

IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COURT OF AUDITORS

Annual report on EU agencies for the financial year 2017*(2018/C 434/01)*

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LIST OF ACRONYMS

The list of acronyms includes the EU agencies and other Union bodies covered by this report.

Acronym	Full name	Location
ACER	Agency for the Cooperation of Energy Regulators	Ljubljana, Slovenia
BEREC Office	Office of the Body of European Regulators for Electronic Communications	Riga, Latvia
CdT	Translation Centre for the Bodies of the European Union	Luxembourg, Luxembourg
Cedefop	European Centre for the Development of Vocational Training	Thessaloniki, Greece
CEPOL	European Union Agency for Law Enforcement Training	Budapest, Hungary
Chafea	The Consumers, Health, Agriculture and Food Executive Agency	Luxembourg, Luxembourg
CPVO	Community Plant Variety Office	Angers, France
EACEA	Education, Audiovisual and Culture Executive Agency	Brussels, Belgium
EASA	European Aviation Safety Agency	Cologne, Germany
EASME	Executive Agency for Small and Medium-sized Enterprises	Brussels, Belgium
EASO	European Asylum Support Office	Valletta, Malta
EBA	European Banking Authority	London, UK
ECDC	European Centre for Disease Prevention and Control	Stockholm, Sweden
ECHA	European Chemicals Agency	Helsinki, Finland
EEA	European Environment Agency	Copenhagen, Denmark
EFCA	European Fisheries Control Agency	Vigo, Spain
EFSA	European Food Safety Authority	Parma, Italy
EIGE	European Institute for Gender Equality	Vilnius, Lithuania
EIOPA	European Insurance and Occupational Pensions Authority	Frankfurt, Germany
EIT	European Institute of Innovation and Technology	Budapest, Hungary
EMA	European Medicines Agency	London, UK
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction	Lisbon, Portugal

Acronym	Full name	Location
EMSA	European Maritime Safety Agency	Lisbon, Portugal
ENISA	European Union Agency for Network and Information Security	Heraklion, Greece
ERA	European Union Agency for Railways	Valenciennes, France
ERCEA	European Research Council Executive Agency	Brussels, Belgium
ESMA	European Securities and Markets Authority	Paris, France
ETF	European Training Foundation	Turin, Italy
EUIPO	European Union Intellectual Property Office	Alicante, Spain
eu-LISA	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	Tallinn, Estonia
EU-OSHA	European Agency for Safety and Health at Work	Bilbao, Spain
Euratom	Euratom Supply Agency	Luxembourg, Luxembourg
Eurofound	European Foundation for the Improvement of Living and Working Conditions	Dublin, Ireland
Eurojust	The European Union's Judicial Cooperation Unit	The Hague, The Netherlands
Europol	European Union Agency for Law Enforcement Cooperation	The Hague, The Netherlands
FRA	European Union Agency for Fundamental Rights	Vienna, Austria
Frontex	European Border and Coast Guard Agency	Warsaw, Poland
GSA	European Global Navigation Satellite Systems Agency	Prague, Czech Republic
INEA	Innovation & Networks Executive Agency	Brussels, Belgium
REA	Research Executive Agency	Brussels, Belgium
SRB	Single Resolution Board	Brussels, Belgium

CHAPTER 1

The EU agencies and the Court's audit

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INTRODUCTION

1.1. The European Court of Auditors (ECA) was established by the Treaty on the Functioning of the European Union ⁽¹⁾ as the external auditor of the EU's finances. In this capacity we act as the independent guardian of the financial interests of the citizens of the Union, notably by helping to improve the EU's financial management. More information on our work can be found in our activity reports, our annual reports on the implementation of the EU budget, our special reports, our landscape reviews and our opinions on new or updated EU laws or other decisions with financial management implications ⁽²⁾.

1.2. Within this mandate we carry out an annual examination of the accounts, and the underlying transactions, for EU institutions, agencies and other Union bodies ⁽³⁾.

1.3. This report presents the results of our audit of the EU agencies and other Union bodies (collectively referred to as 'the agencies') for the financial year 2017. The report is structured as follows:

- Chapter 1 describes the agencies and the nature of our audit,
- Chapter 2 presents the overall results of the audit,
- Chapter 3 contains the *statement of assurance* for each of the 41 agencies with our opinions and observations on the reliability of the agencies' accounts and on the legality and regularity of the underlying revenue and payments (transactions).

THE EU AGENCIES

Different types of agencies help the EU design and implement policy

1.4. Agencies are distinct legal entities set up by secondary legislation to carry out specific technical, scientific or managerial tasks that help the EU institutions design and implement policies. Many are highly visible and have significant influence in important areas of European citizens' daily life, such as health, safety, security, freedom and justice. A short description of the tasks carried out by each agency is given with their *statements of assurance* in Chapter 3.

1.5. In this report we refer to specific agencies by their acronyms, a list of which is provided at the beginning of the report.

1.6. There are three types of agencies: decentralised agencies, executive agencies and other bodies. The main characteristics of each are described below. The number of agencies has increased over the years and stood at 41 in 2017, as shown in *Box 1.1*.

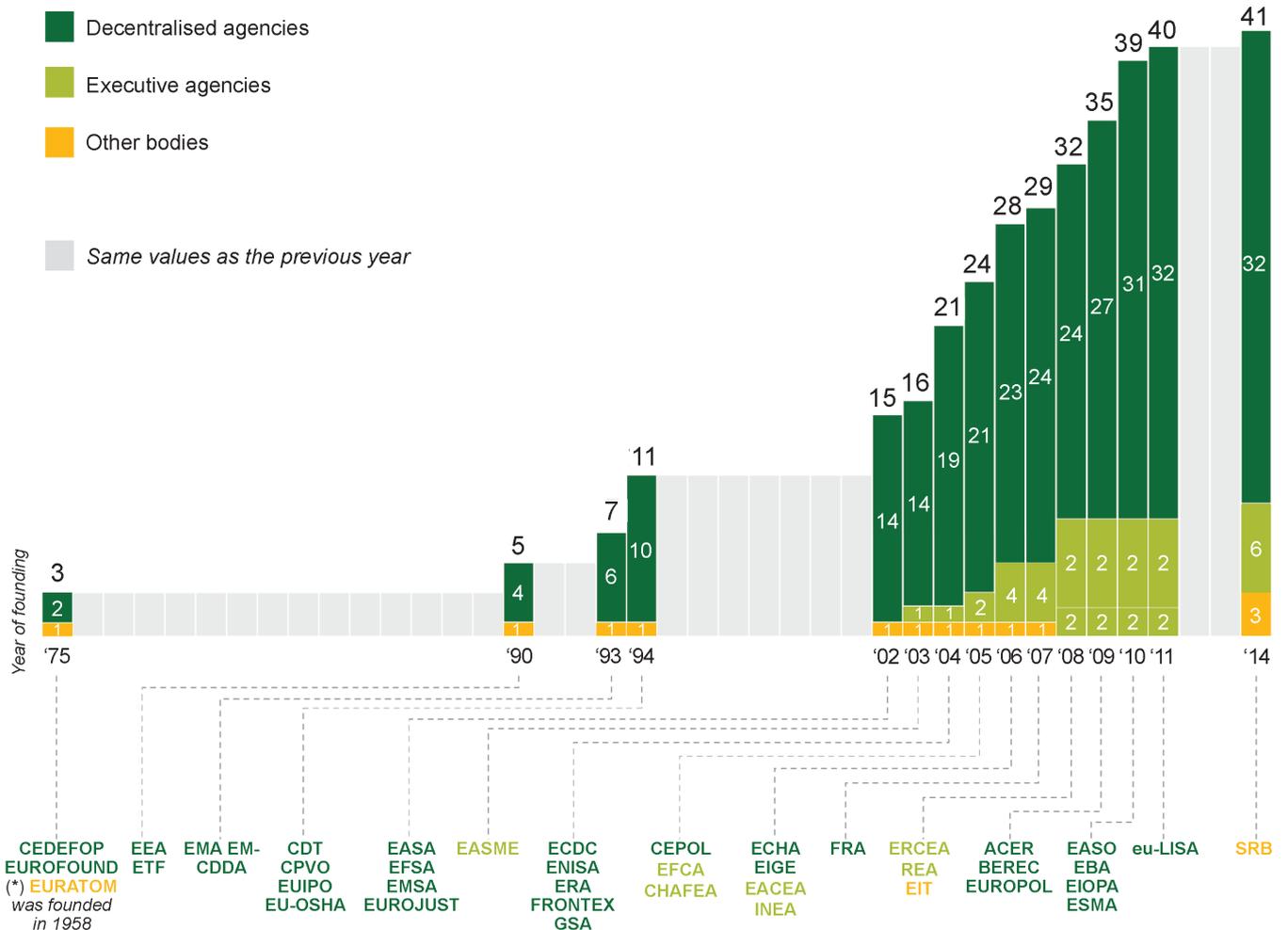
⁽¹⁾ Articles 285 to 287 (OJ C 326, 26.10.2012, pp. 169-171).

⁽²⁾ Available on our website: www.eca.europa.eu

⁽³⁾ Three agencies related to defence (the European Defence Agency, the European Institute for Security Studies and the European Union Satellite Centre) financed through Member States' contributions are not audited by the ECA but by other independent external auditors.

Box 1.1

Increase in the number of agencies



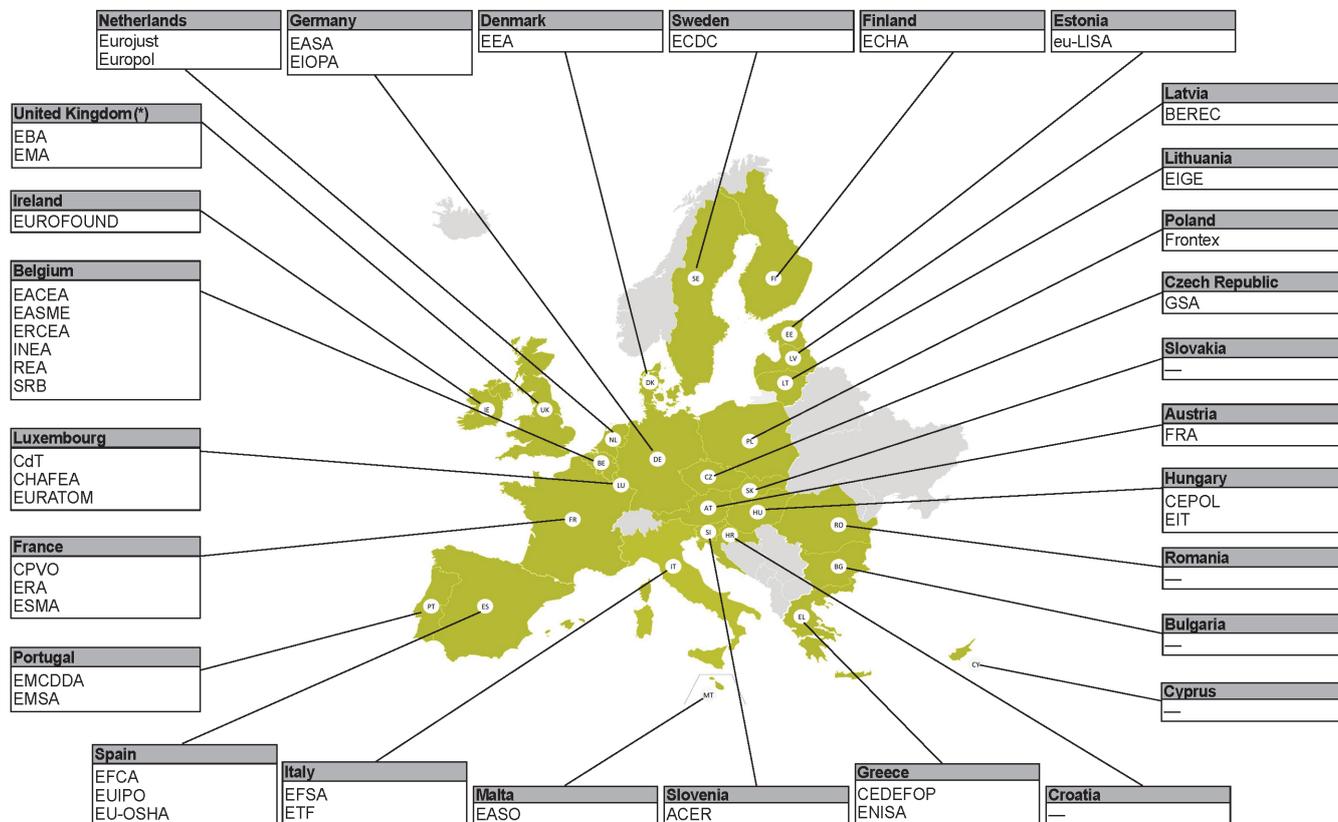
(*) Some of the agencies operated before as intergovernmental organisations under a different status.

Source: ECA.

1.7. Commission executive agencies are located at the seats of the Commission in Brussels and Luxembourg. Decentralised agencies and other bodies are located across the EU in 23 different Member States as shown in the list of acronyms and in Box 1.2. Their locations are decided by the Council or jointly by the Council and the European Parliament.

Box 1.2

Agencies' locations across Member States



(*) Following the United Kingdom's decision to leave the EU, Council decided during the General Affairs meeting (Art. 50) on 20 November 2017, to reallocate EMA and EBA to Amsterdam and Paris respectively in 2019.

Source: ECA.

Decentralised agencies address specific policy needs

1.8. The **32 decentralised agencies** ⁽⁴⁾ play an important role in preparing and implementing EU policies, especially for tasks of a technical, scientific, operational and/or regulatory nature. The intention is to address specific policy needs and to reinforce European cooperation by pooling technical and specialist expertise from the EU and national governments. They have been set up for an indefinite period by Regulation of the Council or of the European Parliament and the Council.

1.9. Decentralised agencies work under the control of a board consisting of representatives of the Member States, the Commission and in some agencies other parties. The Board establishes the operational framework the agency has to follow, such as the multi-annual and annual work programmes, draft budgets and staff establishment plans, which are implemented under the responsibility of their (executive) directors. Each decentralised agency is subject to an individual discharge procedure on the implementation of its budget, in most cases by the European Parliament and the Council ⁽⁵⁾, covering its staff, administrative and operational expenditure.

⁽⁴⁾ Cedefop, Eurofound, EEA, ETF, EMA, EMCDDA, CdT, CPVO, EUIPO, EU-OSHA, FRA, EASA, EFSA, EMSA, Eurojust, ECDC, ENISA, ERA, Frontex, GSA, CEPOL, EFCA, ECHA, EIGE, ACER, BEREC Office, Europol, EASO, EBA, EIOPA, ESMA, eu-LISA.
⁽⁵⁾ Two self-financed agencies (CPVO and EUIPO) are subject to discharge procedures by their Management Boards.

Commission executive agencies implement EU programmes

1.10. The **six Commission executive agencies** ⁽⁶⁾ are entrusted with executive and operational tasks relating to one or more EU programmes and are set up for a fixed period of time. They were created by a Commission decision and work under the supervision of Steering Committees appointed by the Commission. They work on the basis of multi-annual and annual work programmes established and implemented under the responsibility of executive directors. They are subject to individual discharge procedures by the European Parliament and the Council for their own budgets. In contrast to decentralised agencies, their budgets cover staff and administrative expenditure only, while all the operational expenditure that they implement stems from the Commission budget and is therefore part of the general discharge given to the Commission. The executive agencies' own budgets therefore represent only a very small part of the budget they actually implement.

Other bodies have specific mandates

1.11. The three **other bodies** are the EIT, Euratom and the SRB.

1.12. The EIT in Budapest is an independent, decentralised EU body, which pools scientific, business and education resources to boost the Union's innovation capacity by providing grant funding. It was set up for an indefinite period by the European Parliament and the Council. It is headed by a director and supervised by a Governing Board, and is subject to an individual discharge procedure by the European Parliament and the Council.

1.13. Euratom in Luxembourg was created for an indefinite period by the Council to support the aims of the European Atomic Energy Community Treaty. It is subject to an individual discharge procedure by the European Parliament and the Council. An Advisory Committee composed of members from Member State assists the Euratom in carrying out its tasks by giving opinions and providing analysis and information. Euratom's director general works under the supervision of the Commission.

1.14. The SRB is the central resolution authority within the banking union and has its seat in Brussels. Its mission is to ensure an orderly resolution of failing banks with minimum impact on the real economy, the financial system, and the public finances of the participating Member States and beyond. The SRB is represented by its Chair, who also assumes the role of appointing authority. The Chair of the SRB is subject to an individual discharge procedure by its Board, which is composed of members from the national resolution authorities of participating Member States.

Agencies are financed by various sources and under different MFF headings

1.15. The total 2017 budget of all agencies (excluding the SRB) amounted to 3,5 billion euros (2016: 3,4 billion euros) which is equivalent to some 2,7 % of the 2017 EU general budget (2016: 2,4 %) as shown in Box 1.3. The agencies with the highest increase in their budgets in 2017 were GSA and EIT, which are financed under MFF ⁽⁷⁾ heading 1a (Competitiveness for growth and jobs) and Frontex, EMA and EASO, financed under MFF heading 3 (Security and Citizenship).

1.16. In addition, the 2017 budget of the SRB amounted to 6,6 billion euros (2016: 11,8 billion euros) ⁽⁸⁾. This consists of contributions from credit institutions to the Single Resolution Fund.

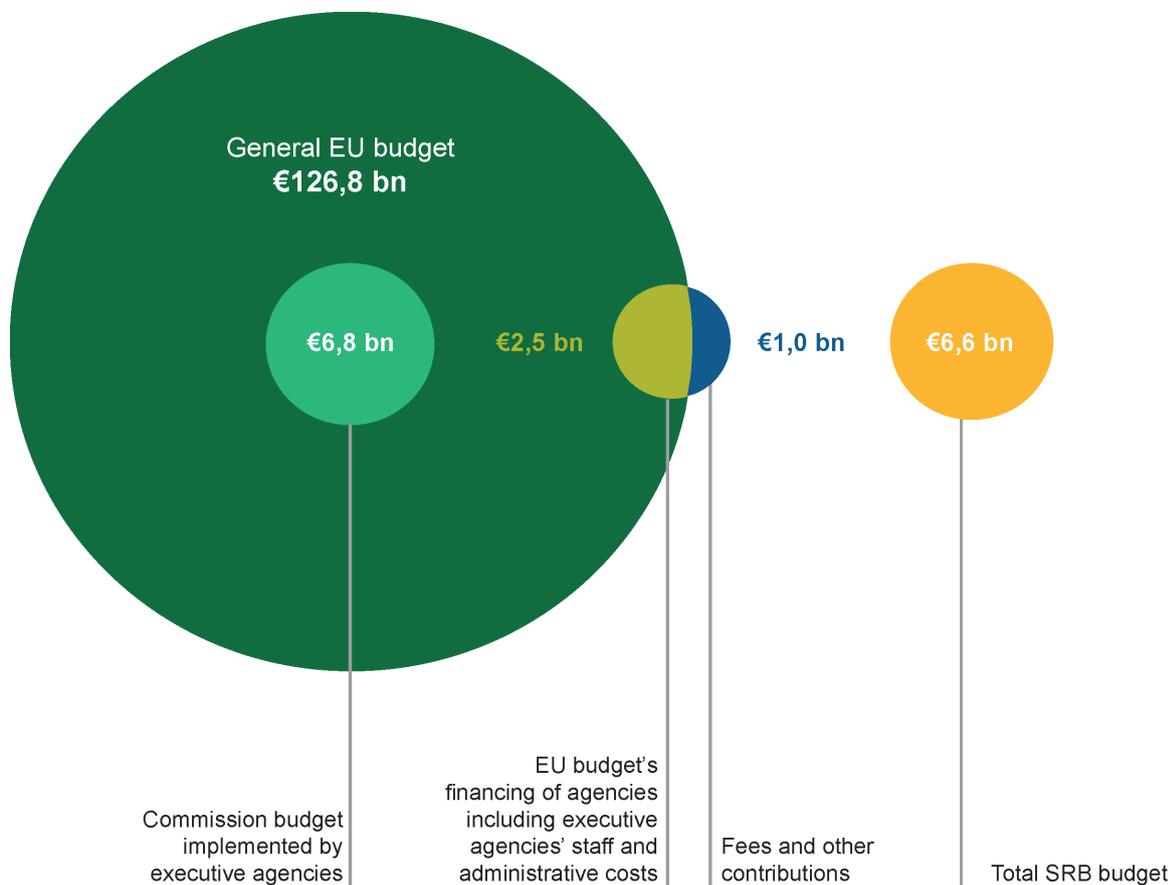
⁽⁶⁾ INEA, REA, EACEA, ERCEA, Chafea, EASME.

