



2024/2343

10.10.2024

RESOLUTION (EU) 2024/2343 OF THE EUROPEAN PARLIAMENT

of 11 April 2024

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 Law Enforcement Cooperation (Europol) for the financial year 2022

THE EUROPEAN PARLIAMENT,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Union Agency for Law Enforcement Cooperation (Europol) for the financial year 2022,
- 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 (A9-0119/2024),
- A. whereas, according to its statement of revenue and expenditure ⁽¹⁾, the final budget of the European Union Agency for Law Enforcement Cooperation (Europol) (the 'Agency') for the financial year 2022 was EUR 197 759 722, representing an increase of 10,91 % compared to 2021; whereas the Agency's budget mainly derives from the Union budget;
- B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the European Union Agency for Law Enforcement Cooperation (Europol) for the financial year 2022 (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. Notes that budget monitoring efforts resulted in a budget implementation in 2022 of 96,62 % in commitment appropriations, representing a decrease of 2,10 % compared to 2021; notes that the current year payment appropriations execution rate was 79,73 %, indicating a decrease of 3,78 % compared to 2021; commends the Agency's efforts to further reduce its payments delays from 32,8 % in 2020 and 7,8 % in 2021, to 7,2 % in 2022; however, notes with concern that the observation from the Court stressing that the Agency faces challenges regarding late payments is still ongoing; shares the opinion of the Court that this recurrent weakness exposes the Agency to reputational risks;
2. Notes a low implementation rate (85 %) of the funds (C8) carried over from 2021 to 2022, leading to an unused amount of EUR 3,8 million of appropriations; notes with concern that appropriations related to the current budget carried forward from 2022 to 2023 are at a relatively high level of 17 % or EUR 32,5 million; observes further an increasing trend in the last years (2020 to 2022) with regard to the Agency's surplus (budget result) at the end of the financial year, whereas for 2022, such surplus was EUR 10,3 million, more than the double of the same figure in 2021 (EUR 5,1 million); notes that, according to the Agency's 2022 Consolidated Annual Activity Report (CAAR) and the Agency's report with follow-up to Parliament's discharge decision on the implementation of the Agency's budget for 2021, the Agency assessed the root causes of the high levels of surplus at the end of the financial year and the carry-forward budgetary implementation performance; notes in this sense that the Agency also prepared an action plan; calls on the Agency to keep the discharge authority informed on the progress made in this regard;
3. Notes that the Agency's final budget for 2022 is the result of a first amendment of EUR 4,3 million, for the 2022 contribution from Denmark and a second amendment of EUR 1,1 million, for contribution agreements and Service Level Agreements (SLAs);

⁽¹⁾ OJ C 38, 31.1.2023, p. 160.

