RESOLUTION (EU) 2023/326 OF THE EUROPEAN PARLIAMENT

of 18 October 2022

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency (Frontex) for the financial year 2020

THE EUROPEAN PARLIAMENT,

— having regard to its decision on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2020,

— having regard to the OLAF report finalised on 15 February 2022, and made available in July 2022 to Members of the Committee on Civil Liberties, Justice and Home Affairs and of the Committee on Budgetary Control,

— having regard to Rule 100 of and Annex V to its Rules of Procedure,

— having regard to the opinion of the Committee on Civil Liberties, Justice and Home Affairs,

— having regard to the second report of the Committee on Budgetary Control (A9-0235/2022),

A. whereas the European Ombudsman has held a series of inquiries regarding the European Border and Coast Guard Agency's (the 'Agency') compliance with its fundamental rights obligations and accountability in relation to its enhanced responsibilities in the cases OI/5/2020/MHZ and OI/4/2021/MHZ and made a series of recommendations to the Agency;

1. Notes the resignation of the executive director of the Agency and his former head of cabinet on 28 April 2022 following the release of the OLAF report and following numerous reports and journalistic investigations exposing problems particularly in the field of upholding human rights; regrets the absence of disciplinary proceedings against them despite the recommendations of OLAF in this regard; welcomes the appointment by the management board of an executive director *ad interim* as of 1 July 2022; takes note of the vacancy notice for a new executive director of the Agency published on 21 June 2022; calls on the management board of the Agency to appoint an executive director as soon as possible; invites the management board, before advancing this recruitment procedure, to commit to increased transparency and accountability to Parliament and to confirm that commitment in writing; highlights that the new executive director should commit to ensuring the full respect of fundamental rights in all activities of the Agency as well as to having high-level administrative and management skills; invites the management board and the Commission to actively engage with the Parliament, in line with Parliament's prerogatives; recalls that maximum possible public access to OLAF final reports concerning the Agency, in an appropriate format for public use, as well as the full implementation of the recommendations by Parliament, and in particular by its Frontex Scrutiny Working Group, should form part of the commitment of the management board to transparency and accountability;

2. Welcomes the briefing note on 'Actions taken by Frontex management during transition period' that was sent to the Committee on Budgetary Control on 27 June 2022 that informs the discharge authority on the measures taken by the interim management of the Agency, in anticipation of the appointment of a new executive director; calls on the interim management and on the to be appointed executive director to continue with pro-actively informing the discharge authority on its response to its observations and recommendations;

3. Takes note of the commitment that has been undertaken for the preparation of an action plan on the remedial actions presented in this document under the lead of the acting executive director; welcomes the acknowledgement by the acting executive director of the existing problems of the Agency, acknowledges the commitment of the acting executive director to ensuring that the Agency fully implements its mandate and operates in full respect of the rule of law and appreciates the positive change with regard to respecting fundamental rights and to changing the organisational culture of the Agency, including to making sure people are not afraid to report possible wrongdoings

and that there is proper follow-up thereof, to establishing a dialogue with the members of staff, to encouraging the delegation of powers and to building relationships of trust with other institutions and the public; further welcomes also her commitment to transparency; expects the above acknowledgements and commitments to be reflected in an action plan to be submitted to the Parliament, together with regular updates on its implementation; considers the progress in implementing the action plan as an important condition in the Agency's discharge process;

4. Calls on the executive management of the Agency to continue with the implementation of the Agency's mandate; reiterates that clarity, transparency, open dialogue and communication both internally and externally, the delegation of responsibilities and tasks, as well as abiding by high standards of ethics and compliance with fundamental rights are essential for changing the organisational culture within the Agency, ensuring good governance and improving its functioning towards the full implementation of its mandate, as established by Regulation (EU) 2019/1896 of the European Parliament and of the Council [1]; recalls that this is a collective effort which requires the sincere cooperation of the executive management, the Agency's management board and the Commission; reiterates, in this context, its call on the Commission to provide clear guidelines for the interpretation and implementation of the Agency's mandate, particularly with regard to border control aspects; reiterates Parliament's support within this process; recalls remarks made in the meeting of the Committee on Budgetary Control on 13 July 2022 that the fast growing pace imposed by the new mandate of the Agency caused difficulties that were, with hindsight, underestimated, leading to delays in recruitment in particular; notes that the current correction coefficient causes serious difficulties in attracting qualified and diversified staff and calls for a revision of that correction coefficient taking into account the reality of the cost of living in order to improve geographical balance within the Agency;

