

RESOLUTION (EU) 2023/1941 OF THE EUROPEAN PARLIAMENT**of 10 May 2023****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 (Frontex) for the financial year 2021**

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 2021,
 - 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 (A9-0142/2023),
- A. whereas, according to its statement of revenue and expenditure ⁽¹⁾, the final budget of the European Border and Coast Guard Agency (the 'Agency') for the financial year 2021 was EUR 535 245 042, representing an increase of 46,87 % compared to 2020; whereas the Agency's budget derives mainly from the Union budget;
- B. whereas all Union bodies, offices and agencies should be transparent and fully accountable to the citizens of the Union for the funds entrusted to them;
- C. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the Agency for the financial year 2021 (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;
- D. whereas since December 2019 the Agency has been implementing a new mandate with a scale-up that is significant in terms of missions and staff, that requires an adequate budget;
- E. whereas in 2021 there was a significant increase in the Agency's budget and execution of the establishment plan due to the enlarged mandate under Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽²⁾;
- F. whereas the Court in its Special Report No 8/2021 on the Agency's support to external border management concluded that there were several shortcomings related to the Agency's primary activities, namely situation monitoring, risk analysis, vulnerability assessment, joint operations and rapid border interventions, return operations and the Agency's training and the lack of needs and impact assessments prior to the exponential increase in the Agency's expenses;

Budget and financial management

1. Welcomes the Court's conclusion that the revenue and payments underlying the Agency's accounts for the year ended 31 December 2021 are legal and regular in all material respects;
2. Observes that the budget-monitoring efforts during the financial year 2021 resulted in a budget implementation rate of 94,70 %, representing a decrease of 4,27 % compared to 2020; calls on the Agency to pay more attention in order to avoid lower levels of commitments and to reach a rate closer to the target of 100 %;

⁽¹⁾ OJ C 141, 29.3.2022, p. 112.

⁽²⁾ 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).

3. Regrets that, in spite of the Agency's financial unit having put in place certain mechanisms to improve budget execution, in 2021 the payment appropriations execution rate was only 50,42 %, representing a decrease of 4,90 % compared to 2020; notes the Agency's explanation for this decrease, whereby payments for field operations are made to a large extent in year N+1, and the significant increase in the scope of field operations inevitably resulted in the decrease of payment appropriations execution rate in 2021;
4. Notes the second amendment of the Agency's budget in 2021 in connection with a return to the Union budget of EUR 14,5 million; considers that the Agency's justification for having adopted this amendment is insufficient; calls for the Agency, in its future reporting, to provide the discharge authority with more elaborate justifications as to why budgetary amendments, returning money to the Union, are adopted;
5. Is concerned that the level of carry-over (C8 funds) from 2020 to 2021 was EUR 159 400 000, while from 2021 to 2022 it was EUR 237 000 000; considers the level to be particularly high; regrets that the rate of payments of C8 funds in 2021 was only 87 %, which is lower than in previous years (2019 and 2020); notes, however, the Agency's observation that this indicator has been affected by the pandemic; observes that grants represent around 60 % of the total operational budget of the Agency and that, according to the Agency, most of the them are related to activities that usually have an extended horizon; notes further the Agency's observation that significant amounts of carry-overs are justified since most of them are linked to the lifecycle of activities which have a final date in December, which makes the carry-over inevitable; understands the Agency's observation that risk of cancellation of carry-overs is mitigated by the fact that all of those carry-overs must have legal commitment in place which gives a level of certainty that the amounts would be paid; recalls and shares, nevertheless, the Court's position that excessive levels of carry-overs can, in certain cases, be prevented by improving budget planning and its implementation cycles; calls on the Agency to continue its efforts in this direction, including by striving for more precise cost estimates and budget forecasts and to report to the discharge authority about the progress achieved;
6. Expresses concern over the Court's observation highlighted as an 'Emphasis of matter' concerning the carry-over to 2021 of a budgetary commitment dated in December 2020, without the backing of a legal commitment before the end of 2020; notes that the payments related to this issue were, in 2021, EUR 18 375 458; takes further note of the fact that the Agency addressed this non-compliance by means of subsequent legal commitments throughout 2021;
7. Notes with concern the second Court observation highlighted as an 'Emphasis of matter' that contributions from non-Union Schengen area countries and the balancing Union contribution are not correctly calculated; notes that the latter was overstated by EUR 2,6 million and the former was understated by the same amount; notes further that there was no impact on the operating revenue of the statement of financial performance for the year 2021; maintains however its observation that this is an indication of the need for additional guidance from the Commission to Union bodies on how to calculate correctly contributions from non-Union countries; calls on the Commission to issue additional guidance without further delay;
8. Notes with concern the third 'Emphasis of matter' observation made by the Court, concerning the declaration of the Agency's accounting officer with regard to the lack of the necessary information for the validation of a new system laid down by the authorising officer and used for supplying accounting information, that show the Agency's assets and liabilities and the budgetary implementation; notes that the same system is in use by the Commission and has been validated by the Commission's accounting officer; urges the Agency to provide the discharge authority with clarifications on this issue;