Performance

4. Notes with satisfaction from the Agency's CAAR that the Agency used key performance and work programme indicators to assess the added value provided by its activities and other measures to improve its budget management in 2022; notes that the Agency monitored 15 key performance indicators (KPI) and 56 work programme indicators (WPI); notes that 10 KPIs and 40 WPIs reached or exceeded the set targets; appreciates in this context the increase of some KPIs, compared to previous years, in connection with the number of operations (2 758) and the number of action days (394) supported by the Agency, as well as the number of searches performed in EIS and QUEST (13 million) and the number of cross border crime checks in EIS related to persons (2 339);
5. Commends the Agency for its ample achievements delivering on its five multi annual strategic priorities set in the Europol Strategy 2020+; notes in particular the set up of the Information Management Unit (IMU), the development of an ICT Strategy which is expected to help in the implementation of the Agency's strategy in the area of information management and the implementation of a new business value model for monitoring the progress of ICT delivery; notes that the Europol Innovation Lab became part of IMU in a structure expected to lead to closer collaboration that is needed in the implementation of the revised Europol Regulation and launched the Europol Tools Repository to support research and innovation in the Member States, encourage exchange of experiences, and promote synergies; notes further the launch of the Digital Support Unit aimed at an efficient and effective answer to the investigative needs of the Member States and within the Agency, in particular with regard to complex cases that require digital forensic support;
6. Commends the Agency's prompt responsiveness and its support to Member States in combatting crime in the wake of the illegal and unprovoked Russian invasion of Ukraine, by, for example, deploying experts and guest officers to support local law enforcement authorities in countries bordering Ukraine or supporting financial investigations targeting criminal assets owned by individuals and legal entities sanctioned in the context of that war; notes moreover that in 2022 the Agency issued several threat assessments on potential implications of the war, as well as early warning and intelligence notifications on e.g. weapons trafficking and trafficking in human beings; further encourages the Agency to do its utmost to support Union's and Member States' actions in this field; notes that the illegal military invasion has caused a humanitarian crisis and prompted large numbers of refugees to flee from Ukraine to the Union, meaning that opportunistic criminal networks may use this situation to further their criminal activities; further expresses that the extension of the Agency's competences as regards support to Member States and cooperation with private parties, third countries and international organisations would require the establishment of additional internal and external oversight mechanisms to guarantee respect of Union law and ensure protection of fundamental rights;
7. Notes that the Agency continued to work closely with eu-LISA on establishing automated checks of travel application data from the European Travel Information & Authorisation System (ETIAS) against Europol data; notes that entry into operation of the ETIAS was postponed to November 2023 by the decision of the Council; appreciates that the Agency expanded its cooperation with the European Public Prosecutors Office (EPPO) in 2022 whereas by the end of the year it supported 21 major EPPO operations in the area of tax fraud;

Efficiency and gains

8. Notes with appreciation that the Agency revised its Europol Strategy 2020+ adapting its strategic priorities to the current operational needs of the Member States and security threats they are facing, thus aiming at improving the Agency's performance; notes in this sense a new strategic priority to bring the relevant partners together for cross-border cooperation and joint action, including the Schengen Associated Countries, Interpol and the Union agencies in the field of Justice and Home Affairs;
9. Notes with appreciation from the Agency's replies to Parliament's written questions the Agency's extended measures and practices to increase efficiency and gains in the areas of core business ICT solutions (in-sourcing instead of outsourcing), digitalisation of HR services (e-recruitment, e-training), and tools for the monitoring of budgetary implementation, vacancy rate, contractual ceilings in procurement procedures and environmental indicators, among other; commends the Agency for implementing the Public Procurement Management Tool, as well as for sharing procurement procedures with other agencies;

10. Notes that, in the wake of the change in the planning of the Union's Interoperability Agenda (IA), the re-planning of the Agency's internal activities and resources was required, which brought a need for additional staff; notes in this context an agreement reached whereby 25 staff of the European Border and Coast Guard Agency will, as of 2024, support the Agency in delivering on its obligations in the IA; notes further a strain on the Agency's resources linked to consultation procedures with the European Data Protection Supervisor (EDPS), with 25 of the Agency's staff assigned to EDPS generated actions; commends the Agency for its close collaboration with the EDPS and for addressing the latter's recommendations with regard to the use of various systems such as EPRIS, ADEP, SIS, PERCI and QUEST+; notes the Agency's observation with regard to the delay in the rolling-out of PERCI (the Union Platform on Illegal Content Online) due to the impact the EDPS's opinions and ensuing recommendations had on developments of key operational importance; commends the Agency for designating its Fundamental Rights Officer who will support the Agency in safeguarding the respect of fundamental rights in all its activities and tasks;
11. Commends the Agency for having received in 2022 the Eco-management and Audit Scheme (EMAS) registration; further commends the Agency for the use of green public procurement criteria in, as well as for the integration of the Agency's environmental policy and objectives into its procurement procedures; notes that the Agency initiated a feasibility study project for the development of the Agency's environmental vision for 2030 to define reduction targets of the Agency's greenhouse gas emissions and the improvement measures needed to meet those targets; calls on the Agency to inform the discharge authority of the results of that study; invites the Agency to consider implementing also intermediate sustainable and energy-efficient solutions both to its infrastructure and internal processes, such as increased use of digital tools and document management;

