

## REPORT

**on the annual accounts of the European Border and Coast Guard Agency for the financial year 2016,  
together with the Agency's reply**

(2017/C 417/38)

## INTRODUCTION

1. The European Border and Coast Guard Agency (hereinafter 'the Agency', aka 'Frontex'), was created by Regulation (EU) 2016/1624 <sup>(1)</sup> of the European Parliament and of the Council ('new founding Regulation') repealing Council Regulation (EC) No 2007/2004 <sup>(2)</sup>. It has been developed from the European Agency for the Management of Operational Cooperation at the External Borders of the Members States and maintained the short name 'Frontex' and the seat of its headquarter in Warsaw. The new founding Regulation extends the mandate of the Agency and entrusts it to ensure European integrated border management at the external borders with a view to managing the crossing of the external borders efficiently. This includes addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it.

2. The Table presents key figures for the Agency <sup>(3)</sup>.

Table

**Key figures for the Agency**

	2015	2016
Budget (million euro)	143,3	251
Total staff as at 31 December <sup>(1)</sup>	309	365

<sup>(1)</sup> Actual staff working at the Agency including officials, temporary and contract staff and seconded national experts. The number of posts authorised under the final 2016 Staff Establishment Plan was higher with 275 posts for officials and temporary agents and 192 posts for contract staff and seconded national experts.

Source: data provided by the Agency.

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

3. The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency's supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of management representations.

**OPINION**

4. We have audited:

(a) the accounts of the Agency which comprise the financial statements <sup>(4)</sup> and the reports on the implementation of the budget <sup>(5)</sup> for the financial year ended 31 December 2016; and

<sup>(1)</sup> OJ L 251, 16.9.2016, p. 1.

<sup>(2)</sup> OJ L 349, 25.11.2004, p. 1.

<sup>(3)</sup> More information on the Agency competences and activities is available on its website: [www.frontex.europa.eu](http://www.frontex.europa.eu)

<sup>(4)</sup> The financial statements comprise the balance sheet, the statement of financial performance, the cashflow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

<sup>(5)</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

(b) the legality and regularity of the transactions underlying those accounts;

as required by Article 287 of the Treaty on the Functioning of the European Union (TFEU).

### **Reliability of the accounts**

#### *Opinion on the reliability of the accounts*

5. In our opinion, the accounts of the Agency for the year ended 31 December 2016 present fairly, in all material respects, the financial position of the Agency at 31 December 2016, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector.

### **Legality and regularity of the transactions underlying the accounts**

#### **Revenue**

#### *Opinion on the legality and regularity of revenue underlying the accounts*

6. In our opinion, revenue underlying the accounts for the year ended 31 December 2016 is legal and regular in all material respects.

#### **Payments**

#### *Opinion on the legality and regularity of payments underlying the accounts*

7. In our opinion, payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

### **Responsibilities of management and those charged with governance**

8. In accordance with Articles 310 to 325 of the TFEU and the Agency's Financial Regulation, management is responsible for the preparation and presentation of the accounts on the basis of internationally accepted accounting standards for the public sector and for the legality and regularity of the transactions underlying them. This responsibility includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them. The Agency's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts.

9. In preparing the accounts, management is responsible for assessing the Agency's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

10. Those charged with governance are responsible for overseeing the entity's financial reporting process.

### **Auditor's responsibilities for the audit of the accounts and underlying transactions**

11. Our objectives are to obtain reasonable assurance about whether the accounts of the Agency are free from material misstatement and the transactions underlying them are legal and regular and to provide, on the basis of our audit, the European Parliament and the Council or other respective discharge authorities with a statement of assurance as to the reliability of the accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

12. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and the regularity of the transactions underlying them. The procedures selected depend on the auditor's judgment, including an assessment of the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error. In making those risk assessments, internal controls relevant to the preparation and fair presentation of the accounts and legality and regularity of underlying transactions, are considered in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the accounts.

13. For revenue, we verify the subsidy received from the Commission and assess the Agency's procedures for collecting fees and other income, if any.

14. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments other than advances at the point they are made. Advance payments are examined when the recipient of funds provides justification for their proper use and the Agency accepts the justification by clearing the advance payment, whether in the same year or later.

15. In preparing this report and Statement of Assurance, we considered the audit work of the independent external auditor performed on the Agency's accounts as stipulated in Article 208(4) of the EU Financial Regulation <sup>(1)</sup>.

16. In response to the migration crisis faced by the Union, the mandate of Frontex was considerably extended and its 2016 final budget was 75 % higher than that of the previous year. Staff available in 2016 increased by only 18 % and systems and procedures were still in the process of being adapted to cope with the new circumstances. The comments which follow do not call the Court's opinion into question and are to be read in the context of the challenges the Agency had to face.

#### COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

17. The Agency's previous founding Regulation which was in force until 5 October 2016 provided for the funding of joint return operations carried out with participating countries. National return operations only became eligible under the new founding Regulation. However, in the period January to October 2016 the Agency funded national return operations for an amount of 3,6 million euro. These payments are irregular.

18. The Staff Regulations provide that in the case of an external selection procedure, temporary staff can only be recruited at grades SC 1 to SC 2, AST 1 to AST 4 or AD 5 to AD 8 <sup>(2)</sup>. In 2016 the Agency recruited 14 staff at higher AST grades. The recruitments at these grades are irregular.

#### COMMENTS ON BUDGETARY MANAGEMENT

19. The level of carry-overs for committed appropriations increased for Title II (administrative expenditure) to 6,4 million euro, i.e. 43 % (2015: 3,2 million euro, i.e. 38 %) and Title III (operational expenditure) to 67,3 million euro, i.e. 37 % (2015: 40,2 million euro, i.e. 35 %). The main reason is contracts and operations extending beyond the year-end. The Agency may consider introducing differentiated budget appropriations to better reflect inevitable delays between legal commitments, contract implementation and operations and the related payments.

20. The level of cancelled carry-overs from 2015 was high for Title III (operational expenditure) at 6,4 million euro, i.e. 16 %, due to an overestimation of 2015 costs that still had to be reimbursed to participating countries in 2016. There is a need to obtain more precise cost estimations and more timely cost reporting from cooperating countries.

<sup>(1)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

<sup>(2)</sup> Article 53.2 of the Staff Regulation

**COMMENTS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE**

21. Under the Agency's extended mandate, high importance is attached to return operations and 63 million euro had been assigned to that in its 2016 budget. However, 23 million euro, i.e. 37,5 % were repaid to the EU budget since fewer return operations were carried out than envisaged. The significant delay of the procurement procedure for a 50 million euro framework contract to charter aircraft and related services for Frontex return operations contributed to this situation and continues to affect the number of return operations arranged by the Agency. While the launch of this procurement procedure was planned for March 2016, it had not been started by the year end.

22. On 22 December 2015 the Commission and the Agency, co-beneficiary and coordinator of three other co-beneficiaries (EASO, IOM and UNHCR) <sup>(1)</sup>, signed a grant agreement amounting to 5,5 million euro on regional support to protection-sensitive migration management in the Western Balkans and Turkey for a three year period starting on 1 January 2016. However, cooperation agreements with the three partners (legal commitments) which amounted to 3,4 million euro were only signed between August and November 2016. For two of the agreements the budgetary commitments, which should have released the funds before entering in the legal commitments, were only signed in October and in December 2016. Moreover, budget commitments amounted to 1,2 million euro, covering only the pre-financing payments. Such a procedure is in breach of the Financial Regulation's rules on budgetary management and the late signature of the agreements caused uncertainty for the operational cooperation between partners.

**OTHER COMMENTS**

23. The Agency's establishment plan for 2016 provides for 275 posts for officials and temporary agents <sup>(2)</sup>. By the end of 2016 only 197 of these posts, i.e. 71 % were filled, mainly due to the fact that 50 new posts were only established in October 2016 and recruitment still has to be completed. The Agency traditionally experiences difficulties in finding staff with the required profile, partly because of the salary correction coefficient (66,7 %).

24. Following the extension of its mandate, the Agency's staff will more than double from 365 in 2016 to 1 000 in 2020 <sup>(3)</sup>. This increase was not based on a thorough estimation of needs.

25. The planned increase in staff will require additional office space. The Agency is analysing options to address the needs, together with the Commission and the host country.

**FOLLOW-UP OF PREVIOUS YEARS' COMMENTS**

An overview of the corrective actions taken in response to the Court's comments from previous years is provided in the *Annex*.

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA, Member of the Court of Auditors, in Luxembourg at its meeting of 19 September 2017.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

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<sup>(1)</sup> European Asylum Support Office (Malta), International Organisation for Migration (Belgrad) and United Nations High Commissioner for Refugees (Geneva).

<sup>(2)</sup> Additional 192 posts were authorised for contract staff and seconded national experts.

<sup>(3)</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC (COM/2015/0671 final — 2015/0310 (COD)).

