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THE EUROPEAN UNION**

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COVER NOTE

from:	Mr Vítor CALDEIRA, President of the Court of Auditors
date of receipt:	29 October 2012
to:	Mrs Erato KOZAKOU-MARCOULLIS, President of the Council of the European Union

Subject:	Report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the financial year 2011 together with the Agency's replies
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Sir,

I enclose in all the official languages of the European Union a copy of the Court of Auditors' report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the financial year 2011.

This report is accompanied by the Agency's replies and will shortly be published in the Official Journal of the European Union.

(Complimentary close).

(s.) Vítor CALDEIRA

Encl.: Report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the financial year 2011 together with the Agency's replies.

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА
TRIBUNAL DE CUENTAS EUROPEO
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DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



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Report on the annual accounts
of the European Agency for the Management of Operational Cooperation at the External
Borders of the Member States
for the financial year 2011

together with the Agency's replies

INTRODUCTION

1. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States (hereinafter "the Agency"), which is located in Warsaw, was created by Council Regulation (EC) No 2007/2004¹. The Agency's task is to coordinate the Member States' activities in the field of the management of external borders (support for operational cooperation, technical and operational assistance, and risk analysis)².

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

2. The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency's supervisory and control systems. This is supplemented by evidence provided by the work of other auditors (where relevant) and an analysis of management representations.

STATEMENT OF ASSURANCE

3. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts³ of the Agency, which comprise the "financial statements"⁴ and the "reports on the

¹ OJ L 349, 25.11.2004, p. 1.

² The ***Annex*** summarises the Agency's competences and activities. It is presented for information purposes.

³ These accounts are accompanied by a report on the budgetary and financial management during the year which gives further information on budget implementation and management.

⁴ The financial statements include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

implementation of the budget”⁵ for the financial year ended 31 December 2011, and the legality and regularity of the transactions underlying those accounts.

The Management’s responsibility

4. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the financial rules of the Agency, under his own responsibility and within the limits of the authorised appropriations⁶. The Director is responsible for putting in place⁷ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts⁸ that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

The Auditor’s responsibility

5. The Court’s responsibility is to provide, on the basis of its audit, the European Parliament and the Council⁹ with a statement of assurance as to the reliability of the annual accounts of the Agency and the legality and regularity of the transactions underlying them.

6. The Court conducted its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International

⁵ The budget implementation reports comprise the budget outturn account and its annex.

⁶ Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72).

⁷ Article 38 of Regulation (EC, Euratom) No 2343/2002.

⁸ The rules concerning the presentation of the accounts and accounting by the Agencies are laid down in Chapters 1 and 2 of Title VII of Regulation (EC, Euratom) No 2343/2002 as last amended by Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.7.2008, p. 23) and are integrated as such in the Financial Regulation of the Agency.

⁹ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002.

Standards of Supreme Audit Institutions. These standards require that the Court plans and performs the audit to obtain reasonable assurance as to whether the annual accounts of the Agency are free of material misstatement and the transactions underlying them are legal and regular.

7. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the transactions underlying them. The procedures are selected based on the auditor's judgment, including an assessment of the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirement of the legal framework of the European Union, whether due to fraud or error. In assessing those risks, the auditor considers internal controls relevant to the preparation and fair presentation of the accounts and supervisory and control systems implemented to ensure legality and regularity of underlying transactions, in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of accounting policies used and reasonableness of accounting estimates made, as well as evaluating the overall presentation of the accounts.

8. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

Opinion on the reliability of the accounts

9. In the Court's opinion, the Agency's Annual Accounts¹⁰ present fairly, in all material respects, its financial position as of 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with

¹⁰ The Final Annual Accounts were drawn up on 20 June 2012 and received by the Court on 11 July 2012. The Final Annual Accounts, consolidated with those of the Commission, are published in the Official Journal of the European Union by 15 November of the following year. These can be found on the following website <http://eca.europa.eu> or <http://www.frontex.europa.eu/>.

the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer¹¹.

Opinion on the legality and the regularity of the transactions underlying the accounts

10. In the Court's opinion, the transactions underlying the annual accounts of the Agency for the financial year ended 31 December 2011 are legal and regular in all material respects.

11. The comments which follow do not call the Court's opinions into question.

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

12. The Agency's 2011 budget amounted to 118,2 million euro of which 38,7 million euro (33 %) were carried over to 2012. Carryovers related to Title III (operational expenditures) amounted 36 million euro (41 %). As in the previous year, the level of carryovers is excessive and at odds with the budgetary principle of annuality.

13. Within the total amount carried over, the Agency carried over global commitments of 5,1 million euro. The Agency's Financial Regulation however does not provide a clear basis for such a carryover¹².