9. Highlights the importance of a strong, effective and well-functioning Agency able to assist Member States to manage the common external borders of the Union and to ensure an integrated border management with a view to managing those borders efficiently and in full compliance with fundamental rights, and to increasing the efficiency of the Union return policy; notes the shared responsibilities that the Agency and the Member States have in the fulfilment of fundamental rights obligations; stresses that the effective and just management of the external borders is of crucial importance for the protection of the Schengen as an area of freedom, security and justice; stresses that close cooperation and agreements with third countries in aspects such as readmission agreements, technical assistance, training, and return activities, together with development aid are important to guarantee an efficient EU border management ⁽³⁾; calls on the Agency and the Member States to further develop structures of cooperation, information-sharing and the exchange of best practices;
10. Notes the Agency's measures to mitigate the high risk of losing possible unspent budget, with Member States sending on a monthly basis monitoring tables, indicating up to date real costs incurred; calls on the Internal Audit Service (IAS) to conduct an evaluation of the Agency's mechanism for the monitoring of costs and forecasting needs under grant provisions, as well as the effect, on the financial management of its return operations, of the upgrades of the Frontex Applications for Return (FAR) and Integrated Return Management Applications (IRMA) systems;

Performance

11. Notes that in 2021 the Agency implemented a new organisational structure, a major endeavour for effectively addressing its extended mandate; acknowledges the impact and changes that the Agency's restructuring has entailed; commends, in this context, the Agency's strategy for efficiency gains through the digitalisation, automation or simplification of rules and procedures applied in certain areas;
12. Notes that in 2021 the Agency used certain measures as key performance indicators to assess the performance of its activities, adopted by the Agency's management board and stemming from the single programming document 2021-2023; notes with appreciation that the level of the perceived quality of the Agency's delivered products and services has improved, as in 2021 it reached a mark of 94,34 % of assessments from average, high to very high; regrets that for some performance indicators, the Agency missed the set targets, for example with regard late payments or the availability of technical equipment for deployments;
13. Notes that the Agency successfully deployed to the host Member States and to four Union airports the first officers of the European Border and Coast Guard standing; acknowledges that the latter's main activities focused on supporting cooperation in the area of the identification and issuance of travel documents, return counselling and booking flights in the FAR; notes further that in 2021 the Agency implemented 19 joint operations (JO) with 9 host Member States, 23 participating Member States, 32 authorities and 4 third countries involved therein; notes the Agency's rapid border intervention (RBI) to respond to migratory pressure at the external land border between Lithuania and Belarus and to control irregular immigration flows towards Lithuania and the Union, but emphasises simultaneously the fundamental rights concerns, including as identified by the fundamental rights officer (FRO), that has come with these operations; notes the Agency's operational outreach in connection with RBI Lithuania, JO Opal Coast at the English Channel and the launch of the new JO in a third country, namely Serbia; notes the launch of the pilot phase for the first deployments of liaison officers from Member States; calls on the Agency to inform the discharge authority on the assessment of the results of this pilot phase once finalised;
14. Notes that operational activities conducted on land borders in 2021 resulted in 3 546 incidents reported, involving 16 304 apprehended irregular migrants, 6 461 irregular migrants and 368 arrested smugglers; notes with appreciation the Agency's efforts that led to the return by air of 18 301 non-EU nationals, of which 10 193 were persons on 337 operations by charter flights to 33 countries of return and 8 108 persons by scheduled flights to 107 countries of return; acknowledges that in 2021 return in a voluntary manner constituted 57 % of all returns by scheduled flights and that the Agency chartered 22 aircrafts for return operations; commends the successful preparation and organisation of the first fully fledged Agency-led return operation, whereby the Agency takes over the role of the organising Member State;

⁽³⁾ Frontex Strategic Risk Analysis 2022.

