

RESOLUTION (EU) 2018/1410 OF THE EUROPEAN PARLIAMENT**of 18 April 2018****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 Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2016**

THE EUROPEAN PARLIAMENT,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice for the financial year 2016,
 - having regard to Rule 94 of and Annex IV 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 (A8-0111/2018),
- A. whereas in the context of the discharge procedure, the discharge authority stresses the particular importance of further strengthening the democratic legitimacy of the Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources;
- B. whereas, according to its statement of revenue and expenditure ⁽¹⁾, the final budget of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (the 'Agency') for the financial year 2016 was EUR 82 267 949, representing an increase of 21,77 % compared to 2015 due to the new procurement procedure for the Visa Information System and for the Biometrics Matching System; whereas the budget of the Agency derives mainly from the Union budget;
- C. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom for the financial year 2016 (the 'Court's report'), has stated that it has obtained reasonable assurances that the annual accounts of the Agency are reliable and that the underlying transactions are legal and regular;

Follow-up to the 2013 and 2015 discharges

1. Notes with concern the number of outstanding issues and ongoing corrective measures in response to the Court's comments in 2013 and 2015 related to a framework contract for the procurement of services and to the relation between the Agency and Schengen associated countries; urges the Agency to take corrective actions without further delay;

Comments on the legality and regularity of transactions

2. Condemns the fact that the Agency received and accepted supplies amounting to EUR 2 800 000 without having budget and legal commitments (contracts) in place; notes that the legal commitments were made retroactively in order to regularise the purchases; notes moreover that, according to the Agency, the purchases were made in this way in order to deal with urgent operational requirements and also in response to rapidly growing storage needs required by Member States; calls on the Agency to significantly improve budget planning and budget implementation; is of the opinion that the growing storage needs of Member States were foreseeable by the Agency; is of the opinion that the Union's public procurement rules allow for an urgent procedure and thus that the retroactive signing of contracts for an urgent purchase is not in accordance with Union law;

Budget and financial management

3. Notes that budget-monitoring efforts during the financial year 2016 resulted in a budget implementation rate of 97,9 % and that the payment appropriations execution rate was 97,6 %;

⁽¹⁾ OJ C 113, 30.3.2016, p. 191.

4. Notes that the Agency signed a construction contract for its premises in Strasbourg with a value of EUR 21 500 000 in June 2015; notes moreover that stage payments were agreed as the main payment method; notes with concern that the Agency amended the contract in July 2015 to make advance payments the default method to increase budget consumption; is gravely concerned that by November 2016 the Agency had paid the full contract amount although less than half of the work had been completed; notes that, according to the Agency's reply, the pre-financing payments were associated with a matching financial guarantee and a 5 % performance guarantee; calls on the Agency to report to the discharge authority on the implementation of that contract;

Commitments and carry-overs

5. Notes that, according to the Court's report, appropriations carried over under Title II (administrative expenditure) are high at EUR 5 000 000, i.e. 63 % of committed appropriations (compared to EUR 9 000 000 in 2015, i.e. 50°%); recalls that the carry-overs mainly concern building maintenance and consultancy services to be delivered in 2017;
6. Notes that, according to the Agency's reply, carry-overs for Title I and II appropriations are constantly revised and planned with the objective of reducing them over time to the strict and necessary minimum and that of the EUR 19,5 million non-differentiated appropriations carried over to 2016, only EUR 474 000 were cancelled, representing 2,42 %;
7. Notes that carry-overs may often be partly or fully justified by the multiannual nature of the agencies' operational programmes, do not necessarily indicate weaknesses in budget planning and implementation and are not always at odds with the budgetary principle of annuality, in particular if they are planned in advance by the Agency and communicated to the Court;

Procurement and staff policy

8. Notes with concern that the Court identified procurements where the Agency did not check for the most economic solution by not checking whether the framework contractor had found the best price; calls on the Agency to take the principle of economy and cost-effectiveness seriously and carry out all relevant measures in order to avoid this situation happening again;
9. Notes that in May 2016 the Agency signed a framework contract for EUR 194 000 000 with a consortium for the further development and maintenance of the Visa Information System (VIS) and of the Biometrics Matching System (BMS) for a maximum period of six years; notes that the contract was awarded through a public procurement procedure; notes also that one main requirement for tenderers to be accepted was having commercial access to BMS technology; expresses its concern as to a potential risk for the competitiveness of the procedure; notes that, according to the Agency's reply, the acquisition of permanent licences is linked to their subsequent maintenance and resulted in significant savings in the long term, estimated at EUR 402 243,22 over a four year period; notes that Article I.19.1 of the special conditions of the framework contract provides for the 'most favoured customer', further protecting the financial interests of the Agency when sourcing hardware or software from the contractor;
10. Observes from the Agency's establishment plan that 114 posts (out of 118 posts authorised under the Union budget) were occupied on 31 December 2016, compared to 117 in 2015; notes that in addition the Agency was employing 26 contract agents, 47 interim staff and 6 seconded national experts;
11. Observes with concern that the growing operational risk facing the Agency's operations is related to understaffing of the Agency so that while tasks allocated to it continuously increase, the staffing levels have been reduced as a result of the requirement to reduce staff by 5 %; observes that there are a number of functions in the Agency which are either understaffed or have no embedded business continuity (one single member of staff performs the tasks and holds the know-how on operations); notes with concern that reducing staff and outsourcing work increase the risks of 'revolving doors' and information leaks; notes with satisfaction that the Agency has published the general principles regarding obligations after leaving service in its code of ethical behaviour and conduct;
12. Observes that the Agency is increasingly dependent on external staff, who are often more expensive to employ than internal staff and may present inherent risks with regards to the retention of knowledge and capabilities in the Agency and the sustainability of its operations;
13. Welcomes the Agency's staff retention policy, implemented by the management board, which provides for the possibility that temporary agents receive indefinite contracts at the end of their first contractual term, allowing the Agency to retain key in-house knowledge and expertise.

