RESOLUTION (EU) 2024/2349 OF THE EUROPEAN PARLIAMENT

of 11 April 2024

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 for the financial year 2022

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 2022,

— 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 (A9-0113/2024),

A. whereas, according to its statement of revenue and expenditure ([1]), the final budget of the European Border and Coast Guard Agency (the 'Agency') for the financial year 2022 was EUR 693 122 859, representing an increase of 29,50 % compared to 2021; whereas the Agency's budget derives mainly from the Union budget;

B. whereas all Union bodies, offices and agencies should be transparent and fully accountable to the citizens of the Union for the funds entrusted to them;

C. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the Agency for the financial year 2022 (the 'Court's report'), states that it has obtained reasonable assurance that the Agency's annual accounts are reliable and that the underlying transactions are legal and regular;

D. whereas since December 2019 the Agency has been implementing a new mandate with an essential scale-up that is significant in terms of missions and staff, that requires an adequate budget;

E. whereas in 2022 there was a significant increase in the Agency's budget and execution of the establishment plan due to the enlarged mandate under Regulation (EU) 2019/1896 of the European Parliament and of the Council ([2]);

F. whereas the Court in its Special Report No 8/2021 on the Agency's support to external border management concluded that there were several shortcomings related to the Agency's primary activities, namely situation monitoring, risk analysis, vulnerability assessment, joint operations and rapid border interventions, return operations and the Agency's training and the lack of needs and impact assessments prior to the exponential increase in the Agency's expenses;

1. Recalls that the Agency, following the findings of the European Anti-Fraud Office (OLAF) and the resignation of the former Executive Director of the Agency in April 2022, has drawn up an action plan (AP) presenting specific actions to be undertaken to address various shortcomings in areas of needed improvement such as organisational culture, transparency and accountability and the fundamental rights framework; notes, according to the Agency's report (signed 24 October 2023) regarding the third quarter of 2023 addressed to the Frontex Scrutiny Working Group of the European Parliament (FSWG), the implementation of most actions pertaining to recommendations by FSWG, the Working Group of the Agency's Management Board (MB) on Fundamental Rights and Legal and Operations (FRaLO), the European Ombudsman (EO) and OLAF; calls on the Agency to fully implement the AP and continue to inform the discharge authority on the progress in this matter; calls on the Agency to fully implement, as a matter of priority, all pending recommendations from FSWG, the Working Group of the Agency's MB, the FRaLO, the EO, the Court and OLAF; reiterates the importance of constantly reviewing and controlling the activities of the management team in order to ensure timely identification and resolution of issues; notes that, to further follow-up on the issues raised in the OLAF report that led to the resignation of the Agency's former executive director, the head of the newly established Inspection and Control Office (ICO) has drafted an action plan which was presented to the MB in January 2023; requests the Agency to step up ongoing efforts and take all actions needed to ensure full respect of Union standards, in particular in the field of budgetary and financial management, fundamental rights, organisational culture and transparency; recalls the second OLAF investigation into management practices at the Agency which is underway, only nine months after the first OLAF investigation was closed; requests that allegations of misconduct are thoroughly checked and investigated; calls on the Agency to ensure the full and sincere cooperation with OLAF throughout all stages of the investigation and to regularly report to the Parliament about the progress of the state and outcome of the investigation;

([1]) OJ C 141, 29.3.2022, p. 112.
([2]) 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. Expresses concerns about the several outstanding legal cases and criticism on the Agency's involvement in human rights violations, which does not comply with its own regulations and fundamental rights obligations;

3. Notes the Agency's measures on transparency and scrutiny, namely providing Parliament and the Council with an overview of its activities through a new reporting tool called the 'dashboard'; encourages the chairpersons of the Agency's MB to continue inviting Parliament observers to its meetings and to consider extending the invitations to all agenda items, including in camera points, and to continue providing all supporting documents without exception and, if deemed necessary, in a confidential manner;

Budget and financial management

4. Notes that, after two budget amendments reducing the Agency's budget for 2022 by approximately EUR 47 million, the budget-monitoring efforts during that year resulted in a budget implementation rate of commitment appropriations of 99,40 %, representing an increase of 4,70 % compared to 2021;

5. Notes with concern that, in spite of the Agency's sustained efforts, reported in 2021, to improve its budget execution, the payment appropriations execution rate (50,25 %) continued to be low in 2022, representing a decrease of 0,17 % compared to 2021; acknowledges, nevertheless, that in absolute terms, the yearly value of the payments has increased between 2020 and 2022; notes the Agency's renewed explanation linking the low level of the budget execution rate to the nature of the Agency's expenditure;

6. Expresses its great concern about an increasing level of the Agency's C8 funds (automatic carry-over) in the last years, with EUR 240,4 million in 2022, while in the previous 2 years it was EUR 159,4 million (in 2021) and EUR 102 million (in 2020); notes in this context also the increase in the Agency's C8 funds relative to the increase in the Agency's annual budget, whereas from 2019 to 2022 the latter has increased by a factor of 2,1, while the former by a factor of 2,9; notes that the level of payments (84 %) of C8 funds has further decreased in 2022 (87 % in 2021); notes, however, the Agency's observation that this indicator has been affected by a difficult situation in the supply-chain which resulted in delays in deliveries of ordered services and products; in addition calls on the Agency and on the Commission to provide the discharge authority with details on the origins and evolution of the financial liability of EUR 9,3 million accounted for in 2022;

