

**RESOLUTION (EU) 2019/1507 OF THE EUROPEAN PARLIAMENT
of 26 March 2019**

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 (now European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice) for the financial year 2017

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 (now European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice) for the financial year 2017,
 - 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 (A8-0145/2019),
- A. 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 2017 was EUR 155 801 818, representing a significant increase of 89,38 % compared with 2016; whereas the increase was related to the additional tasks of the Agency under Regulation (EU) 2018/1726 of the European Parliament and of the Council ⁽²⁾ that came into force on 11 December 2018; whereas the budget of the Agency derives mainly 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 2017 ('the Court's report'), states that it has obtained reasonable assurances that the Agency's annual accounts are reliable and that the underlying transactions are legal and regular;

Budget and financial management

1. Notes with appreciation that budget-monitoring efforts during the financial year 2017 resulted in a budget implementation rate of 100 %, representing an increase of 2,1 % compared with 2016; notes furthermore that the payment appropriations execution rate was 91,53 %, representing an increase of 0,68 % compared with 2016;
2. Notes that, according to the Court's report, although the Agency paid the full price for construction works for its new premises in Strasbourg in 2016, the work is still not finalised, due to the inability of the contractor to deliver, and that only 70 % of the works are covered by the accepted works progress reports; acknowledges that prepayments to the contractor are covered by bank guarantees, released progressively upon acceptance of works; notes that the contractor submitted a financial claim and filed a court case against the Agency; notes that, according to the Agency, it registered a statement of defence with the Administrative Court of Strasbourg, and that the decision of this court is pending; calls on the Agency to report to the discharge authority on the final decision of the Administrative Court of Strasbourg;

Cancellation of carry-overs

3. Regrets that the cancellations of carry-overs from 2016 to 2017 amounted to EUR 658 000, representing 12,20 % of the total amount carried over, representing a notable increase of 7,11 % in comparison with 2016;

Performance

4. Notes with satisfaction that the Agency uses several key performance indicators (KPIs) in areas such as system performance, security and the level of customer satisfaction to measure the added value provided by its activities, and various other KPIs to enhance its budget management;

⁽¹⁾ OJ C 108, 22.3.2018, p. 270.

⁽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).

5. Welcomes the Agency's continuous co-operation with the Justice and Home Affairs agencies network, notably the European Union's Judicial Cooperation Unit, the European Union Agency for Network and Information Security, the European Union Agency for Law Enforcement Training and the European Asylum Support Office, with all of which the Agency shares best practice;
6. Observes that the Agency underwent an external evaluation in 2016 which concluded that the Agency fulfils its mandate effectively and suggested particular ways of improving its operations and identified potential opportunities to extend its mandate; notes that in 2017 the Agency implemented an action plan to address these recommendations; notes furthermore that the Commission took the findings into account in its proposal for reforming the Agency's founding act that became Regulation (EU) 2018/1726;
7. Emphasises the importance of the final report of the High Level Expert Group on Information Systems and Interoperability and welcomes the Commission's proposals for regulations on interoperability between the Union information systems in relation to police and judicial cooperation, asylum and migration, and borders and visa;
8. Notes with concern that, according to the Court's report, the Agency currently manages three separate, non-integrated large-scale IT systems, which may prevent the Agency from realising economies of scale and synergies between those three systems, and that the extension of the Agency's mandate to manage several additional IT systems is expected during the coming years; welcomes the suggestion of the Court that the Agency should prepare a detailed cost-benefit analysis to support a discussion on the future development strategy for the IT systems it manages; notes that, according to the Agency's reply, a study was undertaken in order to have a clear picture related to the future architecture for interoperable IT systems; calls on the Agency to report to the discharge authority on the outcome of this study and the corrective actions planned;
9. Notes that in November 2017 the Management Board adopted an updated long term strategy for the Agency, covering the period 2018-2022 and setting the direction for the future development of the Agency, and expects the implementation of this strategy to further improve the performance of the Agency;

Staff policy

10. Notes with concern that on 31 December 2017 the establishment plan was only 87,02 % executed, with 114 temporary agents appointed out of 131 temporary agents authorised under the Union budget (compared with 118 authorised posts in 2016); acknowledges that the difference between the 114 temporary agents appointed and the 131 authorised is justified by the facts that two posts were added in anticipation of the recast of Regulation (EU) No 603/2013 of the European Parliament and of the Council ⁽³⁾ and that 14 posts were provided under Regulation (EU) 2017/2226 of the European Parliament and of the Council ⁽⁴⁾ which entered into force on 29 December 2017 and thus only enabled the Agency to start the recruitment process after that date; notes with satisfaction that the job offer for the post of head of the Operations Information Unit was sent and accepted by the end of 2017; notes that, in addition, 32 contract agents and seven seconded national experts worked for the Agency in 2017;
11. Notes that the Agency has adopted the Commission's model decision on the policy on protecting the dignity of the person and preventing harassment; acknowledges that the Agency offers e-learning material and has published calls for confidential counsellors;
12. Regrets the gender imbalance within the Agency's Management Board with 46 out of 52 members being male and 6 being female; in this regard requests the Commission, the Member States and other concerned parties to take into account the importance of ensuring gender balance when presenting their nominees for members of the Management Board;

