



Council of the  
European Union

121387/EU XXV. GP  
Eingelangt am 07/11/16

Brussels, 7 November 2016  
(OR. en)

14046/16

FIN 751

## 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 operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) 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 operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) 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*

---

Encl.: Report on the annual accounts of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) for the financial year 2015 together with the Agency's reply.<sup>1</sup>

---

<sup>1</sup> 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 operational management of  
large-scale IT systems in the area of freedom, security and justice (eu-LISA)  
for the financial year 2015  
  
together with the Agency's reply

## **INTRODUCTION**

1. The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), hereinafter “the Agency”, which is located in Tallinn, Strasbourg and St. Johann im Pongau, was established by Regulation (EC) No 1077/2011 of the European Parliament and of the Council<sup>2</sup>. The core mission of this Agency is to fulfil the operational management tasks for the Second Generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac.

2. **Table 1** presents key figures for the Agency<sup>3</sup>.

**TABLE 1: KEY FIGURES FOR THE AGENCY**

	<b>2014</b>	<b>2015</b>
Budget (million euro) <sup>4</sup>	64,9	71,7
Total staff as at 31 December <sup>5</sup>	129	134

*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.

---

<sup>2</sup> OJ L 286, 1.11.2011, p. 1.

<sup>3</sup> More information on the Agency’s competences and activities is available on its website: [www.eulisa.europa.eu](http://www.eulisa.europa.eu).

<sup>4</sup> Budget figures are based on payment appropriations.

<sup>5</sup> 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 statements<sup>6</sup> and the reports on the implementation of the budget<sup>7</sup> 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 transactions<sup>8</sup>:

- (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 officer<sup>9</sup>; 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.

---

<sup>6</sup> These include the balance sheet and the 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.

<sup>7</sup> These comprise the budgetary outturn account and the annex to the budgetary outturn account.

<sup>8</sup> Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

<sup>9</sup> 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 Council<sup>10</sup> 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 Regulation<sup>11</sup>.

---

<sup>10</sup> Article 107 of Regulation (EU) No 1271/2013.

<sup>11</sup> 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.

**Opinion on the reliability of the accounts**

9. In the Court's opinion, 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**

10. 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.

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

**COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS**

12. The Agency signed a two million euro framework contract for the procurement services by a contractor (procurement services), for training, coaching and learning services from third party providers (training services). The contractor identifies suitable training services for any specific request, and provides a quote for the training services plus a fee for its own procurement service (uplift). However, the framework contract fails to specify that the procurement services should be in compliance with the procurement provisions in the Agency's financial rules. Therefore the current process of submitting quotes for approval by the Agency does not ensure that the services are procured in compliance with all requirements of the financial rules.

13. The call for expression of interest and pre-selection of candidates for participation in a negotiated procedure with an estimated value of 20 million euro took place without a delegation by the authorising officer.

**COMMENTS ON BUDGETARY MANAGEMENT**

14. The committed appropriations carried over under budget title II (administrative expenditure) amount to 9 million euro or 50 % of total committed appropriations (2014:

15 million euro; i.e. 87 %). These carry overs mainly concern a large contract for the extension of the Strasbourg building (4,6 million euro) as well as services provided under multi-annual contracts.

15. Arrangements with Schengen Associated Countries (Switzerland, Liechtenstein, Iceland and Norway) defining detailed rules for their participation in the work of the Agency, including provisions on voting rights and their contribution to the Agency's budget, have still not been concluded. In their absence, Schengen Associated Countries contribute to Title III (operational expenditure) of the Agency's budget following a provision in the association agreements signed with the EU. However they do not yet contribute to activities under titles I and II (salaries and other administrative expenditure) of the Agency's budget.

#### **OTHER COMMENTS**

16. The audited procurement procedures showed that the Agency engaged in contractual agreements or negotiations with a single contractor without precisely defining the services requested. This limits competition and increases dependence upon the contractor. The Agency should conclude agreements with multiple suppliers or define the services required more precisely, whenever possible.

#### **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**.

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 13 September 2016.