15. Notes that in April 2021, an amended standard operating procedure (SOP) on the Serious Incident Report (SIR) mechanism was signed and served to define the role and competences of the FRO; notes further that the necessary additional revision of the SOP on the SIR mechanism has been delayed, welcomes that the SIR mechanism is currently being finalised in cooperation with the FRO and in consultation with the Agency's Consultative Forum on Fundamental Rights; recalls that this had been one of seven conditions addressed to the Agency with respect to granting discharge in previous years; calls upon the Agency to inform the discharge authority about the finalisation of the additional revision of the SOP on the SIR mechanism;
16. Stresses that every operational plan should include a transparent reporting mechanism ensuring that every incident in the operational area is reported and properly followed up; stresses that this reporting mechanism should apply regardless of the way these assets are being financed, in order to ensure that the Agency, and in particular the FRO, can monitor the whole operational area and investigate all SIRs or other indications of non-compliance;
17. Welcomes the Agency's decision of 25 January 2022 detailing standard operating procedures for the implementation of Article 46 of Regulation (EU) 2019/1896 drafted in accordance with the comments and observations of the Member States and Schengen Associated Countries, the FRO, and the Frontex Consultative Forum on Fundamental Rights;
18. Welcomes the implementation of Return Case IT systems based on Return Case Management System (RECAMAS) model in Italy, Belgium and Finland; echoes the recommendation of the Agency's management board to the Agency to engage also with other Member States and fulfil necessary prerequisites to follow this example;
19. Notes a substantial increase in the number of the SIRs from only 10 SIRs in 2020 to 62 SIRs in 2021, of which 53 were covered by the newly amended SOP; regrets that the highest numbers reported were from Lithuania and Greece; welcomes the fact that a new procedure has been put in place whereby all incidents involving use of force are shared with the FRO on a monthly basis who committed to issue an annual assessment of this procedure; calls on the Agency to report to the discharge authority on the results of this assessment; commends the fact that Fundamental Rights Monitors (FRMs) started their integration into the operational framework and completed over 200 deployment days visiting 10 countries and taking part in 15 return missions;
20. Notes that in 2021, under the Agency's complaints mechanism, 27 complaints were received and reviewed by the FRO who deemed admissible 6 of them; expresses its deep concern over the alleged violations of fundamental rights in connection with the admissible complaints;
21. Recalls that, in its judgement of 30 June 2022, the Court of Justice of the European Union (CJEU) found that Lithuanian legislation allowing the denial of international protection and the placing of applicants in automatic detention solely on the grounds that they have irregularly crossed the border was incompatible with Union law; notes that as of July 2022, the Agency no longer participated or supported Lithuania with border surveillance; notes however that the Agency maintained its operation in Lithuania, with agents working on border checks, even after the judgment of the CJEU; further recalls the concerns, including from the Council of Europe, about the humanitarian situation and the alleged violation of humanitarian rights at the Latvian-Belarusian border, which was caused by the instrumentalisation of migrants by the Belarussian regime; calls on the Agency to verify that it is not involved in activities related to the Lithuanian legislation declared incompatible with Union law by the CJEU, and to refrain from participating in any operations that are incompatible with Union law;

22. Notes the legal actions against the Agency initiated at the CJEU, on behalf of victims who had sought protection in Greece; notes that the CJEU was requested to determine whether the Agency failed to act in accordance with Article 46(4) of Regulation (EU) 2019/1896 by refraining from taking the decision to withdraw the financing of all or of part of its activities in the Aegean Sea region, to suspend those activities or to terminate them in whole or in part; calls on the Agency to provide to Parliament all relevant documentation in this regard, including the FRO opinion of 1 September 2022, SIRs from 2021 and 2022 as well as information about the investigation into the case of the Agency's cultural mediator that was forcibly expelled to Turkey with at least 130 third-country nationals, as reported in November 2021 to the management board; notes that following the opinions and recommendations of the FRO regarding his assessment of the situation in Greece, the former executive director ad interim and the FRO engaged with Hellenic authorities to establish safeguards for the implementation of a fundamental rights framework in operational activities carried out in Greece; notes that further to those discussions, the Hellenic authorities drew up an implementation plan for the implementation of the safeguards, which was recognised as a good achievement by the FRO and the management board; highlights the fact that the FRO recognises the procedural efforts, and notes that FRO recommended the Agency to withdraw from Greece in line with Article 46 of Regulation (EU) 2019/1896;
23. Notes the Agency's cooperation with the European Fisheries Control Agency and European Maritime Safety Agency in order to coordinate and share resources in areas such as information sharing, surveillance and communication services, capacity building, risk analysis and, in particular, capacity sharing; further notes that such cooperation is governed by a Tripartite Working Arrangement signed by the three agencies and updated in 2021 for an indefinite period; welcomes the implementation thereof through, for example, operations that respond to coast guard related matters in specific maritime area and surveillance aircraft services provided by the Agency; calls on the Agency to further explore possibilities to also coordinate and share resources with other agencies, in particular with the Justice and Home Affairs Agencies, in spite of their potential differences in operational activities;
24. Notes that the Agency has been postponing the deadline for the implementation of Recommendation 1 of the Court's Special Report 8/2021 (deadline end of 2021) regarding the improvement of the information exchange framework and of the European situational picture, by more than a year from mid-2022 to Q3 and Q4 of 2023; calls upon the Agency to address this matter with priority;

Staff policy

25. Notes that, on 31 December 2021, the establishment plan was 82 % executed, with 861 temporary agents appointed out of 1 050 temporary agents authorised under the Union budget; notes that, in addition, 506 contract agents and 187 seconded national experts worked for the Agency (with 730 contract agents and 220 seconded national experts authorised for the Agency in 2021); welcomes the occupancy rate of the Agency having been increased by approx. 15 % compared to the year 2020, with a recruitment of 432 newcomers, but a net increase of 320 occupied positions from 1234 in 2020 to 1554 in 2021; notes that the current occupancy rate in the Agency is 79 %, the highest occupancy rate since the Regulation (EU) 2019/1896 came into force; notes further that 44 members of the European travel information and authorisation system (ETIAS) were on-boarded for the ETIAS Central Unit Division; regrets that in 2021 the external turnover of the Agency's staff has almost doubled from 2,8 % in 2020 to 4,4 % 2021; acknowledges the Agency's sustained efforts and critical improvements in the recruitment area, in spite of delays; acknowledges that timely recruitment and achieving geographical balance remain challenging mainly due to a low coefficient rate for Poland; further notes that the low coefficient rate for Poland is a long standing challenge for the Agency, which has been exacerbated in recent months by record high inflation in the country, reaching 16,6 % in December 2022;
26. Notes the Agency's gender breakdown reported for 2021 at senior management level with 15 men (68,18 %) and 7 women (31,82 %), at the level of the management board with 55 men (83,3 %) and 11 women (16,7 %), and for the Agency's staff overall, with 1 116 men (71,8 %) and 438 women (28,2 %); acknowledges that the responsibility to ensure gender balance within the management board lies with the Member States; deeply regrets that, in spite of previous calls of the Parliament upon the Agency and Member States, efforts to improve the gender balance in the Agency's top management and staff were insufficient; urges the Agency and the Member States to address this issue and take into consideration gender balance when recruiting new staff and when making nominations and appointments to the aforementioned positions;