¹¹ The accounting rules adopted by the Commission's accounting officer are derived from International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, in their absence, International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

¹² The Agency Financial Regulation states in its article 62(2) that "Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N+1". Both the EU Financial Regulation and the Agency Financial Regulation are however unclear concerning the use of global commitments for non differentiated appropriations. The Agency used global commitments to justify an automatic carryover of non differentiated appropriations.

COMMENTS ON KEY CONTROLS OF THE AGENCY'S SUPERVISORY AND CONTROL SYSTEMS

14. In 2011, the Agency financed grants for joint operations amounting to 74 million euro. In order to verify the expenditure claimed by the beneficiaries (Member states and Schengen Associated Countries), the Agency, although it performs reasonableness checks, does not usually request supporting documentation that would address the risk of ineligible expenditure.

15. As in the previous year, the Agency's accounting system has still to be validated by the Accounting Officer.

16. Internal control weaknesses were identified as regards the management of fixed assets. There is no procedure related to the disposal of fixed assets and the physical inventory is incomplete.

This report was adopted by Chamber IV, headed by Mr. Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 5 September 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

**European Agency for the Management of Operational Cooperation at the
External Borders (Warsaw)**

Competences and activities

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Articles 74 and 77(2)(b) and (d) of the Treaty on the Functioning of the European Union)</i></p>	<p>Art. 74: "The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. [...]"</p> <p>Art. 77(2): "[...] the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:</p> <p>[...] (b) the checks to which persons crossing external borders are subject;</p> <p>[...] (d) any measure necessary for the gradual establishment of an integrated management system for external borders; [...]"</p>
<p>Competences of the Agency</p> <p><i>(Council Regulation (EC) No 2007/2004 amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council, amended by Regulation (EU) No 1168/2011 of the European Parliament and of the Council)</i></p> <p><i>(The last amendment entered into force on 12.12.2011; the content of the table reflects the situation after this last amendment.)</i></p>	<p>Objectives</p> <p>The Agency was established with a view to improving the integrated management of the external borders of the Member States of the EU.</p> <p>Main Tasks</p> <p>(a) coordinate operational cooperation between Member States in the field of management of external borders;</p> <p>(b) assist Member States on training of national border guards and establish common training standards;</p> <p>(c) carry out risk analyses, including the assessment of the capacity of Member States to face threats and pressures at the external borders;</p> <p>(d) participate in the development of research relevant for the control and surveillance of external borders;</p> <p>(e) assist Member States in circumstances requiring increased technical and operational assistance, especially those Member States facing specific and disproportionate pressures;</p> <p>(f) provide Member States with the necessary support including, upon request, coordination or organisation of joint return operations;</p> <p>(g) set up European Border Guard Teams (EBGT) to be deployed during joint operations, pilot projects and rapid interventions;</p> <p>(i) develop and operate information systems for information exchange, including IConet;</p> <p>(j) provide necessary assistance to the development and operation of a European border surveillance system (EUROSUR).</p>
<p>Governance</p>	<p>Management Board</p> <p><i>Composition:</i></p> <p>One representative of each Member State, two representatives of the Commission and one representative per Schengen Associated Country (Iceland, Norway, Switzerland and Liechtenstein).</p> <p><i>Tasks:</i></p> <p>(a) appoint the Executive Director;</p> <p>(b) adopt the general report of the Agency;</p> <p>(c) adopt the Agency's Programme of Work;</p> <p>(d) establish procedures for taking decisions related to the operational tasks of the Agency;</p> <p>(e) carry out its functions relating to the Agency's budget;</p> <p>(f) exercise disciplinary authority over the (Deputy) Executive Director;</p> <p>(g) establish its Rules of Procedure;</p> <p>(h) establish the organisational structure of the Agency and adopt the Agency's staff policy;</p> <p>(i) adopt the Agency's multiannual plan.</p> <p>Executive Director</p> <p>Appointed by the Management Board on a proposal from the Commission.</p> <p>External audit</p> <p>European Court of Auditors.</p>

