

FINAL COMPROMISE AMENDMENTS DISCHARGE 2020

Frontex -2021/2146(DEC)

AMs: 48

Covered: AM 1 Greens, AM 2 Greens (partially), AM 4 Renew, AM 5 Renew, AM 6 Renew, AM 7 EPP, AM 8 The Left, AM 9 Renew, AM 10 The Left, AM 11 Greens, AM 13 EPP, AM 14 Greens, AM 15 Greens, AM 18 EPP, AM 19 The Left, AM 21 Renew, AM 23 Greens, AM 28 Greens, AM 29 The Left AM 30 EPP, AM 32 Greens, AM 33 ECR (partially), AM 35 Renew, AM 38 EPP, AM 40 S&D, AM 42 S&D, AM 43 EPP, AM 44 EPP, AM 46 S&D, AM 47 S&D, AM 48 EPP

Fall: AM 3 The Left, AM 12 ID, AM 16 ID, AM 17 ECR, AM 20 EPP, AM 25 EPP, AM 26 ECR, AM 27 ID, AM 34 ID, AM 41 Greens

Not covered in the compromise amendments: AM 22 The Left, AM 24 The Left, AM 31 ECR, AM 36 Greens, AM 37 ECR, AM 39 The Left, AM 45 Greens

Update: 8/02/2022

CA 1

Covered: AM 1 Greens, AM 2 Greens (partially), AM 4 Renew, AM 23 Greens

Fall: AM 3 The Left

1. Welcomes the fact that the Court of Auditors (the ‘Court’) has declared the transactions underlying the annual accounts of the European Border and Coast Guard Agency (the ‘Agency’) for the financial year **2020** to be legal and regular in all material aspects; notes that the budget of the Agency was increased from EUR 446 million to EUR 495 million (+ 11 %); takes note of the increase in the Agency's staff in 2020 from 749 to 1 234 (+ 64,8 %); ***recalls that the budget of the Agency increased from EUR 118 million in 2011 to EUR 460 million in 2020, and to an annual average of EUR 900 million for the 2021-2027 period (AM 1 Greens)***;

1 a (new) Notes that the Union funding to the Agency increased by EUR 10 million by means of Amending budget No 1/2020; deplors that that amount was not visible in the EPP: Agrees budgetary accounts of the Agency; (AM 4 Renew) agrees with the Court opinion that this reduces transparency as it makes it harder to see how much Union funding was available to the Agency in 2020 and how that amount changed over time(AM 23 Greens); emphasises the need to ensure transparency as a priority (AM 4 Renew);

CA 2

Covered: AM 5 Renew, AM 7 EPP, AM 8 The Left; AM 38 EPP

1 b (new) Notes the Court's remark that in one case a national authority conducted two unannounced return operations, costing EUR 355 000 overall, which resulted in a sudden budgetary deficit for the Agency; notes that as a result, the Agency was forced to make an ex-post budgetary commitment, (AM 38 EPP) in violation of the Agency's financial regulation (AM 5 Renew);

2. ***Notes the ongoing actions of the Agency on the observations of the Court; notes that the Agency has created an action plan to address identified shortcomings***; calls on the

Agency to continue undertaking corrective actions, including the adoption and implementation of a sensitive posts policy in line with its own internal control standards, drafting a business continuity plan and obtaining the approval of its management board, addressing the risk of double funding from the Internal Security Fund and addressing the **high (AM 8 The Left)** level of carry-overs; calls however on the Agency to step up its efforts into reaching the required occupancy levels laid down in the staff establishment plan; welcomes the corrective steps taken by the Agency to address the issue of reimbursements to cooperating countries without the necessary supporting documentation; ***calls on the Agency to inform the discharge authority about the progress made on those matters; (AM 7 EPP)***

CA 2A (previous CA 8)

Covered: AM 9 Renew, AM 43 EPP

2 a (new) Acknowledges that the Agency has adopted a new process to increase transparency and equal opportunities by streamlining industry dialogues (AM 43 EPP) through the establishment and operationalisation of the Agency's transparency register, thus addressing Parliament's recommendation from the 2019 discharge resolution (AM 9 Renew); calls on the Agency to comply with the highest standards of transparency and to have the transparency register regularly updated (AM 43 EPP);

CA 2B (previous CA 9)

Covered AM 21 Renew, AM 44 EPP

2 b (new) Notes the Court's remark that the Agency asked the Commission on 1 September 2020 for permission to upgrade 100 AST posts into advanced-level posts (AD7 or higher); regrets that the Agency, in anticipation of the Commission's reply, on 9 September 2020 sent out 47 offers to advanced-level candidates which consequently had to be withdrawn because the Agency did not have legal authority for such an action (AM 44 EPP), exposing the Agency at an unnecessary risk of reputational damage and litigation (AM 21 Renew); calls on the Agency to ensure principle of legality in all its activities (AM 44 EPP); recalls however that the allocation of posts at the appropriate grade is essential for the optimal functioning of the Agency (AM 21 Renew); calls on the Agency and the Commission to improve mutual communication (AM 44 EPP), taking into consideration the specifics of the operational nature of the Agency and ensure that future posts are allocated at the appropriate grade corresponding to the post requirements (AM 21 Renew);