5. Highlights the increased role that the Agency has had to play in the context of the Russian invasion of Ukraine; welcomes in this regard the signature of the Agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova [2] and the assistance given to Chisinau in managing migratory flows;

Budgetary and financial management

6. Recalls the Court of Auditors (the 'Court') observation on the carry-over of a provisional budgetary commitment of EUR 18 000 000 for the preparation of field deployments in 2021 for which a legal commitment was lacking; notes the remedial measures taken by the Agency, which focus on clarifying the regulatory framework, better involving the Agency's financial service and training staff, however without release of the amount concerned to the Union budget; considers that the provisional budgetary commitment should have been cancelled, instead of being carried-over; calls on the Court to evaluate the decision by the Agency not to cancel the commitment;

7. Reiterates its concern that the executive director of the Agency used, in violation of the Financial Regulation, a private plane on 4 March 2020, costing the Agency EUR 8 500;

Conditions formulated for the 2019 discharge

8. Takes note of the report of the Agency on the implementation of the seven conditions formulated for the 2019 discharge of the Agency; regrets nevertheless that only five of the seven conditions are reported as being implemented by the Agency; regrets to note that several conditions still have not been fully met;

[1] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

[2] OJ L 91, 18.3.2022, p. 4.

9. Regrets that one of the conditions not yet met is the recruitment of 40 fundamental rights monitors (FRMs), as on 1 June 2022, 31 FRMs were in service, with three more to take office on 1 September 2022; highlights that according to Article 110(6) of Regulation (EU) 2019/1896, the Agency had the obligation to recruit at least 40 FRMs by 5 December 2020; underlines that the Frontex Scrutiny Working Group has established that the recruitment of FRMs was unnecessarily delayed by the Agency's previous executive director, while the Agency explains that the delay was due to lengthy recruitment procedures in Union institutions; recognises the recent progress made by the Agency in recruitment and welcomes the increase in the number of FRMs from 40 to 46; highlights that Regulation (EU) 2019/1896 provides the framework for further increases in the number of FRMs as the Agency expands, with the initial 40 FRMs being the threshold and not the ceiling; reiterates its calls on the Agency to conduct all future recruitment and the appointments of FRMs at AD level; acknowledges the Agency's commitment to recruit the remaining FRMs as quickly as possible; notes that the Fundamental Rights Officer (FRO) has expressed to be content with the procedure;

10. Regrets that the Agency has not evaluated its activities in Greece, even though reports by institutions of Member States, the Council of Europe and the United Nations show that the Agency was carrying out joint border surveillance operations in sections where simultaneously, fundamental rights violations were taking place; regrets that the discharge authority has addressed this matter in its first 2020 discharge report on the Agency, but that the Agency has not provided any substantial information on how it plans to follow-up on this; emphasises the urgency of this matter in light of the developments in Greece; urges the Agency to conduct a thorough evaluation as soon as possible and keep the discharge authority updated;

11. Regrets that the Agency has not yet revised the standard operating procedure for Serious Incident Reports; notes that this was initially planned for the second quarter of 2022 but that this has, according to the Agency due to the war in Ukraine, been delayed to the third quarter of 2022;

