RESOLUTION (EU) 2023/1935 OF THE EUROPEAN PARLIAMENT

of 10 May 2023

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 Law Enforcement Cooperation (Europol) for the financial year 2021

THE EUROPEAN PARLIAMENT,

— having regard to its decision on discharge in respect of the implementation of the budget of the European Union Agency for Law Enforcement Cooperation (Europol) for the financial year 2021,

— 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 (A9-0138/2023),

A. whereas, according to its statement of revenue and expenditure ([1]), the final budget of the European Union Agency for Law Enforcement Cooperation (Europol) (the 'Agency') for the financial year 2021 was EUR 178 310 917, representing an increase of 12,41 % compared to 2020; whereas the Agency's budget mainly derives from the Union budget;

B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the Agency for the financial year 2021 (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;

Budget and financial management

1. Notes with satisfaction that budget monitoring efforts during the financial year 2021 resulted in a budget implementation rate of 98,72 %, representing a decrease of 0,72 % compared to 2020; notes that the payment appropriations execution rate was 83,51 %, indicating a decrease of 1,58 % compared to 2020;

2. Notes with concern that the observation from the Court stressing that the Agency faces challenges regarding late payments is still ongoing; shares the opinion of the Court that that recurrent weakness exposes the Agency to reputational risks; notes the Agency's efforts made to reduce its payment delays; commends the fact that in 2021 the late payment rate was 7,8 %, compared to 32,8 % in 2020; welcomes the Agency's commitment to reach a maximum of 5 % of payment delays in 2022, including by monitoring a performance indicator on a monthly basis and other mitigating actions; observes that appropriations related to the current budget carried over from 2021 to 2022 are at a relatively high level of 15,20 % or EUR 25,7 million; calls on the Agency to continue its efforts and address this aspect in full compliance with the principle of annuality;

Performance

3. Notes with satisfaction that the Agency uses certain measures as key performance indicators to assess the added value provided by its activities and other measures to improve its budget management; notes that in 2021 the Agency monitored, in total, 44 corporate performance indicators, of which 33 reached or exceed the set targets;

4. Commends the Agency's progress made towards achieving its five multi-annual strategic priorities set in the Europol Strategy 2020+; notes, in particular, the setting up of the SIRENE Office, the delivery of the data analysis portal for operational analysis, which incorporates new features to enhance data protection by design, and the regular support of the Agency to four major Horizon 2020 innovation projects; further notes the endorsement in 2021 of the implementation plan for the Agency's information management strategy, which aims to achieve eight strategic objectives through actions and tasks that will be monitored and reported on regularly by the newly created Information Management Unit;

([1]) OJ C 162, 13.4.2022, p. 16.

5. Highlights the fact that in 2021 the number of operations was 2 519, i.e. 9 % higher than in 2020; further highlights outstanding results in several areas such as the use of EIS (Europol Information System) and QUEST (Query Europol System), in which, in 2021, more than 12 million searches were recorded, representing a 20 % increase compared to 2020; notes the positive assessments given by users in 2021 on the occasion of the user satisfaction surveys carried out by the Agency with regard to several of its activities;

6. Welcomes that in 2021 the European Counter Terrorism Centre (ECTC) supported a total of 1 010 operations in the area of counterterrorism, which is well above the annual target set at 650; notes that in the context of the Terrorist Finance Tracking Programme Agreement with the USA, 104 searches were requested by the Union in 2021, compared to 174 in the previous year;

7. Welcomes the activities of the Agency under Western Balkan Partnership against Crime and Terrorism, in particular the first operational training needs analysis workshop which took place in Sarajevo, followed by a regional training course focusing on countering terrorism financing in Budapest, as well as several workshops and webinars;

8. Welcomes the cross-border initiatives in the area of counterterrorism, namely those with the countries in the Western Balkans and countries in the Middle East and North Africa (MENA) and Turkey; notes especially the ECTC meetings organised by the Commission's Directorate-General for Migration and Home Affairs with all Western Balkan partners to discuss the progress and the report on the implementation of the joint action plan on counterterrorism for the Western Balkans; notes the ECTC attendance at several workshops, conferences and meetings organised by the delegations from the European External Action Service in the MENA region, the Arab Interior Ministers' Council and the Counter Terrorism MENA Project; encourages the Agency to continue cross-border cooperation with third countries in the area of counterterrorism;