Staff policy

12. Notes that, on 31 December 2022, the establishment plan was 99,41 % implemented, with 682 temporary agents (TA) appointed out of 686 authorised under the Union budget (615 in 2021); notes that, in addition, 236 contract agents (of which 19 funded by grants/agreements) and 55 seconded national experts worked for the Agency in 2022, with 235 and 71 authorised under the Union budget respectively; also notes that 11 additional TA posts, outside the establishment plan for 2022, were assigned for a limited period to keep the number of vacant posts to a minimum; notes that the Agency differentiates between five categories of seconded national experts, with four categories bearing no or limited costs for the Agency's budget and representing another 152 persons, bringing the total number of seconded national experts to 207 in 2022; commends the Agency's low vacancy rate of 0,6 % in 2022, well below the annual target of a maximum vacancy rate of 2 %; notes further the increase of the Agency's turnover rate from 6,9 % in 2021 to 9,12 % in 2022;
13. Highlights that in light of the 2022 Russian invasion of Ukraine, the Agency has deployed operational teams composed of cost free seconded national experts (SNE) in several Member States such as Lithuania, Slovakia, Hungary, Romania or Bulgaria, as well as in partner countries such as Moldova, thus increasing its use of cost free SNEs; pinpoints that the income of cost free SNEs remain dependent on national decisions and that a number of Member States have decided not to continue to pay salaries when such situations occur, thus leaving them dependent on the amounts paid to them as daily subsistence allowances (DSA); recalls that while the DSA should be adjusted with the Correction Coefficient and should compensate higher cost of living, with the inflation figures, every 3 years, these rates have remained unchanged over the past 6 years; calls for the Agency to engage in a substantive dialogue with the Commission and competent national authorities in order to ensure a fair compensation for all experts employed by the Agency;
14. Notes with concern the Agency's gender distribution reported for 2022 for senior and middle management, with 82 % being men (28 men and 6 women), for the management board (MB), with 75 % being men (38 men and 13 women), and for the overall staff, with 65 % being men (556 men and 295 women); acknowledges that the proportion of women (35 %) employed by the Agency in 2022 is above the average (based on Eurostat's 2021 statistics) proportion of women (21,6 %) employed in law enforcement in the Union (police officers, professional judges and prison personnel); recalls the importance to ensure gender balance and calls on the Agency to take this aspect into consideration with regard to future recruitments of staff and appointments within its senior and middle management; 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 MB;

15. Observes that three new burnout cases were reported by the Agency's medical service in 2022; further observes that the Agency has implemented measures to improve the well-being of its staff such as occupational health and lifestyle advice, medical part-time work schedule, referrals to medical specialists and advice to management supporting staff members, among other; notes that the Management Board agreed with the application, by analogy to the Agency, of Commission Decision C(2022) 1788 on working time and hybrid working, replacing the previous implementing provisions on working time and on telework, aiming at providing a framework where working at the office and telework are considered equivalent ways of working; calls on the Agency to continue exploring solutions for reducing burnout cases and report back to the discharge authority about the progress achieved;
16. Notes that, according to the Agency's replies to Parliament's written questions, although the Agency has not implemented the 'Charter on Diversity and Inclusion', it has put in place its own Diversity and Inclusion Strategy; further notes that in 2022 the Agency has revised and adopted the Manual of procedures for the implementation of the decision of the MB on the policy on protecting the dignity of the person and preventing psychological and sexual harassment; notes that during the period 2017-2022, the Agency sought external legal advice on two cases of alleged harassment; notes that no harassment cases relating to the Agency's staff were brought before a court in 2022; stresses the importance of having robust anti-harassment frameworks in place, especially in highly-stressful and demanding work environments; invites the Agency to introduce a training scheme on the matter both for newcomers and existing staff;

