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COVER NOTE

From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	22 October 2013
To:	Mr Linas LINKEVICIUS, 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 2012 together with the Agency's replies

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 2012.

This report is accompanied by the Agency's replies 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 2012 together with the Agency's replies.¹

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

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ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
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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 2012

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”, aka “FRONTEX”), 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 (TFEU), the Court has audited:

(a) the annual accounts of the Agency, which comprise the financial statements³ and the reports on the implementation of the budget⁴ for the financial year ended 31 December 2012, and

¹ OJ L 349, 25.11.2004, p. 1.

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

³ These 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.

(b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

4. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002⁵, 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:

(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 officer⁶; making accounting estimates that are reasonable in the circumstances. The 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.

⁴ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁵ OJ L 357, 31.12.2002, p. 72.

⁶ 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

5. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council⁷ 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.

6. 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

⁷ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

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.

7. 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

8. In the Court's opinion, the Agency's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 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.

Basis for a disclaimer of opinion on the legality and regularity of the transactions underlying the accounts

9. In 2012, expenditure related to grants amounted to 56 million euro, representing 63 % of total operating expenditure. In order to verify the expenditure claimed by beneficiaries the Agency performs reasonableness checks prior to payment but does not usually request supporting documentation.

10. The ex post audit strategy of the Agency was adopted in 2012 and is a key control for assessing the legality and regularity of the Agency's transactions. Three audits were carried out in 2012 to verify expenditure reimbursed in 2011. However, no 2012 expenditure has yet been verified.

11. In the absence of effective ex ante and ex post verifications, there is no assurance on the legality and regularity of the 2012 transactions related to

grants. The Court could not obtain sufficient appropriate audit evidence on the legality and regularity of the audited 2012 grant transactions.

Disclaimer of opinion on the legality and the regularity of the transactions underlying the accounts

12. Because of the materiality and pervasiveness of the matter described in the basis for a disclaimer of opinion (paragraphs 9 to 11), the Court has not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion and, accordingly, the Court does not express an opinion on the legality and regularity of the transactions underlying the accounts.

13. The comments which follow do not call into question the Court's opinion on the reliability of the accounts or its disclaimer of opinion concerning the legality and regularity of the underlying transactions.

COMMENTS ON INTERNAL CONTROLS

14. The physical inventory was incomplete and did not cover all assets owned by the Agency. Assets under construction and assets purchased near year-end were not taken into account.

15. There is no procedure for the disposal of fixed assets. Fixed assets no longer in use are written off from the fixed assets register without being physically disposed of. No register of these assets is kept.

16. Weaknesses were still noted in the system for reconciling suppliers' statements with the corresponding records at the Agency.

COMMENTS ON BUDGETARY MANAGEMENT

17. The Agency's 2012 budget amounted to 89,6 million euro of which 21,8 million euro (25 % of committed appropriations) were carried over to 2013.

Carry-overs related to title III (operational expenditure) amounted to 19,6 million euro. Such a high level of carry-overs is excessive and at odds with the budgetary principle of annuality, although it is partly related to the operational, multi-annual nature of the Agency's activities. By the end of February 2013, 1,1 million euro of these carry-overs had been cancelled.

18. The Agency made 39 budgetary transfers amounting to 11,5 million euro in 2012, affecting 70 of the 79 budget lines. This is partly due to the fact that the second budgetary amendment for 2012 was only approved in October 2012 and the funds needed for operations had meanwhile been transferred from other budget lines.

OTHER COMMENTS

19. 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.

FOLLOW-UP OF PREVIOUS YEAR'S COMMENTS

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

This Report was adopted by Chamber IV, headed by Dr Louis GALEA,
Member of the Court of Auditors, in Luxembourg at its meeting of 9 July 2013.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

Follow-up of previous year's comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	As in the previous year, the level of carry-overs is excessive and at odds with the budgetary principle of annuality.	Outstanding
2011	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 carry-over ¹ .	N/A
2011	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.	Ongoing
2011	As in the previous year, the Agency's accounting system has still to be validated by the Accounting Officer.	Completed

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	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.	Ongoing

1. 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 carry-over of non-differentiated appropriations.