9. Notes with satisfaction that the Agency strives for close cooperation with other Union bodies and international organisations in order to guarantee the security interests of all Union citizens; welcomes the Agency's cooperation with the European Anti-Fraud Office (OLAF) in Operation Sentinel, which was joined by OLAF, with the European Public Prosecutor's Office in Operation Sentinel against fraud relating to Union COVID-19 recovery funds, and with the European Union Agency for Law Enforcement Training (CEPOL) in various ways, such as through training sessions and conferences; calls on the Agency to further continue the development of strong ties with other relevant Union institutions; encourages the Agency to explore ways of sharing resources or staff, or both, on overlapping tasks among other agencies with similar activities, most notably CEPOL;

10. Welcomes the establishment of the Europol Data Protection Experts Network, which is used as a channel to present projects, best practices and events linked to data protection in a law enforcement context;

11. Notes the collaboration between the Agency and the European Data Protection Supervisor (EDPS) in 2021, with an increase of activities regarding prior consultation as required by Article 39 of Regulation (EU) 2016/794 of the European Parliament and of the Council [2] (the 'Europol Regulation'); further notes that all actions (except one pending technical implementation) contained in the action plan prepared by the Agency as a follow up to the EDPS decision of 18 September 2020 regarding the processing of large and complex datasets were fully implemented and evaluated; further notes that 25 staff members, representing 3 % of the Agency's workforce, are estimated to be committed for efforts in responding to data protection supervision and assurance related actions; notes, nevertheless, that in September 2022, the EDPS requested that the Court of Justice of the European Union (CJEU) annul two provisions of the amended Europol Regulation; notes with appreciation, in light of the EDPS request that the CJEU annul two provisions, the action taken by Member States, operational cooperation partners and the Agency, as no request was made to these articles and all contributions from before the entry into force of the amended Europol Regulation have meanwhile been assigned a data subject category;

[2] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

12. Is concerned about one individual complaint in particular to the EDPS introduced against the Agency for the refusal to grant access to personal data; notes that the EDPS issued a decision instructing the Agency to comply with the data subject's request two years after the complaint was introduced following exchanges between the EDPS and the Agency; calls on the Agency to report to the discharge authority about the progress of this situation and to fully comply with its obligations concerning the protection of personal data;

13. Welcomes the signature of a memorandum of understanding with the Fundamental Rights Agency which would contribute to ensure the Agency's compliance with fundamental rights;

Staff policy

14. Notes with appreciation that, on 31 December 2021, the establishment plan was 99,80 % implemented, with 614 temporary agents appointed out of 615 temporary agents authorised under the Union budget (same as in 2020); notes that, in addition, 214 contract agents and 59 seconded national experts worked for the Agency in 2021, with 235 and 71 authorised respectively; notes that the Agency differentiates between four categories of seconded national experts, with three categories bearing no or limited costs for the Agency's budget and representing another 91 persons, bringing the total number of seconded national experts to 150 in 2021;

15. Commends the Agency's low vacancy rate of 0,2 % in 2021, well below the annual target of a maximum vacancy rate of 2 %, as well as the decrease of the turnover rate from 10,9 % in 2020 to 6,9 % in 2021; further notes that the Agency regularly monitors those indicators against annual targets; welcomes the fact that the Agency has taken several measures to prevent high turnover rates, such as the possibility for internal career advancement, a flexible working regime or training and development opportunities; acknowledges, nevertheless, that for certain restricted positions in the core area of law enforcement work, the maximum contract duration is nine years;

16. Notes the gender distribution reported for 2021 for senior and middle management, with 83 % being men (29 men and 6 women), for the management board, with 79 % being men (44 men and 12 women) and for the overall staff, with 65 % being men (541 men and 288 women); is concerned over a decrease in the percentage of women in management posts, with 17 % in 2021 compared to 21 % in 2020; acknowledges that the responsibility to ensure gender balance within the members of the management board lies with the Member States; reiterates its call on the Agency and the Member States to ensure a more equal gender distribution on the management board, in the Agency's management and within staff levels in the future; recalls also the importance of ensuring a balanced geographical representation among the Agency's management and staff members;