⁽³⁾ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

⁽⁴⁾ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

13. Notes with concern that, according to the Court's report, the small number of staff creates significant risks for the continuity of the Agency's operations, particularly considering that the head of the Application Management and Maintenance unit also occupied ad interim the posts of head of the Operations Department and head of the Operations and Infrastructure Unit and thereby combined the three highest management posts in the Operations Department; acknowledges that the Agency successfully delivered its mandate throughout 2017, despite the lack of resources in the operational and horizontal functions in the Agency; supports the continued efforts necessary for staff retention and development in the Agency; welcomes in this regard the Agency's measure to appoint a different staff member as interim head of the Operations and Infrastructure Unit; urges the Agency to fulfil all posts with permanent staff without further delay;
14. Calls on the Agency to continue its efforts to ensure staff retention and development within the Agency; welcomes how the Agency handled the substantially increased workload in 2017 despite the high turnover in expert staff;
15. Welcomes the suggestion of the Court to publish vacancy notices also on the website of the European Personnel Selection Office in order to increase publicity; understands the concern of the Agency with regard to translation costs;

Procurement

16. Notes with concern that, according to the Court's report, the Agency encountered difficulties in attracting sufficient competition for several middle-value procurement procedures, receiving only one offer in the procedures concerned;
17. Notes with regret that the audit undertaken by the Commission's Internal Audit Service (IAS) with respect to the Agency's procurement processes found significant weaknesses, including two 'very important' issues regarding the estimation of contract values and key controls and three other findings rated as 'important'; acknowledges that many of the weaknesses are related to the insufficient staffing of the Financial and Procurement Unit and the procurement sector in particular; notes that the Agency has put in place an action plan addressing the audit findings and the IAS's recommendations; calls on the Agency to report to the discharge authority on the measures taken to mitigate these weaknesses;
18. Notes that, according to the Court's report, the Agency makes extensive use of external contractors and that 90 % of the work relating to the development and implementation of IT projects is carried out by the Agency in a combined effort with external contractors; notes with concern that although all phases of IT projects are under the Agency's control, outsourcing the development of sensitive IT systems to such an extent creates considerable risk of over-reliance and over-dependency on external contractors; acknowledges the Agency's reply that the complete development of those systems in-house and the reduction of outsourcing would require a substantial increase of the staff of the Agency and that in order to ensure proper segregation of duties, contractors involved in quality assurance are not involved in providing external support to the operational management of large-scale IT systems; calls on the Agency to, therefore, limit dependency on external contractors by better use of its own resources and to set up a proper policy to limit the use of external contractors;
19. Requests the Agency to take all necessary measures to ensure that contractors having access to sensitive information about IT systems or the data they process are legally bound to stringent confidentiality rules and to demand that such contractors have formal national security clearances at the time of accessing such information; requests the Agency to ensure that its contractors are not bound by any laws of third countries that could bring them into conflict with the confidentiality arrangements established by the Agency;
20. Notes that, according to the Court's report, by the end of 2017, the Agency had not yet introduced all of the tools launched by the Commission to introduce a single solution for the electronic exchange of information with third parties participating in public procurement procedures (e-procurement); notes on the basis of information from the Agency that it has already introduced e-invoicing and e-tendering for certain procedures, but not e-submission; calls on the Agency to introduce all the necessary tools and report to the discharge authority on their implementation;

Prevention and management of conflicts of interests and transparency

21. Acknowledges the Agency's existing measures and ongoing efforts to secure transparency, prevention and management of conflicts of interests, and whistleblower protection; notes with concern that the Agency does not publish the CVs of the members of its Management Board or of its managerial staff in general, only of its executive director; calls on the Agency to publish the CVs of all members of its Management Board and of its managerial staff and to report to the discharge authority on the measures taken in this regard; encourages the Agency to use the Independence Policy of the European Chemicals Agency (ECHA) as a best practice and an exemplary system of monitoring and preventing any conflicts of interest;
22. Regrets that despite previous calls the Agency does not publish the declarations of interests of the members of its Management Board, of its managerial staff in general, and of its executive director; calls for the publication of declarations of interests listing membership to all other organisations; stresses that it is not for the members of the Management Board, the managerial staff or the executive director to declare themselves out of conflict of interest but that a neutral body should assess the existence of conflicts of interest;

Internal controls

23. Takes note that as of 31 December 2017, the Agency had 23 open audit recommendations which were rated as 'very important', including nine which had been issued recently, three that were past their due date and four that were still in progress; notes that no 'critical' issue is open; calls on the Agency to report to the discharge authority on the implementation of these audit recommendations;

Other comments

24. Notes the reconstruction of the Agency's operational site in Strasbourg, France, and the construction of the new headquarters building in Tallinn, Estonia; notes that the Agency also has a backup site in Sankt Johann im Pongau, Austria, and a liaison office in Brussels, Belgium; notes with concern that the relocation to new premises in Strasbourg suffered considerable delays and that there have been several failings on the part of the contractor responsible;
25. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 26 March 2019 ⁽⁵⁾ on the performance, financial management and control of the agencies.

⁽⁵⁾ Texts adopted, P8_TA(2019)0254. See page 361 of this Official Journal.