⁽⁷⁾ EU Multiannual financial framework covering the period 2014-2020.

⁽⁸⁾ 2016 budget revenue consisted not only of the 2016 contributions from credit institutions to the Single Resolution Fund, but also included the 2015 contributions which were raised by the National Resolution Authorities (NRAs) in 2015 but only transferred to the Fund in January 2016. This explains why the budget total for 2017 is much lower than the 2016 budget (6,6 versus 11,8 billion euros).

1.17. The budgets of the decentralised agencies and the other bodies cover their staff, administrative and operational expenditure, whereas the executive agencies implement programmes financed by the Commission’s budget, and their own budgets (some 241 million euros in total) only cover their staff and administrative expenditure. Commission operational expenditure implemented by the six executive agencies in 2017 amounted to some 6,8 billion euros, i.e. more than twice the total budget of all the other agencies together excluding the SRB.

Box 1.3
Agencies’ financing sources 2017

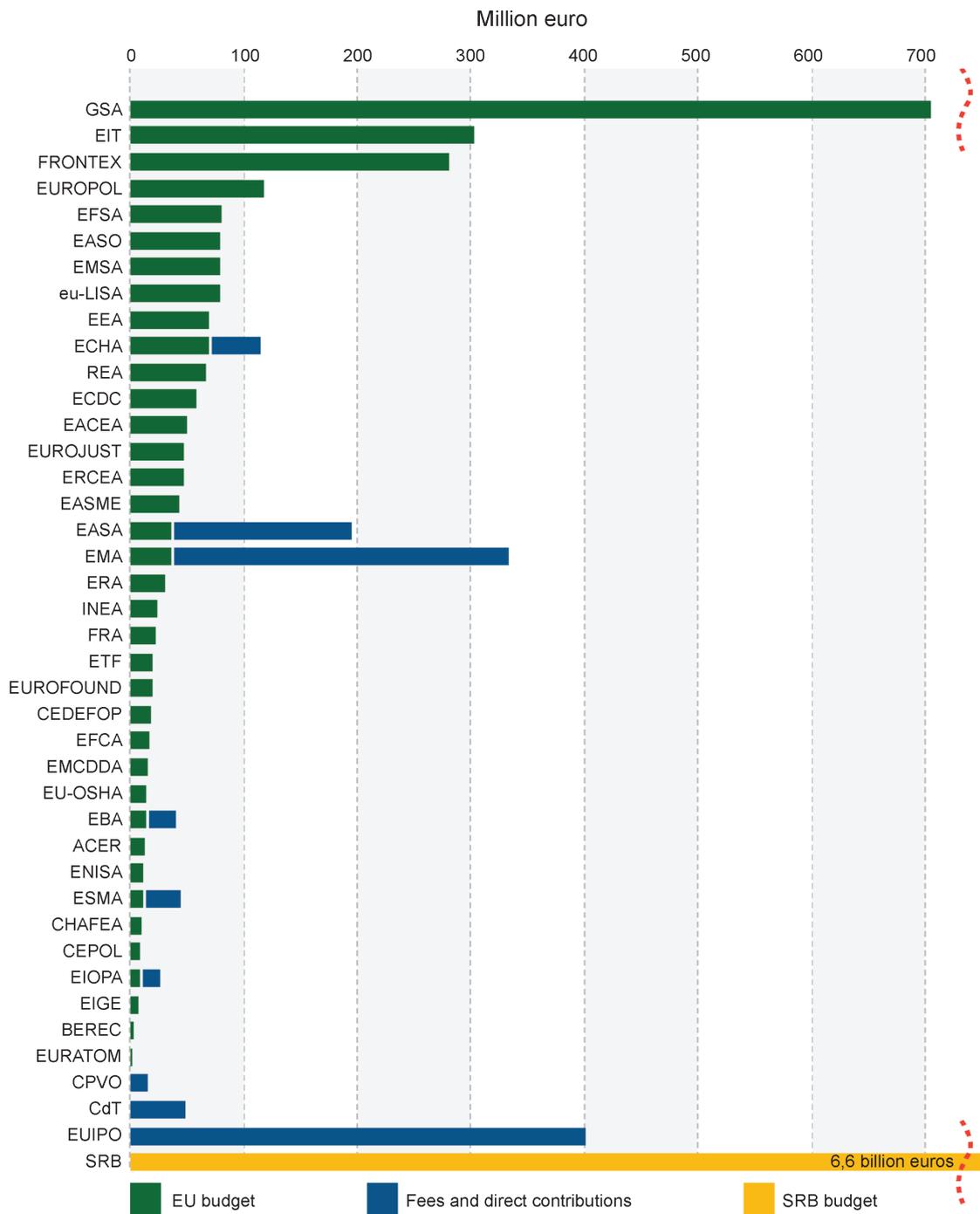


Source: EU general budget 2017 and agencies’ budgets 2017, compiled by ECA.

1.18. Most agencies, including all executive agencies, are financed almost entirely by the EU general budget. The others are fully or partially financed by fees and charges and by direct contributions from participating countries: Member States, EFTA countries, etc. In total, the EU general budget financed some 2,5 billion euros, with 1 billion euros financed by fees and charges and direct contributions from participating countries. Box 1.4 shows a breakdown of the agencies by the size of the EU budget contributions received.

Box 1.4

Agencies ranked by size of EU budget contribution

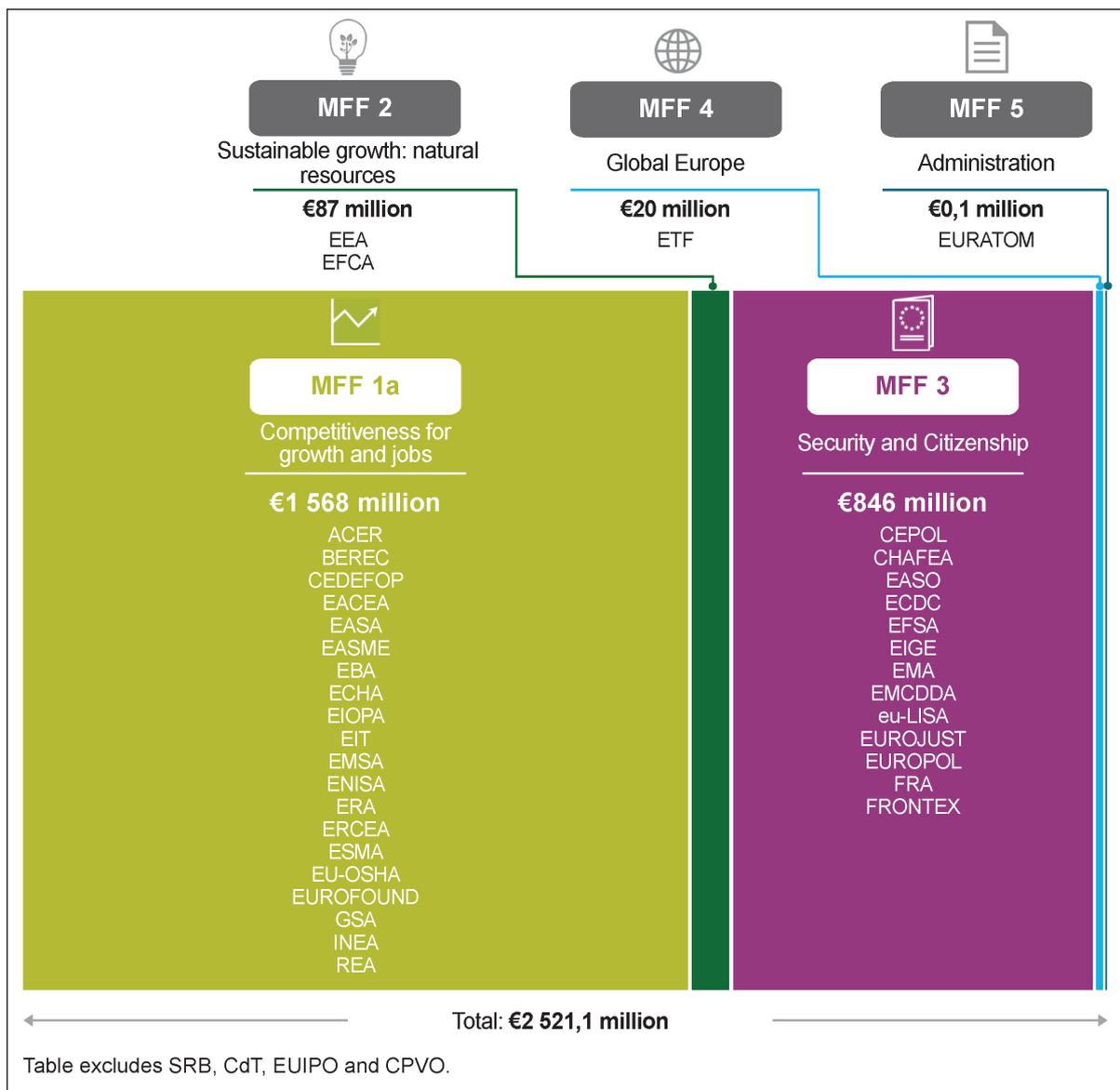


Source: Agencies, compiled by ECA.

1.19. The 2,5 billion euros in contributions from the EU general budget are financed under different MFF headings as illustrated in Box 1.5.

Box 1.5

Agency financing by EU general budgets' MFF heading



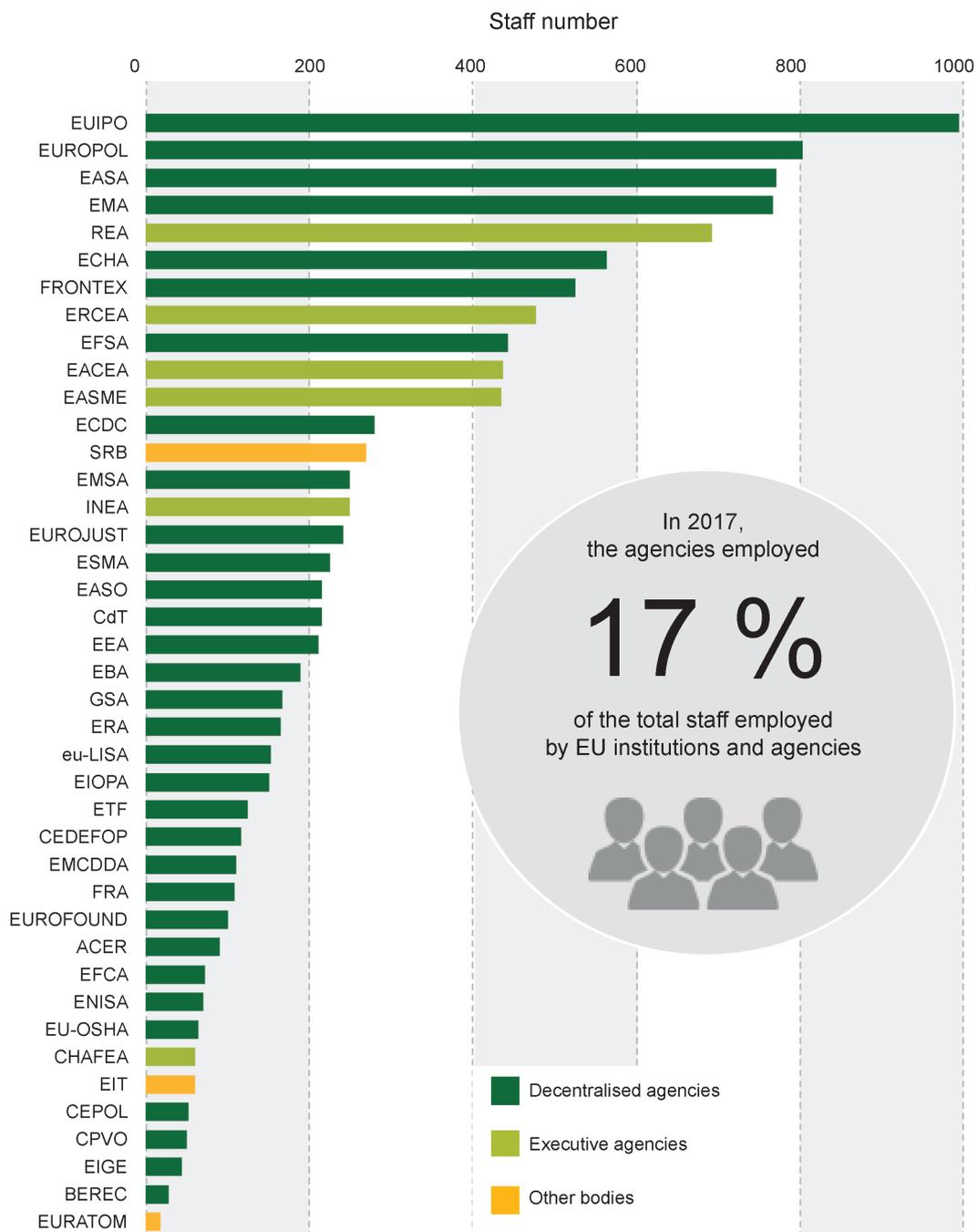
Source: EU Multiannual financial framework covering the period 2014-2020 and agencies' budgets 2017, compiled by ECA.

1.20. With regard to staff, at the end of 2017 the agencies employed some 11 000 staff⁽⁹⁾ (2016: 10 300), about one sixth of the total staff employed by EU institutions and agencies. The breakdown of total staff by agency is presented in Box 1.6.

⁽⁹⁾ Staff members include officials, temporary and contract staff as well as seconded national experts.

Box 1.6

Numbers of staff per agency at the end of 2017



Source: Agencies, compiled by ECA.

The EU Agencies Network facilitates inter-agency cooperation and communication with stakeholders

1.21. The EU Agencies Network (EUAN) was set up by the agencies as an inter-agency cooperation platform to enhance the agencies' visibility, to identify and promote possible efficiency gains and to add value. The EUAN operates on the basis of priorities agreed by the agencies in a 5-year Strategy Agenda (2015-2020) and yearly Work Programmes specifying activities and deliverables. One important role assigned to EUAN is to ensure efficient communication between the agencies and stakeholders, mainly with the European Institutions. EUAN is chaired by a different agency every year on a rotational basis.

OUR AUDIT

We have a mandate to audit the agencies' annual accounts and transactions

1.22. As required by Article 287 of the Treaty on the Functioning of the European Union (TFEU), we have audited

- (a) the accounts of all agencies, which comprise the financial statements⁽¹⁰⁾ and the reports on the implementation of the budget⁽¹¹⁾ for the financial year ended 31 December 2017; and
- (b) the legality and regularity of the transactions underlying those accounts.

1.23. On the basis of the results of our audit, we provide the European Parliament and the Council, or the other discharge authorities referred to in Chapter 3 of this report, with one statement of assurance per agency as to the reliability of the agencies' accounts and the legality and regularity of the underlying transactions. We complement the statements of assurance with significant audit observations, where appropriate.

1.24. As stipulated in Article 208(4) of the EU Financial Regulation⁽¹²⁾, the accounts of 32 agencies receiving contributions from the EU budget were verified by independent external auditors. We reviewed the reliability of the verification results according to International Standards on Auditing and took them into account when preparing our own audit opinions.

Our audit addresses the risks identified

1.25. In order to obtain sufficient assurance, we designed our audit to address the main risks identified.

Risk to the reliability of agencies' accounts is low in general

1.26. Overall, we consider the risk to the reliability of accounts to be low for all agencies. The agencies' accounts are established by applying the accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector. The number of material errors found in the past was small.

Risk to the legality and regularity of transactions is medium overall, but varies

1.27. The overall risk to the legality and regularity of transactions underlying the agencies' accounts is considered to be medium, but varies from low to high for the specific budget titles.

Title I (Staff expenditure)

1.28. Risk is generally low. Salaries are administered by the Commission's PMO service which the Court audits within the framework of its specific assessments of administrative expenditure. No material errors were found in relation to staff expenditure in recent years. However, where agencies have to recruit a high number of additional staff within a short time, there is a medium to high risk to the legality and regularity of recruitment procedures.

⁽¹⁰⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹¹⁾ The reports on implementation of the budget are reports which aggregate all budgetary operations and explanatory notes.

⁽¹²⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

Title II (Administrative expenditure)

1.29. Risk is considered to be medium. Procurements of different kinds of services, with increasing amounts related to IT, involve complex procurement rules and procedures, and agencies' administrations sometimes do not achieve satisfactory transparency and best value for money. Serious procurement errors affecting the conditions for payments have traditionally been one of the main reasons for qualified audit opinions and observations by the Court. However, office rent is often the main cost category paid on a recurrent basis, and changes usually only occur when agencies move to new premises, so the overall risk is medium.

Title III (Operational expenditure)

1.30. The risk is considered to be low to high. This depends on the specific agencies and the type of operational expenditure they have. In general, procurement-related risks are similar to those in relation to title II, although the amounts involved can be higher. As far as grants paid under budget title III are concerned, previous audits found that, while — overall — the agencies' controls have improved, they are not always fully effective.

Risk to Sound Financial Management (SFM) is medium

1.31. Risk to SFM is considered to be medium and mainly identified in the areas of IT and public procurement. We previously reported findings on the agencies' diverse IT landscape and weaknesses in IT project management, as well as procurement procedures that did not ensure best value for money.

1.32. From a broader perspective, the number of small agencies (see *Boxes 1.4* and *1.6*), each with their own administrative structures and procedures, creates a risk to administrative efficiency.

CHAPTER 2

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INTRODUCTION

2.1. This Chapter presents an overview of the results from the Court's annual audits of the agencies for the year 2017 as well as other agency-related audit work carried out by the Court in the course of 2017.

2.2. The statements of assurance (audit opinions) on the reliability of the agencies' accounts and the revenue and payments underlying these accounts, as well as all matters and observations not calling into question these opinions, are provided in *Chapter 3*.

RESULTS FROM THE ANNUAL AGENCY AUDITS FOR THE YEAR 2017 ARE POSITIVE OVERALL

2.3. Overall, our audit of the annual accounts of the agencies for the year ended 31 December 2017 and the revenue and payments underlying them confirmed the positive results reported in previous years.

'Clean' opinions on the reliability of all agencies' accounts

2.4. We issued *unqualified ('clean') audit opinions* on the accounts of all agencies. In our opinion, these accounts present fairly, in all material respects, the agencies' financial positions as at 31 December 2017 and the results of their operations and their cash flows for the year then ended, in accordance with the provisions of the applicable financial regulations and the accounting rules adopted by the Commission's Accounting Officer⁽¹³⁾.

Emphasis of matter paragraphs are fundamental for the understanding of the accounts

2.5. Emphasis of matter paragraphs draw the readers' attention to matters of importance that are fundamental to the users' understanding of the accounts.

2.6. For EASO, we drew attention to the fact that the human resources situation at the Office has deteriorated exponentially. The Office currently does not have the administrative capacity to fill the high number of vacancies. Overall, the human resources situation causes a significant risk to the continuation of the Office's operations at the current scale.