17. Notes the Agency's reply that in 2021 there was one administrative inquiry into allegations of harassment regarding a work-related conflict situation; further notes that the administrative inquiry was concluded in June 2022 and that no decision had been taken by the time the discharge authority received the Agency's reply on 16 September 2022; calls on the Agency to keep the discharge authority informed with regard to the decision and follow-up in that matter; further notes that no harassment cases relating to the Agency's staff were brought before a court in 2021;

18. Expresses concern over the 8 burnout cases reported by the Agency in 2021; recalls, nevertheless, that that represents less than 1 % of the total staff of the Agency; notes with appreciation that the Agency took several preventive actions, including the provision of occupational health and lifestyle advice, medical part-time schedules, mental check-ups, flexitime options or dedicated meetings for addressing the well-being of staff;

19. Welcomes the approval of the Agency's 2020+ human rights strategy and the diversity and inclusion strategy; further welcomes the audits on diversity, equality and inclusion, and the review of the Agency's ethics framework, both carried out in 2021 by the internal audit capability (IAC); commends the positive conclusions of those audits;

20. Notes with appreciation that following the release of the SYSPER human resources management system to all staff at the Agency, the Agency has implemented a basic set of modules, as well as most of the optional ones; acknowledges that the implementation of further modules is ongoing; calls on the Agency to continue the digitalisation of its human resources management activities;

Public procurement

21. Notes that in 2021 the implementation of the Agency's annual procurement plan reached 79 %, including 10 procurement procedures for contracts above EUR 15 000 for a total value of EUR 58 314 000; notes with great concern that one contract of a value of EUR 405 000 was concluded under a negotiated procedure without prior publication of a contract notice; calls on the Agency to fully respect all legal provisions concerning thresholds for the publication of contract notices;

22. Welcomes the fact that the digitalisation of public procurement procedures is part of the Agency's procurement policy and finance unit strategy; notes with satisfaction that the Agency uses e-procurement tools such as eNotices, eSubmission and eTendering, the latter also applying to middle-value procedures as of 2022; notes with satisfaction that the Agency is in the process of on-boarding the public procurement management tool, intended for deployment from January 2023; encourages the Agency to continue the digitalisation of its procurement procedures and to report to the discharge authority about the progress achieved;

23. Welcomes the participation of the Agency in 16 interinstitutional procurement procedures organised by other contracting authorities; encourages the Agency to continue participating in such procedures in order to enhance efficiency and achieve economies of scale;

24. Commends that, according to the Court's report, in the area of procurement and contract management, all follow-up actions regarding the Court's observations from previous years have been completed;

Prevention and management of conflicts of interest, and transparency

25. Notes the Agency's existing measures and ongoing efforts to secure transparency, the prevention and management of conflicts of interest, whistleblower protection and the fight against harassment; notes with satisfaction that declarations of interests and CVs of management board members and senior management are published on the Agency's website; commends the Agency in particular for being among the nine agencies who had introduced their own internal rules to deal with the lack of provisions in Union law governing the activities of members of agencies' boards, thus going beyond the minimum legal requirements when handling potential 'revolving door' situations;

26. Notes that between 2019 and 2021, the Agency assessed two cases of a potential conflict of interest in relation to a senior member of staff taking up a new job elsewhere; notes with concern the Court's finding that in one of those cases the Agency did not issue its decision within the deadline provided by Article 16 of the Staff Regulations and thus effectively authorised the person concerned to take up the new job without any restrictions; notes that, according to the Agency's reply, an *ex-post* assessment confirmed that the Agency was not exposed to a conflict of interest situation; calls, nevertheless, on the Agency to comply with all provisions of the Staff Regulations and to apply in a comprehensive and effective way the legal framework applicable to the handling potential 'revolving door' situations and the associated risk of conflicts of interest;

27. Notes the reports about cooperation between the Agency and Frontex in the field of border guard operations, particularly in light of the findings regarding Frontex's 'Processing of Personal Data for Risk Analysis' programme; recalls that cooperation between the Agency and other JHA agencies should be fully transparent and subject to an adequate framework of oversight and that accountability should be ensured; calls on the Agency to take measures to ensure full compliance with Union transparency rules as well as with fundamental rights with data protection standards, in particular, and accountability, including when cooperating with other JHA agencies and partners; considers that the disclosure of meetings and interactions between the Agency and third parties, where that can be disclosed without prejudice to its operational activities, contributes to ensuring enhanced transparency; welcomes the swift appointment of the Agency's fundamental rights officer, a position which was introduced by Regulation (EU) 2022/991 of the European Parliament and of the Council ([3]), which amended the Europol Regulation and which entered into force on 28 June 2022;

([3]) Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation (OJ L 169, 27.6.2022, p. 1).