27. Notes with appreciation the appointment of the FRO in June 2021; recalls however the European Anti-Fraud Office (OLAF) finding that the FRO was not assigned a case-handler for reports on serious incidents with alleged violations of fundamental rights; notes further that the Agency has come closer to the full implementation of its extended mandate by having in office, in 2022, a total of 46 FRMs, compared to only 20 FRMs in 2021; notes that most of the FRMs have been appointed at AD level; regrets nevertheless that a differentiation exists between FRMs, as 15 are still recruited on AST positions, compared to the other 31 recruited at AD level; recalls the Parliament and Commission's long standing call for at least 40 FRMs at AD level; highlights that Regulation (EU) 2019/1896 provides the framework for further increases in the number of FRMs as the Agency continues to expand, with the initial 40 FRMs being the threshold and not the ceiling; urges the Commission and the Agency to modify the establishment plan of the Agency in order to recruit all FRMs at AD level; calls on the Agency to conduct further recruitment of FRMs exclusively at AD level; further regrets that the fulfilment of the requirement of Article 110(6) of Regulation (EU) 2019/1896, which provided for the recruitment of at least 40 FRMs by December 2020, has been delayed by almost two years; recalls the negative role played by the former executive director in the repeated delays of this process and welcomes the efforts of the former ad-interim management towards fulfilling this requirement;
28. Welcomes the Agency's extensive anti-harassment measures and policies put in place; notes with appreciation the adoption in 2021 of the Manual of Procedures for Frontex' Confidential Counsellors (CCs) which outlines the practical application of the Agency's Anti-Harassment Policy; acknowledges the key role that the CCs play in protecting the dignity of the Agency's staff and preventing psychological and sexual harassment; emphasises, at the same time, the importance of an organisational culture that puts such policies into practice, as at the time the Manual of Procedures was adopted, serious misconduct, including related to harassment, continued to persist among key individuals within the Agency; acknowledges that these have been addressed in the follow-up to the findings of the OLAF investigation; welcomes in that regard the Agency's commitment to structural transformation and the enlargement of the network of CCs specifically; reiterates its call on the Agency's leadership to conduct a thorough investigation into the implementation of existing procedures against sexual harassment, to fully cooperate with all relevant authorities and report back to the discharge authority about the findings, and present a detailed action plan with measures ensuring zero tolerance towards sexual harassment in all of the Agency's activities;
29. Notes the Agency's replies to Parliament's written questions to the effect that in total 10 cases of harassment were reported to the Agency's competent entities in 2021; notes further that of the 7 formal procedures opened in 2021, 4 cases were concluded; calls on the Agency to carefully assess each pending case, taking a zero-tolerance approach to psychological, sexual or any other kind of harassment, and to proceed swiftly with holding those responsible for this misconduct accountable; calls further on the Agency to keep the discharge authority informed about the results of the reopened investigation with regard to the tragic death of a staff member in 2020;
30. Notes the Agency's attention and proactivity with regard to occupational safety and health (OSH) policies and procedures; welcomes in this context the creation of the internal working group on OSH to ensure effective internal coordination, consultation and the identification of priorities; calls on the Agency to inform the discharge authority with regard to the list of actions and measures proposed to be implemented under the OSH framework and their implementation; notes the Agency's current measures in place, flexitime and the reimbursement of sport activities, aimed at improving its staff's well-being at work and work-life balance; calls on the Agency to adopt more measures in this area, also by taking example from other Union institutions and bodies;

Procurement

31. Notes that in 2021 the Agency launched 36 open tenders, with 18 resulting in signed contracts for a total value of EUR 218 400 000, and that 18 of these are still ongoing, with an estimated value of EUR 241 000 000; notes further that the Agency launched 29 low- and medium-value procedures (negotiated with three and five candidates) with a total value of EUR 12 000 000, with out of the 29 procedures, 25 resulting in signed contracts in 2021 for a total value of EUR 11 800 000, while four of these are still ongoing, for a total value of EUR 300 000; notes further that 203 very low-value procedures (negotiated with one candidate) for a total value of EUR 2 500 000 were handled by the Agency in 2021; notes finally that 991 procedures under existing framework contracts for a total value of EUR 194 600 000 have been handled in 2021 with 900 resulting in signed specific contracts or order forms, with a total value of EUR 172 200 000, while 91 of them for a total value of EUR 22 300 000 are still ongoing;

