RESOLUTION (EU) 2020/1927 OF THE EUROPEAN PARLIAMENT

of 14 May 2020

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) (before 11 December 2018: European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice) for the financial year 2018

THE EUROPEAN PARLIAMENT,

— having regard to its decision on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2018,

— 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 report of the Committee on Budgetary Control (A9-0053/2020),

A. whereas, according to its statement of revenue and expenditure ([1]), the final budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) (the 'Agency') for the financial year 2018 was EUR 205 657 227, representing a significant increase of 32 % compared to 2017; whereas the increase was related to additional tasks and to the strengthening of the Agency's mandate, whereas the budget of the Agency derives mainly from the Union budget ([2]);

B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the Agency for the financial year 2018 (the 'Court's report'), states that it has obtained reasonable assurances that the Agency's annual accounts are reliable and that the underlying transactions are legal and regular;

Budget and financial management

1. Notes that budget-monitoring efforts during the financial year 2018 resulted in a budget implementation rate of 75,18 %; observes that the low implementation rate is due to outstanding commitments, mainly related to operational expenditure, which is subject to adoption of their legal basis; notes furthermore that the payment appropriations execution rate was 94,08 %, representing an increase of 2,55 % compared to 2017;

2. Notes that, having suffered considerable delays, the construction of the Agency's new premises in Strasbourg had a 88,17 % completion rate, according to the latest accepted works progress report from April 2018, and that the Agency protects its financial interests with a EUR 1,2 million performance guarantee; notes that the Agency registered statements of defence with the Court of First Instance in Strasburg on 15 May 2018 and on 15 February 2019, and also that the decision of the Court of First Instance has not yet been issued; notes furthermore that talks aimed at reaching an out-of-court settlement were restarted in April 2019; calls on the Agency to inform the discharge authority without delay in the event that an out-of-court settlement is reached or, alternatively, as soon as the judgement of the Court of First Instance is issued;

3. Notes with concern that, according to the Court's report, the Agency's budget implementation rate was less than planned because of the late adoption or entry into force of legal acts (a matter which is outside the Agency's control), affecting both the evolution and the development of existing and new systems; notes that, in response, the Agency returned to the Commission EUR 74 000 000 in payment appropriations and carried forward EUR 49 000 000 of commitment appropriations, thereby calling into question the planning assumptions contained in the legislative

([1]) OJ C 120, 29.3.2019, p. 161.
([2]) OJ C 120, 29.3.2019, p. 163.

financial statements prepared by the Commission; highlights that the inscription of budgetary resources in the Agency's voted budget in respect of legal acts not yet adopted introduces significant risks to sound financial management; calls on the Commission, together with the Agency, to improve the alignment of budgetary planning with the timing of adoption or entry into force of legal acts;

Performance

4. Welcomes the Agency's sustained cooperation with other Union agencies and the strengthened mandate given by the entry into force of Regulation (EU) 2018/1726 ([3]) in December 2018, which bring new opportunities to reinforce cooperation, to deliver proactive advice and additional support and assistance to the Commission, Member States and other justice and home affairs agencies, and to work more closely with international organisations;

5. Observes the possible development of a centralised router for the exchange of Advance Passenger Information and Passenger Name Records information among Member States; notes that the use of such information for checks against large-scale IT systems has been proposed as an element of interoperability of future interest; further notes the related feasibility study carried out by the Commission between April 2018 and January 2019;

6. Notes, in light of the observations and comments made in 2018 by the discharge authority, that the Agency manages three separate, non-integrated, large-scale IT systems in accordance with the respective legal instruments governing those systems, and that the different development timelines and constraints stemming from these legal frameworks have caused the IT systems to be built separately and in a non-integrated way; notes that the Agency recognises that this approach is neither sustainable nor efficient from an operational or budgetary perspective; welcomes the fact that the Agency has begun an initiative to streamline system architecture and design with the Commission's interoperability initiative as the main driver; encourages the Agency to further explore the possibilities of establishing common procedures and shared systems;

7. Recalls (particularly in view of the fact that this Agency deals with the interoperability of sensitive data) the importance of data management and processing services and the need to internalise these services; highlights in this regard the importance of the protection and confidentiality of such data, and the potential risks that the current external IT services management system involves;

8. Welcomes the new organisational structure put in place by the Agency to reinforce the capabilities needed for operational planning and associated procurement, including the provision of legal and technical input; calls, however, for further efforts to be made to ensure compliance with procurement rules and for more accurate reporting; notes the Court's observation that the Agency may consider using the methodology of the International Function Point Users Group, which is a standard methodology for determining the price of development activities;