Public procurement

17. Notes the observation from the Court's report that in 2022 the Agency paid a grant of EUR 3,3 million to fund the activities of a national police force in a Member State, including EUR 1,4 million as reimbursement for the purchase of five boats and a 7 % provision for associated overheads, including VAT; notes that, according to the Court's assessment, for the acquisition of the boats for police trainings, in light of Article 186(4)(c) of the Financial Regulation, VAT should not have been reimbursed because the beneficiary is a public authority, governed by public law, and engaged in activities as public authority, therefore that part of the grant, amounting to EUR 0,2 million being found irregular; acknowledges from the Agency's reply that, having regard to Article 5 of the Council Decision 2008/617/JHA ⁽²⁾ on the improvement of cooperation between the Special Intervention Units (SIUs) of Union Member States which provides that SIUS shall ensure joint training exercises, whereas the operational grant concerned the activities of SIUs coordinated by one Member State, the Agency considered that, under Article 186(4)(c) of the Financial Regulation and the corresponding specific implementation guidance of the Commission on grant administration, VAT was an eligible cost where it is not recoverable under applicable national legislation and where it relates to training, awareness raising or similar activities in the area of security, except for VAT paid by the Member States when acting as public authorities in their sovereign capacity, in particular where private companies could not provide the related services; notes lastly, on the way forward, the Agency's commitment to assess the eligibility of VAT in operational grants in light of the Court's observations;

Prevention and management of conflicts of interest and transparency

18. Notes the Agency's existing measures and ongoing efforts to secure transparency, the prevention and management of conflicts of interest and whistleblower protection; notes with satisfaction that the declarations of interests and CVs of all MB members and senior management are published on the Agency's website; calls on the Agency to consider measures preventing also the revolving doors phenomena;
19. Notes that, in the course of 2022, the Agency handled six cases concerning conflicts of interest situations, of which two with respect to the role of advisor in the selection process, one surfaced during the recruitment of a successful candidate prior to taking up duties at the Agency and two by members of staff after leaving the service; further notes that adequate measures in relation to those situations were taken, including conditional authorisations for employment after leaving the service; takes note that the Agency dealt with one whistleblowing case in 2022, which was closed without further action in terms of a potential breach of professional obligations;

⁽²⁾ Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations (OJ L 210, 6.8.2008, p. 73).

20. Expresses concern over media reports regarding conflicts of interest occurring among the Agency's staff; notes that in December 2023 the European Ombudsman decided to open an inquiry to investigate how the Agency dealt with the moves of two former members of staff to positions related to combatting online child sexual abuse; notes that the first member of staff joined a major technology stakeholder in early 2022, and the second joined the same stakeholder as a board member later that year; takes note of the reply provided by the Agency and calls for allegations to be thoroughly investigated and outcome reported to the discharge authority;