**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>Article 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>Article 77(2): "(...) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning: (...) (b) the checks to which persons crossing external borders are subject; (...) (...) (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 and 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>Frontex 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> <ul style="list-style-type: none"> (a) To coordinate operational cooperation between Member States in the field of management of external borders; (b) to assist Member States on training of national border guards and establish common training standards; (c) to carry out risk analyses, including the assessment of the capacity of Member States to face threats and pressures at the external borders; (d) to participate in the development of research relevant for the control and surveillance of external borders; (e) to assist Member States in circumstances requiring increased technical and operational assistance, especially those Member States facing specific and disproportionate pressures; (f) to provide Member States with the necessary support including, upon request, coordination or organisation of joint return operations; (g) to set up European Border Guard Teams (EBGT) to be deployed during joint operations, pilot projects and rapid interventions; (h) to develop and operate information systems for information exchange, including IConet; (i) to provide necessary assistance to the development and operation of a European border surveillance system (EUROSUR).
<p>Governance</p>	<p>Management Board</p> <p><i>Composition</i></p> <p>One representative of each Member State + two representatives of the Commission + one representative per Schengen Associated Country.</p> <p><i>Tasks</i></p> <ul style="list-style-type: none"> (a) To appoint the Executive Director; (b) to adopt the general report of the Agency; (c) to adopt the Agency's Programme of Work; (d) to establish procedures for taking decisions related to the operational tasks of the Agency; (e) to carry out its functions relating to the Agency's budget; (f) to exercise disciplinary authority over the (Deputy) Executive Director; (g) to establish its Rules of Procedure; (h) to establish the organisational structure of the Agency and adopt the Agency's staff policy; (i) to adopt the Agency's multiannual plan. <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 2012 (2011)</p>	<p>Final Budget</p> <p>89,6 (118,2) million euro Union subsidy 84 (111) million euro</p> <p>Staff as at 31 December 2012</p> <p><i>Establishment plan</i></p> <p>Temporary staff planned: 143 (143) - Temporary staff posts occupied: 137 (141)</p> <p><i>Other posts</i></p> <p>Contract staff planned: 87 (88) - Contract staff posts occupied: 84 (85) Seconded National Experts planned 83: (83) - Seconded National Experts posts occupied: 82 (78)</p> <p>Total staff posts: 313 (314) - of which occupied: 303 (304) Assigned to the following tasks: operational 216 (214) – administrative 87 (90)</p>
<p>Products and services in 2012 (2011)</p>	<p>Risk Analysis Unit (RAU) produced 80 (20) strategic reports including three regular annual reports, two annual reports of new type, six tailored reports, nine quarterly reports with situational updates and analysis in MS, and selected regions neighbouring the EU, 60 strategic monitoring reports; 482 (469) analytical products supporting the planning, implementation and evaluation of Joint Operations; 54 (112) reports of other types, including briefings for the Agency's Management, the EU Commission and others; published seven (six) strategic reports for the general public via the Agency website.</p> <p>The rollout of the updated Common Integrated Risk Analysis Model (CIRAM v 2.0) was initiated with translation into selected EU languages. Four (four) regular Frontex Risk Analysis Network meetings, five meetings of the new specialist network with Member States on EU Document Fraud, two (two) Tactical Risk Analysis meetings, six (five) regional expert meetings/conferences, and three regional technical workshops were organized.</p> <p>In line with the tasks of Risk Analysis Unit within EUROSUR, in 2012 the following were undertaken, and communicated/consulted as appropriate with MSs within the framework of the Analysis Layer User Group: Within the CPIP/ESP analysis layer: delivery of the content (281 products in 2012), preparatory work for basic services and analysis tools; development of the concept for the attribution of impact levels methodology.</p> <p>Joint Operations Unit (JOU) organised 17 (19) joint operations, 12 (14) pilot projects and 10 (15) conferences and 25 meetings. Furthermore, during 39 (42) Frontex coordinated joint return operations 2 110 (2 059) people were returned. The total number of operational days accumulated in all joint operations amounted to 3 503 days (7 754); the number of operational man-days accumulated equals to 117 114 (105 038).</p> <p>Frontex Situation Center (FSC) provided 2 169 (1 900) situational reports, 31 serious incident reports, 27 flash news reports and 13 (11) mission awareness reports, while uploading 145 document alerts in the FOSS portal and 2 130 artefacts to EUROSUR. Daily Newsletters were delivered to 241 (400) accounts; 308 media contributions were made to daily situational reports and operational briefings. The FSC as a single point of contact managed over 24 000 (24 000) correspondence items; it consolidated the Frontex-One-Stop-Shop (FOSS) as the main information exchange platform between Frontex and external partners, with 6 000 documents uploaded. FSC received around 30 000 incidents through the Joint Operations Reporting Application (JORA) and provided JORA training to 500 officers from Frontex and MS/SAC.</p> <p>Training Unit (TRU) organised 207 (223) training activities with the participation of 2 980 (3 490) attendees (training experts, trainees, etc.) in the framework of 3 programmes comprising 19 (20) projects; a total of 13 300 (12 947) man-days were invested by the stakeholders in training activities. Within career path education for border guard officers, Frontex finalised the development of a Sectoral Qualifications Framework (SQF) for Border Guarding. This is an overarching framework for border guard education and training, with special emphasis on integration of the principles of fundamental rights. The SQF follows the educational standards set on EU level in the Copenhagen and Bologna processes.</p> <p>Pooled Resources Unit (PRU) - response capacity was considerably strengthened by setting up and managing newly established pools of European Border Guard Teams (EBGT) and Technical Equipment that are to be deployed during joint operations, pilot projects and rapid interventions. PRU implemented seven (six) projects designed to improve the overall effectiveness of Frontex operations. Within the framework of its projects, PRU organized 11 events with the participation of 295 attendees from the MS. A total of approximately 551 man-days were invested by</p>