32. Commends the Agency's efforts in 2021 to secure strategically important contracts in areas such as surveillance aircraft support, the provision of personal protective equipment and sanitary supplies, the supply of four-wheel drive off-road vehicles, the supply of service weapons, satellite imagery provisioning, the delivery of map production services, the provision of meteorological and oceanographic information services or the purchase of drones and payloads; welcomes the Agency's diligence in designing and implementing the procurement training plan;
33. Reiterates its strong concern regarding media reports in August 2022 according to which the Agency made use of a contractor who allegedly exploited cultural mediators, offering them working conditions that violate European standards on pay and working conditions; takes note of the petition initiated by cultural mediators in this regard as well as their complaint to the European Ombudsman; takes note of the Agency's replies to the media that, following the petition, the Agency contacted the contractor to remind them about their obligations; deplores the fact that information about the implementation of the contract and respect of conditions for the workers could not be found in the information provided by the Agency to the Parliament;
34. Notes with concern the Court's observations in the area of procurement; notes in particular that the Agency has launched a procurement procedure for a framework contract for the provision of travel services, whereby the requirements for the financial, technical and professional capacity of bidders was set very low; notes that the estimated contract value on which the Agency based its assessment was EUR 15 000 000, while the underlying value of the contract was covering planned mission costs which were estimated at approximately EUR 240 000 000; echoes the Court's conclusion that in this case, the Agency exposed itself to various risks, such as the impossibility to deliver contracted services at the minimum quality on time and the risk that the contract would not be performed correctly; regrets that the contract led to a lack of performance that resulted in serious disruptions of business continuity; welcomes the fact that following verifications, the contract was terminated immediately; stresses that lax requirements used for the assessment of bidders or assessments carried out based on misleading data must be avoided;
35. Notes the Agency reporting on having improved the planning and monitoring of the annual procurement plan; calls on the IAS to include this plan in its future audits;

Prevention and management of conflicts of interest, and transparency

36. Welcomes the successful implementation of Parliament's calls for publication of the CVs and declarations of interest of the members of the Agency's management board and of its executive management on the Agency's website;
37. Notes the further steps taken in order to enhance the transparency of the Agency's activities; welcomes the decision of the Agency's executive director to establish the Transparency Register pursuant to Article 118 of the Regulation (EU) 2019/1896; notes the reply to the discharge authority which provides information on the contacts and meetings registered and documented in the Agency's Transparency Register in 2021; calls on the Agency to regularly report to the discharge authority about the implementation and use of this tool;
38. Recalls the European Ombudsman's decision in its own initiative enquiry on fundamental rights obligations; recalls further that the Agency has an obligation to ensure proactive transparency as stated in Article 114(2) of Regulation (EU) 2019/1896; calls on the Agency to implement all the European Ombudsman's recommendations; reiterates its suggestion that the Agency develops and implements a new code of conduct ensuring full transparency and good management and that the Agency keeps the discharge authority informed about the progress made in that regard;
39. Stresses that the European Ombudsman found the maladministration on the side of the Agency in regards to its recent practice regarding access to documents in its decision of 15 December 2022 in Cases 1261/2020 and 1361/2020;

40. Acknowledges the Agency's briefing note of 27 June 2022 on actions taken by the Agency's management during the transition period, in particular its efforts to strengthen the procedures needed for good governance and accountability in the organisation, through enhancing transparency, proactive communication and engagement with internal and external stakeholders; welcomes the Agency's initiative for an operational brief informing the public about its operational activities in a comprehensive way; welcomes further the Agency's commitment to publish on its website the recommendations presented by the FRO and the Consultative Forum to the management board; welcomes the fact that the Agency has finally increased its transparency on its Industry Days, through the publication on the Agency's website of follow-up reports providing information on companies participating in the Industry Days and their presentations;
41. Notes that the application of the Agency's measures and guidelines on whistleblowing has brought results; acknowledges that in 2021 staff has reported one case of fraudulent activity and two cases of alleged harassment; notes further that of the three cases, one has been closed, while the remaining two cases are ongoing at the level of fact-finding mission; calls on the Agency to ensure that those responsible are held accountable, and to inform the discharge authority on the outcome and further steps taken with regard to these three cases;
42. Reiterates that the enhanced competences and resources allocated to the Agency must be accompanied by increased transparency and accountability, as well as full respect for and protection of fundamental rights; welcomes in this regard the use by the Agency of a Transparency Register and notes the prioritisation of efforts by both the management board and the executive management to further enhance integrity and accountability arrangements at the cross-Agency level; notes with satisfaction in this regard the establishment of an Internal Audit Capability and adoption of Internal Audit Charter in 2022; reiterates its dismay for the track record of the Agency under the leadership of the previous executive director with regards to accountability, transparency and respect for fundamental rights that was acting as executive director throughout the year 2021 and only resigned on 29 April 2022; welcomes the expressed commitment of the ad-interim executive management to fully address these issues; stresses that such accountability and transparency, and fundamental rights compliance are essential in the evaluation towards granting discharge to the Agency for the respective financial year;

