2015 discharge: European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

2016/2193(DEC) - 13/09/2016 - Court of Auditors: opinion, report

PURPOSE: presentation of the EU Court of Auditors' report on the annual accounts of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) for the year 2015, together with the Agency's reply.

CONTENT: in accordance with the tasks conferred on the Court of Auditors by the Treaty on the Functioning of the European Union, the Court presents to the European Parliament and to the Council, in the context of the discharge procedure, a Statement of Assurance as to the reliability of the annual accounts of each institution, body or agency of the EU, and the legality and regularity of the transactions underlying them, on the basis of an independent external audit.

This audit focused on the annual accounts of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA). As a reminder, the core mission of this Agency is to fulfil the operational management tasks for the Second Generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac.

Statement of Assurance: pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- the annual accounts of the Foundation, which comprise the financial statements and the reports on the implementation of the budget for the financial year ended 31 December 2015;
- the legality and regularity of the transactions underlying those accounts.

Opinion on the reliability of the accounts: in the Court's opinion, the Agency's annual accounts present fairly, in all material respects, its financial position as at 31 December 2015 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

Opinion on the legality and regularity of the transactions underlying the accounts: the Court considers that the transactions underlying the annual accounts for the year ended 31 December 2015 are legal and regular in all material respects. However, the Court noted that the Agency signed a EUR 2 million framework contract for the procurement services by a contractor (procurement services), for training, coaching and learning services from third party providers (training services). The contractor identified suitable training services for any specific request, and provides a quote for the training services plus a fee for its own procurement service (uplift). However, the framework contract failed to specify that the procurement services should be in compliance with the procurement provisions in the Agency's financial rules. Therefore the current process of submitting quotes for approval by the Agency **does not ensure that the services are procured in compliance with all requirements of the financial rules**. The call for expression of interest and pre-selection of candidates for participation in a negotiated procedure with an estimated value of EUR 20 million took place without a delegation by the authorising officer.

The report also made a series of observations on the budgetary and financial management of the Agency, accompanied by the latter's response. The main observations may be summarised as follows:

The Court's observations:

- **budgetary management**: the Court noted that the committed appropriations carried over under administrative expenditure amount to EUR 9 million or 50 % of total committed appropriations. These carry overs mainly concern a large contract for the extension of the Strasbourg building (EUR 4.6 million) as well as services provided under multi-annual contracts. The Court stated that arrangements with Schengen Associated Countries (Switzerland, Liechtenstein, Iceland and Norway) defining detailed rules for their participation in the work of the Agency, including provisions on voting rights and their contribution to the Agency's budget, have still not been concluded. In their absence, Schengen Associated Countries contribute to operational expenditure of the Agency's budget following a provision in the association agreements signed with the EU. However they do not yet contribute to activities under titles I and II (salaries and other administrative expenditure) of the Agency's budget.

The Agency's replies:

- **budgetary management**: the Agency stated that it deployed a considerable effort in planning and coordination to verify that all business cases for the carry-forward of non-differentiated appropriations were indeed justified, as evidenced by the sharp decrease of cancellations over the years. It acknowledged the comment and pointed out that all legally possible actions have been taken in order to acquire financial contributions of Associated Countries to the Agency's budget, whereas negotiations with Associated Countries are led by the European Commission rather than the Agency. Agreements are subject of ratification by the national parliaments of these countries;
- **legality of the underlying accounts**: the Agency stressed that the framework contract in question was awarded through an open procedure under the rules of the Agency's Financial Regulation. While there was no explicit provision that the contractor would be bound to EU procurement rules, the specifications include a mandatory requirement that the lowest price on the market would be provided. The Agency has the right to impose a price review if a lower price can be found. The Agency is not aware of a legal obligation to impose a specific set of procurement rules on contractors. The Agency also stated that no pre-selection, under the meaning of the Financial Regulation and its Rules of Application (i.e. formal application of pre-set selection criteria), took place before the launch of the negotiated procedure. The call for expressions of interest was used as part of the market prospection and not as a tender procedure.

Lastly, the Court of Auditors' report contained a summary of the **Agency's key figures in 2015**:

- **Budget**: EUR 71.7 million in payment appropriations.
- **Staff**: 134 including officials, temporary and contract staff and seconded national experts.