



Council of the
European Union

Brussels, 5 December 2014
(OR. en)

16465/14

FIN 937

COVER NOTE

From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	23 October 2014
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 2013 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 2013.

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 2013 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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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 2013

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 2007/2004². 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)³.

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 statements⁴ and the reports on the implementation of the budget⁵ for the financial year ended 31 December 2013, and

² OJ L 349, 25.11.2004, p. 1.

³ ***Annex II*** summarises the Agency's competences and activities. It is presented for information purposes.

⁴ 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. 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 transactions⁶:

- (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 officer⁷; 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.
- (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

⁵ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁶ Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

⁷ 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.

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 Council⁸ 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 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

⁸ Article 107 of Regulation (EU) No 1271/2013.

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 2013 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 qualified opinion on the legality and regularity of the transactions underlying the accounts

9. In 2013, expenditure related to grants amounted to 32 million euro, representing 39 % of total expenditure. In order to verify the expenditure claimed by cooperating countries, the Agency performed reasonableness checks prior to payment for all types of financed operations (joint return operations and joint land/sea/air operations). Documentation supporting the cooperating countries' entitlements has usually been requested for joint return operations, but not for joint land/sea/air operations implemented under grant agreements signed before June 2013.

10. Transactions in relation to joint land/sea/air operations represented 23 million euro or 28 % of total 2013 expenditure. Although a more comprehensive system of ex ante verifications was introduced for grant agreements signed since June 2013, the majority of 2013 transactions resulted from grant agreements signed before that date.

11. The Agency carries out ex post controls on grants which cover transactions from previous years. None of the 2013 grant transactions was subject to this cycle of ex post controls.

12. In the absence of sufficient appropriate audit evidence on the effectiveness of ex ante verifications and ex post verifications on 2013 transactions there is insufficient assurance as to the legality and regularity of the 2013 grant transactions related to joint land/sea/air operations.

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

13. In the Court's opinion, except for the matters described in paragraphs 9 to 12, the transactions underlying the annual accounts of the Agency for the period from 1 January to 31 December 2013 are legal and regular in all material respects.

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

COMMENTS ON THE RELIABILITY OF THE ACCOUNTS

15. 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.

COMMENTS ON BUDGETARY MANAGEMENT

16. Some 32 million euro or 35 % of committed 2013 appropriations were carried over to 2014. Although the multiannual nature of the Agency's operations and the heightened risk of unforeseen events represent a particular challenge in respect of annual budget planning and implementation, there is still scope for improved budget monitoring to help reduce the level of carry-overs.

17. The carry-overs include global commitments of 5,2 million euro, which are the left-over balance of an 8,2 million euro additional subsidy made available by the budgetary authorities towards the end of 2013 to deal with unforeseen and

urgent operational needs. Although the global commitment was made to cover the related operations in 2014, the Agency's financial regulation does not provide a clear basis for such carry-overs.

18. In 2013, 29 budgetary transfers amounting to 12,2 million euro were made. This is partly due to the fact that funds needed for operations had been transferred from other budget lines until the additional subsidies were made available.

OTHER COMMENTS

19. 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.

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

20. 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 Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 8 July 2014.

For the Court of Auditors

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)
2011	As in the previous year, the level of carry-overs is excessive and at odds with the budgetary principle of annuality.	Ongoing
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 .	Ongoing
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	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.	Completed

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	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.	Completed
2012	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.	Completed
2012	Weaknesses were still noted in the system for reconciling suppliers' statements with the corresponding records at the Agency.	Ongoing
2012	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.	Ongoing

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	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.	Completed
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

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:</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 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 (MS) + two representatives of the Commission + one representative per Schengen Associated Country (SAC).</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;