stakeholders in the unit's activities

Research & Development Unit (RDU) organised 39 (34) meetings for 1 020 participants from MS, SAC, EU institutions, intergovernmental and international organizations, academies, research institutes and industry. Staff participated in approximately 100 (130) internal and external events. RDU produced various documents, reports and studies: two good practices, three guidelines, one study, one cost-benefit analysis, one technical report, and delivered them to the stakeholders.

Partnership and cooperation with third countries: During 2012, two (two) Working Arrangements (WA) were concluded with the Immigration Service of Nigeria and with the National Security Council of Armenia, increasing the overall number of WAs to 18 (16). A Memorandum of Understanding was signed with the Ministry of Foreign Affairs of the Republic of Turkey. Within the framework of the respective WAs, operational cooperation on border security/management related matters between the Agency and the third country authorities was further enhanced, with a view to progressively developing mutually beneficial and sustainable partnerships. Tangible results have been achieved particularly in the field of information sharing, training and joint operational activities.

Cooperation with EU Bodies and international organization: In 2012, two Working Arrangements (WA) were signed with the United Nations Office on Drugs and Crime (UNODC) and the European Asylum Support Office (EASO) increasing the overall number to 12 (10). Regarding Inter-Agency cooperation, during 2012 Frontex chaired the EU JHA Agencies Contact Group, aiming at fostering cooperation and creating synergies among the different JHA Agencies. In this framework, Frontex organized several cluster meetings, an experts' conference on Data Protection and the annual meeting of the Heads of JHA meeting. Different activities implementing the Agencies' Joint Statement on Trafficking in Human Beings were also put into practice.

Source: Information supplied by the Agency.