*For the Court of Auditors*

(s) Vítor Manuel da SILVA CALDEIRA

*President*

Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2013</b>	There is no insurance coverage for fixed tangible assets, except for multi-risk fire for the premises in Tallinn.	<b>Completed</b>
<b>2013</b>	According to the Agency's Founding Regulation, countries associated with the implementation, application and development of the Schengen <i>acquis</i> and Eurodac-related measures must make a contribution to the Agency's budget. Although Schengen associated countries were using the systems managed by the Agency in 2013 the Commission's negotiations were still ongoing.	<b>Ongoing<sup>1</sup></b>

---

<sup>1</sup> For further information see paragraph 15 and the Agency's reply.



Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2014</b>	<p>Emphasis of matter in relation to the reliability of the accounts</p> <p>Without calling into question the opinion expressed in paragraph 8, the Court draws attention to the valuation of the Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC (systems) in the Agency's accounts. The operational management of these systems is the Agency's core task. In the absence of reliable and complete information in respect of their total development cost, they are recorded in the Agency's accounts at their net book values as per the Commission's books and updated at year end (approximately 6,6 million euro at date of transfer and 2,1 million euro at 31 December 2014)<sup>2</sup>. These values relate mainly to hardware and off-the-shelf software components and do not include software development costs (see note 6.3.1 to the annual accounts of the Agency).</p>	<b>Ongoing</b>
<b>2014</b>	<p>Out of the 6,6 million euro committed appropriations for titles I (staff expenditure) and II (administrative expenditure) which were carried over from 2013 to 2014, 1,7 million euro (26 %) were cancelled in 2014, showing that budgetary needs were overestimated at the end of 2013.</p>	<b>N/A</b>

<sup>2</sup> 0,2 million euro at 31 December 2015 which is under the materiality threshold.

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2014</b>	<p>Committed appropriations carried over to 2015 were very high for title II (administrative expenditure) at 15 million euro, i.e. 87 % (2013: 6 million euro or 79 %). These carry-overs mainly resulted from delayed procurements for the extension and refurbishment of the Agency's site in Strasbourg. Carry-overs of committed appropriations were also high for title III (operational expenditure) at 24,5 million euro (85 %) (2013: no comparative figures available), mainly in relation to multi-annual contracts for the maintenance of the IT systems. The high levels of cancelled carry-overs from 2013 and the extent of carry-overs made from 2014 to 2015 is at odds with the budgetary principle of annuality. Reliable procedures for budget planning, execution and monitoring need to be put in place.</p>	<b>N/A</b>

## THE AGENCY'S REPLY

12. The framework contract in question was awarded through an open procedure under the rules of the Agency's Financial Regulation. While there was no explicit provision that the contractor would be bound to EU procurement rules, the specifications include a mandatory requirement that the lowest price on the market would be provided. The Agency has the right to impose a price review if a lower price can be found.

The Agency is not aware of a legal obligation to impose a specific set of procurement rules on contractors.

13. The Agency is of the opinion that no pre-selection, under the meaning of the Financial Regulation and its Rules of Application (i.e. formal application of pre-set selection criteria), took place before the launch of the negotiated procedure. The call for expressions of interest was used as part of the market prospection and not as a tender procedure. The outcome of the market prospection was part of the documents approved by the Authorising Officer before the launch of the tender.

14. As the Court mentioned in the case of the carry-forward of the appropriations for the Strasbourg reconstruction project, the payment schedule was known to require substantial carry-forwards of C1 and C2 appropriations, and these operations were planned and authorized by the Management Board.

The Agency deployed a considerable effort in planning and co-ordination to verify that all business cases for the carry-forward of non-differentiated appropriations were indeed justified, as evidenced by the sharp decrease of cancellations, from EUR 1,690,194.29 representing 25.53% of carried over appropriations in 2014 to EUR 457,590.48 representing 8.75% in 2015.

15. The Agency acknowledges the comment and points out that all legally possible actions have been taken in order to acquire financial contributions of Associated Countries to the Agency's budget, whereas negotiations with Associated Countries are led by the European

Commission rather than the Agency. Agreements are subject of ratification by the national parliaments of these countries.

16. The Agency specifies technical requirements at the best of its knowledge at the time when competitive tenders are launched, or when negotiations with a current contractor are unavoidable.

Especially for the systems under management, factors outside the control of the Agency limit the possibility to systematically re-open competitions. These factors include: the evolving technical and legal requirements of the systems compared with the launch of the tender; the limited amount of workforce to perform tenders; the limited time to contract requirements imposed by operational activities.