	<p>(c) to adopt the Agency's Programme of Work;</p> <p>(d) to establish procedures for taking decisions related to the operational tasks of the Agency;</p> <p>(e) to carry out its functions relating to the Agency's budget;</p> <p>(f) to exercise disciplinary authority over the (Deputy) Executive Director;</p> <p>(g) to establish its Rules of Procedure;</p> <p>(h) to establish the organisational structure of the Agency and adopt the Agency's staff policy;</p> <p>(i) to 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 2013 (2012)</p>	<p>Final Budget</p> <p>93,95 (89,6) million euro</p> <p>Union subsidy 87,7 (84) million euro</p> <p>Staff as at 31 December 2013</p> <p><i>Establishment plan</i></p> <p>Temporary staff planned: 153 (143) - Temporary staff posts occupied: 142 (137)</p> <p><i>Other posts</i></p> <p>Contract staff planned: 87 (87) - Contract staff posts occupied: 82 (84)</p> <p>Seconded National Experts planned: 78 (83) - Seconded National Experts posts occupied: 76 (82)</p> <p>Total staff posts: 318 (313) - of which occupied: 300 (303)</p> <p>Assigned to the following tasks: operational 227 (216) – administrative 91 (87)</p>
<p>Products and services in 2013 (2012)</p>	<p>The Risk Analysis Unit (RAU) produced 79 (80) strategic reports including 6 regular annual reports, 1 annual report of new type, 3 tailored reports, 12 quarterly reports with situational updates and analyses for EU MSs and selected neighbouring regions, 57 strategic monitoring reports; 510 (482) analytical products supporting the planning, implementation and evaluation of Joint Operations; 81 (54) reports/contributions of other types, including briefings for the Agency's Management, the EU Commission and others; published 7 (7) strategic reports for the general public via the Agency website. The updated Common Integrated Risk Analysis Model (CIRAM v 2.0) was made available to MSs in selected EU languages. 4 (4) regular Frontex Risk Analysis Network meetings, 5 (5) meetings of the specialist network with MSs on EU Document Fraud, 4 (2) Tactical Risk Analysis meetings, 10 (6) regional expert meetings/conferences, and 1 (3) regional technical workshop were organised. In line with the tasks of the Risk Analysis Unit within EUROSUR, in 2013 the following were undertaken (and MSs informed/consulted as appropriate within the framework of the Analysis Layer User Group, which met five times in 2013): within the CPIP/ESP analysis layer - delivery of content (317 (281) products) and basic services, completion of design for the analysis tools, development of the initial impact levels methodology and long term planning for its implementation.</p> <p>The Joint Operations Unit (JOU) organised 19 (17) joint operations, 10 (12) pilot projects and projects, 8 (10) conferences and 64 (25) meetings with external stakeholders including preparatory/planning/evaluation meetings and workshops. Furthermore, during 39 (39) Frontex coordinated joint return operations 2 152 (2 110) third country nationals were returned. The total number of operational days accumulated in all joint operations amounted</p>

to 2 832 (3 503); the number of operational man-days accumulated came to 89 548 (117 114).

The **Frontex Situation Center (FSC)** provided 2 226 (2 169) situational reports, 43 (31) serious incident reports, 44 (27) flash news reports and 10 (13) mission awareness reports, while uploading 20 084 (2 130) artefacts to EUROSUR and 107 (145) document alerts in the FOSS portal. 237 Daily Newsletters were delivered to approx. 500 (241) subscribers; 795 (308) media contributions were made to daily situational reports and operational briefings. The FSC, as a single point of contact, managed over 25 000 (24 000) correspondence items; it consolidated the Frontex-One-Stop-Shop (FOSS) as the main information exchange platform between Frontex and external partners, with 6 238 (6 000) documents uploaded and almost 4 500 users at the end of 2013. FSC received around 29 000 (30 000) incidents through the Joint Operations Reporting Application (JORA) and provided JORA training to 200 (500) officers from Frontex and MSs/SACs.