14. Notes with concern the lack of gender balance among posts occupied by 31 December 2016, given that the ratio was 28 % female to 72 % male members of staff; regrets that the management board is even more imbalanced with a ratio of 11 % female to 89 % male board members; calls on the Agency to pay greater attention to the gender balance of its staff;
15. Regrets that no particular steps have been taken with regard to the gender imbalance in the composition of the Agency's management board; calls on Member States to ensure gender balance when nominating their members and alternate members to the Agency's management board; calls on the Agency to pro-actively remind Member States of the importance of gender balance;
16. Notes with satisfaction the fact that the Agency did not receive any complaints, law-suits or reported cases linked to the hiring or dismissal of staff in 2016;
17. Observes that in 2016, the Agency's staff was on average on sick leave 10,7 days; notes that, according to the Agency's replies, the number of days spent per member of staff on well-being activities in 2016 was between two and three; notes that the Agency organised different team building activities with more days allocated to operational staff and less to administrative staff; calls on the Agency to consult the medical service on how to lower the absence from work due to sick leave;
18. Observes that the Agency adopted a policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment in 2015 and that information about the implementing rules is included in the on-boarding programme for new members of staff; notes that Agency's human resources and training unit provide the answers and information to the members of staff on this subject; notes that two complaints were submitted, investigated and concluded with recommendations in 2016 and that no cases were taken to court;
19. Notes that the Agency does not have any official vehicles;

Prevention and management of conflicts of interests, transparency and democracy

20. Notes that the management committee of the Agency approved its guidelines on whistleblowing on 23 May 2016 and that the European Anti-Fraud Office (OLAF) gave a positive opinion on the text; notes, however, that the Commission's Directorate-General for Human Resources was not in favour of it and informed the Agency that the Commission is working on new guidelines; notes with satisfaction that in the meantime the Agency has published the general principles relevant for whistleblowing in the code of conduct published on its website; reiterates that transparency is a key issue for creating and maintaining a trusting relationship between citizens, the Union and its institutions;
21. Notes that all members of the management board are obliged to issue an annual public statement of interest in writing, which is published on the Agency's website; notes that the CV of the executive director and the chairperson of the management board are also published and kept up to date; notes that the Agency is preparing new rules on the prevention and management of conflicts of interest; regrets that the members of the management board and of the advisory group have published declarations of 'absence of conflicts of interest' rather than declarations of interest as it is not for the members to declare themselves that they have no conflicts of interest but for third parties to verify independently declarations of interest; calls on the members of the management board and of the advisory group to publish declarations of interest listing their membership of any other organisation; calls on the Agency to report to the discharge authority on this matter by the end of July 2018;
22. Notes that the first annual monitoring report on the implementation of the Agency's anti-fraud strategy (April 2016) showed a low level of implementation of close to 60 %, while the next monitoring report (November 2017) showed a level of quantitative implementation of at least 80 %; notes the progress made in this regard; calls on the Agency to constantly improve the implementation of its anti-fraud strategy;
23. Notes with satisfaction that the Agency is preparing a revision of its anti-fraud strategy; calls on the Agency to report to the discharge authority on the adoption and implementation of the new rules;
24. Observes that the Agency has informed Parliament that it does not interact with lobbyists;
25. Notes that in 2016 the Agency received eleven requests for access to documents and that the Agency granted full access in nine cases but refused access in the case of two requests on grounds of protecting commercial interests and protecting the purpose of inspections, investigations and audits; expects the Agency, when deciding on limiting the access to documents to protect commercial interests, also to consider with seriousness citizens' interests and the Union's commitment to greater transparency, while taking into account all relevant rules and regulations;

26. Notes that for one of the cases in which a request for access to documents was refused, the case was further transmitted to the European Ombudsman who carried out an inspection between the end of 2016 and beginning of 2017 and closed the file in March 2017 with a report signed and dated on 3 March 2017; calls on the Agency to report to the discharge authority on the European Ombudsman's decision and the subsequent procedure, if any;

Main achievements

27. Welcomes the three main achievements identified by the Agency in 2016, namely:

- it implemented a corporate quality management system;
- it ensured stable and continuous operations of the systems entrusted to it and at the same time provided broad support to the Commission in the development of a number of key legal proposals;
- it played a key role in all developments related to interoperability between IT systems in the justice and home affairs domain and provided significant input to support and facilitate the work of the high level expert group on information systems and interoperability led by the Commission;