7. Notes with concern from the Court's report, for a second year in a row, the 'Emphasis of matter' regarding the declaration of the Agency's accounting officer whereby the Agency's accounting system could not be validated because of missing information relating to an IT system owned by the Commission which supplies accounting data; notes from the Court's report the Agency's reply in that matter whereas the missing part of the accounting system validation of the Agency is the mission management system (MiPS);

8. Notes for a third year in a row a recurrent 'Emphasis of matter' drawn by the Court on the basis of the notes to the Agency's final annual accounts, regarding an understatement of the contribution from the Schengen associated countries (SAC), which in 2022 was equivalent to the amount of EUR 3,2 million whereas the Union's contribution was overstated by the same amount; is concerned that the agreements between the Union and the SAC serving as legal basis for calculating their contributions to the Union budget are unclear and allow divergent interpretations resulting in a lower contribution by SAC calculated around 7 %; notes from the Court's report the Agency's reply that the understanding between the Agency's Accounting Officer on the one hand and the Agency's MB, the Commission and SAC on the other hand is different with regard to the modality of application of the calculation of the SAC contribution based on the current agreements in place with SAC; notes that in the Agency's interpretation the methodology used since 2016 is in line with the applicable legal framework and agreements and the Agency's MB concluded in 2021 that the calculation methodology for the SAC contributions would not be revised; notes the Court's renewed arguments as to why the Agency's interpretation is flawed; is of the opinion that in no way SAC should contribute less than expected to the Agency's budget and calls for a review of the Agency's interpretation of the methodology;

9. Notes with concern from the Court's report the observations with regard to an overestimation of accrued charges incurred in 2022 for the Agency's mission costs and the lack of formalised guidance or procedures in the Agency to ensure consistent calculation of accrued charges; calls on the Agency to address this shortcoming and report back to the discharge authority;

Performance

10. Notes that in 2022 the Agency used a wide range of (240) measures as key performance indicators (KPIs) to assess the performance of its (58) activities, adopted by the Agency's MB, stemming from the single programming document 2022–2024; notes an implementation rate of its Annual Work Programme for 2022 of 85,20 % as self-assessed by the Agency; commends the overall improvement of the Agency's qualitative KPIs; notes, however, the deterioration of some of the Agency's KPIs, such as the rate of delayed payments which was 20 % in 2022 (compared to 12 % in 2021);

11. Expresses its gratitude for the swift actions taken by the Agency in the wake of the illegal and unprovoked Russian invasion of Ukraine that led millions of Ukrainians to flee their country and arrive in the Union; commends the Agency in this context for: the activation of a crisis response mechanism and a dedicated crisis response team that has operated 24/7; the signing in record time of the Status Agreement with Moldova which led to the launch of a new joint operation JO Moldova 2022; the deployment of about 500 standing corps officers working at the border of the Union with Ukraine and along the entire eastern Union border from Finland to Romania and; the deployment of other assets (maritime, aerial, terrestrial) in 102 new operational locations; notes that the war in Ukraine has transformed the Union and the way the Union's citizens see its security, especially at the eastern borders; highlights that the Union is facing the highest number of illegal border crossings since 2016;

12. Notes the various initiatives taken by the Agency in 2022, including the signature of a status agreement with North Macedonia and a Memorandum of Understanding and an Operation Action plan with Cyprus, as well as the doubling of the Agency's presence in the joint operation JO Serbia Land 2022 and the opening of a new operational area at the Serbian-Hungarian border; stresses that the Court of Justice of the European Union has ruled that Hungary's activities are incompatible with the Return Directive and Charter of the Fundamental Rights of the European Union; notes with concern that even though the Agency said it withdrew operations from Hungary in 2021, it nonetheless continued to support Hungary's return operations; reiterates the FSWG's calls on the Agency's executive director to suspend operations from Hungary;

13. Notes that the Agency finalised and evaluated the pilot project on deploying Member States' Liaison Officers to the Agency's headquarters; welcomes that an internal evaluation of that pilot project was carried out and the Agency has decided to continue this form of cooperation with the Member States; calls on all the Member States to deploy Liaison Officers to the Agency;

14. Notes that operational activities conducted on land borders in 2022 resulted in approximately 49 000 incidents reported, involving more than 26 000 apprehended irregular migrants and 700 smugglers arrested; notes the Agency's efforts that led to the return by air of 24 850 non-EU nationals (increase of 35 % compared to 2021), of which 9 919 persons on 291 operations by charter flights to 32 countries of return and 14 931 persons (increase of 84 % compared to 2021) by 8 789 scheduled flights to 116 countries of return; notes further the Agency's efforts under all maritime joint operations in 2022 which led to the detection of 1 105 facilitators and 11 traffickers of human beings, the seizure of tens of tons of smuggled drugs and the rescue of thousands of migrants; notes, at the same time, the many recent tragedies of shipwrecks and other deadly incidents with migrants on the Mediterranean Sea; calls on the Agency to fully cooperate with the Ombudsman investigation; observes that 1 422 multipurpose surveillance missions were carried out by the Agency in 2022 with as a result 1 177 events and 51 362 migrants detected;