The **Pooled Resources Unit (PRU)** organised 9 (11) events with the participation of 252 (295) attendees from the MSs. Over 1 250 man-days (551) were invested by stakeholders in the unit's activities. The focus of attention for PRU in 2013 was the development of the European Border Guards Teams (EBGT) and Technical Equipment (TE) pools, creating a suitable software application to manage them and, in addition, developing the Seconded Guest Officers mechanism. Attention was also given to the acquisition of aerial means for border surveillance. In particular, PRU organised and managed the Annual Bilateral Talks between Frontex and the MSs, as well as talks with 3rd countries, in order to agree the national contributions to the pools. To this end, PRU implemented 7 (7) projects designed to improve the overall effectiveness of Frontex operations.

In the framework of 3 (3) programmes comprising 17 (19) projects, the **Training Unit (TRU)** organised 205 (207) activities with the participation of 3 253 (2 980) attendees (training experts, trainees, etc.). In total, 12 460 (13 300) man-days were invested by the stakeholders in training activities. Under the first programme, the Sectoral Qualifications Framework for Border Guarding (SQF) was launched and work on the implementation of the Common Core Curricula (CCC) and the development of the Joint Master Study Programme continued. For the further training and specialisation of Border Guards, to which the second programme is dedicated, TRU finalised the development of the Fundamental Rights Trainers' Manual for border guards and continued the development and implementation of specialised training courses for border guards. Induction training courses were organised for members of the EBGT and a new pre-deployment briefing concept was developed in order to ensure that all guest officers participating in Frontex coordinated joint operations receive adequate training prior to their deployment. Thirdly, for networking and IT-related issues, TRU implemented new administrative tools for online registration for events, sharing documents and planning activities. New eLearning components are under development ensuring the delivery of parts of Frontex training in a modern, cost-effective way.

The **Research and Development Unit (RDU)** organised 8 projects (including EUROSUR) covering 40 activities with the participation of above 950 (1 020) attendees (participants from MSs, SACs, EU institutions, intergovernmental and international organisations, academies, research institutes and industry representatives). In total, 2 000 man-days were invested by the stakeholders in these activities. RDU continued its efforts to identify and develop best practice guidelines in the area of Automated Border Control, Border Checks at land border crossing points, the roll-out and implementation of the Visa Information System (VIS) by MSs and land border surveillance. In order to improve the capabilities to detect document fraud in the first line, several events were organised aiming at assessing performance of both machines and human experts. In 2013, RDU undertook activities to boost the MSs' awareness concerning new developments in the field of sensors, platforms and advanced system solutions while also facilitating the deployment (try-out) of new technologies for border surveillance in MSs and in the context of Joint Operations coordinated by Frontex. Also, an end-user informal Advisory Group on Border Security Research consisting of representatives of 22 EU MSs and SACs was set-up. This Group prepared a first draft of a report on Border Security Challenges and Research Topics for the mid- and long term perspective with the goal of providing input to the European Commission for the research activities to be organised and financed under the new EU research funding framework Horizon 2020.

- **Partnership and cooperation with third countries:** During 2013, 1 Working Arrangement (WA) was concluded with the competent authorities of Azerbaijan, increasing the overall number of WAs to 19 (18). 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 organisations: During 2013 within the framework of the respective Agreements already concluded (11 WA, 2 Cooperation Arrangements, 2 Memoranda of Understanding (MoU), 1 Administrative Agreement and 1 Service Level Agreement) cooperation with EU bodies and international organisations was further enhanced. 1 MoU was signed with Eurojust. Within the area of 'Trafficking in Human Beings', Frontex continued the 'train the trainers' programme and organised 3 sessions to tutor MS trainers.

The conference on the European System of Border Guards was organised, involving numerous stakeholders of the JHA area. Preparatory work has been done in order to facilitate the implementation of the first technical assistance project led by Frontex within the framework of the Eastern Partnership, involving extensive cooperation with IOM, UNHCR and ICMPD and WCO. Contacts were established with the Joint European Research Centre to find synergies in projects in the field of security.

Source: Annex supplied by the Agency.