Internal control

43. Takes note of the Agency's assessment of the internal control system being partially effective in 2021; echoes the management board's concern that in only 2 out of the 17 areas assessed no deficiencies have been identified; further expresses its concern that major deficiencies have been identified in relation to area 5 ('holds individuals accountable for their internal control responsibilities in the pursuit of objectives') and to area 10 ('Selects and develops control activities that contribute to mitigation of risks to the achievements of objectives to acceptable levels'); welcomes the Agency's 15 improvement actions to strengthen the controls in the areas where control deficiencies have been identified; notes that 4 of those actions require improvement on an ongoing basis and that 4 more actions are in progress; calls on the Agency to keep the discharge authority informed about the progress made;
44. Expresses its concern that the Agency registered a high amount of non-compliance events in the domain of contract and, in particular, grants management; regrets that the number of deviations (exceptions and non-compliant events) and the value related thereto increased notably from 106 in 2020 to 159 in 2021 and from EUR 10,2 million in 2020 to EUR 21,3 million in 2021, respectively; notes with concern that in 2021 the area of grant management accounts for 72 % of this amount; notes further that in 2021, 8 deviations were registered with an amount higher than EUR 1 million;
45. Regrets that there are delays in the implementation of 12 recommendations from the IAS on contract management, IT governance and project management, HR management and planning and allocation; calls on the Agency to correct these deficiencies as soon as possible, if necessary with assistance from the Commission, and keep the discharge authority informed about the progress on this matter;
46. Recalls the Court's recommendation that the Agency should adopt and implement a sensitive post policy; notes the Agency reporting that the draft of such policy is being finalised; calls on the Agency to implement this recommendation as soon as possible;

47. Notes the Court's observations on the Agency's internal control weaknesses in the areas of recruitment procedures, procurement procedures and with regard to the delegation of powers to authorising officers by delegation or sub-delegation; notes further the Agency's replies to the Court's findings and the measures already implemented; welcomes the adoption by the Agency in January 2022 of clearer instructions to the selection committee members ensuring more consistent assessment and harmonised procedures; calls on the IAS to include the Agency's updated recruitment procedures in its future audits;
48. Welcomes the fact that measures to improve the carry-forward procedure have been introduced in order to prevent irregular carry-overs; welcomes further the agreement to involve the Agency's financial services in the carry-forward process, the planned improvement of the training provided to authorising officers by delegation, as well as the establishment of an Internal Audit Capability in the Agency;

Digitalisation and the green transition

49. Commends the Agency's aim to further integrate sustainability in its operational, analytical, scientific and administrative activities; notes the positive assessment of the Agency's experience with green public procurement, following the introduction of guidelines in this area; welcomes, as encouraged by the discharge authority, the fact that the Agency opted for sharing good practices and lessons learned with other agencies; welcomes further the awareness-raising activities on green procurement; notes that Agency's entities are constantly encouraged to use green criteria and solutions in public procurement;
50. Notes that in 2021 the Agency held the Presidency of the Justice and Home Affairs Agencies' Network (JHAAN) composed of nine Union agencies; welcomes the Agency's decision to explore cooperation among Justice and Home Affairs agencies, through seminars and training activities in the area of climate change, environmental crimes, corporate carbon neutrality and Green Deal policies; notes with appreciation that JHAAN committed to take a series of actions to support the environment and fight environmental crime; commends the fact that the JHAAN signed a Joint Statement on the EU Green Deal committing to adhere to the European policy objectives related to this framework and supporting the Union and the Member States in their implementation;
51. Welcomes the Agency's various measures to reduce the environmental impact of its activities, including through digital solutions for paperless document circulation, paperless workflow for financial transactions, e-learning tools for training activities or remote meetings; understands that, on its way towards carbon neutrality, the Agency's goal is to collect data on carbon footprint and consumption per person; notes further that the Agency launched a study called 'The Green Deal and the European Border and Coast Guard' to embed environmental sustainability in all the Agency's processes, policies and operations; calls on the Agency to report to the discharge authority on the results of this study and the follow-up thereto;
52. Welcomes the Agency's decision to adopt its Cybersecurity Strategy that addresses the actions that must be performed to increase resilience against cybersecurity threats and protect the Agency's digital records; further welcomes in this area the most important measures implemented in 2021, including the enhanced security monitoring capability, the ICT vulnerability management capability and the Endpoint Detection and Response technology; notes that the Agency has adopted the Frontex Security Rules, the Frontex Information Management Framework and ICT Strategy 2022-2027; notes further that the Agency plans to implement a 24/7 Security Operations Centre for cybersecurity operations;
53. Notes that the Agency's strategy for efficiency gains is closely linked to the implementation of various IT tools; welcomes the modernisation of the architecture of the EU-RESTRICTED EUROSUR network, the extended digital support provided to the staff of the Agency and the deployment of digital-profiled standing corps to gain experience in providing off-site support in operational areas; calls on the full integration of SYSPER in the Agency's management of its human resources;
54. Commends the Agency's efforts and progress in the area of return-related digitalisation, in particular with regard to updates to the RECAMAS reference model, new releases of the FAR and FAR Charter flights systems and the continued statistical data collection through the IRMA system;

