management capabilities and re-assigning the staff responsible for the preparation and evaluation of the tender to other operational roles;
21. Notes with regard to the follow-up of the Court's findings for previous year that the Agency increased the prices of a framework contract without amending it and extended one specific contract after the expiry of the framework contract; notes that the Agency took steps aimed at strengthening contract and vendor management;

Prevention and management of conflicts of interest, ethics and transparency

22. Acknowledges the Agency's existing measures and ongoing efforts to secure transparency, prevention and management of conflicts of interest, and whistleblowing; notes that the Agency has in place rules on the prevention and management of conflicts of interest for members of staff; notes that in 2019 the Agency organised one training session on ethics and integrity with a focus on whistleblowing and fraud delivered by a representative of the European Anti-Fraud Office (OLAF), two training sessions on ethics and the code of conduct covering the prevention of harassment and whistleblowing with the involvement of the Agency's confidential counsellors, and three training sessions on the management of conflicts of interest; notes that in 2019, 106 declarations of interest were submitted by members of staff appointed as agents or verifiers in the operational and financial circuits and by newcomers, of which 21 declared an interest, and that for one member of staff it was advised to not participate in several actions to comply with the rules preventing conflicts of interest; notes that in June 2020, the management board was expected to adopt new rules on conflicts of interest that would apply to all members of staff of the Agency, including its senior management; calls on the Agency to report to the discharge authority by June 2021 with regard to the progress made;
23. Underlines the fact that the current ethical framework applying to Union institutions and agencies suffers from considerable drawbacks due to its fragmentation and lack of coordination between existing provisions; highlights that these issues should be addressed by setting up a common ethical framework, ensuring the application of high ethical standards by all Union institutions and agencies;
24. 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;
25. Notes that according to the Agency's reply there is no legal obligation to publish the CVs of the members of its management board; highlights in that respect that the Union agencies should set an example in terms of transparency and calls on the members of the management board to publish their CVs on the Agency's website; notes that the Agency will continue to encourage the representatives of the management board to provide their CVs in order to increase transparency; calls on the Agency to report to the discharge authority by June 2021 with regard to the progress made;

Internal Controls

26. Notes that the internal audit service, as a result of the audit on the 'Agency's Staff Recruitment, Management and Engagement of Structural Service Providers (SSPs) and Organisational Ethics' carried out in 2019, concluded two 'very important' issues; notes that the Agency will put in place an action plan addressing the recommendations; calls on the Agency to report to the discharge authority on the implementation of the audit recommendations;

27. Notes in light of the comments and observations from the discharge authority related to open audit recommendations that at the end of 2019 the implementation rate of audit recommendations was 62 % (21 implemented out of 34 recommendations); notes that in total 32 recommendations were open at the end of 2019 out of which none were 'critical'; notes that in 2020 the Agency took firm and urgent actions aimed at addressing the delayed recommendations, including providing revised target implementation dates; calls on the Agency to report to the discharge authority by June 2021 on the implementation of the audit recommendations;
28. Notes that the Agency adopted and deployed the revised internal control framework early in 2019;
29. 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 this regard in order to avoid at all costs a digital gap between the Union agencies; 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 by the Agency;
30. Notes the efforts made to increase the Agency's cybersecurity and data protection;

Other comments

31. Notes that in anticipation of the UK's withdrawal from the Union, the Agency made all the necessary preparations to execute the disconnection of the UK and the possible deletion of the UK data from the Schengen Information System and the European Asylum Dactyloscopy Database as and when required by the legal framework; notes that the Agency made the necessary preparations for the application of the provisions of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽³⁾ and the respective Commission guidelines regarding the UK's participation in the Agency's governance bodies, human resources management, statistical reports and other relevant matters;
32. Welcomes the Agency's active online presence in 2019; encourages the Agency to continue promoting its work, research and activities to increase its public visibility;
33. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 29 April 2021 ⁽⁴⁾ on the performance, financial management and control of the agencies.

⁽³⁾ OJ L 29, 31.1.2020, p. 7.

⁽⁴⁾ Texts adopted, P9_TA(2021)0215.