2.7. In the case of the SRB we emphasised that Single Resolution Fund contributions are calculated on the basis of information provided by credit institutions to the Board through the national resolution authorities. However, the Single Resolution Mechanism Regulation does not provide for a comprehensive and consistent control framework to ensure the information is reliable. Furthermore, we noted that the methodology for calculating contributions laid down in the legal framework is very complex, resulting in a risk to accuracy. For confidentiality reasons the Board cannot release the credit institutions' data used for the calculation of Fund contributions, which reduces transparency.

2.8. For ECHA the Court emphasised that the Agency is partly self-financed and receives a fee from every company applying for the registration of chemicals as required under the REACH Regulation⁽¹⁴⁾. The Agency calculates and invoices the fees on the basis of information provided by the companies on application. *Ex post* verifications by the Agency identified the need for considerable fee corrections, with the total amount of corrections being unknown at the end of 2017. This observation demonstrates the limitations of a system that relies excessively on self-declarations made by applicants.

2.9. For the GSA, we drew attention to the fact that the outcome of the public procurement procedure for one of the agency's main contracts (1,5 billion euro framework contract) has been challenged by one of the tenderers.

2.10. In relation to the two London-based agencies, EMA and EBA, we drew attention to the fact that they will leave the UK in 2019 and that their accounts and related notes were prepared using the information available at the date the accounts were signed. We also referred to implications from the current lease arrangements in London and possible decreases in revenue following the UK's departure from the EU.

2.11. For Chafea, we reported on significant weaknesses in the accounting environment.

⁽¹³⁾ These are based on internationally accepted accounting standards for the public sector.

⁽¹⁴⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1).

'Clean' opinions on the legality and regularity of the revenue underlying all agencies' accounts

2.12. For all agencies, we issued *unqualified ('clean') audit opinions* on the legality and regularity of the revenue underlying the annual accounts for the year ended 31 December 2017. In our opinion, revenue was legal and regular in all material respects.

'Clean' opinions on the legality and regularity of the payments underlying the agencies' accounts, except for EASO

2.13. For 40 agencies, we issued *unqualified ('clean') audit opinions* on the legality and regularity of the payments underlying the annual accounts for the year ended 31 December 2017. In our opinion, payments were legal and regular in all material respects.

2.14. For EASO we issued an adverse opinion due to material and systematic instances of non-compliance of payments with the Office's Financial Regulation and other applicable rules and provisions, mainly related to public procurement and recruitment procedures underlying payments. The systematic nature of non-compliances demonstrates an inadequate internal control system. The combined error from non-compliant payments amounts at least to 7,7 million euros or 10,3 % of the Office's total payments made in 2017.

Other matter paragraphs address issues of specific importance

2.15. Other matters paragraphs draw the readers' attention to matters other than those that are presented or disclosed in the annual accounts or related to the legality and regularity of revenue and payments.

2.16. For the EIT we addressed that the initial grant reimbursement rates to Knowledge and Innovation centres (KICs) were increased towards the end of the eligibility period, which goes against the purpose of encouraging KICs to become less dependent on EIT financing. Furthermore, some new activities were retroactively added to the annual business plans for two KICs. For one of the KICs, this caused a substantial change to the initial award decision. Substantial changes can affect the equal treatment of KICs and are not compliant with Financial Regulation.

2.17. In the case of Frontex, since 2014 we have consistently reported that proof of the expenditure claimed by cooperating countries was often insufficient. This was also confirmed by this year's audit results. In response to our recommendation from 2016, Frontex is introducing a simplified cost reimbursement model.

2.18. For EBA, EIOPA and ESMA we drew attention to the fact that their budgets are financed partly from European Union funds and partly through direct contributions from EU Member States' supervising authorities and/or supervised entities. It is possible that the authorities' revenue will decrease in future as a result of the UK's decision to leave the EU.

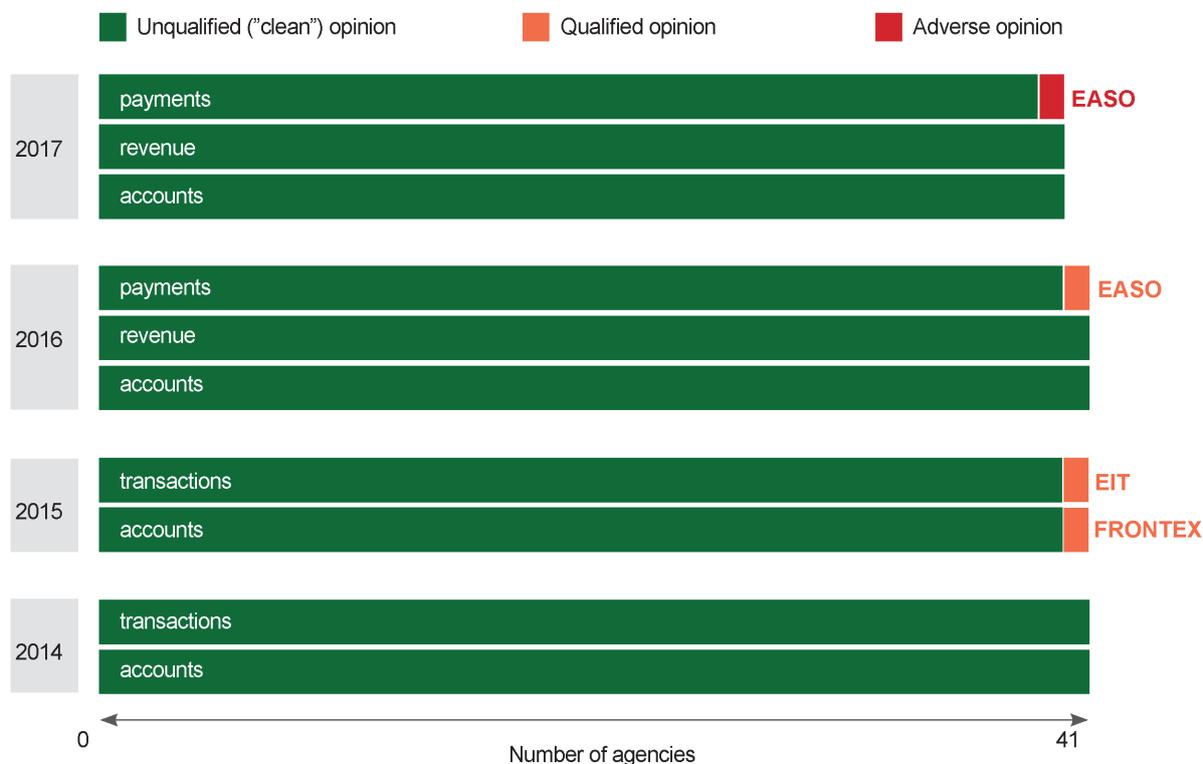
2.19. For the GSA we reported that the Agency operates both Galileo Security Monitoring Centre (GSMC) and Galileo ground stations on UK territory, which might need to be relocated.

2.20. For the CdT we referred to the fact that several agencies were making increasing use of in-house and other alternative translation solutions, which implied that the CdT's capacity was not being utilised to the greatest possible extent. Moreover, there is a duplication of effort at European level concerning translation systems development and running costs.

2.21. In December 2016, BEREC Office requested translations from CdT for four calls for expression of interest for the establishment of staff reserve lists, even though all posts authorised by the budgetary authorities in its establishment plan were filled. In our view, there was no justification for the translation request in December 2016. The related payment made in March 2017 counted for 2,5 % of the 2017 budget.

Box 2.1

2014-2017 annual audit opinions on agencies' accounts and transactions



Source: ECA.

Our observations cover a range of issues

2.22. We made a total of 145 observations concerning 37 agencies to highlight matters of importance and to indicate room for improvement. These observations, which can be found in Chapter 3, are summarised below. The majority of observations concern sound financial management.

Major risks leading to serious weakness in EASO

2.23. In the case of EASO we highlighted major risks inherent to the nature of the Office's activities and extraordinary operational challenges caused by the migration crisis. Those risks were not mitigated by a solid governance structure and effective controls, which led to numerous instances of material non-compliance.

2.24. Since 2014 the Office suffered from high staff turnover and the recruitment procedures were suspended since December 2017. Moreover, the Office has neither an internal audit capability nor a legal service and systematic review of legal documents.

2.25. Almost all services audited, which were based on public procurement or recruitment procedures, were systematically affected by significant weaknesses in assessment of the Office's needs, drafting of tender specifications, choice of the type of the contract, evaluation and award methods, amendments and extension of contracts, execution of contracts and verification of services provided, etc. Such weaknesses go against the principles of competition, transparency, equal treatment and non-discrimination.

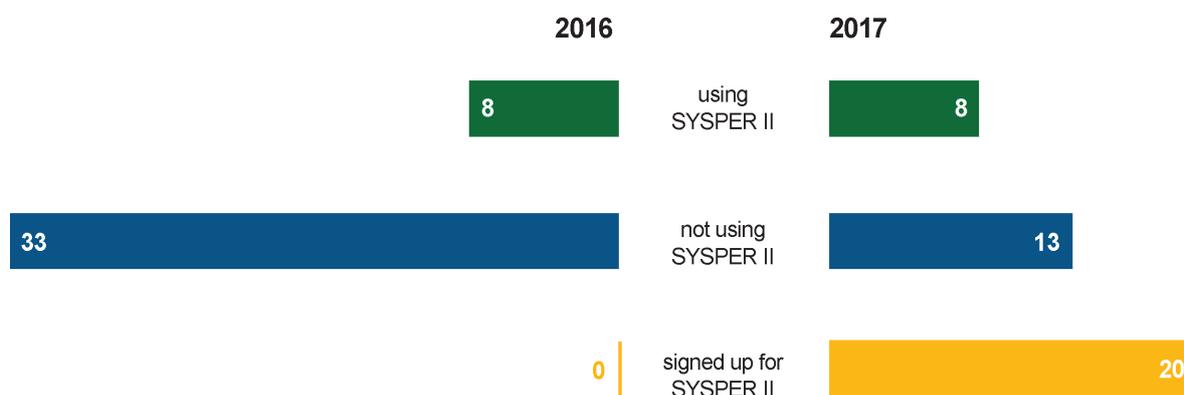
Progress towards a more harmonised IT landscape

2.26. Agencies carry out a wide range of operational activities, requiring adequate and occasionally tailor-made IT solutions. However, key operational and administrative activities are implemented on the basis of the same legal framework, which suggests that they have similar processes that can be supported by similar IT solutions. While the agencies made very good progress in the use of similar budget management and accounting systems, as we reported in our 2016 summary report on agency audit results, there was still a multitude of IT solutions used in other key areas, such as human resources management and procurement/contract management.

2.27. Agencies are considering further harmonisation of IT solutions in these areas, mainly in order to enhance cost-efficiency, to reduce internal control risks and to strengthen IT governance. Good progress in relation to IT tools on human resources management was made in 2017, when 20 agencies signed agreements with the Commission on the use of its SYSPER II tool, which will provide for a more uniform IT landscape in the area. It is planned that the majority of agencies will use the Commission’s tool as from 1 January 2019, while some of the agencies started in the 3rd quarter of 2018.

Box 2.2

Agencies’ introduction of common SYSPER II HR tool



Source: ECA based on information from agencies.

The introduction of e-procurement is on its way

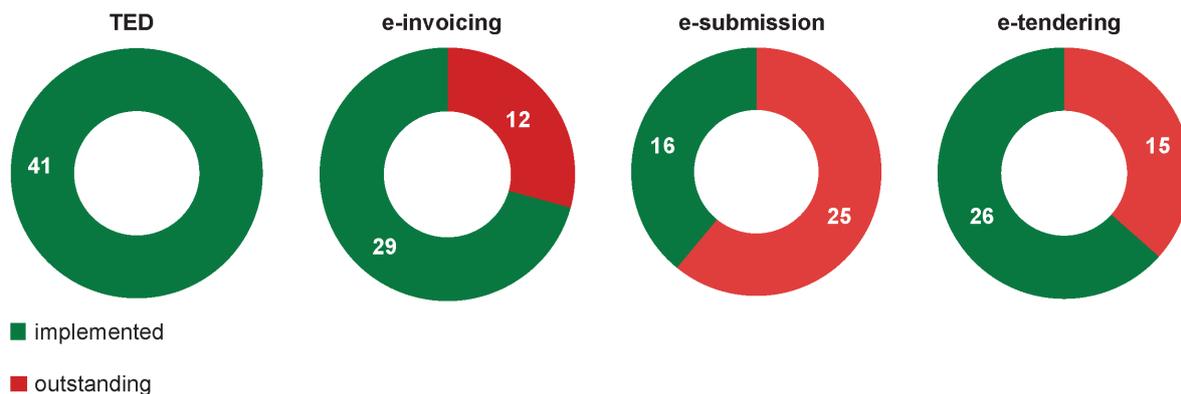
2.28. In this fragmented scenario the use of similar electronic tools to procure supplies or services (e-procurement) would also be an important move to achieve a more harmonised IT framework among agencies. According to the Financial Regulations which entered into force in 2012 and 2013 respectively, all EU Institutions and agencies ‘...shall, to the greatest possible extent, design and implement solutions for the submission, storage and processing of data submitted in grant and procurement procedures, and to this end, shall put in place a single electronic data interchange area for applicants, candidates and tenderers’⁽¹⁵⁾,⁽¹⁶⁾. While no target date for the introduction of e-procurement was set by the Financial Regulations, the 2014 EU Public Procurement Directive⁽¹⁷⁾ mandates the use of electronic means for public procurement in the EU Member States by 2018, while the 2014 EU e-Invoicing Directive⁽¹⁸⁾ requires all public authorities to allow receipt of e-invoices by 2019.

⁽¹⁵⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.
⁽¹⁶⁾ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council, Article 79 e-Government (OJ L 328, 7.12.2013, p. 42).
⁽¹⁷⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).
⁽¹⁸⁾ Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement (OJ L 133, 6.5.2014, p. 1).

2.29. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. While all agencies publish their calls for tender electronically via TED (Tenders Electronic Daily), the European public procurement journal, the Commission also launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017, most agencies had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.

Box 2.3

Agencies' introduction of e-procurement tools



Source: ECA based on information from agencies.

IT consultancy and project management improving at EMA and eu-LISA

IT consultancy and project management at EMA

2.30. In the course of last year's audit we carried out an analysis of the Agency's management of consulting services. The excessive use of consulting firms led to a critical dependency on external expertise. We also reported that control over project development and implementation was inadequate and that projects were considerably delayed and costs were escalating.

2.31. In the course of 2017 the Agency implemented several measures to improve the situation. However, reducing the Agency's critical dependence on consulting firms will take time and the impact of the measures taken will only be seen over the years.

IT consultancy and project management at eu-LISA

2.32. Given the nature of eu-LISA operations, the Agency uses consultancy services mainly in connection with IT projects. In 2017 the Agency's IT projects were implemented within the budgets and timeframes set.

2.33. For the development and implementation of IT projects the agency applies an outsourcing model where some 90 % of the related work is carried out by three contractors. Although IT projects are owned by and under the control of the Agency, a model under which the evolution and development activities for such sensitive IT systems is outsourced to such an extent creates risks of over-reliance and dependency on contractors.

2.34. At the same time, the small number of staff in key operational units creates risks for the continuity of operations.

Shortcomings persist in the management of procurements

2.35. The objective underlying public procurement is to ensure competition between economic operators and to achieve the most economically advantageous purchase in a transparent, objective and consistent manner on the basis of the applicable legal framework. For 14 agencies (**BEREC Office, CEPOL, Chafea, eu-LISA, EASO, EBA, EEA, EFSA, EIGE, EUIPO, ERA, EASA, FRA and SRB**) we observed weaknesses in public procurement, mostly relating to services, that put value for money at risk. Frequent shortcomings identified include; lack of adequate balance between price and quality aspects for contract award criteria, a non-optimal design of framework contracts, the use of framework contracts that allowed the purchase of services for which specifications and/or price were not sufficiently detailed and the unjustified use of intermediary services.

Most agencies analysed BREXIT implications

2.36. On 29 March 2017 the United Kingdom (UK) notified the European Council of its decision to withdraw from the European Union (Brexit). Unlike most of the other agencies, five of them (**ACER, BEREC Office, CEPOL, ENISA, EU-OSHA**) did not carry out a comprehensive analysis of the likely Brexit impact on their organisation, operations and accounts.

Vacancy notices could be published on the EPSO website

2.37. Most of the agencies (**ACER, Cedefop, CEPOL, Chafea, EASA, EBA, ECHA, EEA, EIGE, EIOPA, EIT, EMA, EMCDDA, EMSA, ENISA, ESMA, eu-LISA, Eurojust, Europol, Frontex, GSA, SRB**) publish vacancy notices on their own websites and on social media, but frequently not on the website of the European Personnel Selection Office (EPSO). A publication on the EPSO website would increase transparency and publicity, and allow citizens to identify vacancies published by all European institutions and agencies. The main reason given by the agencies is that EPSO accepts the publication of vacancy notices only if this is done in all EU official languages, which entails high translation costs.

Fewer observations on the legality and regularity of payments

2.38. The number of observations on the legality and regularity of payments decreased to eight (2016: 11), which illustrates the agencies' continued efforts to comply with the legal framework, particularly the provisions laid down by the Financial and Staff Regulations. While five observations again addressed weaknesses related to procurement procedures (**EASO, EASA, EIGE, Frontex**), three observations related to recruitment procedures (**EASO, Cedefop, Frontex**).

Budgetary management shows improvements

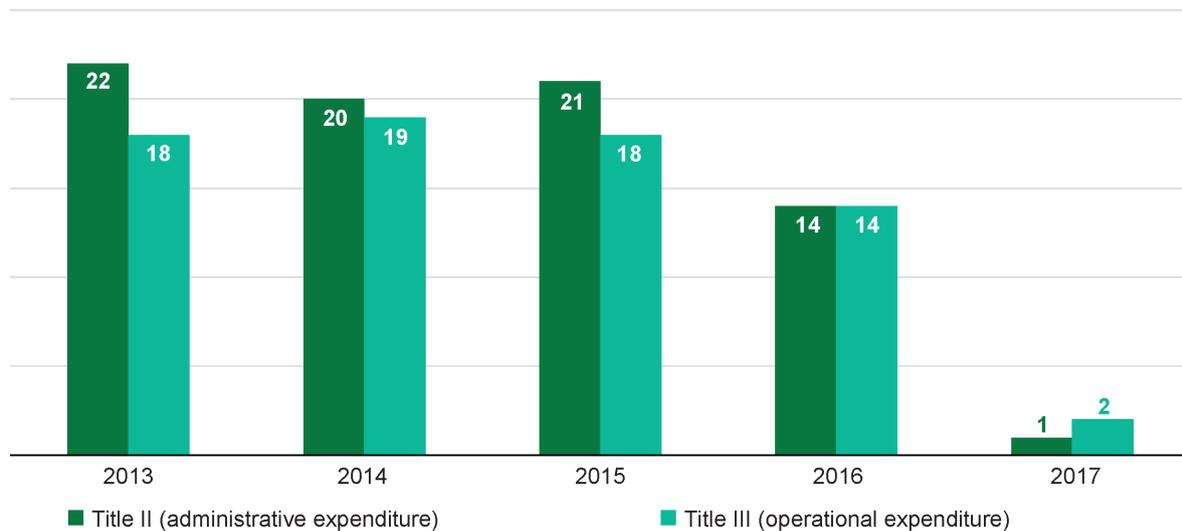
2.39. Under the Financial Regulation, budget appropriations granted for a given year can be carried over to the next year under certain conditions⁽¹⁹⁾. While the Financial Regulation does not set ceilings for such carry-overs and the multi-annual nature of operations can explain them to a considerable extent, excessive levels can indicate delays in the implementation of work programmes or procurement plans and can also be in contradiction with the budgetary principle of annuality.