15. Notes the increase in the Frontex-supported returns implemented on a voluntary basis from 26 % in 2021 to 39 % in 2022; commends the implementation of the first fully fledged Frontex-led return operations, whereby the Agency – taking over the role of the organising Member State – returned 80 third-country nationals to Albania and Nigeria; notes the Agency's report titled 'Cooperation between the Agency and third countries in 2022 in which the Agency elaborates on its external dimension activities, such as: further developing dialogue and cooperation with various partners (e.g. Western Balkans, Eastern Partnership Region, Africa and the Middle East); its work on data protection standards and fundamental rights; providing technical and operational assistance to third countries to tackle, among others, cross-border crime; and capacity building actions (e.g. training); expresses concern about some reports, that might suggest the involvement of the Agency in human rights violations, including in its external dimension activities, particularly the alleged facilitation of illegal pushbacks at Union's external border; notes that according to recent information provided by the Agency, it has been sharing coordinates of migrants in distress with Libyan actors in the last three years; notes two pending Serious Incident Reports on interceptions of migrants by Tareq Bin Zeyad following the Agency's detection;

16. Welcomes the Agency's first report on the functioning of Eurosur, a key instrument meant to improve situational awareness and increase reaction capabilities for the purpose of border management through information exchange and cooperation between Members States and the Agency; notes with appreciation from that report the progress made in different areas such as the technical developments of the applications used for Eurosur purposes, the development of 17 services under the Eurosur Fusion Services (with a relatively high number of service requests from Member States for satellite imagery and coastal monitoring) and the development of a roadmap for the re-design and development of Eurosur 2.0 aiming at full interoperability of the different applications and systems by year 2026; takes note from the Agency's Consolidated Annual Activity Report 2022 (CAAR) of the progress made by the Agency regarding Eurosur in 2022 and invites the Agency to speed up its efforts to fully align it with the requirements of Regulation (EU) 2019/1896 and the Eurosur Implementing Regulations;

17. Commends the Agency for the significant progress made in 2022 with regard to the establishment of the European Travel Information and Authorisation System (ETIAS) Central Unit (ECU) through activities such as the development of internal rules and procedures, a mid-term strategy, an engagement framework, a business impact analysis, as well as the drafting of security, business continuity and disaster recovery plans and the conduct of the ECU's first risk assessment; notes that for the setup of ECU, in 2022 the Agency finalised the recruitment of the second wave of ECU's staff reaching a rate of 55 % of all posts envisaged and launched other recruitment procedures; welcomes the fact that the Commission has put in place in 2022, with the support of the Agency, a public information campaign promoting the ETIAS among the nationals of 60 visa-free countries; notes the other operational achievements of the Agency such as the initiation of the development of a new chain of command for standing corps with a single operational coordination structure and the delegation of more decision-making responsibilities to the field;

18. Welcomes the Agency's Annual Report on the practical application of Regulation (EU) No 656/2014 of the European Parliament and of the Council ([3]) regarding the Agency's maritime operations in 2022, namely the Joint Operations: Themis (Italy), Poseidon (Greece), Indalo (Spain), Opal Coast (Belgium and France) and Multipurpose Maritime Operation Black Sea (Bulgaria and Romania); notes the Agency's observation that there is an asymmetry between the standards and requirements applicable to the Agency according to Regulation (EU) No 656/2014 and those applicable to other actors (e.g NATO, EMSA, EFCA) that are involved in maritime operations, whereas such actors, when acting with the Agency's support, follow the international maritime law; supports the Agency in exploring the possibilities of including in the relevant status agreements similar standards to the ones reflected in Regulation (EU) No 656/2014;

19. Highlights the importance of a strong, effective and well-functioning Agency able to assist Member States to manage the common external borders of the Union and to ensure an integrated border management with a view to managing those borders efficiently and in full compliance with fundamental rights; notes the shared responsibilities that the Agency and the Member States have in the fulfilment of fundamental rights obligations; stresses that the effective and just management of the external borders is of crucial importance for the protection of the Schengen as an area of freedom, security and justice; stresses that close cooperation and agreements with third countries in aspects such as readmission agreements, technical assistance, training, and lawful return activities, together with development aid are important to promote an efficient Union border management if they fully respect fundamental rights; calls on the Agency and the Member States to further develop structures of cooperation, information-sharing and the exchange of best practices;

20. Acknowledges the key role of the Fundamental Rights Officer (FRO) since 2021 in the implementation of various fundamental rights related recommendations stemming from the EO, FSWG and FRaLO; notes from the annual report of the FRO for 2022 (the 'FRO Report') that the majority of those recommendations have been implemented; calls on the Agency to fully cooperate with the FRO and implement all of its recommendations;

21. Recalls that the Agency and relevant Member States authorities constitute the main guarantor for strong and protected European external borders while upholding fundamental rights and international protection obligations; notes that the FRO has concluded in his opinion of 1 September 2022 that the conditions for triggering Article 46 of the Frontex Regulation were met; further notes that the Agency Working Group on Fundamental Rights Art. 46 issued series of recommendations concerning fundamental rights in Greece of which in October 2023 four were fully implemented; notes that the Agency Working Group intends to monitor further progress and that recommended measures continue to be applied; calls for all recommendations to be fully implemented as matter of priority and on the Agency to continue informing the Parliament on the progress made;

