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COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	4 November 2016
To:	Mr Peter KAZIMIR, 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 2015 together with the Agency's reply

Delegations will find attached the European 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 2015.

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

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 2015 together with the Agency's reply.¹

¹ In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.



EUROPEAN
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 2015

together with the Agency's reply

INTRODUCTION

1. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States (hereinafter “the Agency”, aka “FRONTEX”), which is located in Warsaw, was created by Council Regulation (EC) No 2007/2004². 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. **Table 1** presents key figures for the Agency³.

TABLE 1: KEY FIGURES FOR THE AGENCY

	2014	2015
Budget (million euro)	86,7	143,3
Total staff as at 31 December ⁴	311	309

Source: data provided by the Agency.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

3. 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 and an analysis of management representations.

² OJ L 349, 25.11.2004, p. 1.

³ More information on the Agency competences and activities is available on its website: www.frontex.europa.eu.

⁴ Staff includes officials, temporary and contract staff and seconded national experts.

STATEMENT OF ASSURANCE

4. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- (a) the annual accounts of the Agency, which comprise the financial statements⁵ and the reports on the implementation of the budget⁶ for the financial year ended 31 December 2015, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

5. The management is responsible for the preparation and fair presentation of the annual accounts of the Agency and the legality and regularity of the underlying transactions⁷:

- (a) The management's responsibilities in respect of the Agency's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer⁸; making accounting estimates that are reasonable in the circumstances. The Executive Director approves the annual accounts of the Agency after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, inter alia, that he has reasonable assurance that they present a true and fair view of the financial position of the Agency in all material respects.

⁵ These include the balance sheet and statement of financial performance, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁶ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁷ Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

⁸ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

6. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council⁹ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Agency are free from material misstatement and the transactions underlying them are legal and regular.

7. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts. In preparing this report and Statement of Assurance, the Court considered the audit work of the independent external auditor performed on the Agency's accounts as stipulated in Article 208(4) of the EU Financial Regulation¹⁰.

⁹ Article 107 of Regulation (EU) No 1271/2013.

¹⁰ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

8. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Basis for Qualified Opinion on the reliability of the accounts

9. The Agency underestimated the cost incurred in 2015 but not yet invoiced for prefinanced services related to maritime surveillance by 1 723 336 euro. This underestimation affected the accrued charges and resulted in a material misstatement in the Agency's balance sheet and statement of financial performance.

Qualified opinion on the reliability of the accounts

10. In the Court's opinion, except for the effects of the matter described in the Basis for Qualified Opinion paragraph, the Agency's annual accounts present fairly, in all material respects, its financial position as at 31 December 2015 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

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

11. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2015 are legal and regular in all material respects.

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

COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

13. The ex-post audit to Iceland carried out by the Agency in October 2015 detected irregular payments totalling 1,4 million euro related to the depreciation of a vessel participating in seven joint operations from 2011 to 2015. The Icelandic coast guard had claimed reimbursement of depreciation for that vessel even though it had exceeded the useful life provided for in the Agency's guidelines. Whilst the Agency has the right to recover irregular payments made in the last five years, it announced to recover only the payments made since January 2015, amounting to 0,6 million euro.

14. The Internal Security Fund (ISF) is set up for the period 2014-20. It is composed of two instruments, ISF Borders and Visa as well as ISF Police, under which 2,8 billion euro and

1 billion euro are available for funding actions respectively. The Commission under ISF Borders and Visa reimburses Member States' purchases of means, such as vehicles or vessels as well as running costs such as fuel consumption or maintenance. The Agency also reimburses such costs to participants in joint operations. There is therefore an unaddressed risk of double funding¹¹.

COMMENTS ON BUDGETARY MANAGEMENT

15. The level of carry-overs for committed appropriations was high for Title II (administrative expenditure) at 3,2 million euro, i.e. 38 % (2014: 4,5 million euro, i.e. 36 %) and Title III (operational expenditure) at 40,2 million euro, i.e. 35 % (2014: 28,4 million euro, i.e. 44 %). For Title II, the main reason for high carry-overs is IT contracts extending beyond the year-end whereas for Title III, it is the multiannual nature of the Agency's operations.

OTHER COMMENTS

16. States participating in border operations declare the costs incurred on the basis of cost claim sheets which comprise "fixed expenses" (depreciation and maintenance), "variable expenses" (mostly fuel) and "mission expenses" (mostly allowances and other crew expenses). The costs declared are based on real values and follow national standards leading to divergent approaches among participating states which creates a particularly burdensome system for all parties involved. The Court in its Special Report 12/2016 recommended that agencies should use simplified cost options whenever appropriate to avoid such inefficiencies¹².

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

17. An overview of the corrective actions taken in response to the Court's comments from previous years is provided in **Annex I**.