2.40. Box 2.4 shows the number of agencies for which we reported on high carry-overs in 2017 and in previous years. The decrease to only two agencies (**Chafea, EU-OSHA**) in 2017 resulted from a better and more transparent explanation and justification of carry-overs by the agencies, but also by a change in our reporting approach in 2017. As from 2017, we are only reporting on carry-overs if we do not consider them sufficiently justified.

⁽¹⁹⁾ Conditions for carry-overs are explained in Art. 13 of the Financial Regulation.

Box 2.4

Decreasing number of observations on excessive or high carry-overs



Source: ECA based on information from agencies.

2.41. In addition, we reported cancellations of budget appropriations carried over from previous years for two agencies (**Frontex, EUIPO**). These indicated an overestimation of budgetary needs, notably on the part of public administrations of Member States and other cooperating countries.

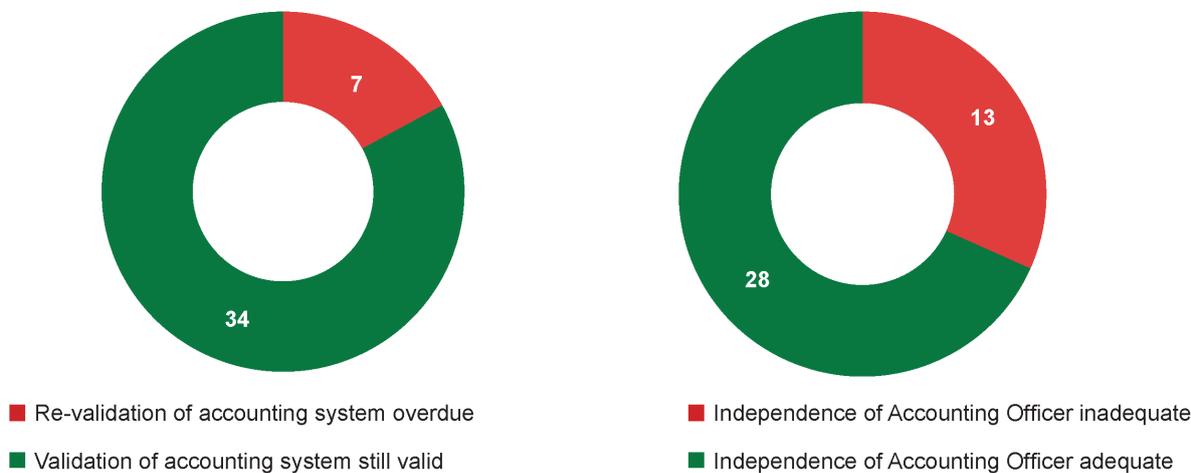
Accounting environments could be further enhanced

2.42. In the course of this year's annual audits, we also reviewed the agencies' accounting environments, which are an important element for the preparation of reliable accounts. In accordance with the Financial Regulation, each agency has its own accounting officer, which has led to a situation where a total of 37 accounting officers are in charge of 2% of the European budget. The main duties of the accounting officer are; implementing payments, collecting revenue and recovering amounts, preparing, presenting and keeping the accounts, laying down and validating the accounting systems and treasury management. In order to increase efficiency in 2012 the Commission's accounting officer invited the agencies to delegate their accounting functions to him on a contractual basis. The first agency (to accept the proposal) was CEPOL in 2014. By the end of 2017, only three more agencies (GSA, BEREC Office, ACER) had joined this arrangement.

2.43. The hierarchical position of an accounting officer within an agency can affect his independence. In particular, accounting officers need to be independent from anyone having (sub-) delegation to authorise commitments and payments. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administratively) and Board (functionally). This observation was included for a total of 13 agencies (**CdT, EACEA, EASA, EASME, EEA, EFSA, EIOPA, EMA, EMCDDA, ERA, EU-OSHA, Eurofound, FRA**). This would also require the appointment and annual appraisal of the accounting officer to be the responsibility of the Board.

2.44. The Financial Regulation requires accounting officers to confirm the reliable functioning of the agencies' accounting systems (validation). While for most of the agencies their accounting systems are covered by up-to-date validations, we found that major changes made to the accounting systems of seven of the agencies (**ACER, BEREC Office, CEPOL, EASME, EIT, EMA, GSA**) require a timely re-validation.

Box 2.5

Independence of agencies' accounting officers and re-validation of accounting system overdue

Source: ECA based on information from agencies.

We found internal control weaknesses in some agencies

2.45. For three agencies (**EASO**, **CPVO**, **REA**) the documentation relating to procurements, grant awards or recruitment procedures was inadequate.

2.46. Some weakness in the implementation of the internal control standard concerning their business continuity plan were identified for three agencies (**ACER**, **EIT**, **Frontex**). These weaknesses might create a considerable risk to business continuity in the event of major disasters, as data might be lost irretrievably.

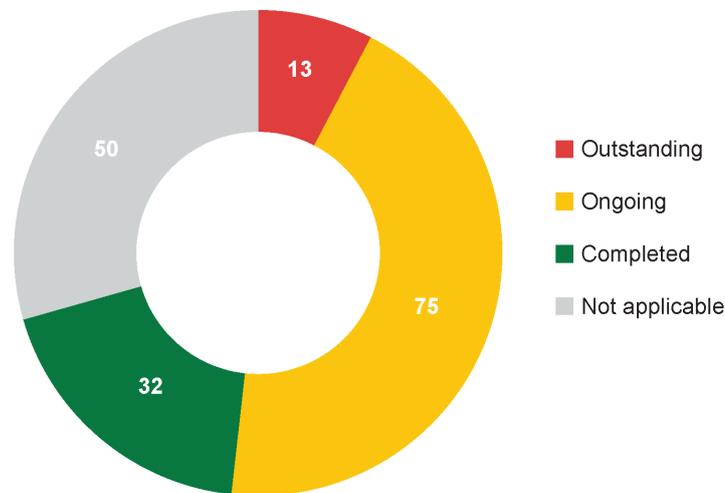
Agencies are following up on previous years' audit findings

2.47. Where applicable, we provided a status report on follow-up actions taken by the agencies in response to observations from previous years.

Box 2.6 shows that for the 170 observations that had not been addressed at the end of 2016, corrective action was completed or ongoing in most cases. Out of the 13 outstanding observations, the corrective action needed in relation to 3 observations was not under the agency's control.

Box 2.6

Agencies' efforts to follow up previous years' observations



Source: ECA.

We report suspected fraud to OLAF

2.48. Fraud is an act of deliberate deception to gain a benefit. We report all suspected fraud cases detected during our audit work to OLAF, the European Union's anti-fraud office. It is then up to OLAF to investigate and follow up these cases, where appropriate in co-operation with national judicial authorities. In 2017, we found and reported to OLAF three instances of suspected fraud in the approximately 1 000 transactions and 150 procurement procedures that we audited for our statements of assurance on the agencies. The instances of suspected fraud concerned procurement irregularities.

We provide information on the Commission's internal audit service (IAS) and external evaluation reports

2.49. We also referred, for information, to audit reports prepared by the IAS and to external evaluation reports prepared on behalf of the Commission. In 2017, there were 26 IAS reports and 9 instances where an external evaluation of an agency was carried out. We did not verify the related audit or evaluation processes.

AUDIT RESULTS FROM OTHER AGENCY-RELATED REPORTS ISSUED BY THE COURT IN 2017

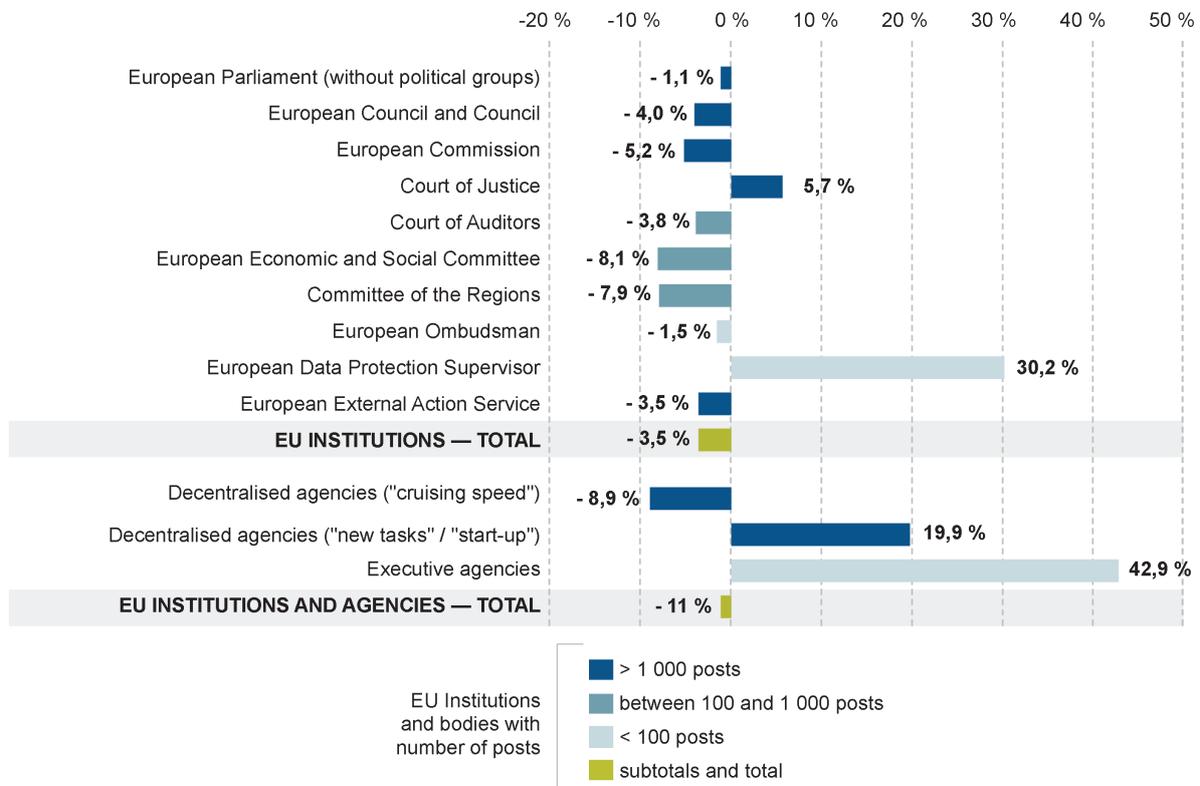
ECA rapid case review on the implementation of the 5 % reduction of staff posts

2.50. In 2017 the Court issued a rapid case review⁽²⁰⁾ on how European Union institutions and agencies implemented the commitment made to cut 5 % of staff in their establishment plans during the period 2013-2017 (for agencies 2014-2018). For the agencies we concluded that the 5 % reduction had been implemented, albeit with some delays. Whilst decentralised agencies with traditional tasks managed to decrease staff by 8,9 %, staff increased by 19,9 % and 42,9 % for the new tasks and responsibilities of some decentralised and executive agencies respectively. Box 2.7 shows the impact of the percentage change on the staff posts in the establishment plans of all institutions, bodies and agencies.

⁽²⁰⁾ Rapid case review on the implementation of the 5 % reduction of staff posts; published on 21 December 2017.

Box 2.7

Analysis of the variations in staff post numbers in the establishment plans between 2012 and 2017 (in percentage)



Source: ECA.

ECA special report on the SRB

2.51. The Brussels-based Single Resolution Board (SRB) was set up in August 2014 as part of the policy response to the financial crisis. Its mission is the resolution of any of the banks within its remit if they are failing. In January 2017 the SRB had 139 banks including 130 banking groups under its remit ⁽²¹⁾.

2.52. The special audit ⁽²²⁾ examined whether the SRB is equipped to carry out bank resolutions effectively and analysed the quality of the SRB’s resolution planning for individual banks, whether the SRB was adequately set up to comply with its statutory framework for resolution planning and whether the SRB had adequate human resources to carry out its tasks.

2.53. We found shortcomings in all of these areas, although the set-up of the SRB as a completely new structure was a very significant challenge and any weaknesses must be seen in this context. We made a number of recommendations relating to the preparation of resolution plans and completing its rules and guidance and on the improvement of staffing levels and HR procedures.

⁽²¹⁾ On 1 January 2018 the number had reduced to 127 banks and 119 banking groups.

⁽²²⁾ Special report 23/2017: ‘Single Resolution Board: Work on a challenging Banking Union task started, but still a long way to go’; published on 19 December 2017.

ECA specific annual report on contingent liabilities arising as a result of the SRB's performance of its tasks

2.54. The Single Resolution Mechanism Regulation provides ⁽²³⁾ that the Court must prepare a report on any contingent liabilities arising as a result of the performance by the SRB, the Council and the Commission of their tasks under this Regulation. As of 31 December 2016, the SRB's contingent liability amounted to 842 million euros from *ex ante* contributions, which rose to 1 420 million euros as of 30 September 2017. No bank resolutions were initiated by the SRB in 2016 and consequently no contingent liability was to be disclosed in relation to resolution decisions for the financial year 2016. However, due to the resolution decision taken on Banco Popular Español S.A. in June 2017, 90 legal cases had been brought against the SRB before the General Court of the European Court of Justice (ECJ) and 46 appeals submitted to the SRB's appeal panel by the end of October 2017 when our 2016 report on contingent liabilities arising as a result of the SRB's performance of its tasks was published. The Commission and the Council had been notified of 26 cases brought before the General Court of the ECJ in connection with that same resolution decision. The related contingent liabilities will be subject to our audit and report for the financial year 2017.

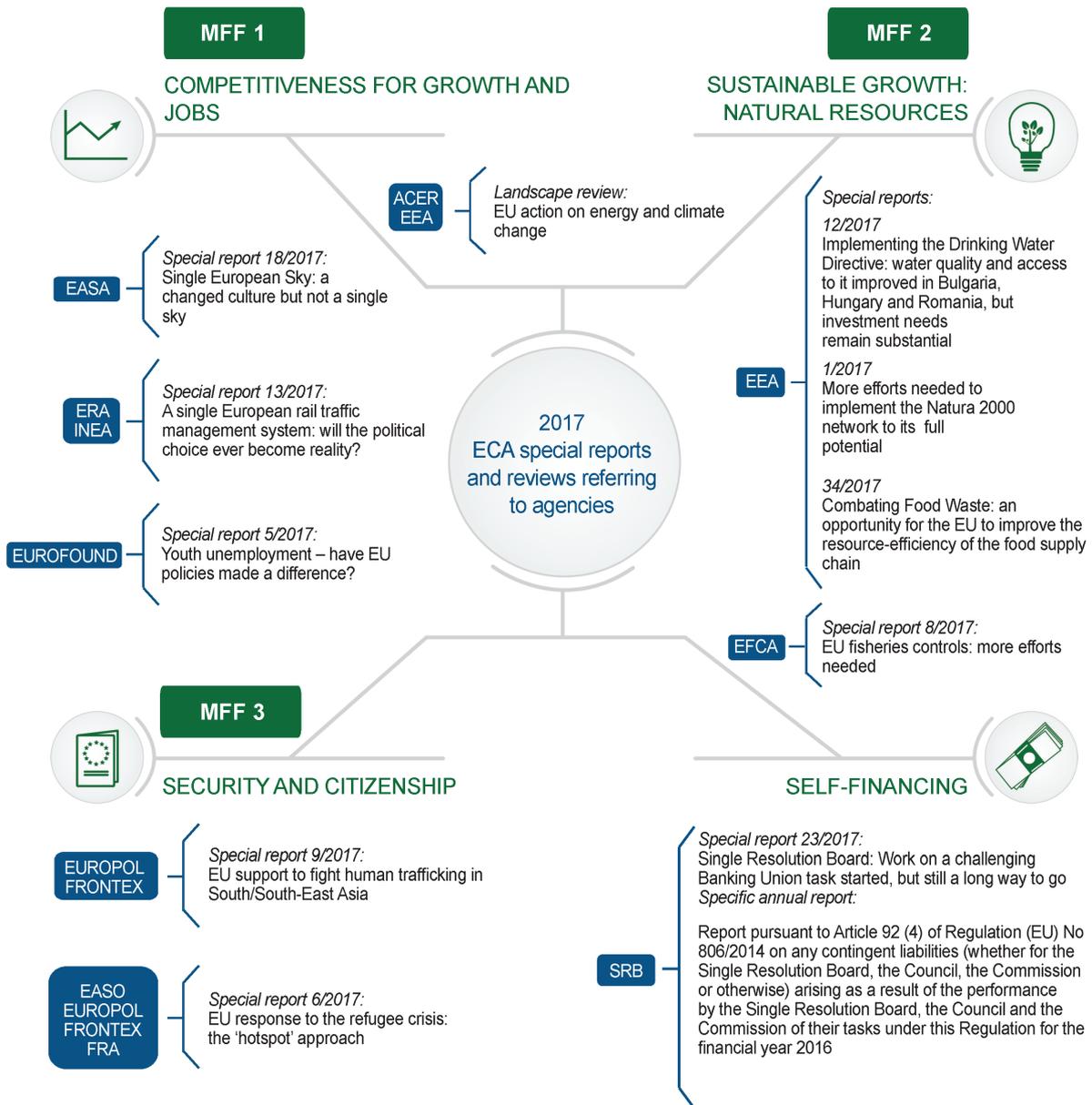
Other ECA special reports also referring to one or more agencies

2.55. Apart from audit reports specifically dedicated to the agencies, in the course of 2017 we also issued a number of special audit reports on EU policy implementation which referred to a number of agencies (see Box 2.8).

⁽²³⁾ Article 92(4) of Single Resolution Mechanism Regulation.

Box 2.8

Other ECA special audit reports referring to agencies



Source: ECA.

THE EU AGENCIES NETWORK'S REPLY

The Agencies appreciate the Court's positive conclusions on the reliability of their accounts and the transactions underlying them.

2.27. The Network would like to express its concern that given the fact that the Commission only provides a basic package of modules to Agencies in Sysper, Agencies have been and will be obliged to continue maintaining separate tools such as, e.g. for appraisal, teleworking, flexitime and HR reporting. The IT landscape in HR management will therefore only partially become more uniform and much less so than the Commission could have decided to.

Agencies are also investigating the possibility to adopt a shared service solution supporting recruitment processes currently not covered by Sysper.

2.39. In the area of procurement, there has been a clear trend towards harmonisation of the e-tools in the recent 2 years. It started softly back in 2015-16 when e-Prior e-procurement suite designed by DIGIT in coordination with BUDG was created. Since then this suite of e-modules covering all the phases of the procurement cycle became more and more a standard to which the EU Agencies are adhering. In 2018 this trend further intensified with new e-submission modules and ABAC LCK module being introduced and open to Agencies. While still to be developed e-evaluation and e-award modules. Agencies step by step abandon their own isolated tools, some more quickly, other more slowly, but this trend is unstoppable.

2.42. The suggested efficiency gains that a delegation to the European Commission could lead to are in reality hard to achieve. It is not the sum of the budget that decides the workload only, but the finalisation of the accounts in a tight window at the beginning of the year. The experience is that when having to conclude more than one set of accounts (i.e. with additional funding via delegation agreements) it requires almost double the manpower despite smaller amounts (and fewer transactions). By delegating to the Commission, each Agency is still required to have a so-called 'antenna' as there will still be accounting-related tasks to be implemented. Hence competencies related to accounting would have to be kept, and given this the specialisation the minor gain in released efforts cannot be redeployed to other tasks. As long as this is the case, the saving will not be a full-time equivalent. In addition hereto is the annual fee that has to be paid. Consequently few Agencies have chosen to delegate this task to the Commission.

2.43. The Network would like to underline that there is no background or risk analysis that can justify the conclusion that the accountants independence will increase by reporting directly to the Authorising Officer as opposed to an Authorising Officer by delegation. Some Agencies opted for the adoption of a Charter for the Accounting Officer including provisions for reporting to the Governing Board if required.