([3]) Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

22. Notes the European Ombudsman's inquiry into the Agency's role in search and rescue operations (OI/3/2023/MHZ), which was launched after the Adriana tragedy of June 2023; notes with concern the Ombudsman's conclusions that the Agency is unable to fulfil its fundamental rights obligations and too reliant on Member States to act when migrants are in distress, because the Agency lacks internal guidelines on issuing emergency signals and the Agency's fundamental rights monitors are not always sufficiently involved in decisions on emergencies, and that since the Adriana tragedy no sufficient changes have been made to prevent such incidents from happening again; recalls that the discharge authority has repeatedly pointed out those shortcomings in previous discharge resolutions and regrets that the issue remains unresolved; notes the Ombudsman's call on the Agency to address the identified shortcomings, and its call on the Parliament, Commission and Council to establish an independent commission of enquiry into the matter;

23. Welcomes the decision of the Agency's MB of 20 July 2022 that has strengthened the cooperation and communication between various Agency entities, including the Consultative Forum (CF) and the FRO through rules for the Agency's Executive Director and MB to inform the CF of the follow-up to the recommendations of the CF and to ensure that action is taken with regard to the recommendations of the FRO; welcomes further the adoption in 2022 of the standard operating procedure on Article 46 of Regulation (EU) 2019/1896 and standard operating procedure regarding the working methods related to FRO's investigative powers;

24. Welcomes that, following the recommendations for an effective border agency compliant with fundamental rights and in order to improve accountability, regularity, and legality of all of the Agency's activities, an additional 22 Fundamental Rights Monitors (FROMs) were externally recruited; recalls that all FROMs should be recruited on AD level, as soon possible through the appropriate procedures; notes that, based on the Agency's updated mandate, there will be a demand for additional FROMs in the future; welcomes that the Fundamental Rights Office conducted 1 183 deployment days visiting 50 countries which is a substantial increase in comparison to the previous year;

25. Stresses that Agency's direct and indirect involvement in border management and border surveillance activities must go hand in hand with respecting fundamental rights;

26. Notes from the FRO Report a further increase in the number of the serious incidents reports (SIRs) from 62 SIRs in 2021 to 72 SIRs in 2022, all covered by the standard operating procedure as amended in 2021; commends the FRO for the development of procedures standardising how its office evaluates and processes the received information on incidents; notes that in 2022, in most SRI cases (38 out of 72) the primary source of information were the Agency's deployed officers, however the FRO also relied on other sources of information such as media (4 cases) and non-governmental organisations (10 cases); recalls that the necessary additional revision of the standard operating procedure on the SIR mechanism has been delayed; expects the Agency to implement the recommendations of the FRO as set out in its 2022 annual report;

27. Notes from the FRO Report that in 2022 the FRO received a total of 69 complaints (an increase from 27 in 2021); notes further that nine of those complaints were declared admissible (an increase from 6 in 2021), welcomes the revised rules on the complaints mechanism adopted by the Agency's MB in 2022 which provide for timelines and adequate follow-up to be enhanced; commends the FRO for its additional efforts in the complaints mechanism related area such as actions to raise awareness by e.g. updating the information materials and capacity buildings activities in the form of training to the Agency's deployed officers and local partners during visits to the Agency's operational areas;

28. Commends the Agency for the progress made in implementing the fundamental rights action plan (FRAP) which foresee 87 activities; notes from the FRO Report that 18 of those activities have been fully implemented (i.e. no further action is required), 62 are on-going (i.e. implemented on a systematic manner and on a rolling-basis), one is partly implemented and six are delayed; regrets these delays and calls upon the Agency to swiftly progress on the outstanding actions; recalls in this context the important role that the FRMs have, including with regard to their access to the operational areas and close cooperation with the Agency's operational staff, as well as their efforts in the implementation of the FRAP activities (n° 23, 63 and 83 among other); commends that the standard operating procedure on the roles and responsibilities of the FRMs in the Agency's operational activities was finalised and approved; welcomes the creation at the beginning of 2022 of a network of fundamental rights focal points in all the Agency's divisions to develop fundamental rights expertise in all areas of activity;

Efficiency and gains

29. Commends the Agency for its close cooperation and/or resource sharing with various agencies and other stakeholders such as the Commission, Member States or third countries; points out the horizontal benefits of working together and adopting best practices and that joint initiatives bring together diverse perspectives, reduce duplication of effort, enhance learning and strengthen relationships between the participants; notes in this sense the Agency's actions in connection with, among others: the negotiations on the renewal of working arrangements that structure bilateral cooperation with several agencies in the Justice and Home Affairs (JHA) field; the relocation of some of its staff to eu-LISA for the period 2022–2024 for EES and ETIAS related projects and to Europol as of 1 January 2024 for projects in the area of the Union's interoperability of systems; and the contributions by the Agency on a regular basis to annual work programmes of other agencies for alignment of activities;

30. Notes in particular the Agency's cooperation trough a Tripartite Working Arrangement with the European Fisheries Control Agencies (EFCA) and European Maritime Safety Agency (EMSA) in order to coordinate and share resources in various areas such as information sharing, surveillance and communication services or capacity sharing; commends the launching of Multipurpose Maritime Operations (MMO) which ensure the implementation of different coast guard functions into one operation that touches upon the mandates of those three agencies and enhances cross-sectorial and cross-border cooperation; welcomes that the MMO concept was further developed with the implementation of the MMO Black Sea from August to November 2022 in cooperation with EFCA, EMSA and six authorities from Romania and Bulgaria; welcomes further that those three agencies agreed to expand the implementation of the MMO concept to Adriatic and Baltic seas in 2023;