Business continuity during the COVID-19 crisis

55. Welcomes the adoption of the Agency's business continuity plan (BCP); calls on the Agency to report to the discharge authority on the implementation of its BCP;
56. Commends the Agency's continued efforts to adapt to the changing conditions in the context of the third and fourth waves of the pandemic, including through updated internal practices such as paperless workflows, online authorisations or virtual meetings; acknowledges the key role of the crisis cell, created following the outbreak of the pandemic, in supporting the executive management in decision making to ensure business continuity, minimising disruption to Agency's operations and ensuring a safe working environment;
57. Welcomes the fact that the Agency has created guidelines on health and safety in return operations during pandemics or outbreaks, aimed at ensuring the safe continuation of return operations in such situations;

Other comments

58. Notes the Agency's commitment to define and operationalize the compliance of fundamental rights in its activities through the adoption in 2021 of the Fundamental Rights Strategy and the Fundamental Rights Action Plan (FRAP); welcomes the Agency's commitment to monitor the implementation of the FRAP; calls on the Agency to provide the discharge authority with an update on the progress with regard to FRAP implementation; stresses that the success of the Fundamental Rights Strategy depends on its implementation, and that the findings of the OLAF report, which also pertain to the 2021 financial year; indicate on this matter that (a) the FRO was prevented from accessing operational information, contrary to the provisions of Regulation (EU) 2019/1896, and (b) that staff doing their job and reporting on Fundamental Rights incidents had been ignored by the previous Agency's executive management; welcomes in this regard that since then, the FRO is involved and consulted on all pertinent files and has regular meetings with the executive management and the Consultative Forum; notes the creation of a network of fundamental rights focal points in all the Agency's entities to develop fundamental rights expertise in all areas of activity; acknowledges the important role that the FRMs have, including their access to the operational areas and close cooperation with the Agency's operational staff; notes nevertheless that the FRO office disposes of less than 20 staff members, in spite of the growing numbers in the Agency's recruitment plan; calls on the Agency to step up its efforts towards equipping the FRO office with the appropriate resources for conducting its respective activities; further acknowledges the Agency's decision setting rules for the executive director and the management board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to the recommendations of the FRO; expects the Agency to implement the recommendations of the FRO as set out in his 2021 annual report; calls on the Agency's to ensure that the recommendations of the FRO and the Consultative Forum presented to the management board are shared with the discharge authority;
59. Reiterates that the findings of the OLAF report are limited to misconduct and non-compliance with procedures by individuals; recognises that the Agency did valuable work in strengthening the role of the FRO, but that the Agency did not yet conduct a deeper analysis to ensure there are no structural problems; reiterates in this regard the need (i) to analyse internal checks and balances, since misconduct by individuals was allowed to continue too long, (ii) to monitor the Agency's relationship with Member States, as OLAF findings point to Member States pressuring coast guards and concealing push backs, which challenges the work of the Agency beyond the past leadership, and (iii) to evaluate its continued application of Article 46 of Regulation (EU) 2019/1896, as indicated by the Agency's decision to increase presence in the Aegean Sea, despite media reports and OLAF's findings point to persistent fundamental rights violations in this area;
60. Notes that as from October 2021, the Agency reports regularly to the management board on the progress of the implementation of recommendations of the European Ombudsman, Working group on Fundamental Rights and Legal and Operational Aspects of Operations in the Aegean Sea and the European Parliament Frontex Scrutiny Working Group (FSWG); calls on the Agency to report also to the discharge authority on the progress in the implementation of these recommendations;