CHAPTER 3

Statements of Assurance and other agency-specific audit results

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3.1. INFORMATION IN SUPPORT OF THE STATEMENTS OF ASSURANCE

Basis for opinions

3.1.1. We conducted our audit in accordance with the IFAC International Standards on Auditing (ISAs) and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions (ISSAIs). Our responsibilities under those standards are further described in the Auditor's responsibilities section of our report. We are independent in accordance with the International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants (IESBA Code) together with the ethical requirements that are relevant to our audit, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of management and those charged with governance

3.1.2. In accordance with Articles 310 to 325 of the TFEU and the agencies' Financial Regulations, agencies' management is responsible for the preparation and presentation of their 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 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. Agencies' managements bear the ultimate responsibility for the legality and regularity of the transactions underlying the accounts of the agencies.

3.1.3. In preparing the accounts, management is responsible for assessing an 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 unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

3.1.4. Those charged with governance are responsible for overseeing the agencies' financial reporting process.

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

3.1.5. Our objectives are to obtain reasonable assurance about whether the accounts of the agencies 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 the other respective discharge authorities with statements of assurance as to the reliability of the agencies' 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.

3.1.6. For revenue, we verify subsidies received from the Commission or cooperating countries and assess the agencies' procedures for collecting fees and other income, if any.

3.1.7. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments (including those made for the purchase of assets) 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 an agency accepts the justification by clearing the advance payment, whether in the same year or later.

3.1.8. As part of an audit in accordance with ISAs and ISSAIs, we exercise professional judgment and maintain professional scepticism throughout the audit. We also:

- Identify and assess 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, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement or non-compliance resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit 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 the internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on an agency's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the accounts or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause an entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the accounts, including the disclosures, and whether the accounts represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the agencies to express an opinion on the accounts and transactions underlying them. We are responsible for the direction, supervision and performance of the audit. We remain solely responsible for our audit opinion.
- Considered the audit work of the independent external auditor performed on the agencies' accounts as stipulated in Article 208(4) of the EU Financial Regulation ⁽²⁴⁾, where applicable.

3.1.9. We communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

3.1.10. From the matters communicated with the agencies, we determine those matters that were of most significance in the audit of the accounts of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

⁽²⁴⁾ Regulation (EU, Euratom) No 966/2012.

Agencies funded under MFF heading 1a — Competitiveness for growth and jobs

3.2. AGENCY FOR THE COOPERATION OF ENERGY REGULATORS (ACER)

INTRODUCTION

3.2.1. The Agency for the Cooperation of Energy Regulators (hereinafter 'the Agency', aka 'ACER'), which is located in Ljubljana, was created by Regulation (EC) No 713/2009 of the European Parliament and of the Council⁽²⁵⁾. The Agency's main task is to assist National Regulatory Authorities in exercising, at Union level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action. Under the REMIT regulation⁽²⁶⁾, the Agency was given additional responsibilities, together with national regulatory authorities, regarding the monitoring of the European wholesale energy market.

3.2.2. The *Table* presents key figures for the Agency⁽²⁷⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	16	13
Total staff as at 31 December ⁽¹⁾	103	91

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: budget published in OJ.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.2.3. We have audited:

(a) the accounts of the Agency which comprise the financial statements⁽²⁸⁾ and the reports on the implementation of the budget⁽²⁹⁾ for the financial year ended 31 December 2017; and

(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).

⁽²⁵⁾ OJ L 211, 14.8.2009, p. 1.

⁽²⁶⁾ Regulation (EU) No 1227/2011 of the European Parliament and of the Council (OJ L 326, 8.12.2011, p. 1), which assigns an important role to the Agency in supervising trading in wholesale energy markets across Europe.

⁽²⁷⁾ More information on the Agency's competences and activities is available on its website: www.acer.europa.eu.

⁽²⁸⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Reliability of the accounts*Opinion on the reliability of the accounts*

3.2.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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*

3.2.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.2.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.2.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.2.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments, including the aspect of the timely (re-)validation of accounting systems. In October 2017 the Agency delegated its accounting function to the Commission's Accounting Officer. Despite this significant change, the last validation of the accounting system was done in 2011.

OBSERVATIONS ON INTERNAL CONTROLS

3.2.9. In 2011, an additional task in the area of wholesale energy market monitoring (REMIT) was assigned to the Agency. In 2017, all the elements foreseen by the REMIT monitoring framework were in force for the first time. However, while initially a disaster data recovery site for REMIT was established in Maribor, Slovenia, this was moved in April 2017 to the Agency's main data centre in Ljubljana. Consequently, the backup data now is stored at the same location as the original data. This causes a considerable risk to business continuity in case of major disasters, as data might get lost irrevocably.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.2.10. On 29 March 2017 the United Kingdom (UK) notified the European Council of its decision to withdraw from the European Union (Brexit). Unlike most of the other agencies, the Agency did not carry out a comprehensive analysis of the likely Brexit impact on its organisation, operations and accounts.

3.2.11. The Agency publishes vacancy notices on its own website and in social media, but usually not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.2.12. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽³⁰⁾,⁽³¹⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017, the Agency had not yet introduced any of these tools.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.2.13. In 2017, the Commission's Internal Audit Service issued an audit report on 'Human Resources Management' at ACER⁽³²⁾. The Agency prepared an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽³⁰⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽³¹⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽³²⁾ We did not verify the work carried out by the Commission's Internal Audit Service.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	According to the Seat Agreement between the Agency and the Slovenian government a European School will be established in Slovenia. However, more than four years after the agreement no European School has been set up.	Ongoing
2016	In its audit report dated May 2016, the Commission's Internal Audit Service (IAS) highlighted a strong need to clarify roles and responsibilities and to analyse workload in the procurement cell in order to achieve more efficient processes and procedures. It also concluded that procurement planning and monitoring needs to be significantly improved. The Agency and IAS agreed on a plan to take corrective action.	Ongoing
2016	The Agency carried over 4,9 million euros, i.e. 86 % of committed appropriations for Title III operational expenditure (2015: 1,4 million euros, i.e. 59 %). As was the case in previous years, carry-overs mainly relate to the implementation of the REMIT Regulation on wholesale energy market integrity and transparency with 4,7 million euros in 2016 (2015: 1,1 million euros). For Title II administrative expenditure the Agency carried over 1 million euros, i.e. 38 % of committed appropriations (2015: 0,8 million euros, i.e. 35 %).	N/A
2016	The increasing level of carry-overs is a matter of concern and in contradiction with the budgetary principle of annuality. It is directly linked to a concentration of procurement procedures finalised and contracts signed late in the year, leading to deliveries and/or payments in the following year. In 2016, 98 out of 299 contracts were signed in November and December (5 976 122,47 euros or 40 % of the total value of contracts concluded in 2016). The Agency may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.	Ongoing

THE AGENCY'S REPLY

3.2.8. The Agency agrees with the finding and would like to clarify that the Agency is recording all its financial transactions in the financial system provided by the European Commission, which is updated, maintained and validated by the Commission. With the accounting services outsourced to the Commission as from October 2017, the Agency will accept the validation of the accounting system that will be provided by the Commission in 2018.

3.2.9. Ever since the ARIS Primary and Disaster Recovery sites were migrated to the internal ACER Data Centre in early April 2016 and integrated into one single site to optimise and advance performance and address increasing space requirements in June 2017, business continuity can no longer be ensured. However, it has to be noted that the current situation, in which business continuity cannot be guaranteed, has been forced onto the Agency by the significant reduction in its budget over the last two years. The Agency has repeatedly alerted the Commission and the Budgetary Authority of the severe consequences of the budgetary limitations it faces, but without any result in terms of additional resources. The Agency will continue to assess the possibility to re-establish a disaster recovery site for ARIS, but currently does not have the budget to do so in 2018. The re-establishment of the disaster recovery site would require the Agency to be provided with additional financial resources.

3.2.10. Given that the risks related to Brexit have been considered very low and limited, the possible impact of Brexit was only informally analysed by the management in 2017. In early 2018 the Agency conducted a comprehensive analysis on the impact of Brexit on its governance, operations and financial areas highlighting the impact and actions required.

3.2.11. In 2014 the Administrative Board of the Agency adopted Decision AB No 15/2014 on the language regime of the Agency. Despite this, the Agency still has to translate the vacancy notices published on the EPSO website in all official EU languages. Due to its severe financial resource limitations, repeatedly highlighted to the Budgetary Authority, the Agency cannot afford the cost of translation of every vacancy notice in all the EU official languages, in order for these notices to be published on the EPSO website. Still, in 2017, four of the nine vacancy notices, including two open calls, were published on the EPSO website and thus translated in all EU official languages. The remaining five vacancy notices for posts in operational departments were published only on the Agency website, as these were mainly of interest to candidates already working in the sector, who typically follow the activities of the Agency, including our website. This approach struck a pragmatic balance between reaching out to potential candidates and an efficient use of the limited resources.

3.2.12. The Agency is not yet using the Commission's IT solution for e-invoicing, e-tendering and e-submission. In the course of 2018 the Agency will start with e-tendering which will subsequently be extended with the use of e-submission and e-invoicing during the course of 2019.

3.2.13. Following the report of the Commission's Internal Audit Services (IAS) on 'Human Resources Management' the Agency has agreed with the IAS on an action plan and is currently implementing the recommended improvements.

3.3. BODY OF EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS (BEREC)

INTRODUCTION

3.3.1. The Office of the Body of European Regulators for Electronic Communications (hereinafter 'the Office'), which is located in Riga, was established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council⁽³³⁾. The Office's main task is to provide professional and administrative support services to the Body of European Regulators for Electronic Communications (BEREC) and, under the guidance of the Board of Regulators, to collect and analyse information on electronic communications and to disseminate among National Regulatory Authorities regulatory best practices such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework.

3.3.2. The *Table* presents key figures for the Office⁽³⁴⁾.

Table
Key figures for the Office

	2016	2017
Budget (million euros) ⁽¹⁾	4	4
Total staff as at 31 December ⁽²⁾	27	27

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Office

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.3.3. We have audited:

- (a) the accounts of the Office which comprise the financial statements⁽³⁵⁾ and the reports on the implementation of the budget⁽³⁶⁾ for the financial year ended 31 December 2017; and
- (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

3.3.4. In our opinion, the accounts of the Office for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Office at 31 December 2017, 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.

⁽³³⁾ OJ L 337, 18.12.2009, p. 1.

⁽³⁴⁾ More information on the Office's competences and activities is available in its website: www.berec.europa.eu.

⁽³⁵⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽³⁶⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.3.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.3.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Other matter

3.3.7. In December 2016, the Office requested translations from CdT for four calls for expression of interest for the establishment of staff reserve lists, even though all posts authorised by the budgetary authorities in its establishment plan were filled. In our view, there was no justification for the translation request in December 2016. The related payment made in March 2017 amounted to 106 432,50 euros (i.e. 2,5 % of the 2017 budget).

3.3.8. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.3.9. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments, including the aspect of the timely (re-)validation of accounting systems. The Office delegated its accounting function to the Commission's Accounting Officer in 2016. In 2017, the Office introduced a new paperless system. While these events caused significant modifications to the Office's procedures and the accounting system, it was not re-validated since 2013.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.3.10. In December 2017, the Office signed both legal and budgetary commitments of 20 000 euros for a training planned for the end of March 2018. The financing of 2018 activities from the 2017 budget is in contradiction with the budgetary principle of annuality.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.3.11. In August 2015, the Office launched a call for tender to conclude a four-year multiple framework service contract in cascade with an estimated market volume of 3 million euros for the organisation and planning of events such as meetings, workshops, conferences, etc. The award criteria did not attach sufficient weight to the price element. Furthermore, the potential event costs were not covered by the competitive procedure, but only the tenderer's management fee. The procurement procedure, therefore, did not ensure adequate competition on price and the contract may not represent the most economically advantageous offer.

3.3.12. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽³⁷⁾,⁽³⁸⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Office had introduced e-tendering for certain procedures, but not e-invoicing and e-submission.

⁽³⁷⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽³⁸⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

3.3.13. On 29 March 2017 the United Kingdom (UK) notified the European Council of its decision to withdraw from the European Union (Brexit). Unlike most of the other agencies, the Office did not carry out a comprehensive analysis of the likely Brexit impact on its organisation, operations and accounts.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	The 2014 budget provision for contributions from EFTA's ⁽¹⁾ national regulatory authorities having observer status at BEREC did not materialise in the absence of agreements with EFTA countries.	Outstanding (Not under the Office's control)
2016	In March 2016 the Office launched a procurement procedure with the aim to sign one framework contract (FWC) with the two existing international schools in Riga for the children of its staff. While the technical specifications of the tender state that the Office would establish one multiple framework contract in cascade with two economic operators, the award criteria state that the choice of the school is with the parents. Consequently, the 400 000 euros framework contract signed in July 2016 is based on contradicting concepts, causing legal uncertainty to the Office and the schools. Moreover, in this specific case a FWC was unnecessary.	N/A
2016	Following reclassification, one staff member was assigned to a higher grade directly at step 2 instead of step 1, which is not in line with the EU Staff Regulations.	N/A
2016	In March 2016 the Office signed a 60 000 euros for the provision of human resources related professional support and consultancy services. The procurement procedure was exclusively based on price. The engagement of a consultant without considering competence and expertise as award criteria does not ensure best value for money.	N/A
2016	In 2016, the average employment period in the Office was 2,58 years and staff turnover was high with 25 %. This situation affects the Office's efficiency and poses risks to the implementation of its work programmes. A possible reason is the salary correction coefficient applied for the host state (73 % as at 1 July 2016).	Completed
2016	The Office's founding regulation does not require periodical external performance evaluations. The Office should, together with the Commission, consider commissioning such an evaluation at least every five years, as is the case for most of the other Agencies. Any future revision of the founding regulation should introduce such a requirement.	Outstanding (Not under the Office's control)

⁽¹⁾ European Free Trade Association

THE OFFICE'S REPLY

3.3.7. In view of the high staff turnover identified by the management as a risk factor to execute its work programme the Management Committee (MC) of the BEREC Office requested the establishment of reserve lists for minimum 75 %⁽³⁹⁾ of the job profiles in the Agency. To comply with the obligation to publish the calls for expression of interest⁽⁴⁰⁾ on EPSO website⁽⁴¹⁾ BEREC Office needed to translate the documents in all official languages of the EU. The use of pre-established reserve lists enables the Agency to comply with the requirement of the MC to keep the vacancy rate below 15 % and to send job offers with 1 month from the establishment of a recruitment need. To reduce the high expenses on mandatory translations in the future, the BEREC Office plans to develop standard templates of calls and short specific parts for translations.

3.3.9. In 2016 BEREC Office outsourced its accounting services to the European Commission (EC). Therefore the EC Accounting Officer (within DG Budget) provides all services required by Articles 50 of the Framework Financial Regulation applicable to Agencies, including validation of local systems. The validation approach is currently under way and announced by the EC Accounting Officer via an official note under ref: Ares(2018)3149885 on 14 June 2018. The EC Accounting Officer's services will conclude the process and issue a report on the results during the 4th quarter of 2018.

3.3.10. BEREC Office started preparation for the training event already in November 2017, having contacted the potential trainers and reviewing the availability of the venues. Therefore, it was necessary to sign the contract with the event organiser to ensure the availability of trainers and moderators and to secure the venue for the planned dates of the training. The contract was signed in December 2017 and consequently a budget commitment was opened prior to the contract signature, as required by the Financial Regulation. Experiences show that to organise a training event in the first quarter of a year is very challenging without a carry-over from the previous year so for future training events the BEREC Office will consider different timing.

3.3.11. The choice of a FWC was made in 2015. At that time a 'cost-plus-fixed-fee contract' was considered as compliant with the Financial Regulation since several cost-plus-fixed-fee contracts were and are still currently used by other EU institutions (e.g. travel agency or banking services).

Due to the specificities of the BEREC operation a large part of the expenses related to BEREC events covered by the BEREC Office are related to reimbursement of experts, mainly to public bodies established in the EU Member States (e.g. national regulatory authorities — NRAs). It should therefore be noted that the contractor has no influence on this type of expenditure. Further to the comments and valuable exchange of views with ECA, in the relaunch of the procurement the BEREC Office will consider also other types of FWCs, which did not exist under the legal framework in force in 2015.

3.3.12. The BEREC Office takes note on the Court's observations and informs the latter that it is planning to implement these modules by the end on 2018, taking into consideration the budget availability of the Agency.

3.3.13. Currently the Agency does not employ UK nationals, who might be affected. The impact on the Agency workload could be assessed only after the final decision on the relations between the EU and the UK. Having in mind the fact that the BEREC Office budgets and staffing were not amended when Croatia joined the EU to address the additional expenditure and workload and considering the small budget of the BEREC Office, similar approach could be expected with the Brexit.

⁽³⁹⁾ See paragraph 9 of MC (16) 136, Annual and Multiannual Programming of the BEREC Office Activities 2017-2019, 09.12.2016; https://bereg.europa.eu/eng/document_register/subject_matter/bereg_office/office_annual_work_programmes/6594-annual-and-multiannual-programming-of-the-bereg-office-activities-2017-2019

⁽⁴⁰⁾ Referred to in the opinion as 'vacancies'.

⁽⁴¹⁾ Article 11, Decision MC/2015/3: Decision of the BEREC Office MC on laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union.

3.4. EUROPEAN CENTRE FOR THE DEVELOPMENT OF VOCATIONAL TRAINING (CEDEFOP)

INTRODUCTION

3.4.1. The European Centre for the Development of Vocational Training (hereinafter 'the Centre', aka 'Cedefop'), which is located in Thessaloniki, was established by Council Regulation (EEC) No 337/75⁽⁴²⁾. Its core mandate is to serve the development of vocational training at Union level. In order to achieve this objective, it has the task of compiling and disseminating documentation on vocational training systems.

3.4.2. The *Table* presents key figures for the Centre⁽⁴³⁾.

Table
Key figures for the Centre

	2016	2017
Budget (million euros) ⁽¹⁾	18	18
Total staff as at 31 December ⁽²⁾	122	117

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Centre

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.4.3. We have audited:

- (a) the accounts of the Centre which comprise the financial statements⁽⁴⁴⁾ and the reports on the implementation of the budget⁽⁴⁵⁾ for the financial year ended 31 December 2017; and
- (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

3.4.4. In our opinion, the accounts of the Centre for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Centre at 31 December 2017, 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.

⁽⁴²⁾ OJ L 39, 13.2.1975, p. 1.

⁽⁴³⁾ More information on the Centre's competences and activities is available on its website: www.cedefop.europa.eu.

⁽⁴⁴⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁴⁵⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.4.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.4.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.4.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.4.8. The management of two recruitment procedures for management positions was weak and the procedures are considered irregular. There was insufficient proof of the requested managerial experience and confidentiality requirements were not met, calling into question the equal treatment of candidates.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.4.9. The Centre publishes vacancy notices on its own website and in social media, but usually not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.4.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽⁴⁶⁾,⁽⁴⁷⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Centre had not introduced any of these tools.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.4.11. In November 2017, the Commission's Internal Audit Service (IAS) issued an audit report on the Centre's Web-based services⁽⁴⁸⁾. The Centre prepared an action plan for any potential areas for improvement.

⁽⁴⁶⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽⁴⁷⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽⁴⁸⁾ We did not verify the audit work.

THE CENTRE'S REPLY*COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS*

3.4.8. We acknowledge the comment from the Court on the irregularity of the two recruitment procedures. Cedefop is carrying out an in-depth assessment of both procedures and is considering remedial measures both concerning the two procedures at stake and recruitment procedures in general to address the weaknesses identified by the Court.