31. Supports the Agency's plans regarding the design and construction of a new building for its future headquarters (permanent premises), whereas such building, expected to meet the highest sustainability standards, shall remain environmentally friendly throughout its entire lifetime; notes that the tender procedure, launched in July 2022, is based on Green Public Procurement Guidelines; notes further that in this context the Agency has developed a concept which is rooted in the idea of activity-based working, supporting the underlying principles of time- and place- independent work, diversity of workspaces and an emphasis on cross-entity collaboration and knowledge exchange and which will first be tested in the current premises of the Agency; invites the Agency to keep the discharge authority informed of the results of that test and follow-up thereto;

32. Notes that on its path towards the integration of environmental sustainability in all its processes, policies and operations, and ultimately towards carbon neutrality by 2050, the Agency has launched in 2021 and published in 2022 a study called 'The Green Deal and the European Border and Coast Guard (EBCG)', based mainly on case studies of best practice in various international organisations (e.g. European Central Bank, the French Ministry of Interior, the U.S. Department of Homeland Security, among others); notes with satisfaction that the report identifies ten different areas (including with regard to sustainability in operational activities where the EBCG community has the highest impact on the environment) with road-maps for short, medium and long-term horizons; notes from that study that the change management framework, the reporting and risk management systems and the EMAS implementation and certification are fundamental for the successful transformation that the Agency seeks together with the EBCG community;

33. Notes that the Agency integrates environmental criteria into its procurement procedures in connection with e.g. flights, catering, the Agency's permanent premises; acknowledges, however, that the specificities of the Agency's acquisitions (e.g. purchases of body armour items) do not always allow for integration of such criteria; notes further the Agency's external consultancy project on how to establish a baseline for measuring the energy and environmental footprint of staff and technical operational equipment, as well as the pilot training in eco-driving conducted to a group of standing corps members and the inclusion of awareness raising training on eco-driving practices in the basic trainings on-line for newcomers (standing corps members);

Staff policy

34. Acknowledges the Agency's sustained efforts and critical improvements in the recruitment area, in spite of delays; notes that, on 31 December 2022, the establishment plan was 88,46 % executed (82 % in 2021), with 1 150 temporary agents appointed out of 1 300 temporary agents authorised under the Union budget; notes that, in addition, 723 contract agents (of which 11 staff financed from external budget) and 190 seconded national experts worked for the Agency (with 964 contract agents and 220 seconded national experts authorised for the Agency in 2022); welcomes an increase (by approx. 6,5 % compared to the year 2021) for a second year in a row in the Agency's occupancy rate thanks to the recruitment in 2022 of 509 newcomers leading to a net increase in the Agency's number of staff overall from 1 554 in 2021 to 2 063 in 2022, and in particular of the standing corps category 1 officers from 595 in 2021 to 963 in 2022; welcomes in this context that 65 new staff were recruited and on-boarded for the ETIAS Central Unit Division, as well as 22 new FRMs, whereas as at 31 December 2022 the

Agency had filled 44 (46 as of 1 September 2023) FRM posts, thus coming closer to the full implementation of the Agency's extended mandate; notes moreover that as of October 2022, the Agency's pool of forced-return monitors counted 60 monitors from 24 Union Member States and SACs, five of which were from the pool of FRMs; commends a decreasing trend in the Agency's annual vacancy rate in all types of contracts in both pillars A and B;

35. Is deeply concerned regarding the Agency's gender breakdown reported for 2022 at senior and middle management level with 19 men (79 %) and 7 women (21 %), at the level of the MB with 54 men (87 %) and 8 women (13 %), and for the Agency's staff overall, with 1 473 men (71 %) and 590 women (29 %); recalls the importance to ensure gender balance and calls on the Agency to take this aspect into consideration with regard to future recruitments of staff and appointments within its senior and middle management; asks the Commission and the Member States to take into account the importance of ensuring gender balance when nominating their members to the Agency's management board; notes from the Agency's report titled 'Frontex's individual follow up report for the 2021 budgetary discharge' (hereinafter the 'Agency's follow-up report') the measures and initiatives the Agency has taken to improve gender balance; notes that, in spite of those efforts, the Agency's declared goal to have at least 40 % of the underrepresented gender at all management levels is still far from being reached; calls on the Agency to address this issue and to report back to the discharge authority regarding progress; notes nevertheless from the Agency's follow-up report that gender balance is being monitored by also taking account five major categories of staff, for some of which, such as managerial posts, the recruitment pool (national law-enforcement services) is mostly made of men; notes nevertheless from that report that, in the administrative posts category, the Agency has reached in May 2023 nearly ideal gender balance (417 men and 426 women);