Internal control

28. Notes that the Commission's Internal Audit Service (IAS) completed its audit on the Agency's contract management and issued four recommendations marked as 'important'; calls on the Agency to take the necessary actions for the implementation of these recommendations; calls on the Agency to fully implement all the open recommendations marked as 'important' issued by the IAS from previous audits on human resources management and ethics and IT security and to keep the discharge authority informed on the progress made in that regard;

29. Notes that the components of the Agency's internal control framework were present and functioning in an integrated manner across the Agency and that the internal control system effectively reduced, to an acceptable level, the risk of not achieving the Agency's annual and multiannual objectives relating to operations, reporting and compliance; notes the good progress made by the Agency regarding the follow-up to IAC audit recommendations, with 87 % implementation rate of all the critical and very important recommendations issued since 2015 (381 recommendations overall) and foreseen for completion in 2021;

30. Notes that in 2021, the IAC also completed three audit engagements on the Agency's 24/7 operational support, on validation of user access rights granted in ABAC and on the Agency's document forensics, with 32 recommendations issued, two of which are marked as 'critical' and two of which are marked as 'very important'; notes with concern the IAC's audit of the Agency's asset management, with 39 recommendations issued, 5 of which are marked as 'critical' and 15 of which are marked as 'very important'; calls on the Agency to implement the IAC's recommendations within the agreed timeframe and to keep the discharge authority informed of the progress made in this matter;

31. Notes the Court's four recommendations made by the Court in its special report of 2021 on Agency's effectiveness of its support to the Members States in combating migrant smuggling; calls on the Agency to implement the Court's recommendations within the agreed timeframe and keep the discharge authority informed of the progress made in that regard;

Digitalisation and the green transition

32. Notes the various ICT-related developments by the Agency in 2021 in the areas of information exchange, search, cross-checking and data management, and accreditation of information systems; further notes the Agency's progress towards Union interoperability and access to Union large-scale IT systems, the measures taken in order to increase the Agency's cyber security and other initiatives such as the endorsement of the Agency's hybrid cloud strategy, the selection of a tool for face recognition through biometrics technology and the rolling out of the e-signature tool for internal documents;

33. Notes with concern that the Agency experienced two distributed denial of service cyberattacks against its public website in 2021; notes with satisfaction that those attacks only caused minimal disruption;

34. Encourages the Agency to work in close cooperation with the European Union Agency for Cybersecurity and the Computer Emergency Response Team for the Union Institutions, bodies and agencies and to carry out regular risk assessments of its IT infrastructure and to ensure that regular audits and tests are carried out on its cyber defences; suggests that the Agency offer regularly updated cybersecurity-related training programmes to all of its staff;

35. Commends the Agency for having received the EMAS and ISO 14001:2015 certifications in 2021; welcomes the Agency's efforts to reduce or offset its CO_2 emissions ranging from purchasing electricity from 100 % renewable sources to awareness-raising measures among staff; notes that, for contracts above EUR 15 000, the Agency applies environmental considerations; notes with appreciation that the Agency monitors its environmental impact through environmental indicators included in the Agency's annual activity report;

Business continuity during the COVID-19 crisis

36. Notes with appreciation that in 2021 the Agency's crisis management team continued to manage the effects of the COVID-19 pandemic by providing guidance on steps to follow and regular updates to staff; notes in that context that some activities requiring physical presence had to be postponed or cancelled, while teleworking remained the norm for most of the non-operational staff; welcomes the approval of the Agency's business impact analysis, which includes the lessons learned from the COVID-19 crisis and the power outage incident from 2020;

Other comments

37. Notes the improved metrics in 2021 regarding the Agency's presence in high-impact web-based media and the number of visitors to the Agency's website, as well as its efforts to increase its public visibility through interviews and press releases; encourages the Agency to continue promoting its work, research and activities;

38. Calls on the Agency to focus on disseminating the results of its operations to the general public and to reach out to the public via the social media and other media outlets; welcomes in that regard the Agency's current efforts to promote its activities;

39. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 10 May 2023 ([4]) on the performance, financial management and control of the agencies.

([4]) Texts adopted, P9_TA(2023)0190.