12. Regrets that another condition not yet met is the call on the Agency to suspend its support-related activities in Hungary, not acting in accordance with Article 46 of Regulation (EU) 2019/1896 and in line with the conclusions of the Court of Justice of the European Union (Court of Justice) on infringement procedures against Hungary; notes that the Agency argues that, instead of suspending the support-related activities, it takes additional safeguarding measures to get assurance from the Hungarian authorities that fundamental rights have been respected, and monitors this closely which is supported by the argument expressed by the Commission in the Committee on Budgetary Control meeting of 13 July 2022 that a presence of the Agency in Hungary allows the Agency to monitor and control possible violations of fundamental rights against refugees or asylum seekers by Hungarian authorities at the border; underlines that this presence should be limited to monitoring activities and highlights that the Agency must refrain from participating in any operations governed by provisions of national legislation that had been deemed incompatible with Union law by the Court of Justice until all such provisions are in line with the *acquis communautaire*; notes that the Agency's FRO stresses that the continuous support of the Agency in Hungary can implicate it in the violation of the non-refoulement principle, and recommends that the Agency suspends its support-related activities in Hungary, and builds in additional safeguards if the Agency would nonetheless continue to monitor these operations, especially in the context of the overall rule of law situation in Hungary; reiterates, in this context, its call upon the Agency to suspend all other activities in Hungary; notes nevertheless the progress made by the Agency through the adoption of the detailed Standard Operating Procedures for Article 46, in the form of an executive director Decision in January 2022; highlights the importance of implementing those procedures abiding by the highest standards of respecting fundamental rights;

13. Concludes that the Agency has implemented most of the conditions formulated by the discharge authority in a satisfactory manner, but that the full implementation of all of those conditions is still not achieved and that important conditions are outstanding; calls on the Agency to promptly act and comply with the remaining conditions; stresses that meeting those conditions is a crucial aspect considered by the discharge authority in order to grant discharge for the financial year 2020;

14. Reiterates, once again, that the dramatic increase in competences and budget which the Agency has seen in recent years must be accompanied by a corresponding increase in accountability and transparency; stresses that the granting of discharge in respect of the implementation of the Agency's budget is conditional on such accountability and transparency, and especially on the Agency's commitment to Union law;

The European Anti-Fraud Office (OLAF) report

15. Notes that OLAF and the Agency's management board have made an anonymised version of the OLAF final report on the Agency's activities available; notes that this anonymised version has only been made available to the Members of the Committee on Budgetary Control and the Committee on Civil Liberties, Justice and Home Affairs; recalls that having access to that report was deemed necessary by the discharge authority in order to take a fully informed decision on the 2020 discharge; regrets the long delay to grant access to that report that hampered Parliaments' scrutiny prerogative; points, moreover, out that the findings of the OLAF report are a matter of public interest; notes that it has by now been clarified that OLAF is the report's owner and that all pending actions following up on the report's findings have been closed;

16. Notes that the serious concerns raised on the basis of the partial presentation of findings from the final report in the Committee on Budgetary Control meeting of 28 February 2022 are confirmed in the final report; is deeply concerned about the findings of the investigation and by the magnitude of the serious misconduct and other irregularities identified by OLAF, as well as the level at which they have been committed; expresses, in this context, its utter dismay in the behaviour and actions of the persons concerned described in the findings and the lack of accountability; notes, from the statements of the Chair of the Agency's management board in the Committee on Budgetary Control meeting of 13 July 2022, that actions have been taken in follow-up to OLAF's conclusions in the final report; considers, in this regard, that serious remedial actions should be taken and that the resolution of the problems discovered by OLAF will take time and will require strong engagement especially by the new expected executive director; reiterates its call upon the Agency to present a detailed road map on how it intends to fulfil the outstanding concerns, together with a clear and detailed timeframe for these actions; recalls that, during the meeting of the Committee on Budgetary Control on 13 July 2022, OLAF reconfirmed that the final report does not contain any financial implications or indications of violations of sound financial management; recalls that the investigation focused on the allegations of misconduct and non-compliance with procedures by senior management; highlights, however, that the conclusions presented in the OLAF final report on the investigation conducted with respect to the activities of the Agency, under the former executive leadership, are extremely serious and relevant for the discharge procedure for the year 2020; recalls that two additional OLAF final reports are expected to be presented in 2022 in relation to the Agency; calls for the immediate access of Members the Parliament to those final reports once finalised, as well as of all executive staff of the Agency that need to access those reports to ensure a correct implementation of the Agency's budget in the future;