Internal control

21. Notes the observation from the Court's report that over a period between 2020 and 2022 the Agency paid daily subsistence allowance (DSA) to three Dutch nationals employed as seconded national experts (SNE); notes that, as the Agency is located in the Netherlands, the three SNEs were not entitled to those allowances according to the Agency's internal rules; notes further that, although in December 2022 the Agency stopped the payment of the DSA to the three SNEs, the Agency decided not to claim back the payments made in excess during that period; notes that the total amount associated to those payments was EUR 155 553, of which EUR 90 605 were paid in 2022; is concerned of the shortcomings in connection with the Agency's *ex-ante* checks for a period spanning over three years; notes that, according to the Agency's reply to the Court's observation, the Agency enhanced *ex-ante* verifications in order to secure assurance on the legality of staff's financial entitlements prior to payment;
22. Commends the Agency for the progress achieved in implementing pending audit recommendations, with 89 % of those critical or very important being implemented in 2022; notes that at the end of 2022, seven very important recommendations (intended for implementation and applicable) were still pending with regard to reports of audits carried out in 2018, 2019 and 2021; notes that the Commission's Internal Audit Service (IAS) issued the Strategic Internal Audit Plan for the Agency for the period 2022-2024 covering three themes, including an audit on coordination and working arrangements with DG HOME carried out in 2022, the results of which are expected in 2023;
23. Notes the conclusion of the Agency's self-assessment of the effectiveness of its internal control system (ICS), through both quantitative measurements and qualitative aspects, including a set of 76 internal control indicators, that overall all components of the ICS were present and functioning in an integrated manner and there were no prominent internal control weakness identified in 2022; notes that the Agency's Internal Audit Capability completed a review of the Agency's internal control framework for 2022, concluding that the Agency had a robust system of internal controls in place;
24. Takes note that the Agency developed and released a risk management policy in 2022; further observes that the Agency's corporate risk profile in 2022 was characterised by the increasing mandate and tasks, rising demand on the successful delivery of key ICT solutions for the processing of personal data, the continuous response to mitigate the security and law enforcement impact resulting from the war in Ukraine and increasing supervisory and related scrutiny activities (including on data protection), among other; commends the Agency for adopting in 2022 its revised Anti-Fraud Strategy for the period 2022-2024, reflecting the principles, the fraud risk assessment, anti-fraud objectives and actions, and an implementation review of Anti-Fraud Strategy 2017-2020 actions; notes that the European Anti-Fraud Office completed an investigation (regarding incorrect mission costs statements of one of the Agency's staff), the report of which was issued in 2022; notes that the Agency's decision making in this case is still in the final stage; calls on the Agency to report to the discharge authority on the follow-up and final decision regarding this case;

Other comments

25. Notes that the Agency has continued to implement different measures to increase its public and online presence through the launch of a podcast series, the consolidation of its website, the organisation of conferences, the launch of reports (such as 'Spotlight Report' series and the revamped 'In Brief' report) and its presence in social media (with more than 1 100 posts published in 2022); notes in this context a growth of media mentions in high-impact media and a significant increase in the Agency's social media metrics in 2022 compared to 2021;

26. Calls on the Agency to take measures to ensure full compliance with Union transparency rules as well as fundamental rights, data protection standards and accountability, including when cooperating with other Agencies; considers that the disclosure of meetings and interactions between the Agency and third parties is required to ensure enhanced transparency; welcomes in this regard the appointment of the Agency's Fundamental Rights Officer;
27. Notes that on 16 September 2022, the European Data Protection Supervisor (EDPS) requested that the Court of Justice of the European Union annul two provisions of the amended Europol Regulation, namely Articles 74a and 74b, arguing that seriously undermine legal certainty for individuals' personal data and threaten the independence of the EDPS; further notes the Order of the General Court in Case T-578/22 from 6 September 2023 by which the action brought by EDPS against the amended Europol regulation was deemed inadmissible and as regards any effects of the contested provisions on the EDPS's decision of 3 January 2022, EDPS cannot rely on them in support of his action; notes that the EDPS has appealed the Case T-578/22 and that it is mandated to supervise the legality of personal data processing of the Agency under Regulation (EU) 2016/794; welcomes the efforts by the Agency to address EDPS recommendations in particular that all contributions from before the entry into force of the amended Europol Regulation have meanwhile been assigned with a Data Subject Category (DSC);
28. Recalls the findings of the EDPS's audit report on the Agency on 16 December 2022, which conducted specific checks of third country nationals' datasets held by the Agency; recalls that EDPS found that the general process for the assessment of information provided by partners on minors (including minors under 15 years old) is clear and well developed; recalls that EDPS found multiple cases where attributing the same level of suspicion (in terms of classification) to data of minors apparently involved in relatively minor infraction within a broader framework of an organised crime group may not meet the threshold of 'strict proportionality'; stresses that the Agency has the obligation to respect the principle of 'strict proportionality' established in Article 30(1) of the Europol Regulation;
29. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 11 April 2024 ⁽³⁾ on the performance, financial management and control of the agencies.

⁽³⁾ Texts adopted, P9 TA(2024)0280.