## ANNEX

**Follow-up of previous years' comments**

Year	Court's comments	Status of corrective action (Completed/Ongoing/Outstanding/ N/A)
2012	The recruitment procedures examined showed significant shortcomings affecting transparency and the equal treatment of candidates: questions for written tests and interviews were set after the applications had been examined by the selection board; no threshold scores were set for admission to written tests and interviews and for being included in the list of suitable candidates; the Selection Board did not document all its meetings and decisions.	Completed
2013	Suppliers' statements at year-end were reconciled with considerable difficulty. There is a need to monitor supplier balances more regularly and to analyse differences in a more timely manner.	Ongoing
2013	Frontex became operational in 2005 and has, to date, worked on the basis of correspondence and exchanges with the host Member State. However a comprehensive headquarters agreement between the Agency and the Member State has not been signed. Such an agreement would further promote transparency in respect of the conditions under which the Agency and its staff operate.	Ongoing
2014	Considerable improvements were noted in both <i>ex ante</i> and <i>ex post</i> verifications of expenditure claimed by cooperating countries under grant agreements. However, documentation from cooperating countries supporting the expenditure claimed is not always sufficient. Moreover, no audit certificates were requested, although the rules of application of the EU's Financial Regulation recommend this for grants above specific thresholds <sup>(1)</sup> . Audit certificates would add further assurance on the legality and regularity of grant transactions.	Ongoing for <i>ex ante</i> and <i>ex post</i> Completed for audit certificates
2014	The high and constantly increasing number of grant agreements and the magnitude of related expenditure to be verified and reimbursed by Frontex raise the question whether more efficient and cost-effective alternative funding mechanisms could be used.	Outstanding <sup>(2)</sup>
2014	There is a need to refine the calculation of contributions from Schengen associated countries (Switzerland, Liechtenstein, Iceland and Norway) to better reflect the related legal provisions <sup>(3)</sup> . For example, the calculation should be based on the final instead of the budgeted annual subsidy received from the Commission.	Ongoing

Year	Court's comments	Status of corrective action (Completed/Ongoing/Outstanding/ N/A)
2015	The <i>ex-post</i> audit to Iceland carried out by the Agency in October 2015 detected irregular payments totalling 1,4 million euro related to the depreciation of a vessel participating in seven joint operations from 2011 to 2015. The Icelandic coast guard had claimed reimbursement of depreciation for that vessel even though it had exceeded the useful life provided for in the Agency's guidelines. Whilst the Agency has the right to recover irregular payments made in the last five years, it announced to recover only the payments made since January 2015, amounting to 0,6 million euro.	Ongoing
2015	The Internal Security Fund (ISF) is set up for the period 2014-20. It is composed of two instruments, ISF Borders and Visa as well as ISF Police, under which 2,8 billion euro and 1 billion euro are available for funding actions respectively. The Commission under ISF Borders and Visa reimburses Member States' purchases of means, such as vehicles or vessels as well as running costs such as fuel consumption or maintenance. The Agency also reimburses such costs to participants in joint operations. There is therefore an unaddressed risk of double funding <sup>(4)</sup> .	Ongoing
2015	The level of carry-overs for committed appropriations was high for Title II (administrative expenditure) at 3,2 million euro, i.e. 38 % (2014: 4,5 million euro, i.e. 36 %) and Title III (operational expenditure) at 40,2 million euro, i.e. 35 % (2014: 28,4 million euro, i.e. 44 %). For Title II, the main reason for high carry-overs is IT contracts extending beyond the year-end whereas for Title III, it is the multiannual nature of the Agency's operations.	N/A
2015	States participating in border operations declare the costs incurred on the basis of cost claim sheets which comprise 'fixed expenses' (depreciation and maintenance), 'variable expenses' (mostly fuel) and 'mission expenses' (mostly allowances and other crew expenses). The costs declared are based on real values and follow national standards leading to divergent approaches among participating states which creates a particularly burdensome system for all parties involved. The Court in its Special Report 12/2016 recommended that agencies should use simplified cost options whenever appropriate to avoid such inefficiencies <sup>(5)</sup> .	Ongoing

<sup>(1)</sup> Delegated Regulation (EU) No 1268/2012 of the Commission (OJ L 362, 31.12.2012, p. 1).

<sup>(2)</sup> Article 3(4) of Regulation (EC) No 2007/2004 limits the Agency's co-financing of joint operations to grants.

<sup>(3)</sup> Arrangement between the European Community of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 243, 16.9.2010, p. 4); Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 188, 20.7.2007, p. 19).

<sup>(4)</sup> The Court had referred to this risk in paragraph 39 and recommendation 4 of its Special Report 15/2014 'The External Borders Fund has fostered financial solidarity but requires better measurement of results and needs to provide further EU added value'.

<sup>(5)</sup> Recommendation 1 in the Court's Special Report 12/2016 'Agencies' use of grants: not always appropriate or demonstrably effective'.

### THE AGENCY'S REPLY

18. In 2016, given the disproportionate migratory pressure towards EU Member States and following the EU Action Plan for return from October 2015, the European Council conclusions from 15 June 2015 and 16/17 March 2016, the Executive Director of the Agency adopted the Decision 2016/36, which provided a broader interpretation of (co)-financing modalities of a joint return operation to the extent that also a national return operation carried out by just one single MS facing a disproportionate migratory pressure would be (co)-financed from Frontex budget. Furthermore: The budgetary authority had amended the budget for 2016 specifically to implement the Action Plan on return mentioned before.