	<p>Discharge Authority</p> <p>European Parliament acting on a recommendation of the Council.</p>
<p>Resources made available to the Agency in 2011 (2010)</p>	<p>Final Budget</p> <p>118,2 (93,2) million euro</p> <p>Union subsidy 111 (89,1) million euro</p> <p>Staff as at 31 December 2011</p> <p><i>Establishment plan:</i></p> <p>Temporary agents planned: 143 (143) - Temporary agents occupied: 141 (139)</p> <p><i>Other posts:</i></p> <p>Contract staff planned 88 (79) - Contract staff occupied 85 (79)</p> <p>Seconded National Experts planned: 83 (76) - Seconded National Experts occupied: 78 (76)</p> <p>Total staff number: 314 (298) - out of which occupied: 304 (294)</p> <p>Assigned to the following occupied tasks: operational: 214 (203) - administrative: 90 (91)</p>
<p>Products and services in 2011 (2010)</p>	<p>Risk Analysis Unit produced 20 (14) strategic assessments, 4 (4) quarterly reports, 469 (294) analytical products supporting Joint Operations (including Weekly Briefings and new types of reports aimed at improving operational focus and response), 112 (64) reports of other types, including briefings for the Agency Management, the EU Commission and others; publication of 6 strategic reports for the general public via the Agency website. Comprehensive update of the Common Integrated Risk Analysis Model (CIRAM v 2.0) finalised in 2011. 4 (4) regular Frontex Risk Analysis Network meetings, 2 Tactical Risk Analysis Meetings and 5 (2) regional Expert Meetings were organised.</p> <p>Joint Operations Unit organised 19 (17) joint operations, 14 (9) pilot projects and 15 (4) conferences. Furthermore, during 42 (40) the Agency coordinated joint return operations 2 059 (2 038) people were returned. The Rapid Border Intervention Team (RABIT) Operation launched in November 2010 was finalised in March 2011. Overall operational intensity increased as a total of 7 754 (6 471) operational days was accumulated in all joint operations; the number of operational man-days accumulated, increased to 105 038 (54 976).</p> <p>Frontex Situation Centre (FSC) provided 1 900 (500) Situational Reports, Flash Reports, Falsified Document Alerts and 11 (14) Mission Awareness Reports for internal and external customers. Daily Newsletters were delivered to 400 (350) accounts. The FSC as a single point of contact for information exchange with external clients managed around 24 000 (20 000) correspondence items and implemented the Frontex-One-Stop-Shop (FOSS), a web-based information-sharing portal which is used by 35 (30) countries and 2 600 (900) users.</p> <p>As well as intensive participation in the EUROSUR Programme, 4 process automation projects were (fully and/or partially) developed and/or implemented.</p> <p>Training Unit organised 223 (176) activities attended by 3 490 (4 015) people (training experts, trainees, etc.) within the framework 20 (18) projects; stakeholders devoted a total of 12 947 (11 000) man-days to training activities.</p> <p>Pooled Resources Unit implemented 6 (9) projects designed to improve the overall effectiveness of Frontex operations. PRU also coordinated deployment during the RABIT operation throughout the entire period of 61 days. The deployment of 576 officers was coordinated, as was the deployment of 67 items of technical equipment.</p> <p>Research & Development Unit developed further – in close collaboration with other Agency's units - the EUROSUR Programme, which is very important to the Agency. The R&D Unit organised and held 34 (32) meetings including conferences, workshops and bilateral events held with Member States. R&D staff participated in approximately 130 (110) internal and external workshops, conferences and working meetings. The R&D Unit produced 19 (10) country reports, 15 meeting reports, 11 project proposal evaluation reports for FP7 SEC and financed three academic studies.</p> <p>Partnership and cooperation with third countries: During 2011, two Working Arrangements (WAs) were concluded with the National Police of Cape Verde and with the Migration, Asylum and Refugees Regional Initiative (MARRI) Regional Centre, increasing the overall number of WAs to 16 (14). On the basis of existing WAs, specific cooperation on operational and technical border security/management matters between the Agency and the third country partners has been increased with a view to working towards sustainable partnerships.</p> <p>Cooperation with EU Bodies and international organisations: By the end of 2011, a Working Arrangement (WA) was signed in DCAF, increasing the overall number to 11 (10). All WAs are implemented through a number of the Agency's activities; the organisation of the Anti-Trafficking Day in Warsaw together with fellow JHA Agencies and the Commission was a very important event</p>

	in this respect.
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Source: Information supplied by the Agency.

THE AGENCY'S REPLY

12. The increased operational activities related to the developments in the Mediterranean Area went hand in hand with a budgetary amendment amounting to 31,8 million EUR. The additional funds arrived to a large part in late October 2011 only which led to a situation where significant carry over occurred as a result.

The high level of carry over is partly a consequence of the budgetary procedure in force, which is not appropriate for reactions on exceptional developments. Frontex would like to provide also the information that the carryovers from 2010 were used to a level of 81 %.

13. The Agency considers that there is a lack of clarity in Frontex' Financial Regulation, giving room for different interpretations. The Agency will refrain from carrying over global commitments.

14. As of January 2012 Frontex requests supporting documents for the majority of costs in joint return operations. For other grants issued for joint operations, supporting documentation is requested in case of discrepancies detected in the final financial statements.

Frontex is developing a policy on ex-ante controls which will be finalised and implemented as of 30 September 2012.

15. The Accounting Officer has started the validation of the Accounting System in the first quarter of 2012 and will finalise it by September 2012.

16. Process descriptions on asset management are currently subject to the approval process; an asset management policy (covering disposal as well) and guidelines on internally developed assets are to be adopted by the end of Q3 of 2012. An audit on asset registration and conducting inventories will be finalised by August 2012 and the management intends to address potential weaknesses identified with corrective actions.