COMMENTS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.4.9. Cedefop uses the EPSO platform in some cases. Cedefop publishes its vacancy notices on its own homepage as well as on the Inter-Agencies online platform which is accessible to all EU citizens and uses various channels to share vacancies such as ReferNet, Skillsnet, Governing Board as well as other means such as networks of economists etc. Cedefop publishes the vacancies of the Director and Deputy Director in EPSO and uses its social media for key positions. Considering the extra cost for the translation of the vacancy notices in all EU languages for the EPSO portal, Cedefop considers it is not proportional to the gain we stand to have.

3.4.10. Cedefop is in the process of joining the e-Tendering and e-Submission (modules of e-Prior platform) in autumn 2018, which is in line with the deadline set in the Directive 2014/24/EU on public procurement for all Contracting Authorities to use electronic exchange of information with economic operators (http://ec.europa.eu/growth/single-market/public-procurement/e-procurement_en).

In this regard Cedefop collaborates with DIGIT, the Directorate-General of the Commission responsible for the on-boarding of Contracting Authorities. The first open tendering procedure with e-Tendering and e-Submission will be launched in October 2018. All open procedures will be launched using the e-tools from then on.

The time of the launch of e-invoicing is depending on the decision of Cedefop management to deploy ABAC (which supports e-Invoicing as a module) or to continue with the in-house platform, Fibus (which will necessitate the development of a link to e-Invoicing platform).

3.5. EUROPEAN AVIATION SAFETY AGENCY (EASA)

INTRODUCTION

3.5.1. The European Aviation Safety Agency (hereinafter 'the Agency', aka 'EASA'), which is located in Cologne, was established by Regulation (EC) No 1592/2002 of the European Parliament and of the Council⁽⁴⁹⁾ which was repealed by Regulation (EC) No 216/2008⁽⁵⁰⁾. The Agency has been given specific regulatory and executive tasks in the field of aviation safety.

3.5.2. The *Table* presents key figures for the Agency⁽⁵¹⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	193	192
Total staff as at 31 December ⁽¹⁾	774	771

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.5.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽⁵²⁾ and the reports on the implementation of the budget⁽⁵³⁾ for the financial year ended 31 December 2017; and
- (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

3.5.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽⁴⁹⁾ OJ L 240, 7.9.2002, p. 1.

⁽⁵⁰⁾ OJ L 79, 19.3.2008, p. 1.

⁽⁵¹⁾ More information on the Agency's competences and activities is available on its website: www.easa.europa.eu.

⁽⁵²⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁵³⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.5.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.5.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.5.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.5.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments including the hierarchical position and independence of accounting officers. The superior of the Agency's accounting officer is the Head of Finance Department. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Management Board (functional).

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.5.9. Framework contracts are agreements with suppliers to establish terms governing specific purchases during the life of the agreement. For the procurement of IT services for a volume of up to 22 million euros, the Agency chose to use framework contracts with three contractors in cascade. Under such procedure, a ranking of contractors (the cascade) is established resulting from a competitive procedure and all specific purchases have to follow this ranking. However, the terms used in the framework contract were not specific enough to allow fair competition and to justify a ranking of contractors for all future specific purchases. According to the rules of application of the Financial Regulation⁽⁵⁴⁾, in such circumstances a competitive procedure between the selected contractors must be used for the specific purchases.

3.5.10. According to the Agency's Financial Regulation⁽⁵⁵⁾, procurements must be approved by the Management Board either in the Agency's annual work programme or by an ad hoc financing decision. One IT framework contract for a maximum amount of 15 million euros has been procured and signed although the financing decision covered an amount of 5 million euros only.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.5.11. In 2014, the Commission on behalf of more than 50 EU Institutions and bodies including EASA signed a framework contract with one contractor for the acquisition of IT hard and software and the provision of maintenance and support (IT services). The framework contractor acts as an intermediary between the Agency and suppliers that can deliver the IT services. While most of these IT services and related prices were defined in the framework contract resulting from the competitive procurement procedure, it also allows the purchase of IT services not specifically mentioned. In the case of one audited payment amounting to some 300 000 euros the Agency purchased, through the contractor, IT services without any competitive procedure. In 2017, total payments to the framework contractor amounted to 2 million euros.

3.5.12. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would, increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

⁽⁵⁴⁾ Commission Delegated Regulation (EU) No 1268/2012 (OJ L 362, 31.12.2012, p. 1), Article 122.

⁽⁵⁵⁾ EASA Financial Regulation Article 68(2) and (3).

3.5.13. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽⁵⁶⁾,⁽⁵⁷⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). According to information from the Commission, by the end of 2017 the Agency had introduced e-tendering and e-submission for certain procedures, but not e-invoicing.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.5.14. In 2017, the Commission's Internal Audit Service issued an audit report on 'The preparation of the European Plan for Aviation Safety' by EASA⁽⁵⁸⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁵⁶⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽⁵⁷⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽⁵⁸⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Although 2016 industry financed activities resulted in a deficit of 7,6 million euros, budgetary results fluctuate over the years ⁽¹⁾ and the Agency has accumulated a 52 million euros surplus from this category of activity. The Agency's Founding Regulation establishes that Industry fees levied should be adequate to cover the Agency's cost for the related certification activities. It does not, however, foresee an accumulated surplus.	Ongoing
2016	Over the period 2014 to 2016, the Agency spent 9,4 million euros (4,4 million euros in 2016) from its accumulated surplus in financing the 12,4 million euros refurbishment (and removal) cost for the Agency's relocation to a new building. The Commission also contributed 3 million euros from the EU budget for this purpose. This financing split between industry and Union contributions was in line with the standard cost allocation methodology employed by the Agency and resulted in these works being financed, in large part from industry fees.	N/A

⁽¹⁾ In 2014 and 2015, there were surpluses of 15,3 million and 16,9 million euros, respectively.

THE AGENCY'S REPLY

3.5.8. The Agency takes note of the Court's observation. The Agency has discussed this topic in the Network of Agencies forum to explore possibilities and to arrive at a common position. The Agency will implement the agreed common approach and will consider in any case clearly separate the accountant role from any operationalisation function as well as engaging the Management Board in the renewal and appraisal cycle.

3.5.9. In preparation for this procedure, the Agency performed a market prospectus and it concluded that the main IT service providers support all required services in the scope of this procedure. As a result, the Agency surmised that a multiple framework contract with re-opening of competition would have led to a high administrative complexity, which was considered disproportionate to a benefit it could potentially bring. As has been the case to date with high-value procurement procedures and as a result of the Court's comment, going forward, the Agency will place increased consideration on the reopening of competitions in order to ensure enhance competition.

3.5.10. This framework contract intends to support the proof of concept and inception phase of a novel project (Data4Safety) for which the funding and structure has been evolving over months with a number of parties. The contract was for 15 million euro, however the financial commitments amount finally to a maximum 4 million euro. Thus, eliminating the possibility to make payments above this amount.

3.5.11. The Agency considered this approach to be in accordance with the principle of sound financial management when using the existing inter-institutional FWC. In the noted case, a remuneration of 24 816,60 euro was regarded as adequate compared to the volume of the purchase and the necessary effort. This facility was foreseen in the Framework contract and the Agency availed of such as outlined in the contract.

3.5.12. In 2015, the Management Board of the Agency decided (Decision no. 08-2015) that the working language regime at EASA with regard to the recruitment and selection procedures shall be English. This decision has been communicated to EPSO who does not accept this decision as an exception to their rules of publication of VNs in all languages and this decision is not proportional to the needs of the Agency. The network of Agencies has recently established an online platform for Agencies to publish their vacancy notices more widely. EASA routinely publishes external VNs on this new platform.

3.5.13. As noted by the Court, the e-submission tool for procurement procedures was implemented last year. For the e-invoicing, the business specifications have been finalised in 2017 and an IT solution is being sought within the constraints of resources and priorities of the Agency.

3.6. EUROPEAN BANKING AUTHORITY (EBA)

INTRODUCTION

3.6.1. The European Banking Authority (hereinafter 'the Authority', aka 'EBA'), which is located in London, was established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁵⁹⁾. The Authority's task is to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, to contribute to the consistent application of legally binding Union acts, to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities, to monitor and assess market developments in the area of its competence and to foster depositor and investor protection.

3.6.2. The *Table* presents key figures for the Authority ⁽⁶⁰⁾.

Table
Key figures for the Authority

	2016	2017
Budget (million euros)	37	38
Total staff as at 31 December ⁽¹⁾	161	190

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Authority.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.6.3. We have audited:

- (a) the accounts of the Authority which comprise the financial statements ⁽⁶¹⁾ and the reports on the implementation of the budget ⁽⁶²⁾ for the financial year ended 31 December 2017; and
- (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

3.6.4. In our opinion, the accounts of the Authority for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Authority at 31 December 2017, 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.

⁽⁵⁹⁾ OJ L 331, 15.12.2010, p. 12.

⁽⁶⁰⁾ More information on the Authority's competences and activities is available on its website: www.eba.europa.eu.

⁽⁶¹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁶²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

3.6.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.6.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Emphasis of matter

3.6.7. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. An agreement setting out the arrangements for its withdrawal is currently being negotiated. The accounts and related notes of the Authority, which is located in London, were prepared using the information available at the date of signature (3 May 2018).

3.6.8. On 20 November 2017, the General Affairs Council of the European Union agreed to move the seat of the Authority to Paris, France. The removal is planned for the beginning of 2019 and the Authority's accounts include provisions for related costs amounting to 6,7 million euros and disclose 11,2 million euros remaining future contractual payments as scheduled for the Office in London.

3.6.9. Furthermore, the Authority's budget is financed by 40 % from European Union funds and by 60 % through direct contributions from EU Member States. A future decrease of the Authority's revenue resulting from the UK's decision to leave the EU is possible.

3.6.10. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.6.11. In four out of five audited open procurement procedures only one tenderer met the award criteria on quality and all other tenderers were excluded. This situation indicates that the Authority puts an over-emphasis on quality criteria. Such procedures do not allow the identification of the most economically advantageous solutions, which should show a fair balance between quality and price.

3.6.12. The Authority publishes vacancy notices on its own website and in social media, but usually not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.6.13. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽⁶³⁾,⁽⁶⁴⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Authority had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE AND EXTERNAL EVALUATION REPORTS

3.6.14. In 2017, the Commission's Internal Audit Service issued an audit report on 'Supervisory Convergence — Colleges & Training'⁽⁶⁵⁾. The Authority prepared an action plan to address any potential areas of improvement.

⁽⁶³⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽⁶⁴⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽⁶⁵⁾ We did not verify the audit work.

3.6.15. An external evaluation of the three European Supervisory Authorities ⁽⁶⁶⁾ (authorities) was carried out in 2017 on behalf of the Commission ⁽⁶⁷⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁶⁶⁾ EBA, the European Insurance and Occupational Pensions Authority and the European Security and Markets Authority.

⁽⁶⁷⁾ We did not verify the evaluation work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	In order to cover higher school fees, the Authority grants staff whose children attend primary or secondary school an education contribution in addition to the education allowances provided for in the Staff Regulations. Total 2012 education contributions amounted to some 76 000 euros. They are not covered by the Staff Regulations and therefore irregular.	Completed

THE AUTHORITY'S REPLY

3.6.11. When running procurement procedures, the EBA seeks to use all the tools at its disposal to maximise competition. In four of the five procedures the quality: price weighting was 60:40 and it was 50:50 in the other. We consider that the low level of participation in the financial evaluation cited by the Court was attributable to factors outside the control of the EBA, including low bidding interest (driven by exchange rate risk, contract size, high tendering costs and low profit margins) and the poor quality of technical proposals.

3.6.12. EBA publishes its vacancy notices in a wide variety of places: EBA webpage; Twitter and LinkedIn; EU Training; EuroBrussels and EurActiv; ESCB HRC network; Financial Times and similar (for higher-profile posts). In February 2018, EBA published 10 vacancy notices on EPSO in all EU languages. EBA believes that, by using the above channels for publishing vacancy notices, EBA is fully transparent and reaches the target audience among EU citizens.

3.6.13. The EBA will implement e-Submission in 2019, following training in and testing of the updates to the system implemented in the first semester of this year.

3.7. EUROPEAN CHEMICALS AGENCY (ECHA)

INTRODUCTION

3.7.1. The European Chemicals Agency (hereinafter 'the Agency', aka 'ECHA'), which is located in Helsinki, was set up by Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽⁶⁸⁾. Its main tasks are to ensure a high level of protection of human health and the environment as well as the free movement of substances on the internal market while enhancing competitiveness and innovation. The Agency also promotes the development of alternative methods for the assessment of hazards relating to substances.

3.7.2. The *Table* presents key figures for the Agency ⁽⁶⁹⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros) ⁽¹⁾	110	112
Total staff as at 31 December ⁽²⁾	578	563

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.7.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽⁷⁰⁾ and the reports on the implementation of the budget ⁽⁷¹⁾ for the financial year ended 31 December 2017; and
- (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

3.7.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽⁶⁸⁾ OJ L 396, 30.12.2006, p. 1.

⁽⁶⁹⁾ More information on the Agency's competences and activities is available on its website: www.echa.europa.eu.

⁽⁷⁰⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁷¹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Emphasis of matter

3.7.5. Without calling into question its opinion expressed in paragraph 3.7.4., the Court would like to emphasise that the Agency is partly self-financed and receives a fee from every company requesting the registration of chemicals as required under the REACH Regulation ⁽⁷²⁾. The applicable fees depend on the size of the companies (micro, small, medium, large) and the volume of chemicals (different thresholds) registered.

3.7.6. As laid down in the Implementing Regulation ⁽⁷³⁾, the Agency calculates and invoices the fees on the basis of information provided by the companies at application. Since the first registrations in 2009 some 30 % of the companies claimed to be micro, small or medium size. The Agency spent considerable efforts to introduce a system of *ex post* verifications checking the information on the company size provided by those applicants. This allowed the Agency to identify that, based on the verifications completed thus far, some 55 % of the abovementioned companies who claimed to be of a micro, small or medium size (16 % of all companies) had categorised their size incorrectly resulting in lower fees. In order to mitigate this situation the Agency has invoiced over the years fee corrections amounting to some 16,4 million euros following *ex post* verifications. However, there is a considerable verification backlog and the remaining amount of necessary fee corrections was unknown at the end of 2017 ⁽⁷⁴⁾. This finding demonstrates the limitation of a system that relies excessively on self-declarations made by applicants.

According to the REACH Regulation, the verification of volumes declared by the companies is under the responsibility of Member States' national enforcement authorities. Therefore, the Agency is not involved in the verification of this second element of the fee calculation.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.7.7. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.7.8. In our opinion, the payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.7.9. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON INTERNAL CONTROLS

3.7.10. The Agency's *ex post* verifications have demonstrated that more than half of the companies who registered chemicals and claimed to be of a micro, small or medium size incorrectly declared their size (See Emphasis of Matter paragraph 3.7.5.). This can be partly explained by the Commission's complex rules to define the company size ⁽⁷⁵⁾ and partly by the financial incentive to understate it as registration fees are much higher for bigger companies. As the initial registration fees are charged on the basis of the declared company size, this can have a significantly negative impact on the Agency's revenue if it goes undetected. While the Agency checks the claimed size for smaller companies through *ex post* verifications, there is a significant backlog of verifications which are only finalised up to 2012 (the years with the highest volumes of chemicals registered). There is an urgent need to speed up and finalise the *ex post* verification process for later years.

⁽⁷²⁾ Regulation (EC) No 1907/2006.

⁽⁷³⁾ Article 13 of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 107, 17.4.2008, p. 6).

⁽⁷⁴⁾ By the end of 2017, *ex post* verifications had been completed for registrations until 2012 but are ongoing for later years.

⁽⁷⁵⁾ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

3.7.11. Whenever errors are found, the Agency invoices the difference between the fee originally paid and the fee ultimately due, as well as an administrative charge. As of 31 December 2017, the amount to be recovered stood at 4,7 million euros, of which 3,2 million euros were related to overdue administrative charges. However, the Agency seems to encounter difficulties in recovering the administrative fees. The Agency recorded a bad debt provision of 2,8 million euros in its 2017 accounts (i.e. 600 000 euros higher than at year-end 2016).

3.7.12. The verification of volumes declared by the companies is under the responsibility of Member States' national enforcement authorities and the Agency has no enforcement powers (See Emphasis of Matter paragraph 3.7.5.). Actions taken by national enforcement authorities are coordinated by the Forum for Exchange of Information on Enforcement. On 6 December 2017, the Forum adopted new 'Strategies and minimum criteria for enforcement of Chemical Regulations', providing a framework for developing national enforcement strategies. The Agency's ability to fulfil its mandate depends on the effectiveness of the practical implementation of this framework by the national authorities. In its General Report for the year 2017, the Agency informs that about two thirds of companies did not update the registered information on the volumes of chemicals they are dealing with. This undermines the effective implementation of the REACH Regulation and also affects the accuracy of fee calculation.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.7.13. The Agency publishes vacancy notices on its own website and in social media, but usually not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

OTHER COMMENT

3.7.14. ECHA fee revenue corresponds to the deadlines for the registration of chemicals in the EU set out in the REACH legislation (2010, 2013 and 2018). Consequently, the Agency does not levy recurrent fees and contends with a mismatch between relatively stable expenditure and more volatile and less predictable revenue, which complicates budgetary planning. The Agency is supported in managing this situation by a subsidy received from the Commission. As the third and last registration deadline for chemicals under the REACH Regulation expires in 2018, income from fees and charges is expected to drop from 2019 onwards and the Agency will become more reliant on subsidies from the EU budget to finance its operations.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	The expenditure for procedures associated with one new specific activity of the Agency, the implementation of the Regulation concerning biocidal products, was to be, in principle, covered by application fees for the registration of these products. However, fees collected in 2014 covered only 17 % of this expenditure and the remaining part was in fact financed by contributions to the Agency's budget from the Union (6,3 million euros) and EFTA countries (0,2 million euros).	Ongoing ⁽¹⁾
2016	Carry-overs of committed appropriations remained high for Title III (REACH operational expenditure) at 10,1 million euros, i.e. 39 % (2015: 7,3 million euros, i.e. 32 %) and are even higher for Title IV (Biocides operational expenditure) at 1,3 million euros, i.e. 68 % (2015: 1,5 million euros, i.e. 74 %). Such high level of carry-overs is in contradiction with the budgetary principle of annuality. The Agency may consider increasing the use of differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.	Ongoing
2016	Under the Biocidal Products Regulation, ECHA contributes to the functioning of the market for biocidal substances and products. In its audit report dated November 2016 the Commission's Internal Audit Service (IAS) concluded that the design and practical implementation of the internal control system in ECHA in relation to the Agency's processes and activities under the Biocidal Product Regulation is effective and efficient. Although no major weaknesses were identified, the IAS identified some scope for further improvement. The Agency and IAS agreed on a plan to take corrective action.	Ongoing
2016	Different from most other agencies, ECHA's founding regulation does not explicitly require periodical external evaluations of its activities, which are key elements to assess performance.	Outstanding (Not under the Agency's control)

⁽¹⁾ In 2017, the Agency collected 8,1 million euros in revenue from Biocidal fees and charges (versus 7,6 million in 2016), covering 65 % of the expenditure for biocides (versus 62 % in 2015 and 88 % in 2016). The remaining part was financed by contributions to the Agency's budget from the Union (6,3 million euros) and EFTA countries (0,2 million euros).

THE AGENCY'S REPLY

3.7.10. The relevant legislation (REACH Fee Regulation (EC) No 340/2008) does not specify that the Agency should perform an *ex post* verification of each SME registrant's size. The Agency's Management Board endorsed an approach whereby SME registrants with the highest financial impact (that is, the largest quantity of registrations within the highest tonnage band) are prioritised. The Agency is presently verifying the SME size of those registrants who submitted their dossiers up to 2015 and, in 2017, the Agency also approached SME registrants from the United Kingdom to verify their company size prior to the United Kingdom withdrawal from the European Union. In future, the Agency will increasingly perform SME size verifications based on the cost-benefit principle.