9. Welcomes the progress made regarding the Court's recommendations from previous years; notes, however, that the Agency still does not publish vacancy notices on the website of the European Personnel Selection Office (EPSO); calls, therefore, on the Agency to take steps to ensure the publication of vacancies through the EPSO website;

10. Notes that, in relation to e-procurement procedures, the Agency has introduced e-invoicing and e-tendering for certain procedures, but notes that the introduction of e-submission remains ongoing;

11. Stresses the importance of providing gender-based data in order to be able to analyse the evolution of the gender balance within the staff of the Agency and in its governing bodies.

Staff policy

12. Notes with concern that on 31 December 2018 the establishment plan was only 89,71 % executed, with 122 temporary agents appointed out of 136 temporary agents authorised under the Union budget (compared with 131 authorised posts in 2017); notes that, in addition, 31 contract agents and 9 seconded national experts worked for the Agency in 2018; welcomes the Agency's reply that this execution rate can be attributed to the late adoption of legal acts and urges the Agency to report on future progress;

13. Notes with concern the lack of gender balance on the management board (40 men and 6 women);

([3]) Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

14. Notes in light of comments and observations made in 2018 by the discharge authority that the Agency acknowledges the significant risks for the continuity of its operations of having a small number of staff; highlights the fact that the Agency has requested additional staff in its programming documents; acknowledges that such staff increase is subject to approval by Parliament and Council, and that the Agency is trying to mitigate the risk through reprioritisation of tasks and speedy recruitment; points out that the current practice of recruiting the staff necessary for the implementation of a legal act only once such legal act is in force implies reliance on existing staff to conduct preparatory measures for the implementation of such legal act, stretching the Agency's core team capabilities and, therefore, carrying the risk of affecting the Agency's performance of its daily activities; calls on the Commission to allow for the front-loading of some of the staff foreseen in a proposal for a legal act in order to allow the Agency to efficiently prepare for the implementation of such legal act;

15. Notes that, according to the Court's report in relation to one particular recruitment procedure, the Agency's selection committee, to the detriment of the transparency of the procedure, deviated from the published vacancy notice and applied a higher minimum score than that published, for applicants to be placed on the reserve list; notes from the Agency's reply the commitment made to using a more stringent wording in the vacancy notices to be published in the future; welcomes the fact that the Agency has immediately re-adjusted its practice for ongoing procedures, and that the guidelines on recruitment procedures will include the principle that the threshold for the reserve list should be established *ex-ante*; calls on the Agency to ensure that published selection criteria are respected;

16. Notes the adoption in March 2018 by the Agency's management board of the new organisational structure in anticipation of the growth of the Agency due to increased tasks following adoption of new legal acts, and the additional staff granted in that respect; notes that the Agency will almost double its number of staff by the end of 2020 and that the reorganisation was expected to be fully enabled by the end of 2019;

Procurement

17. Notes with concern that, according to the Court's report, two audited payments for the provision of 'corrective maintenance in working order of the Schengen Information System' (MWS) were partly irregular in that the Agency amended one specific contract by increasing monthly maintenance charges without amending the MWS framework contract to provide for the price increase, and subsequently extended that contract by 1,5 months after the date of expiry of the MWS framework contract; stresses that the additional amount paid in respect of the monthly maintenance and the payment for maintenance after the expiry date of the framework contract are partially irregular; notes the Agency's reply that delays occurred in the launch of the successor framework contract, that additional steps taken during the award process resulted in the requirement to ensure continuity of maintenance for the Schengen Information System in line with the Agency's legal obligations, and that the process of finalising the set of checklists and templates for procurement procedures and the creation of capabilities for planning support of operational activities and underlying procurement is ongoing; calls on the Agency to ensure compliance with public procurement provisions;

18. Notes further that, according to the Court's report, the formula stipulated in the tender specifications for identifying the best quality offer for the MWS contract was different from the one communicated in the question-and-answers document for bidders, and that other shortcomings in the quality, completeness and consistency of the information provided were identified; notes that the Agency acknowledges the need to improve and document consistency checks and comparability between the tender planning and the actual contracts to allow for *ex-post* assessment (something that is currently not deployed as a function within the procurement process due to lack of human resources); calls on the Agency to strengthen procurement-related internal control;