19. The decision taken by Frontex in regard to an engagement of new temporary staff at grades higher than AST 4 was supported by the Management Board when adopting the Programme of Work and the Budget 2016, including the Establishment plan.

The motivation for upgrading of 5 AST 4 posts to 5 AST 5 posts was due to the business needs to run the 24/7 Duty Officers' service. Given the level of responsibilities in the context of the migratory flows and security challenge at EU external borders, Frontex must be able to attract qualified and experienced candidates with relevant prior working experience, but no university education as required for AD posts. Furthermore: The salary correction coefficient of 66,7 % impacts significantly and every step higher potentially attracts more suitable candidates.

20. The use of differentiated appropriations implies a considerable change in budget management. Taking into consideration the changes and challenges the Agency is facing, the pros and cons will be carefully assessed in view of a sound internal control framework.

21. The Agency agrees that there is a need to obtain more precise cost estimations and more timely cost reporting from cooperating MS/SAC. The Agency commits to make its best in better cooperation with the MS/SAC at the level of drafting costs estimations. At the same time the Agency is revising in 2017 its entire financial scheme aiming at simplifications, switching from grants to service contracts and introducing flat rates.

22. The Agency drastically beefed up the number of joint return flights: 232 in 2016 compared to 66 in 2015 and 39 in 2014. In 2016 this represented 10 700 people returned to third countries, plus one thousand transported by the Agency from the Greek islands to Turkey after the EU/Turkey statement of March 2016. Despite of this unprecedented surge in return services provided by the Agency, only EUR 40,0 m could be used out of the EUR 63,0 m assigned to this activity in the 2016 budget. The remaining EUR 23,0 m could not be used mainly because the Framework Contract for chartering aircrafts and related services for return operations faced delays generated by the deprioritisation of the project in favour of the efforts taken for ensuring the logistical support (ferries and busses) for the implementation of the EU-Turkey Statement. The deprioritisation was negatively impacted by lack of personnel, corroborated also with the increased operational needs to be covered. The subject requirement entails a complex tendering procedure under FWC and multi million budget. The tender procedure for establishing a 4 years FWC has in the meantime been published, however with a lower estimated budget (EUR 20,0 m).

23. Frontex jointly with the European Commission had been in the process of drafting the Grant Agreement for this regional Programme since 2014. In August 2015 just before finalising and signing the Grant Agreement, complicating factors, including the drastic change of the migratory situation in the Western Balkans, led to a request of the Commission to rewrite the project in a way to reflect adequately the migratory situation. As a result, the concept of the Project was entirely changed in an urgent manner and the Grant Agreement was only signed at the end of the contracting deadline end of December 2015.

Due to these last minute changes all four implementing Project Partners (Frontex, EASO, IOM and UNHCR) could start discussing the provisions of the Cooperation Agreements only in January 2016. As the Cooperation Agreements include provisions regulating the overall allocation to each partner, a detailed project budget had to be developed and agreed between all parties before signing the Cooperation Agreements. It has also to be pointed out that the signature with EASO was swift and smooth, while other partners questioned the rules expected by the Executive Director of the Agency to use the euro and not the US dollar or to foresee disclosure of more budget data for the sake of transparency.

Given the above explanation and the fact that in January 2016 the implementation of the Grant Agreement had started, the implementing partners had to start bearing the costs of the activities even before signing the Cooperation Agreements with Frontex. In order to justify this, and also to document the fact that the legal commitment for all three project partners was made prior to the budgetary commitment, Frontex duly documented this as an exception.

In line with the Article 7.2 of the Rules of Application (RAP) the appropriations corresponding to assigned revenue shall be made available automatically, both as commitment appropriations and as payment appropriations, when the revenue has been received by the institution.

24. The Agency appreciates the acknowledgement of the Court that the very low correction coefficient impacts negatively on the recruitments. The Agency is in contact with the relevant services of the European Commission to find remedying measures and hopes that the interpretation of the Staff Regulations can offer some solution to the existing detrimental situation.

25. The Agency takes note of the comment made by the Court; at the same time it would like to clarify that the staff figures were included in the Legislative Financial Statements accompanying the Commission's proposal for the European Border and Coast Guard Regulation.

26. The agency had already addressed at the beginning of 2017 the budgetary authority and received green light to expand in its current premises in order to accommodate the additional staff numbers. Furthermore, once the Headquarters Agreement will be in force, the Polish government committed to donate a plot of land to the Agency in order to enable it to construct a new building that will remain in the ownership of the Agency.

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