61. Recalls the conclusion of the CJEU, that return decisions issued by the Hungarian authorities are incompatible with Directive 2008/115/EC of the European Parliament and of the Council ⁽⁴⁾ and the Charter of Fundamental Rights of the European Union; calls on the Agency to refrain from participating in any operations that are incompatible with Union law; notes from the Agency's reply that it performed verifications and concluded that it had never been involved in returns related to the Hungarian legislation deemed incompatible with Union law by the CJEU (HU national Act LXXXIX of 2007 and Act LVIII of 2020); stresses that if the Agency wants to make a new start including a renewed commitment to transparency, it should provide more clarity and transparency in such cases; takes note that the Agency says it requires Hungary to confirm special disclaimers concerning procedural aspects when requesting the Agency's support, ensuring that all the Agency does its utmost to ensure that all return procedures supported by it in Hungary are fully compliant with the relevant Union legal framework on return and asylum; further notes that the Agency increased monitoring activities in Hungarian returns and strengthened consultation and cooperation with the FRO on Hungary; stresses that procedures are only as effective as their implementation, and that this is of particular concern given the general rule of law situation in Hungary;
62. Stresses that Agency's direct and indirect involvement in border management and border surveillance activities must go hand in hand with preventing and combating fundamental rights violations, and with securing compliance with the principle of non-refoulement, in accordance with the Union *acquis*; calls upon the Agency's management board to further strengthen internal oversight structures, and reiterates the importance to constantly review and control the activities of the management team, towards the timely identification and resolution of any mismanagement situations, as well as to implement the standard operating procedures to withdraw the financing of, or suspend or terminate, or not launch Agency's activities where such risks arise;
63. Notes the Agency's management board decisions in 2021 adopting implementing rules with regard to personal data processing rules; recalls that the European Data Protection Supervisor (EDPS) issued opinions on the Agency's data processing rules and, consequently, the Agency proceeded to redraft the relevant management board decisions in order to ensure full compliance with Union data protection rules; calls on the Agency to report to the discharge authority on the progress on this matter; calls further on the Agency to ask the EDPS for an opinion as a result of the revised management board decisions on the data processing rules;
64. Notes with concern the media reports about alleged misconduct in expansion of the Processing of Personal Data for Risk Analysis programme; notes from the Agency's reply that the project had been implemented between 2015 and 2017, allowing the Agency to develop capabilities required for processing personal data in accordance with Article 11c of Regulation (EU) No 1168/2011 of the European Parliament and of the Council ⁽⁵⁾; further takes note of the Agency's position that it had been processing only the operational personal data of suspects of cross-border crime and terrorism, having not started the processing of personal data of victims and witnesses; reiterates its deep concern about reports that the Data Protection Officer repeatedly warned that this data expansion would breach Union law, but that the Agency initially chose to ignore this advice; takes note of the management board decisions 56/2021, 68/2021 and 69/2021, upon the receipt of the EDPS opinions on the Agency's data protection rules, leading to the Agency's Data Protection Officer to prepare an Action Plan for the implementation of the EDPS recommendations; calls on the Agency to address this situation and ensure full compliance with Union data protection rules, regularly consulting the EDPS over and keeping the discharge authority informed about the status and progress of the reform;

⁽⁴⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

⁽⁵⁾ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 304, 22.11.2011, p. 1).

65. Deplores the long delay for MEPs as well as members of the senior management and the FRO to be granted access to the OLAF report; recalls that two additional OLAF final reports are expected to be presented in relation to the Agency; while acknowledging that the findings of the OLAF report may be a matter of public interest, demands that the confidential report be published within the framework of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽⁶⁾, to respect the confidentiality of the investigation conducted by OLAF as well as the legitimate rights of the persons concerned including their data protection rights; reiterates its call for the immediate access of Members of Parliament to those final reports once finalised, as well as of all executive staff of the Agency that need to access those reports to ensure transparency and accountability of the Agency, and a correct implementation of the Agency's budget in the future;
66. Notes that the problems identified through media reports, FSWG conclusions as well as the findings of the OLAF report, led to the refusal of discharge within the previous cycle; highlights that the Agency is currently undergoing a transition process, following the resignation of its former executive director, in light of the OLAF investigation into the mismanagement of the Agency; further welcomes in this sense the various actions taken by the ad-interim management to improve its activities and standards; notes with satisfaction that these activities tackled budgetary and financial management issues such as the clarification of delegations and sub-delegations for payments authorising offices, greater respect for fundamental rights through the enhanced institutional cooperation between the ad-interim executive management and the FRO, as well as the changes in the management culture through a visible shift towards decentralisation, delegation and improved dialogue in the decision-making process; welcomes in particular the ad-interim management's commitment to changing the management culture, working towards breaking the culture of silence, encouraging collective engagement in solving issues; calls on the Agency to continue its commitment towards fully implementing these necessary reforms, also after the appointment of a non-interim executive director, and to report to the discharge authority about the progress achieved;
67. Reminds the Agency of the fact it is accountable to the Parliament, and that the Parliament is resolved to ensure that the Agency contributes to the continuous and uniform application of Union law, including the Union *acquis* on fundamental rights, in particular the Charter of Fundamental Rights of the European Union; highlights that, in order to achieve this goal, an enhanced cooperation with the Agency's management board by strengthening the transparency, accountability and democratic oversight of the Agency is needed;
68. Calls on the Agency to step up its efforts in reporting relevant performance information to the Union citizens and general public in clear and accessible language; urges the Agency to ensure greater transparency and public accountability by utilizing media and social media channels;
69. Takes note of the decision of the management board in its extraordinary meeting on 20 December 2022, to appoint Mr Hans Leijtens as the new executive director of the Agency; encourages the Agency to step up ongoing efforts and take all actions needed to ensure full respect of Union standards, in particular in the field of budgetary and financial management, fundamental rights, organisational culture and transparency; reiterates its call upon the Agency to present a detailed roadmap on how it intends to fulfil the outstanding concerns, together with a clear and detailed timeframe for those actions, as well as to complete corrective actions to address all outstanding concerns raised by the European Ombudsman, by the FSWG and by the Consultative Forum; calls on the Agency to fully implement the necessary reforms, also after the appointment of a non-interim executive director, and to report to the discharge authority about the progress achieved;
70. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 10 May 2023 ⁽⁷⁾ on the performance, financial management and control of the agencies.

⁽⁶⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽⁷⁾ Texts adopted, P9_TA(2023)0190.