CA 2C (previous CA 7)

Covered: AM 35 Renew, AM 48 EPP

2 c (new) Notes the gender balance reported for 2020 at senior management level with 15 men (75 %) and 5 women (25%) and at the level of the management board with 50 men (83,3 %) and 10 women (16,7 %); notes that the staff overall is composed of 870 men (70,5 %) and 364 women (29,5 %) (AM 48 EPP); underlines that the responsibility of nominating members of the Agency's management board lies with national authorities; calls, therefore, on the Agency to remind Member States proactively of the importance of gender balance and calls on Member States to ensure gender balance when nominating their members to

Agency's management board; urges that that imbalance be addressed and remedied as soon as possible (AM 35, Renew);

CA 3

Covered: AM 10 The Left, AM 11 Greens, AM 13 EPP, AM 14 Greens

Fall: AM 12 ID

3. Recalls of the fact that the European Anti-Fraud Office has initiated an investigation on the Agency *over allegations of harassment, misconduct and migrant pushbacks (AM 10 The Left, AM 11 Greens)*; *notes that according to the Agency's reply, it is fully committed and cooperates closely with the European Anti-Fraud Office (AM 13 EPP)*; underlines that the outcome of the investigation was still pending by early *February 2022*; reminds that the Ombudsman conducted two own-initiative inquiries into the *effectiveness and transparency of the* complaints mechanism of the Agency and on *the role and independence of the fundamental rights officer, as well as into* the compliance by the Agency with its fundamental rights obligations *and its ability to ensure accountability*; *recalls that the Ombudsman's first inquiry was followed by nine suggestions for improvement to the Agency, including suggestions on how to make it easier for potential victims of fundamental rights violations to be aware of redress possibilities and to report incidents; (AM 11 Greens) notes that the Ombudsman's second inquiry, concluded on 17 January 2022, was followed by a new series of suggestions to Frontex, with a view to improving its accountability;*¹ *notes the findings of the Court in its special report 08/2021 entitled 'Frontex's support to external border management: not sufficiently effective to date'*; recalls of the *recommendations* of the Parliament's Frontex Scrutiny Working Group *as laid down in its Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations* and the conclusions of the 13 internal inquiries by *the Agency's* management board; *notes* the Agency's report on the implementation of the conclusions of the extraordinary management board meeting of 6 October 2021 which reflects the 71 recommendations received from the aforementioned reports and audits, *which subsequently were translated by the Agency into 115 actions*; calls on the Agency to take all necessary measures towards implementing all the remaining recommendations and to report to the discharge authority over the progress achieved; *stresses in that context the need for a full clarification of alleged violations of fundamental rights at the external borders (AM 47 S&D)*;

3 a. Notes that Parliament's Frontex Scrutiny Working Group (FSWG) "did not find conclusive evidence on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined by the FSWG", but concluded "that the Agency found evidence in support of allegations of fundamental rights violations in Member States with which it had a joint operation, but failed to address and follow-up on these violations promptly, vigilantly and effectively"; notes that the "Agency also failed to adequately respond to internal observations about certain cases of probable fundamental rights violations in Member States" and "that Frontex generally disregarded" reports from "several reliable actors"; notes that the FSWG "found deficiencies in Frontex's mechanisms to monitor, report and assess fundamental rights situations and developments, and makes concrete recommendations for improvement", but "also identified gaps in the framework of cooperation with Member States, which may hamper the fulfilment of

¹ *European Ombudsman, Decision of 17 January 2022 in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities.*

Frontex's fundamental rights obligations"; notes that the FSWG expressed concern "about the lack of cooperation of the Executive Director to ensure compliance with some of the provisions of the EBCG Regulation, notably on fundamental rights"; notes that the "FSWG takes the position that the Management Board should have played a much more proactive role in acknowledging the serious risk of fundamental rights violations and in taking action to ensure that Frontex fulfils its negative and positive fundamental rights obligations as enshrined in the Regulation"; notes that the FSWG welcomes the new internal procedures and rules developed by the Agency in the months preceding the report to comply with the Regulation but urges the executive director and the management board "to further increase the fundamental rights compliance of the Agency by reconsidering its internal structures and communication, as well as the cooperation with the host Member States"; notes that the FSWG "highlights the responsibility of the Member States and the Commission, outside their role in the Management Board as well"; (AM 14 Greens)