¹¹ The Court had referred to this risk in paragraph 39 and recommendation 4 of its Special Report 15/2014 "The External Borders Fund has fostered financial solidarity but requires better measurement of results and needs to provide further EU added value".

¹² Recommendation 1 in the Court's Special Report 12/2016 "Agencies' use of grants: not always appropriate or demonstrably effective".

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA, Member of the Court of Auditors, in Luxembourg at its meeting of 4 October 2016.

For the Court of Auditors

Klaus-Heiner LEHNE

President

Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	The recruitment procedures examined showed significant shortcomings affecting transparency and the equal treatment of candidates: questions for written tests and interviews were set after the applications had been examined by the selection board; no threshold scores were set for admission to written tests and interviews and for being included in the list of suitable candidates; the Selection Board did not document all its meetings and decisions.	Ongoing
2013	Suppliers' statements at year-end were reconciled with considerable difficulty. There is a need to monitor supplier balances more regularly and to analyse differences in a more timely manner.	Ongoing
2013	Frontex became operational in 2005 and has, to date, worked on the basis of correspondence and exchanges with the host Member State. However a comprehensive headquarters agreement between the Agency and the Member State has not been signed. Such an agreement would further promote transparency in respect of the conditions under which the Agency and its staff operate.	Ongoing

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	Considerable improvements were noted in both ex ante and ex post verifications of expenditure claimed by cooperating countries under grant agreements. However, documentation from cooperating countries supporting the expenditure claimed is not always sufficient. Moreover, no audit certificates were requested, although the rules of application of the EU's Financial Regulation recommend this for grants above specific thresholds ¹ . Audit certificates would add further assurance on the legality and regularity of grant transactions.	Ongoing
2014	The level of carry-overs for committed appropriations was high for title II (administrative expenditure) at 4,5 million euro, i.e. 36 % (2013: 2,4 million euro, i.e. 27 %) and title III (operational expenditure) at 28,4 million euro, i.e. 44 % (2013: 29,2 million euro, i.e. 47 %). For title II, the main reason is year-end purchases related to the move to the agency's new building in December 2014. For title III, high carry-overs mainly result from the multiannual nature of the agency's operations and the approval of an additional 4,2 million euro budget in October 2014.	N/A
2014	The high and constantly increasing number of grant agreements and the magnitude of related expenditure to be verified and reimbursed by FRONTEX raise the question whether more efficient and cost-effective alternative funding mechanisms could be used.	Outstanding ²

¹ Commission Delegated Regulation (EU) No 1268/2012 (OJ L 362, 31.12.2012, p. 1).

² Article 3(4) of Council Regulation (EC) No 2007/2004 (OJ L 349, 25.11.2004, p. 1) limits the Agency's co-financing of joint operations to grants.

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	There is a need to refine the calculation of contributions from Schengen associated countries (Switzerland, Liechtenstein, Iceland and Norway) to better reflect the related legal provisions ³ . For example, the calculation should be based on the final instead of the budgeted annual subsidy received from the Commission.	Ongoing
2014	Contributions to the Agency's budget from the United Kingdom and Ireland (which are non-Schengen countries) have remained stable for many years despite the considerably extended range of activities in which they are involved. A review of their contributions is therefore overdue.	Completed

³ Arrangement between the European Community of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 243, 16.9.2010, p. 4); Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 188, 20.7.2007, p. 19).

THE AGENCY'S REPLY

9. The Agency will further improve its procedure for estimating the costs to be accrued.

13. The implementing rules to the Frontex Financial Regulation provide that the Authorising Officer may waive recovery of an established amount where recovery is inconsistent with the principle of proportionality. In line with that principle and after having received external legal advice the Authorising Officer announced to recover 0,6 million euro; the recovery covers grants awarded since 2014. He also announced for the same reason not to reimburse 0,2 million euro due in 2016.

14. In 2016 mitigating measures put in place in cooperation with DG HOME so far are the access to the ISF database, where all plans and reports of the beneficiaries are made available. DG HOME also intends to invite Frontex to the Asylum, Migration and Integration and Internal Security Funds Committee in autumn 2016 to present the situation from its perspective and to discuss with Member States.

15. Frontex acknowledges the explanations provided by the Court on the amounts of carry-overs. The Agency will continue its efforts to reduce the amounts of carry-overs in view of honouring better the annuality principle.

16. The system in place for reimbursing costs aims at ensuring equal treatment of beneficiaries as the same cost categories can be financed for each of them.

Nevertheless, the agency agrees with the Court that reimbursing costs based on real values is cumbersome and the introduction of unit costs is a viable option, which the agency will pursue. Furthermore, the proposal for the Border and Coast Guard Agency may likely remove the obligation to use grants, which will pave the way for using new funding mechanisms for the agency beyond grants.