3.7.11. The REACH Fee Regulation (EC) No 340/2008 does not provide the Agency with the necessary tools to enforce the collection of overdue administrative charges. The Agency proactively reminds debtors of their obligation to pay and, in the event that the reminder process is unsuccessful, engages local law firms to pursue the outstanding fees and charges directly in the Member States. The law firms have, to date, contacted 74 % of companies with overdue administrative charges and the outcome of this initiative will be subject to a cost-benefit analysis to determine next steps.

3.7.12. Member States have the main responsibility for the enforcement of the REACH/CLP Regulation and, specifically, the obligation to register chemicals. The Agency's ability to fulfil its mandate, and collect the appropriate level of fee income, is subject to the effectiveness of the practical implementation of enforcement strategies by the national authorities. Discussions are taking place with the Commission to address this matter.

3.7.13. The Agency takes note of this preliminary observation which is a horizontal issue pertinent to a number of Agencies. The Agency, similar to other Agencies, publishes vacancy notices on its own website, in social media and on the website of the EU Agency Network (EUAN) (<https://euagencies.eu/>). In order to increase transparency, publicity and allow citizens to identify published vacancies, the Agency recommends that the European Personnel Selection Office (EPSO) website would promote the EUAN website.

3.7.14. This preliminary observation is correct. The Agency is funded from a combination of fees and charges income and a European Union balancing subsidy. The Agency has previously made a number of alternative funding proposals to the Commission, including the introduction of recurrent fees, as pertains in some other EU Agencies. The Agency notes that the REACH Review (COM(2018) 116 final), dated 5 March 2018, indicated that the Commission would assess all possible options to secure sustainable financing for the Agency in the future.

3.8. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

INTRODUCTION

3.8.1. The European Insurance and Occupational Pensions Authority (hereinafter 'the Authority', aka 'EIOPA'), which is located in Frankfurt, was established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁷⁶⁾. The Authority's task is to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, to contribute to the consistent application of legally binding Union acts, to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities, to monitor and assess market developments in the area of its competence and to foster the protection of policyholders, pension scheme members and beneficiaries.

3.8.2. The *Table* presents key figures for the Authority⁽⁷⁷⁾.

Table
Key figures for the Authority

	2016	2017
Budget (million euros)	21	24
Total staff as at 31 December ⁽¹⁾	139	151

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Authority.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.8.3. We have audited:

- (a) the accounts of the Authority which comprise the financial statements⁽⁷⁸⁾ and the reports on the implementation of the budget⁽⁷⁹⁾ for the financial year ended 31 December 2017; and
- (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

3.8.4. In our opinion, the accounts of the Authority for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Authority at 31 December 2017, 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.

⁽⁷⁶⁾ OJ L 331, 15.12.2010, p. 48.

⁽⁷⁷⁾ More information on the Authority's competences and activities is available on its website: www.eiopa.europa.eu.

⁽⁷⁸⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁷⁹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.8.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.8.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Other matter

3.8.7. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. An agreement setting out the arrangements for its withdrawal will be negotiated. EIOPA's budget is financed by 40 % from European Union funds and by 60 % through direct contributions from EU Member States. A future decrease of the Authority's revenue resulting from the UK's decision to leave the EU is possible.

3.8.8. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.8.9. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments. In the Authority, the superior of the accounting officer is the Head of Corporate Support Department. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Authority's Director (administrative) and Management Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.8.10. The Authority publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

INFORMATION ON EXTERNAL EVALUATION RESULTS

3.8.11. An external evaluation of the three European Supervisory Authorities⁽⁸⁰⁾ was carried out in 2017 on behalf of the Commission⁽⁸¹⁾.

⁽⁸⁰⁾ EIOPA, European Banking Authority and European Security and Markets Authority.

⁽⁸¹⁾ We did not verify the evaluation work.

THE AUTHORITY'S REPLY

3.8.9. The Accounting Officer's reporting was until April 2018 to the Head of the Corporate Support Department and to the Management Board. This arrangement was deemed not to conflict with the hierarchical and functional independence of the Accounting Officer, given the final evaluation of the Accounting Officer's annual performance was completed by the Management Board. This has been changed as of May 2018 to strengthen the Accounting Officer's position with the new reporting lines as follows: the hierarchical reporting to the Executive Director and the functional reporting to the Management Board.

3.8.10. To publish vacancies on the EPSO website it is mandatory to translate the notices in all the 24 EU languages. As this has substantial budgetary implications EIOPA decided to increase the use of other media sources where most of the EU Agencies have their vacancies published. EIOPA is also using the Inter-Agency Job Advertisement Board, a joint platform developed by the Network of Agencies, to post vacancy notices accessible to all citizens. In addition, EIOPA is leading a joint procurement for advertising recruitment campaigns that will increase visibility and reach a wide EU audience.

3.9. EUROPEAN INSTITUTE OF INNOVATION AND TECHNOLOGY (EIT)

INTRODUCTION

3.9.1. The European Institute of Innovation and Technology (hereinafter 'the Institute', aka 'EIT'), which is located in Budapest, was created by Regulation (EC) No 294/2008 of the European Parliament and of the Council⁽⁸²⁾. The Institute's objective is to contribute to sustainable European economic growth and competitiveness by reinforcing the innovation capacity of the Member States and the European Union. The Institute awards grants to an increasing number of 'Knowledge and Innovation Communities' (KICs), linking the higher education, research and business sectors with one another and aiming thereby to boost innovation and entrepreneurship. KICs coordinate the activities of hundreds of partners. The grants provided by the Institute reimburse partners' costs and costs stemming from the KICs' coordination activities.

3.9.2. The *Table* presents key figures for the Institute⁽⁸³⁾.

Table
Key figures for the Institute

	2016	2017
Budget (million euros) ⁽¹⁾	283	303
Total actual staff as at 31 December ⁽²⁾	59	60

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Institute

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.9.3. We have audited:

- (a) the accounts of the Institute which comprise the financial statements⁽⁸⁴⁾ and the reports on the implementation of the budget⁽⁸⁵⁾ for the financial year ended 31 December 2017; and
- (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

3.9.4. In our opinion, the annual accounts for the year ended 31 December 2017 of the Institute present fairly, in all material respects, the financial position of the Institute at 31 December 2017 and the results of its operations, its cash flows, and the changes in net assets 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. These are based on internationally accepted accounting standards for the public sector.

⁽⁸²⁾ OJ L 97, 9.4.2008, p. 1.

⁽⁸³⁾ More information on the Institute's competences and activities is available on its website: <https://eit.europa.eu/>.

⁽⁸⁴⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁸⁵⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.9.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.9.6. In our opinion, the payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Other matters

3.9.7. In December 2016, shortly before the end of the eligibility period (1 January 2016-31 December 2016) the EIT signed amendments to the specific grant agreements (SGAs) with KICs EIT Digital, InnoEnergy, Health and Raw Materials. The amended SGA with Climate KIC was even signed in January 2017, after the end of the eligibility period. The increase in the single reimbursement rates (SRR) agreed in these amendments allowed the KICs to receive an extra 15 million euros in grant from the EIT for the same amount of approved eligible costs (6,0 million euros extra for Climate KIC, 5,6 million to EIT Health, 2,2 million to KIC InnoEnergy and 1,2 million to EIT Raw Materials). That practice goes against the purpose of encouraging KICs to find own sources of financing and of incentivising the KICs to become gradually financially independent from the EIT. It could also affect fair competition between the KICs since the co-funding of expenditure also plays a role in the annual award decisions.

3.9.8. The amendments of the business plans for EIT InnoEnergy and EIT Digital also added retroactively some activities not foreseen in the initial business plans, with total values of some 3,3 million euros and 0,6 million euros, respectively. The activity added for EIT InnoEnergy is considered a substantial change to the initial business plan, based on which the initial maximum grant amount was awarded. Since the grant amounts awarded to the different KICs result from a competitive review of their initial business plan proposals, subsequent substantial changes affect the award decisions and the equal treatment of the KICs and are not compliant with Article 180(4) of the Rules of application of the Financial Regulation.

3.9.9. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.9.10. In the course of this years' audit of all EU agencies, we did an analysis of the accounting environments including the aspect of the timely (re-)validation of accounting systems. In 2017 the Institute introduced a paperless system for payments. While this caused modifications to the Institute's procedures and its accounting system, the accounting system was not re-validated since 2012.

OBSERVATIONS ON INTERNAL CONTROLS

3.9.11. In order to further strengthen its internal control system for grants to KICs the EIT introduced centralised *ex ante* checks for those KIC partners whose cost claims exceeded 325 000 euros. The checks were carried out by two audit firms on behalf of the EIT⁽⁸⁶⁾, providing certified financial statements (CFS) of KIC partners. The results of the *ex post* checks, which were carried out by a different audit firm contracted by the EIT, confirm the effectiveness and importance of the new CFS approach as most material errors found related to cost claims that had not been subject to these *ex ante* checks.

⁽⁸⁶⁾ In previous year the certification was carried out by a large number of private audit firm contracted individually by each KIC partner who submitted a cost claim above the threshold of 325 000 euros (reimbursement of actual costs and unit costs). The audit firm which carried out *ex post* verifications is different from these two audit firms which carried out the CFS.

3.9.12. The business continuity and disaster recovery plans of the EIT were adopted in 2013 and are outdated. For example, half of the members of the crisis management team no longer worked for the EIT in 2017. An update has been prepared for the last two years but has not been adopted yet.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.9.13. As in previous years, the KICs did not fully use the grant amounts awarded by the EIT. The accepted eligible costs of the KAVA of the five KICs which became operational before 2016 (first and second wave KICs combined) turned out to be 15 % lower than estimated in the initial specific grant agreements signed in early 2016⁽⁸⁷⁾. The main reasons for the unused funds were an incomplete implementation of the business plans, partly due to the late approval of grant agreements and the multi-annual nature of KICs activities, and higher than planned self-financing of management costs by some of the KICs. These funds were partially used to increase the initial single reimbursement rates (SRR) for KAVA eligible costs (See paragraph 3.9.7). In particular, the second wave KICs (EIT Health and Raw Materials) encountered delays in the start of their activities. Amongst the first wave KICs, especially Climate KIC has underperformed according to the EIT's assessment reports.

3.9.14. Following its performance assessment of the implementation of the business plans, the EIT calculated some performance corrections. These corrections, however, have had no financial impact for any of the KICs. In compliance with the Horizon 2020 grant calculation methodology, EIT applies only the higher of the financial and performance corrections. While this methodology seems appropriate for individual Horizon 2020 projects, it is less appropriate for the grants to the KICs, which finance a wide range of very different activities. It is doubtful whether it is justified to offset performance corrections in, as an example education activities, by financial corrections to for instance innovation projects.

3.9.15. In 2017 all KICs have adopted sustainability strategies in line with the EIT guidance, which was an important step towards a more sustainable future of the KICs. However, revenue generated by the first-wave KICs remains very low (between 2 and 6 % of the cost of the KAVA) and progress was limited in 2017. The co-funding from the KIC partners also remains low (and lower than foreseen in the initial specific grant agreements signed): EIT grants continue to finance KAVA by 62 % to 90 %, depending on the KIC.

3.9.16. The EIT publishes vacancy notices on its own website and on DG HR website, but usually not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.9.17. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽⁸⁸⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. It launched tools for electronic invoicing in 2010 (e-invoicing), for electronic tendering in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Institute had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

OTHER OBSERVATIONS

3.9.18. The current interim Director of the EIT took office in July 2014. A selection procedure for the nomination for a new Director was launched in 2016 but was unsuccessful. No new recruitment procedure has since been launched. The occupation of this post *ad interim* for such a long period is at odds with the Staff Regulations which limits the duration to a maximum of one year.

3.9.19. According to section 5.1 of the Statutes of the EIT, 'the staff of the EIT shall consist of personnel employed directly by the EIT under fixed-term contracts' and the conditions of employment of other servants of the EU applies to them. As a result, the EIT can only offer their temporary agents fixed-term contracts with a maximum duration of five years, extendable once for another five years. Those staff members who joined the EIT shortly after its creation in 2009 will reach the maximum ten years in 2020, which could potentially hamper the continuity of the operations and of the administration in coming years.

⁽⁸⁷⁾ And still 6 % lower than estimated in the amended SGAs signed in December 2016 and January 2017.

⁽⁸⁸⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS AND ON EXTERNAL EVALUATION REPORTS

3.9.20. The Commission's Internal Audit Service (IAS) in 2017 carried out an audit of the Institute's 'Monitoring of Grant Agreements' ⁽⁸⁹⁾. The Institute prepared an action plan to address any potential areas for improvement.

3.9.21. An interim evaluation of the EIT over the period 2011-2015 was carried out in 2016-17 on behalf of the Commission ⁽⁹⁰⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁸⁹⁾ We did not verify the audit work.

⁽⁹⁰⁾ We did not verify the evaluation work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	Grant agreements did not set individual thresholds for specific cost categories (i.e. staff costs, sub-contracting, legal services, etc.	Completed ⁽¹⁾
2014	The Institute overestimated its budgetary needs for 2014 by 13,1 million euros, i.e. 5,6 % (2013: 3,4 million euros, i.e. 2,5 %) and only 220 million of the 233,1 million euros available were committed. The low implementation rate is mainly related to non-used appropriations for grants (11,4 million euros) to fund KIC activities. The KIC's business plans, on the basis of which grant agreements were signed, did not require the use of total 2014 appropriations available to the Institute. The appropriations not used will be re-entered in the Institute's budgets for the years 2015-2017 as stipulated in the Institute's Financial Regulation.	Ongoing ⁽²⁾
2014	While the KICs are to develop strategies for financial sustainability, to date, and in the fifth year of their existence, they remain fully dependent on financing by the Institute and KIC partners.	Ongoing ⁽³⁾
2014	Since its creation in 2009, the Institute has suffered from high staff turnover and instability at management level. Two of the three Head of Unit posts have been vacant since 2013. One is occupied <i>ad interim</i> since 2013 which is in contradiction with the Staff Regulations that stipulate a maximum period of one year. The other is currently occupied by the COO who also serves as the interim Director and who thus fulfils three roles at the same time.	Completed
2015	The Court in its Special Report 4/2016 concluded that the funding condition that the EIT contribution to the KICs shall not exceed 25 % is of little or no added value, and removing it would alleviate much of the operational and financial reporting burden of the KIC partners ⁽⁴⁾ .	Ongoing
2015	The Certificate of Financial Statement ('CFS') requested from KIC partners claiming reimbursement of more than 325 000 euros shall contribute to the Institute's <i>ex ante</i> verification of cost statements. However, the quality of these certificates varies significantly, limiting the assurance that can be obtained from them and requiring the Institute to carry out additional checks.	Completed

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	<p>The EIT founding regulation provides that 'the EIT shall mobilise funds from public and private sources and use its resources in accordance with this Regulation. It shall in particular seek to raise a significant and increasing proportion of its budget from private sources and from income generated by its own activities'. In spite of the said provision that clearly refers to the EIT budget, the contribution from the Horizon 2020 financial envelope accounted for 99 % of its 2015 budget.</p>	Outstanding ⁽⁵⁾
2015	<p>Even though the Institute is allowed to re-enter unused appropriations (appropriations not committed during the year or de-committed by the year end) in the budgets of the following three years, it had not adapted its process in time to re-enter 26,6 million euros available from the 2014 grant agreements in the 2015-2017 budgets. These appropriations result from the lower than expected use of funds by KICs.</p>	Completed
2015	<p>The original target set by the Commission for the Institute to obtain financial autonomy was 2010. However it obtained only partial financial autonomy in June 2011 under the condition of continued <i>ex ante</i> approval of grant related transactions and of procurements above 60 000 euros by its (parent) Directorate-General Education and Culture.</p>	Completed
2015	<p>The Institute funds the EIT Digital Master's programme in which 16 European universities participate. The model for reimbursing the universities' costs combines a lump sum maximum 8 000 euros per student (following the Erasmus Mundus programme provisions) plus actual costs including flat rate based indirect costs. On average a total of 15 000 euros per student was paid to the universities in 2015 on this basis (including the lump sum). However, the model has never been formally defined and does not allow a distinction between activities covered by the lump sum and those covered by the actual costs. The Institute should move towards a clear and formally defined model based on a single method for declaring costs such as a substantiated single lump-sum.</p>	Ongoing ⁽⁶⁾

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	The principle of sound financial management was breached when a KIC partner procured public relations services with daily rates ranging from 800 euros to 3 250 euros per person, which were fully reimbursed by the Institute (7).	N/A
2015	The Institute used a Commission framework contract ('FWC') for the organisation of innovation conferences taking place in 2015 and 2016. Under this FWC services were subcontracted for which prices were not set in the FWC. The prices agreed for these services range from 800 euros per day for a junior consultant to 2 250 euros per day for a senior consultant (almost four times the price agreed in the FWC for a senior manager). The cost of services procured at such prices amount to more than 100 000 euros per conference.	N/A
2016	The Court found weaknesses related to <i>ex post</i> verifications of procurement procedures carried out by KIC LEs. At least for one KIC LE the selection of procurement procedures to be verified was not representative for the population. In addition, the Court concluded differently on the legality and regularity of two procurement procedures. In these cases the Institute accepted the direct award or excessive extension of contracts.	Completed
2016	The Commission's Internal Audit Service (IAS) in its audit report 'Grant Management: Transition to Horizon H2020' dated December 2016 concluded that the Institute has successfully adapted its processes to the rules of Horizon 2020, and in particular the Rules for Participation and that the Institute's controls over the start-up process have been generally effective in supporting new KICs. The IAS also concluded that urgent actions are needed to secure a robust application of the H2020 legislative framework and to further improve the start-up process of new KICs. The Institute and the IAS agreed on an action plan to take corrective actions.	Ongoing
2016	The level of carry-overs for committed appropriations was high for Title II at 0,4 million euros, i.e. 40 % (2015: 0,4 million euros, i. e.44 %). These carry-overs mainly relate to contracts for IT services going beyond year-end and for meeting costs for which invoices had not yet been received.	N/A

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>The grants for the 2015 period were awarded only in April 2015 and the GA were signed in June and July 2015. For the 2016 period, grants were awarded and GA signed in April 2016. Despite an improvement in 2016, these delays in grant award decisions and signatures create uncertainty and undermine partners' willingness to commit resources and to start activities at the beginning of the year.</p>	Ongoing
2016	<p>The latest calls for new KICs, for which the thematic areas were defined in the Strategic Innovation Agenda of the EIT for the years 2014 to 2020 showed a limited competition. The 2014 call for two new KICs (Health and Raw Materials) led to only seven proposals. The 2016 call for two additional KICs (Food and Added-Value Manufacturing) received three proposals, whereby the single proposal for Added-Value Manufacturing KIC was not selected for quality reasons.</p>	N/A
2016	<p>The Institute's Director changed four times between its creation in 2008 and July 2014. Since August 2014 the position of the Director, and another managerial position since February 2013, have been filled on an <i>ad interim</i> basis. This is not only in contradiction with the one year maximum period set for interim placements in the Staff Regulations, but also the frequent changes and long interim solutions cause uncertainty to stakeholders and strategic continuity.</p>	Ongoing ⁽⁸⁾
2016	<p>The Institute is an important player in the Horizon 2020 programme, with 2,4 billion euros of budget allocated for the period 2014-2020. The Commission has created a Horizon 2020 Common Support Centre in order to ensure coherence amongst bodies implementing the programme covering aspects like legal services, IT tools, grant management, dissemination and exploitation of research results, etc. However, as distinct from other bodies like Commission executive agencies and public private partnerships, the Institute has no direct access to the Support Centre but needs approval on a case by case basis from its Commission Parent DG. This limitation affects the efficiency of the Institutes operations.</p>	Completed

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>The coordination and representation of the KICs is carried out by KIC LEs which are almost fully financed by the Institute. The Court in its audit gave particular attention to the procurement procedures carried out by these entities which it considers to be a high risk area. Under the 2015 Grant Agreements (GA) KIC LEs and/or KIC Partners must ensure that any procurement achieves best value for money or, where appropriate, is made at the lowest possible price. For all contracts exceeding 60 000 euros, the GA stipulates that KIC LEs and/or KIC Partners have to invite at least three economic operators for tender and to document the procurement procedure demonstrating its transparency. The Court audited a sample of procurement procedures for a value of some 7 million euros carried out by KIC LEs which were fully financed by the EIT. The audit showed significant weaknesses such as direct award of contracts, absence of essential elements in tenders, significant extensions of initial contracts in time and/or volume, contracts unlimited in time and/or volume or quality/price weightings neutralising competition on price. The 2016 payments related to these irregular procurement procedures amounted to 2,2 million euros. The Institute had also identified the procurement weaknesses for one KIC LE and put in place an action plan to improve all KIC LEs' future procurement procedures.</p>	Ongoing
2016	<p>Despite the large increase in the budget from 309 million euros (2008-2013) to 2,4 billion euros (2014-2020) and the rise of KICs from three to six at the end of 2016, the Institute's authorised number of posts did not change significantly (see Table 2). The Court in its Special Report 4/2016⁽⁸⁾ pointed to the risk that the Institute will not have sufficient capacity to deal with the expanded workload. The Institute's interim Director referred to this risk in the Institute's Annual Activity Report for the year 2015.</p>	Outstanding (Not under the Institute's control)

⁽¹⁾ In particular, ceilings for management costs have been set since the 2016 grant agreements.