Change in the Agency

17. Acknowledges and welcomes the positive change in management style introduced by the acting executive director who committed to change the organisational culture of the Agency, promoting a team-based approach with consultative and inclusive leadership, where people are not afraid to speak up about possible wrongdoings, with the full support of the management board and the FRO; welcomes in particular the commitment of the acting executive director to transparency and expects decisive steps to be taken in order to fulfil those commitments; welcomes the positive role of the new Chair of the management board and the important contribution by the FRO, which has improved and intensified collaboration and communication in the Agency; notes as well the comments from the Chair of the management board and the Commission's Deputy Director-General for Migration and Home Affairs that the report shows the failings of the individuals concerned, and that there is no structural issue; reiterates that OLAF's investigation was limited to misconduct and non-compliance with procedures by individuals and stresses that a deeper analysis is needed for the discharge authority to assess the exact nature of the failings identified in order to ensure there are no structural problems;

(a) stresses firstly, that the checks and balances have to be thoroughly analysed since the misconduct by individuals was allowed to continue too long;

(b) stresses secondly, that media reports on OLAF findings about Member States pressuring the Agency's coast guards, and concealing pushbacks, present challenges for the Agency beyond the past leadership;

(c) is concerned about the expressed intentions of several staff to quit working for the Agency because of the organisational culture and overall working environment, and expects the acting executive director to act immediately in addressing these issues;

(d) is also concerned about the manner in which the Agency continues to apply Article 46 of Regulation (EU) 2019/1896, as is indicated by the acting executive director's decision to increase presence in the Aegean Sea despite media reports of OLAF's findings pointing to persistent fundamental rights violations in this area;

18. Recognises that all the problems that the Agency is confronted with are legacy issues and that the current and future leadership of the Agency need to find a way to deal with those issues in order to help the Agency move forward; emphasises that if the Agency's current leadership recognises that, and aims to address them, the Agency has the discharge authority's full support; stresses that the scope of both the Commission and the Agency's management board should be to address all challenges, in order for a new and fresh start to be made, and prevent that the Agency continues to fall short in respecting fundamental rights; calls, therefore, on the Commission and the Agency's management board to conduct a thorough analysis of all these matters and report on them to the discharge authority; underlines that the future discharge cycles will be seriously considering all the aspects mentioned above;

19. Urges for the Agency's executive management, including the acting executive director, the deputy executive directors and the FRO, to be granted access to and to read the content of the OLAF final report in light of its crucial importance for ensuring a correct implementation of the Agency's budget and regulation in the future; calls on the Agency's management board and executive management to carefully re-assess the content of the OLAF final report and to address the issues it raises; calls in particular on the Agency's executive management to review the conclusions on incidents examined by the management board in relation to their compliance with fundamental rights, in light of the reported concealing of information to the management board as reported by the media, and on the sharing of information within the Agency and between the Agency and the Parliament; urges the Agency and the Commission to acknowledge and address any structural issues related to both the Agency's direct operations as well as to oversight, and to ensure that similar situations never happen again; calls on the Commission and the Agency to inform the discharge authority about how these issues will be addressed;

The Court of Auditors' Special Report 08/2021

20. Notes that the Agency has reported implementation of Recommendation 5 of the Court of Auditors' Special Report 08/2021 (deadline end of 2021), but is postponing the deadline for implementation of Recommendation 1, regarding the improvement of the information exchange framework and of the European situational picture, by more than a year from mid-2022 to the third and the fourth quarters of 2023; notes further the ongoing/partial implementation of Recommendations 2, 3 and 4 and encourages the Agency to respect the deadline for their implementation by the end of 2022;

Transparency

21. Recalls the European Ombudsman's decision in its own initiative enquiry on fundamental rights obligations; notes the Ombudsman's conclusion that the Agency should ensure a more proactive approach to transparency, including by publishing documents that are needed to understand the respective roles and responsibilities of the actors involved in its operations; notes that the Agency cannot share information of a tactical nature that could be abused for the purpose of human trafficking or other illegal activities; calls on the Agency to implement the Ombudsman's recommendations; suggests that the Agency develops and implements a new code of conduct ensuring full transparency and good management and that the Agency keeps the discharge authority informed about the progress made in that regard;