36. Welcomes the Agency's extensive anti-harassment measures and policies put in place that rely on Confidential Counsellors (17 staff, of which 6 from the standing corps team) whose role is key in protecting the dignity of the Agency's staff and preventing psychological and sexual harassment; welcomes from the Agency's follow-up report the actions already implemented and those in progress, as well as the list of proposed measures, all aiming at ensuring zero tolerance towards sexual harassment in all of the Agency's activities; calls on the Agency to remain pro-active and fully implement its action plan with regard to anti-harassment measures; highlights that this is an essential element of reforming the organisational culture of the Agency and calls on the Agency to periodically report on progress achieved in this regard;

37. Notes with concern from the Agency's replies to Parliament's written questions that in 2022, 31 anonymous harassment cases (psychological: 27 or sexual: 4) were reported, of which 22 were closed at the anonymous stage, 4 cases were in the process of conciliation with the alleged harasser and 5 were transferred to a formal procedure; notes further that 11 cases of psychological (7) or sexual harassment (4) were opened in 2022, whereas 5 cases were closed after the preliminary assessment stage and in 6 cases recommendations were made ranging from the taking of harassment prevention awareness courses to the termination of contract; calls on the Agency to carefully assess each pending case, taking a zero-tolerance approach to psychological, sexual or any other kind of harassment, and to proceed swiftly with holding those responsible for this misconduct accountable; notes the from the Agency's follow-up report the Agency's conclusion on the reopened investigation with regard to the tragic death of a staff member in 2020 that no harassment was substantiated, and therefore nor a direct or indirect link between the suicide of the alleged victim and the working environment could be established;

38. Commends the Agency for the multitude of trainings offered to its staff in 2022; notes in this regard that the Agency provided 21 specialisation courses to standing corps category 1 (1 194 attendees), 15 different courses for standing corps category 2 and 3 (with more than 1 450 attendees), 34 courses for different categories of officers (almost 4 000 attendees) and an extended basic training programme for 325 standing corps officers, whereas fundamental rights aspects including data protection remained central elements of the trainings; notes further the adoption of the 'Charter on diversity and inclusion' and the variety of measures the Agency has taken for the integration of persons with disabilities and to improve staff well-being and work–life balance;

39. Notes with concern the information provided by the European Ombudsman regarding the Agency's standing corps officers who performed standby duty before 5 October 2022, for which they did not receive any financial compensation; is worried in this context that due to the lack of additional information and a proper inquiries, the Ombudsman concluded that it remains unclear why the Agency considers that there is no legal basis to make the necessary payments; urges the Agency to set up specific taskforce with a view to collect and verify all the declarations concerning standby duty performed before 5 October 2022 and keep the discharge authority informed of the progress made in this matter;

40. Welcomes the steps taken by the Agency to undergo a transition process to improve the management culture and promote staff well-being; calls on the new management to continue engaging in deeply reforming the organisational culture of the Agency;

Procurement

41. Notes from the Court's report the observation regarding an increase (from EUR 79 000 to EUR 502 900 via four amendments) in the value of a contract beyond the limit (50 %) allowed by the Financial Regulation (Article 172(3)(a)(iii)); notes that the increase led to payments of which those amounting to EUR 384 000 were irregular; acknowledges in this context from the Agency's reply that, in order not to delay recruitment of standing corps, exceptions to the rules were needed and were registered in the Agency's registry of exceptions and non-compliance events;

42. Notes that in 2022 the Agency launched 53 open tenders, of which 20 resulting in signed contracts for a total value of EUR 140,5 million, and 25 still ongoing, with an estimated value of EUR 486,51 million; notes further that the Agency handled 33 low- and medium-value procedures (negotiated with three and five candidates) with a total value of EUR 3,4 million, whereas out of the 33 procedures, 20 resulted in signed contracts in 2022 for a total value of EUR 2,03 million, while four of these still ongoing, for a total value of EUR 524 000; notes further that 228 very low-value procedures (negotiated with one candidate) for a total value of EUR 1,62 million were handled by the Agency in 2022; notes finally that 1 116 procedures under existing framework contracts for a total value of EUR 188,9 million have been handled in 2022 with 983 resulting in signed specific contracts or order forms, with a total value of EUR 153,4 million, while 32 of them for a total value of EUR 16,6 million still ongoing; observes a decrease by approx. 15 % in the total value of procurement procedures finalised, from EUR 406,9 million in 2021 to EUR 348,5 million in 2022;

43. Commends the Agency's efforts in 2022 to secure strategically important contracts in areas ranging from the provision of interim staffing services to the provision of services for geographical information system, geospatial intelligence and imagery intelligence; notes that significant progress was made with critical procurement procedures for significant amounts of money with regard to the Agency's permanent premises (EUR 140 million, provision of travel related services (EUR 666 million) and infrastructure and software related services (EUR 32 million);

44. Notes the Agency reporting on having improved the planning and monitoring of the annual procurement plan; calls on the IAS to include this plan in its future audits;

Prevention and management of conflicts of interest and transparency

45. Notes with satisfaction that the CVs and declarations of interest of the members of the Agency's MB and of its executive management are published on the Agency's website; notes further that in 2022 five cases of whistleblowing were processed, of which three cases were closed or concluded in the preliminary assessment phase and two cases are currently under OLAF investigation; calls on those concerned and on the Agency to ensure full cooperation with OLAF in the course of the investigation; notes lastly that in 2022 no cases of conflicts of interest were investigated;