19. Notes with concern that, according to the Court's report, in the case of a contract for the provision of telecommunication services, the Agency awarded a contract to the sole economic operator who had submitted a tender with the value of the awarded contract amounting to EUR 144 000 as published in the initial contract notice; notes, however, that the financial offer submitted by the operator was EUR 45 700 only, resulting in the award of a contract for an amount exceeding the offer, something which is not in line with public procurement rules; notes the Agency's reply that the financial offer was intended merely as a non-binding scenario for the purpose of tender evaluation and the actual monthly payments are based on actual rendering of services according to the initially offered unit prices; calls on the Agency not to award contracts for prices which exceed tenderers' offers;

20. Notes that, according to the Court's report, the Agency extended the duration of a direct contract for the provision of security and reception services from four to six years, increasing the contract value by 73 % (which is not in compliance with the Financial Regulation), thereby making payments executed after the initial period irregular; notes the Agency's reply that the situation occurred under exceptional circumstances which were reported in a timely manner and analysed in the register of exceptions; acknowledges that decisions were made in order to ensure the continuous provision of security services; calls on the Agency to ensure compliance with public procurement rules;

21. Welcomes the fact that, in light of comments and observations from the discharge authority related to the extensive use of external contractors for the development and maintenance of IT projects, the Agency is working on a sourcing strategy to ensure the best use of its own resources; highlights the fact that the Court has identified a horizontal trend across agencies in the use of external staff hired as IT consultants; stresses that the Agency's dependence on external recruitment in this area needs to be urgently addressed; acknowledges that the decision to allocate sufficient staff resources lies with Parliament and Council as budgetary authorities;

22. Urges the Agency to explore possibilities for sharing resources on overlapping tasks with other agencies with similar activities; encourages the Agency to start looking for ways of sharing non-expert staff in areas such as ITC and accounting, in particular with the Body of European Regulators for Electronic Communications based in Riga and the European Chemicals Agency based in Helsinki;

Prevention and management of conflicts of interests and transparency

23. Notes with satisfaction that in November 2018 the Agency finalised the implementation of the new rules on the prevention and management of conflicts of interest for members of the management board and of the advisory groups, which encompass annual submission of their declarations of interest and assessment of the declarations made by the chairpersons of the management board and the respective advisory groups (as applicable) with the support of the Agency; welcomes the adoption of a new model of declarations of interest, followed by their publication on the Agency's website; notes that the Agency has in place rules on the prevention and management of conflicts of interest for members of staff; notes that in 2018, all members of staff submitted declarations of interest, of which 31 declared an interest (corresponding to 20 % of the staff) which were assessed by the line managers, and that for three members of staff (corresponding to 2 % of the staff) actions were taken to mitigate the risk of potential conflict of interest; regrets, however, that the new model of declaration of interest has not been applied also to the executive leadership; notes with regret that only a declaration of absence of conflict of interest is available for the executive director; notes that in June 2018, the management board adopted the Agency's decision on guidelines on whistleblowing; notes that according to the Agency's reply there is no legal obligation to publish the CVs of the members of its management board; highlights in that respect that the Union agencies should set a model in terms of transparency and calls on the members of the management board to publish their CVs on the Agency's website;

Internal controls

24. Notes, in the light of comments and observations from the discharge authority related to open audit recommendations, that the implementation rate of action plans put in place following various audit recommendations had a descending trend in 2018, and that the Agency adopted and deployed the revised internal control framework early in 2019; notes that the internal audit service has established a strategic audit plan for the period 2019-2021, based on the results of a risk assessment exercise carried out in February 2018 at both the headquarters in Tallinn and the technical site in Strasbourg, covering the Agency's major administrative and operational processes; calls on the Agency to report to the discharge authority on the implementation of the audit recommendations;

Other comments

25. Notes, in light of comments and observations from the discharge authority related to delays in the reconstruction of the Agency's operational site in Strasburg and the construction of the new headquarters building in Tallinn, that the headquarters reconstruction project was finalised by the Estonian government in accordance with the original plan, and that the Agency was moved to its permanent location in July 2018; notes that reconstruction works at the operational site in Strasbourg were contractually finalised in June 2018, that the delay was attributed to the changes in design agreed with the contractor, and that the Agency is working closely with the contractor to remedy technical inefficiencies spotted and to progress with the acceptance of works;

26. Calls on the Agency to focus on disseminating the results of its research to the public, and to reach out to the public via social media and other media outlets;

27. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 14 May 2020 ([4]) on the performance, financial management and control of the agencies.

([4]) Texts adopted, P9_TA(2020)0121.