CA 3A (previous CA 6)

Covered: AM 32 Greens, AM 33 ECR (partially), AM 40 S&D

Fall: AM 34 ID

6. *Notes that an analysis of respect for fundamental rights by the Agency was not included in the scope of the Court's special report 08/2021 entitled 'Frontex' support to external border management: not sufficiently effective to date' (AM 33 ECR); asks the Court to carry out a specific audit about the Agency's activities regarding the respect for and the protection of fundamental rights in future reports (AM 32, Greens); calls the Agency to swiftly implement recommendation 5 of the Court's special report, respecting the indicated timeline set out therein; remains concerned that some weaknesses identified in the Court's special report 08/2021 remain present (AM 40 S&D);*

CA 4

Covered: AM 15 Greens, AM 18 EPP, AM 19 The Left, AM 42 S&D (partially)

Fall: AM 16 ID, AM 17 ECR, AM 20 EPP

4. *Acknowledges the Agency's efforts following the Parliament's recommendations made in the first and the second discharge report for the financial year 2019; recalls the conditions formulated in the second discharge report of the Agency for the financial year 2019 for release of a budgetary reserve; reminds that this reserve was not made in the budget of the Agency for 2022 (AM 18 EPP) asks nevertheless the Agency to inform the discharge authority on the progress made towards fulfilling the six conditions formulated in that report, namely: (1) the recruitment of the fundamental rights officer, who took office on 1 June 2021, and the appointment of the first 20 fundamental rights monitors; regrets the fact that 15 of those appointments were made at AST level; reiterates that Regulation (EU) 2019/1896 provides for the recruitment of at least 40 fundamental rights monitors by 5 December 2020; deplores that the Agency is still unable to fulfil that requirement; (AM 42 S&D) urges the Agency to swiftly recruit the remaining 20 fundamental rights monitors and to appoint them at AD level; deeply regrets the delay in the recruitment of the fundamental rights monitors and recalls that this poses a serious risk to operations and reputation of the Agency; deplores the fact that the fundamental rights officer still lacks adequate human resources to properly conduct the tasks that he is entrusted with; urges the Agency to provide its fundamental rights officer with adequate resources and staff, in particular in relation to further developing and*

implementing the Agency's strategy to monitor and ensure the protection of fundamental rights (AM 15 Greens, AM 19 The Left); welcomes the cooperation between the Agency and the European Union Agency for Fundamental Rights towards completing the recruitment of the remaining fundamental rights monitors; (2) the appointment of the three deputy executive directors in 2021; (3) the update of the Standard Operating Procedure for Serious Incident Reporting in May 2021; (4) the adoption by the Agency's management board of a detailed procedure for the implementation of Article 46 of Regulation (EU) 2019/1896; (5) the establishment of a fully functioning fundamental rights monitoring system, in line with Article 110 of Regulation (EU) 2019/1896 and (6) the implementation of recommendation 5 of the Court's Special Report 08/2021 by the end of 2021;

CA 5

Covered: AM 6 Renew, AM 28 Greens, AM 29 The Left, AM 30 EPP, AM 42 S&D (partially), AM 46 S&D, AM 47 S&D

Fall: AM 25 EPP, AM26 ECR, AM 27 ID, AM 41 Greens

5. *Recalls that the Agency is mandated to control borders while ensuring that border controls are conducted in accordance with the fundamental rights applicable in the Union, including those enshrined in the Convention relating to the Status of Refugees, Regulation (EU) 2016/399^{1a} and Regulation (EU) 2019/1896; (AM 28 Greens) deeply regrets, in that regard, that the Agency continues to carry out returns from Hungary (AM 46 S&D); regrets the fact that the Agency has also still not established a detailed procedure for the implementation of Article 46 of Regulation (EU) 2019/1896 (AM 42 S&D); notes, moreover, the assessment of the Agency's own fundamental rights officer that the Agency's role in supporting Member States implicated the Agency to some extent in their actions (AM 42 S&D); calls on the Agency to immediately (AM 29 The Left) adopt such a procedure; calls on the Commission to support the Agency in that regard (AM 30 EPP); calls on the Agency to suspend its operations supporting return-related operations from Hungary as long as, and as concluded by the Court of Justice of the European Union, the return decisions issued by the Hungarian authorities are incompatible with Directive 2008/115/EC and the Charter of Fundamental Rights of the European Union;*

5 a (new) *Reiterates that the increased competences and budget of the Agency need to be accompanied with a corresponding increase in accountability and transparency; stresses that the granting of discharge in respect of the implementation of the budget of the Agency is conditional on such accountability and transparency, and especially on the Agency's commitment to comply with Union law; (AM 6 Renew, AM 47 S&D)*

^{1a} *Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77 23.3.2016, p. 1).*