46. Notes from the Agency's reply to Parliament's written questions that the Agency is working on a policy for monitoring of compliance of the Agency's current and former senior staff in the area of 'revolving door' situations; calls on the Agency to keep the discharge authority informed of the progress in this matter; reiterates its call on the Agency to also put in place for the members of its MB principles, procedures and specific mechanisms to deal with conflicts of interest of those members and with 'revolving door' situations;

47. Notes the reply to the discharge authority which provides information on the contacts and meetings registered and documented in the Agency's Transparency Register in 2022; notes the various meetings (Industry Days) of the Agency that gave companies from the industry the opportunity to present their products and services that can support border management activities and encourage dialogue between the EBCG community and the industry; notes that in the framework of the Industry Days for 2022 the Agency received 277 applications on solutions, invited 88 companies to showcase their technologies and organised online sessions where information on 175 solutions were shared; welcomes that the list of the participating companies are published on the website of the Agency;

48. Notes from the Agency's CAAR that the Agency's transparency office processed a significantly higher number of applications (469) for public access to documents (PAD), representing an increase by nearly 34 % year-on-year; notes further that the Agency's public register of documents website was established with around 1 900 key documents uploaded in 2022; notes the EO's conclusions from its own initiative enquiry (case OI/2022/PB) that the Agency systematically takes too long to process PAD-requests, specifically when it concerns a large amount of documents and when the Agency considers the request to be imprecise, and that this amounts to maladministration; deplores that the Agency has failed to accept the recommendation of the Ombudsman and calls upon the Agency to start dealing with PAD-requests more swiftly and transparently as a matter of priority;

49. Recognises the general presumption of non-disclosure of public access for documents pertaining to ongoing OLAF investigations ([4]); reiterates nevertheless its call for OLAF reports on the Agency to be made public in cases of overriding public interest in disclosure and, in all cases, for the relevant Members of Parliament to be given access to such reports within a reasonable period of time in order to allow them to effectively carry out democratic scrutiny and hold the Agency to account for its actions; believes that the current rules need to be revised to ensure that Parliament is fully informed in its role as policymaker and co-legislator, in particular regarding its budgetary powers;

50. Takes note of the Ombudsman inquiry into the Agency's refusal to grant public access to the report by its FRO concerning the Agency's operation in Albania (case 652/2023/VB) ([5]);

51. Recalls the EO's decision in its own initiative enquiry (case OI/4/2021/MHZ) on the Agency's compliance with its fundamental rights obligations; recalls in this context that the Agency has an obligation to ensure proactive transparency as stated in Article 114(2) of Regulation (EU) 2019/1896; calls on the Agency to finalise the implementation of all the Ombudsman's recommendations; notes from the Agency's follow-up report that work on merging the three codes of conduct (two with regard to operational areas and one applicable to the entire staff of the Agency) into one code of conduct covering the specific provisions for the operational areas is ongoing; asks the Agency to keep the discharge authority updated on the progress in this matter;

52. Acknowledges the Agency's briefing note of 27 June 2022 on actions taken by the Agency's management during the transition period, in particular its efforts to strengthen the procedures needed for good governance and accountability in the organisation, through enhancing transparency, proactive communication and engagement with internal and external stakeholders; welcomes the Agency's initiative for an operational brief informing the public about its operational activities in a comprehensive way; calls upon the new leadership to undertake reforms that are needed in respect of transparency and efficiency in internal procedures, and to increase accountability towards the Parliament and Council in accordance with the applicable legal framework;

Internal control

53. Welcomes the Agency's decision to issue, in an improved format, a quarterly report addressed to FSWG covering the state of play on the implementation of the recommendations stemming from various scrutiny bodies; acknowledges receipt of that report for the third quarter of 2023 (hereinafter the 'Q3 2023 report'); commends in this context the significant progress made by the Agency in implementing 36 out of 42 FSWG recommendations; notes from the Q3 2023 report the implementation rates of the recommendations and/or required actions from the FWSG (91 %), the FraLO (87 %), the Ombudsman (79 %) and OLAF (54 %); acknowledges the role of the Agency's ICO in the support provided to addressing those recommendations through liaison functions and coordination tasks; notes further from the Q3 2023 report that 10 IAS recommendations (covering a total of 32 actions) are still open, whereas 21 actions are marked as very important, while none of them is deemed critical; further commends the progress made by the Agency in addressing the remaining open recommendations stemming from the Court's special reports 22/2020 (recommendation 2) and 8/2021 (recommendation 1, 2 and 4); reiterates its call on the Agency to fully address all pending recommendations and related actions, including with regard to the Court's relevant observations stemming from the Court's annual audit reports from previous years (2015, 2016, 2018, 2019, 2020 and 2021); invites the Agency to continue to inform regularly the discharge authority of the progress made in these matters;

([4]) The General Court has stated that 'generalised access, on the basis of Regulation No 1049/2001, to documents in OLAF's file, while OLAF's investigation procedure is still ongoing, would, in principle, undermine the effective conduct of the investigation'; General Court, judgment in Case T-110/15 of 26 May 2016, IMG v Commission, par 33, ECLI:EU:T:2016:322.

([5]) https://www.ombudsman.europa.eu/en/decision/en/177520.