22. Notes the adoption of special rules to guarantee the independence of the fundamental rights officer as well as the drawing up of a fundamental rights strategy and action plan;

23. Notes the shared responsibilities that the Agency and the Member States have in the fulfilment of fundamental rights obligations; urges the Agency and Member States to further develop structures of cooperation, information-sharing and exchange of best practices;

24. Takes note of the outcome of the extraordinary meeting of the Agency's management board that was held on 27 July 2022; welcomes the positive actions taken by the management board in order to improve the functioning of the Agency's internal administrative structure and the updated Frontex External Communication Strategy; shares with the management board the concerns about the increasing level of violence at the external borders; expects the Agency to implement the recommendations of the fundamental rights officer as set out in his 2021 annual report;

Data Protection

25. Notes with deep concern the media reports from July 2022 indicating that the Agency pursued an expansion of intrusive data collection from migrants under the PeDRA programme; expresses further concern over reports that the Data Protection Officer repeatedly warned that this data expansion cannot be achieved without breaching the Union law and recommended the consultation of the European Data Protection Supervisor (EDPS); expresses also concern over reports concluding that the Agency had initially ignored this advice and went ahead with that data expansion; welcomes, based on information provided by the Agency, the fact that upon receiving the EDPS opinions on data processing rules, the Agency has proceeded to redraft the management board decisions with the Agency's Data Protection Officer in order to ensure full compliance with Union data protection rules, stating new rules would diligently follow the EDPS observations; requests the Agency to report to the discharge authority on the current status of this matter and keep the discharge authority informed about the future steps in the development of this programme;

Harassment cases

26. Recalls that the Agency reported to have been notified of 17 cases of alleged sexual harassment in 2020; notes from the Agency's follow-up to the first 2020 discharge report that two of those 17 cases were opened as informal procedures under the Agency's manual of procedures for confidential counsellors; deplores the fact that the other 15 cases were closed without further follow-up; highlights that a particular focus should be placed on identifying, reporting and combatting sexual harassment, especially in light of whistleblower reporting of such alleged cases; welcomes the statements of the acting executive director in the meeting of the Committee on Budgetary Control that the Agency remains vigilant in this area and that additional measures have been taken to make sure all cases are properly treated; welcomes the expressed commitment of the acting executive director to remain vigilant and take additional measures in this field; expresses shock and deep concern about the case of suicide of a member of staff, related to alleged practices of sexual harassment, mentioned in discussions between Agency officials and Members participating in the mission of the Committee on Budgetary Control to Poland in July 2022, and welcomes the reopening of this case by the new executive leadership; calls on the executive director to conduct a full and detailed investigation about this particularly severe and worrying case, to keep the discharge authority informed about the results of this investigation and to fully cooperate with criminal investigation authorities in the process; calls on the executive director to conduct a thorough investigation into the implementation of existing procedures against sexual harassment, to fully cooperate with all relevant authorities and to report back to the discharge authority about the findings and to present a detailed action plan with measures ensuring zero tolerance towards sexual harassment in both its administrative and operational activities; requests the Agency to fully cooperate with all relevant authorities in the process and keep the discharge authority informed about the results;

27. Commends the staff of the Agency, that has been through a very difficult period, facing challenges about which the acting executive director made statements in the meeting of the Committee on Civil Liberties, Justice and Home Affairs of 30 May 2022; points in particular towards the treatment of the former FRO whose work has been hampered over the years by the former executive management of the Agency, as reported by the media; calls on the

executive management of the Agency and on the management board to continue making the Agency a safe place to work that encourages people to speak up; is encouraged by the statements that many members of staff reported wrongdoings they witnessed to their superiors and calls on the Agency to make sure that all signals concerning professional misconduct are taken seriously and properly followed-up; insists on the need to have compulsory training on social harassment for management and for all staff;

28. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 4 May 2022 ([3]) on the performance, financial management and control of the agencies.

([3]) OJ L 258, 5.10.2022, p. 425.