28. Notes that, according to the Court's report, an external evaluation of the Agency was carried out on behalf of the Commission from March to December 2015 and that the results were presented in March 2016; notes that the evaluation concluded that the Agency contributes to the operational management of large-scale IT systems in the area of freedom, security and justice and effectively fulfils its tasks; notes moreover that in order to improve operational management further, the evaluators made 64 recommendations, 7 of which are considered to be critical and 11 very important; welcomes the fact that the Agency has prepared a plan to address the recommendations and that it is being implemented; calls on the Agency to report to the discharge authority on the implementation of that plan;

29. Welcomes the Agency's continuous cooperation with the other justice and home affairs agencies; notes that the annual report of the EU Agencies Network indicates that in 2016 the Agency engaged in a higher number of joint activities with other agencies than in any prior year;

30. Notes that 2016 was the most intense and demanding year for the Agency since its establishment and that the Agency nevertheless performed well and delivered its annual work programme in full, carrying out nearly all of its activities as planned and achieving its operational objectives; notes moreover that a number of additional tasks were assumed through the year;

Internal audit

31. Notes that, according to the Court's report, in its audit report of July 2016 the Internal Audit Service (IAS) concluded that the overall design and practical implementation of processes ensures that the Agency operates the Schengen Information System II, the Visa Information System and the European Asylum Dactyloscopy Database system in a way that allows the continuous and uninterrupted exchange of data between the national authorities using them; welcomes the fact that, according to the external evaluation conducted on behalf of the Commission, the Agency operates and fulfils its tasks effectively; notes moreover that the IAS considered that there is room for improving the efficiency of the processes in relation to configuration management and change management, release and test management, problem management, as well as service and incident management; notes that the Agency and the IAS agreed on a plan to take corrective actions; calls on the Agency to report to the discharge authority on the implementation of that plan;

32. Observes that the IAS carried out two assurance audits in 2016: an audit on IT operations and an audit on staff planning and allocation, performance appraisal, promotion and training; notes that the IAS concluded that weaknesses still exist in the Agency's process for managing human resources, in particular elements that are not fully compliant with procedural aspects of the implementing rules and the Agency's own internal guidelines; notes that an action plan has been prepared to address all findings; calls on the Agency to report to the discharge authority on the implementation of that action plan;

33. Observes that the Internal Audit Capability (IAC) carried out three assurance audits:

- an audit of the Design of Internal Control System for Smart Borders Delegation Agreement, where the IAC believed that the design of the internal control system set up by the Agency was adequate as of 23 May 2016;
- an audit on the reconstruction project in Strasbourg, where the IAC could not provide reasonable assurance as to the effectiveness and efficiency of the internal control system put in place for the project in the absence of the necessary project documents and was concerned by the project and contract management organisation put in place; notes that an action plan has been prepared to address all findings; calls on the Agency to report to the discharge authority on the implementation of that action plan;

— a final audit report on IT project management, where the IAC believed that the project management process was in urgent need of revision and improvement; notes that an action plan has been prepared; calls on the Agency to report to the discharge authority on the implementation of that action plan;

34. Notes that as of 31 December 2016 the Agency had 22 audit recommendations open which were rated as 'very important', including 10 audit recommendations which had been issued recently; notes that no 'critical' issue is open; calls on the Agency to report to the discharge authority on the implementation of those audit recommendations;

Other comments

35. Notes that the agreement concerning the technical site with the host Member State, France, entered into force on 28 August 2016;
36. Notes with satisfaction that, in order to ensure a cost-effective and environmentally friendly workplace, environmental and climate performance criteria were included in the technical specifications of the Agency's tenders and that, for the buildings directly managed by the Agency, energy efficiency rules apply;
37. Notes with satisfaction that, in order to ensure further reductions in or offsetting of CO₂ emissions, the travel management policies of the Agency aim to reduce air travel to what is essential by having extensive recourse to videoconferencing between the two main sites of the Agency;
38. Notes that a level of information exchange between the Agency and the Commission that would allow thorough preparation for activities after Brexit has not been completely arranged as some legal aspects, such as access to the systems managed by the Agency and use of data entered by the United Kingdom into them after Brexit, need further elaboration; calls on the Commission to help the Agency with solutions as soon as the negotiation process with the United Kingdom provides them with enough information;
39. Welcomes the fact that the Agency ensured stable and continuous operation of the systems entrusted to it and provided broad support to the Commission in its development of a number of key legal proposals (Entry/Exit System (EES), European Travel Information and Authorisation System (ETIAS), European Criminal Records Information System (ECRIS TCN), European Asylum Dactyloscopy Database (Eurodac) recast and second generation Schengen Information System (SIS II) recast);
40. Refers for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 18 April 2018 ⁽¹⁾ on the performance, financial management and control of the agencies.
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⁽¹⁾ Texts adopted, P8_TA(2018)0133 (see page 393 of this Official Journal).