54. Notes with concern from the Court's report a series of observations indicating weaknesses in the Agency's management and internal control systems in the areas of procurement and contract management, recruitment procedures and delegation of powers to authorising officers by delegation; is deeply concerned that for a second year in a row the Court issued observations in the area of procurement of travel related services, whereas the amounts at stake are very important; stresses that it is of utmost importance that the Agency abides to the principle of sound financial management in the implementation of Union funds, as stipulated in the Financial Regulation, whereas the Agency is leading among Union's decentralised agencies regarding the Agency's annual budget which has more than doubled since 2019;

55. Notes with concern from annex 12 to the Agency's CAAR the comments of the former Executive director ad interim (currently deputy executive for standing corps management) whereby, with regard to a contract for accommodation and travel services for standing corps officers, overpricing, payments made without supporting documents and failure to provide contractual services allegedly took place during 2021;

56. Notes from the Court's report the observation with regard to a significant risk of overcharging when it comes to payments made for travel services (framework contract of EUR 30 million), in particular accommodation, whereas invoices issued by the travel agency were not supported by the actual invoices of the hotels, but by a travel agency's subsidiary; calls on the Agency to improve its internal controls such that the relevant invoices are produced by the actual provider of the service;

57. Notes further the risk that payments related to the travel agency's costs may not be correct because the information in the Agency's system for managing its travel related costs does not reconcile actual costs paid with the travel agency's costs, which are reported and processed separately from those paid by the staff on mission; understands from the Agency's reply the reason why there are discrepancies between the MiPS and the accounting system (ABAC) and that in the Agency's opinion there is no risk of making payments with a wrong amount;

58. Notes from the Court's report, for a second year in a row, an observation on the Agency's internal control weakness in the area of recruitment procedures; notes in this context that in 2022 in a procedure for recruitment of temporary agents, individual scorings by members of the selection committee (SC) were used, instead of applying a consensual method as stipulated by the Agency's internal rules; regrets the reoccurrence of such weakness, in spite of the Agency having adopted in January 2022 new implementing rules with clearer instructions to the selection committee members aiming to ensure more consistent assessment and harmonised procedures; welcomes the Agency's commitment to extend to the recruitment of temporary agents the rules whereby only one final evaluation report agreed between the SC members is considered, without taking into account their individual scorings; invites the Agency to strengthen the application of the new rules and its internal controls in the area of recruitment procedures;

59. Takes note of the assessment of the internal control system (ICS) of the Agency carried out in 2022; notes the assessment conclusion that the ICS is present and functioning effectively, with some areas needing improvements with regard to components 'Control environment' (in particular principle 1 titled 'Demonstrates a commitment to integrity and ethical values'), 'Control activities' (in particular point 10.5 titled 'Sensitive positions identified') and 'Information and communication' (in particular point 15.1 titles 'External communication'); observes an overall improvement in 2022 compared to 2021 on the scores given to principles in all five ICS components;

60. Notes with satisfaction the reinforcement of the Agency's internal oversight in 2022 through the establishment of the Internal Audit Capability (IAC) and the adoption of the Internal Audit Chapter; welcomes that the head of IAC took up his duties in 2023 and the first IAC Annual Audit plan has already been adopted by the MB;

61. Recalls the recommendation from the Court's report for 2018 that the Agency should adopt and implement a sensitive post policy; notes the Agency reporting on the preparations carried out for a decision on such policy which meanwhile was adopted (at the end of 2023);

Other comments

62. Notes that the opinions of the European Data Protection Supervisor (EDPS) on the Agency's MB decisions 68/2021 and 69/2021 were negative; notes that the Agency created an implementation plan to address all EDPS recommendations in that regard; notes further that those MB decisions have been redrafted and re-adjusted after regular meetings and informal exchanges of the Agency's Data Protection Officer with the EDPS staff, as well as by taking into account the EDPS audit report published on 24 May 2023 (hereinafter the 'audit report'); notes that the audit report verified the compliance of the Agency's processing of personal data in the context of Joint Operations with Regulation (EU) 2018/1725 of the European Parliament and of the Council ([6]) and the relevant provisions of the Regulation (EU) 2019/1896; notes further in this context that the audit report identified 36 formal findings and issued 32 recommendations with regard to the screening of persons and debriefing interviews, joint controllers' arrangements, low reliability of information used for the production of risk analyses and the implementation of data protection by design and by default, among other; notes with concern from the audit report that the EDPS findings also indicate that the Agency has breached multiple articles of legal basis applicable to the Agency (Regulation (EU) 2018/1725, Regulation (EU) 2019/1896 and MB Decision 58/2015) by not assessing the strict necessity of sharing data packages with Europol for the performance of its mandate and, consequently, the EDPS has opened an investigation, which may result in the exercise of enforcement actions; regrets that EDPS identified after its audit new six cases of transmission from the Agency to Europol of personal data relating to NGOs' staff whose lawfulness needs to be further investigated; calls on the Agency to address all recommendations within the deadlines for implementation issued by the EDPS in its audit report and keep the discharge authority informed of the development in this matter;

63. Welcomes that over the course of the last 2 years the Agency went through significant managerial changes, including a new deputy FRO, a new chair of its Management Board, two new deputy executive directors and the appointment of a new executive director; notes the establishment of action plans with national authorities to right the wrongs of the past and present;

64. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 11 April 2024 ([7]) on the performance, financial management and control of the agencies.

([6]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

([7]) Texts adopted, P9_TA(2024)0280.