⁽²⁾ Budgetary needs for 2016 were overestimated by 13,1 million euros, i.e. 5,0 % (2015: 25 million euros, i.e. 9,4 %) and only 249,9 million euros of the 263 million euros available were committed. The appropriations not used can be re-entered in the budgets for 2017-2019.

⁽³⁾ The EIT financed on average 90 % of eligible costs declared by the KICs in the 2015 grant agreements. The amounts raised by the KICs from different sources reached 2,5 % of the EIT funding Requested.

⁽⁴⁾ Special Report 4/2016: The European Institute of Innovation and Technology must modify its delivery mechanisms and elements of its design to achieve the expected impact.

⁽⁵⁾ EIT still interprets the EIT Regulation differently as described in its 2015 reply.

⁽⁶⁾ On average a total of 17 000 euros per full year student was paid to the universities in 2016 on the basis of the model described which combined actual costs and lump sums. The model has been formally defined at the end of 2016 and will be applicable from 2017.

⁽⁷⁾ In 2016 (2015 grant transactions) the EIT reimbursed an amount of 410 000 euros related to that contract.

⁽⁸⁾ The managerial post was filled in February 2018. The Commission launched the recruitment procedure for the Director in June 2018.

⁽⁹⁾ Special Report 4/2016: The European Institute of Innovation and Technology must modify its delivery mechanism and elements of its design to achieve the expected impact.

THE INSTITUTE'S REPLY

3.9.7. The EIT wishes to clarify that amendment requests to the SGA can be submitted at any time during the eligibility period in line with the EIT-KIC Framework Partnership Agreements (FPA). The KICs' amendment requests were subject to a technical and financial assessment by the EIT and *ex ante* approval by the European Commission. As a result, amendments were signed in December 2016. In the case of EIT Climate-KIC, the approval of the amendment request was formally communicated to the KIC on 21 December 2016, i.e. within the eligibility period. As regards the increase in the Single Reimbursement Rates (SRRs), the EIT points out that no additional grant was paid to the KICs as a result of the amendments of the 2016 SGAs. The total final grant paid (241,8 million euro) was significantly lower than the amount initially awarded (274,9 million euro). As regards encouraging KICs to find own sources of financing and incentivising them to become financially sustainable, we refer to our reply to paragraph 3.9.15. As part of the assessment of the amendment requests, the EIT had verified, in consultation with the European Commission, that the adjustment of the SRRs is in line with the applicable legal basis and does not affect the equal treatment of KICs. The possibility to adjust the SRR was available to all KICs on equal terms.

3.9.8. As regards the second observation, the EIT is of the position that the amendments were in line with Article 180 (4) of the Rules of Application of the Financial Regulation, as they did not call into question the grant award decisions and were not contrary to the equal treatment of applicants. It is important to note that there is no provision defining a materiality threshold as to what change of an action would be considered 'substantial' for the purposes of assessing whether the change affects the award of the grant. Whether the inclusion of new activities is in line with the said provision necessitates a case-by-case assessment, based on the relevance and impact of the activities for the entire KIC Business Plan. The EIT carried out this assessment before approving the amendment requests and concluded that the amendments did not call into question the grant award decisions. As every KIC had the possibility to introduce new eligible activities in their amended Business Plans on equal terms, the equal treatment of KICs was also ensured. Finally, the EIT points out that in case of EIT InnoEnergy the sole activity in question represented only 3,9 % of the amended estimated budget of the KIC Business Plan. In the case of EIT Digital, this proportion was 0,6 %.

3.9.10. The EIT is currently in the process of outsourcing its accounting function to the Accounting Officer of the Commission. If deemed necessary by DG Budget, this process will entail a re-validation of the EIT's accounting systems.

3.9.12. The updates to both the Business Continuity Plan and the Disaster Recovery Plan will be adopted by the EIT in 2018.

3.9.13. Specific Grant Agreements for 2016 with EIT Health and EIT RawMaterials were signed later than planned, as the Framework Partnership Agreements needed to be signed first. Specific Grant Agreements in 2017 and 2018 were systematically signed in February, enabling KICs to start their activities early in the year. Innovative actions are dynamic and fast-reacting in nature and cannot be linearly planned. Certain innovation projects or plans may turn out to have less potential than expected and have to be cancelled during the implementation of the grant agreements. Moreover, several of the operational activities of the KICs, such as Masters and Doctoral education programmes or long-term research and innovation projects, are by nature multiannual. The EIT intends to address this issue by moving towards signing multi-annual grant agreements with KICs in the post-2020 period, provided that commitment appropriations for the EIT budget are allocated in multi-annual tranches accordingly.

3.9.14. Indeed, the EIT fully followed the grant calculation methodology stipulated in the Horizon 2020 legal basis and the EIT will continue to comply with the applicable legislation in the future.

3.9.15. Financial sustainability of KICs is a unique ambition of the EIT-KIC model and it is one of the most challenging aspects of the EIT's mission. While this was a distant objective for KICs in the past, some of the Innovation Communities already provide significant co-funding to finance their activities and generate substantial revenues compared to their budget. For example, EIT Digital provided 26 % co-funding (or 22 million euro) to finance their KIC added-value activities in 2016, in addition to reporting more than 200 million euro of KIC complementary activities carried out and financed by their Partner organisations. Another example is EIT Health that collected over 6 million euro in revenues in their first year of operations, a substantial sum compared to the total EIT funding received (ca. 19 million euro).

3.9.16. The EIT is currently considering the option to publish vacancy notices on the website of EPSO, considering also the costs of having to translate vacancy notices to all official languages of the EU, which is a pre-condition to publication on the EPSO website. Nevertheless, the average number of candidates applying to EIT vacancy notices has significantly increased in the past years, mainly due to the active use of social media by EIT in promoting new vacancies.

3.9.17. The EIT intends to adopt the e-tendering and e-submission tools after conclusion of the necessary agreements with the European Commission, for which preparatory actions are ongoing.

3.9.18. The European Commission published the vacancy for the EIT Director position on 1 June 2018 ⁽⁹¹⁾.

3.9.19. The first staff members joined the EIT in 2010 and will therefore reach the maximum ten years in 2020. Nevertheless, the EIT is aware of the risk, which has also been flagged in the 2017 Annual Activity Report of the EIT. The EIT requested formally the legal opinion of the European Commission by letter of 14 May 2018.

⁽⁹¹⁾ OJ C 187 A, 1.6.2018, p. 6.

3.10. EUROPEAN MARITIME SAFETY AGENCY (EMSA)

INTRODUCTION

3.10.1. The European Maritime Safety Agency (hereinafter 'the Agency', aka 'EMSA'), which is located in Lisbon, was set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽⁹²⁾. The Agency's tasks are to ensure a high level of maritime safety and to prevent pollution by ships, provide the Commission and the Member States with technical assistance, and monitor the implementation of Union legislation, as well as to evaluate its effectiveness.

3.10.2. The *Table* presents key figures for the Agency ⁽⁹³⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros) ⁽¹⁾	71	79
Total staff as at 31 December ⁽²⁾	246	250

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.10.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽⁹⁴⁾ and the reports on the implementation of the budget ⁽⁹⁵⁾ for the financial year ended 31 December 2017; and
- (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

3.10.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽⁹²⁾ OJ L 208, 5.8.2002, p. 1.

⁽⁹³⁾ More information on the Agency's competences and activities is available on its website: www.emsa.europa.eu.

⁽⁹⁴⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽⁹⁵⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.10.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.10.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.10.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON INTERNAL CONTROLS

3.10.8. In 2014, the Commission on behalf of more than 50 EU Institutions and bodies, including the Agency, signed a framework contract with one contractor for the acquisition of software licences and the provision of maintenance and support. The framework contractor acts as an intermediary between the Agency and suppliers that can address the Agency's needs. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2017, total payments to the framework contractor amounted to 1,7 million euros. The Agency did not systematically check prices and uplifts charged with the suppliers' quotes and invoices issued to the framework contractor.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.10.9. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.10.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽⁹⁶⁾,⁽⁹⁷⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. It launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing and e-submission for certain procedures, but not e-tendering.

INFORMATION ON INTERNAL AUDIT SERVICE AND EXTERNAL EVALUATION REPORTS

3.10.11. In 2017 the Commission's Internal Audit Service (IAS) issued audit reports on 'Project-Financed Actions' and 'Human Resources Management'⁽⁹⁸⁾. The Agency prepared action plans to address any potential areas for improvement.

3.10.12. An external evaluation of EMSA's performance in the period 2011 to 2016 was carried out in 2017 on behalf of the Commission⁽⁹⁹⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁹⁶⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽⁹⁷⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽⁹⁸⁾ We did not verify the audit work.

⁽⁹⁹⁾ We did not verify the evaluation work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	In 2014 the Agency concluded a framework contract amounting to 3,5 million euros for the purchase of IT-related goods and services over a six-year period. The Agency underestimated the needs and likely contract value, leading to an 80 % consumption of the contract at the end of 2016. A new procurement procedure has to be launched four years earlier than expected, resulting in additional administrative costs.	N/A
2016	In 2016 the Agency concluded seven framework contracts for the purchase of oil pollution response systems. Each framework contract (representing a lot in the procurement procedure) covered a specific type of equipment. The procurement procedure was launched under the assumption that the total value of the seven frameworks contracts would be 7 million euros. However, this assumption underestimated the Agency's needs and seven framework contracts for an amount of 7 million euros each were signed, leading to a total value of the contracts of 49 million euros.	N/A

THE AGENCY'S REPLY

3.10.8. The Agency will remind the relevant Project Officers to consistently perform the necessary checks on the prices charged by the provider and/or if the correct uplifts are applied. EMSA will also request the leading Contracting Authority in this FWC to ask the Contractor, as a general rule, to always provide proof of market price/uplift when replying to any requests for quotation.

3.10.9. Following a court decision ruling EPSO decided that only vacancy notices provided in all official EU languages or the specific languages defined by the legal act establishing the Agency can be published on the EPSO EU website. As a result of the high translations costs related to this new policy (around EUR 19 000 per vacancy) EMSA —as many other Agencies — does no longer make use of the EPSO services for announcing its vacancies. This issue was addressed by a number of agencies to EPSO in December 2015. EMSA would welcome a solution which — whilst ensuring sufficient transparency — also accords with the principle of sound financial management. EMSA endeavours to give a wide publicity to its vacancies by posting job openings on different social media platforms attending a wide public. It is to be noted that most of the EMSA vacancies are addressed to technical experts for whom EMSA's website is a reference.

3.10.10. In 2017, EMSA has done a comprehensive preparation in order to adjust all relevant internal procedures to use e-procurement. EMSA can confirm that — as from the beginning of 2018 — the Agency introduced the e-procurement modules. The deadline for EU bodies to use the e-procurement is October 2018.

3.11. EUROPEAN UNION AGENCY FOR NETWORK AND INFORMATION SECURITY (ENISA)

INTRODUCTION

3.11.1. The European Union Agency for Network and Information Security (hereinafter 'the Agency', aka 'ENISA'), which is located in Athens and Heraklion⁽¹⁰⁰⁾, was created by Regulation (EC) No 460/2004 of the European Parliament and of the Council⁽¹⁰¹⁾ which, following different amendments was superseded by Regulation (EU) No 526/2013⁽¹⁰²⁾. The Agency's main task is to enhance the Union's capability to prevent and respond to network and information security problems by building on national and Union efforts.

3.11.2. The *Table* presents key figures for the Agency⁽¹⁰³⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	11	11
Total staff as at 31 December ⁽¹⁾	69	70

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.11.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽¹⁰⁴⁾ and the reports on the implementation of the budget⁽¹⁰⁵⁾ for the financial year ended 31 December 2017; and
- (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

3.11.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹⁰⁰⁾ The Agency's operational staff was relocated to Athens in March 2013.

⁽¹⁰¹⁾ OJ L 77, 13.3.2004, p. 1.

⁽¹⁰²⁾ OJ L 165, 18.6.2013, p. 41.

⁽¹⁰³⁾ More information on the Agency's competences and activities is available on its website: www.enisa.europa.eu.

⁽¹⁰⁴⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁰⁵⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.11.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.11.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.11.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.11.8. The new accounting officer of the Agency took over duties on 1 December 2017. The hand-over process was improperly carried out and did not meet the requirements of Article 55 of the Rules of application. In particular, there was no hand-over report transmitted to the new accountant.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.11.9. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.11.10. On 29 March 2017 the United Kingdom (UK) notified the European Council of its decision to withdraw from the European Union (Brexit). Unlike most of the other agencies, the Agency did not carry out a comprehensive analysis of the likely Brexit impact on its organisation, operations and accounts.

INFORMATION ON EXTERNAL EVALUATION REPORT

3.11.11. In 2017 a study on the external evaluation of the Agency's performance during the period 2013-2016 was carried out on behalf of the Commission ⁽¹⁰⁶⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁰⁶⁾ We did not verify the work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	In 2016 the Agency plans to relocate some administrative staff from Heraklion to Athens while its basic Regulation provides that staff primarily engaged in the administration of the Agency should be based in Heraklion.	Ongoing
2016	Commitment appropriations carried over are high for Title II (administrative expenditure) with 0,3 million euros, i.e. 25 % (2015: 0,15 million euros, i.e. 22 %) of committed appropriations. This high level mainly results from transfers made from Title I (staff expenditure) and Title III (operational expenditure) and primarily relate to investments in IT and a service car near year end.	N/A
2016	As required by the Agency's Financial Regulation, external evaluations of ENISA's performance were prepared for 2014 and 2015, with the final reports being delivered in October 2015 and May 2016, respectively. The evaluation of 2014 concluded that the core operational activities carried out under the Work Programme 2014 have a clear connection to the legal mandate of ENISA and the Agency's effectiveness was assessed as good. However, it identified room for improvement in relation to the division of the Agency between Heraklion and Athens which leads to cumbersome work processes and a lack of communication and cooperation. The 2015 evaluation concluded that ENISA's work and outputs are responding to a need for Network Information Security across the EU and within Member States and that the Agency effectively meets its stakeholders' expectations. However, the report highlighted that there is a need for improving communication between ENISA and its stakeholders, who find ENISA's mandate and outreach too limited. The Agency is implementing an action plan agreed with the Management Board in response.	N/A
2016	In 2016, the Agency moved eight additional staff to Athens, reducing the number of staff in Heraklion to 14 ⁽¹⁾ . As highlighted in the Court's 2013 Report, it is likely that costs could be further reduced if all staff were centralised in one location.	Ongoing

⁽¹⁾ According to ENISA, at the end of 2017 this number has further reduced to 11 members of staff.

THE AGENCY'S REPLY

3.11.8. While the hand-over to the new accounting officer was never formalised, informal meetings have taken place with previous acting accounting officer to transfer knowledge. Updated training on SAP was also received by the new accounting officer to provide a good understanding of the accounting system. Nevertheless, ENISA will implement corrective actions to ensure that adequate hand-over between in- and out-going staff members.

3.11.9. All vacancies published by EPSO need to be translated in all EU official languages. Unfortunately, given its limited budget, ENISA cannot afford to bear this cost. However, the Agency is using traditional and social media and has agreed to collaborate to the creation of an inter-agency portal to mitigate the risks linked to the publication of vacancies as many of the decentralised agencies are facing the same problem.

3.11.10. ENISA has not performed a formal operational and financial impact analysis of Brexit as it should not have any significant direct impact on ENISA's budget, operation and administration. Nevertheless, relevant internal processes have been revised (i.e. procurement and recruitment) in the Brexit context.

3.12. EUROPEAN UNION AGENCY FOR RAILWAYS (ERA)

INTRODUCTION

3.12.1. The European Union Agency for Railways (hereinafter 'the Agency', aka 'ERA'), which is located in Lille and Valenciennes, was created by Regulation (EC) No 881/2004 of the European Parliament and of the Council, which was replaced by Regulation (EU) 2016/796 of the European Parliament and of the Council⁽¹⁰⁷⁾. The Agency's task is to enhance the level of interoperability of railway systems and to develop a common approach to safety in order to contribute to creating a more competitive European railway sector with a high level of safety.

3.12.2. The *Table* below presents key figures for the Agency⁽¹⁰⁸⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	28	31
Total staff as at 31 December ⁽¹⁾	155	164

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.12.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽¹⁰⁹⁾ and the reports on the implementation of the budget⁽¹¹⁰⁾ for the financial year ended 31 December 2017; and
- (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

3.12.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹⁰⁷⁾ OJ L 220, 21.6.2004, p. 3, and OJ L 138, 26.5.2016, p. 1. In accordance with the latter Regulation, the Agency's original name, the European Railway Agency, was changed to the European Union Agency for Railways.

⁽¹⁰⁸⁾ More information on the Agency's competences and activities is available on its website: www.era.europa.eu.

⁽¹⁰⁹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹¹⁰⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.12.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.12.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.12.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.12.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments including the hierarchical position and independence of accounting officers. In December 2016, the Accounting Officer of the Agency, in addition to this function, has also been appointed as Head of Finance and Procurement Sector *ad interim*. In this additional function, he is responsible for the management of staff entrusted with the initiation and verification of commitments and payments. These financial actors are identified in the Agency's Financial Regulation as falling under the responsibility of the Authorising Officer. However, the principle of segregation of duties between the Authorising Officer and the Accounting Officer implies that both functions are mutually exclusive.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.12.9. In 2014, the Commission on behalf of more than 50 EU Institutions and bodies including the Agency signed a framework contract with one contractor for the acquisition of IT hard and software and the provision of maintenance and support (IT services). The framework contractor acts as an intermediary between the Agency and suppliers that can deliver the IT services. While most of these IT services and related prices were defined in the framework contract resulting from the competitive procurement procedure, it also allows the purchase of IT services not specifically mentioned. In the case of one audited payment amounting to some 47 000 euros the Agency purchased, through the contractor, IT services without any competitive procedure or prior market research. In 2017, total payments to the contractor amounted to 1,1 million euros.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.12.10. In 2017, the Commission's Internal Audit Service issued an audit report on the Agency's 'Human Resources and Competency Management' ⁽¹¹¹⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹¹¹⁾ We did not verify the audit work

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	The Agency is located in Lille and Valenciennes. As the Court mentioned in its Specific Annual Report for the financial year 2006, it is likely that costs could be reduced if all operations were centralised in one location. This might also facilitate a comprehensive seat agreement with the host Member State thereby clarifying the conditions under which the Agency and its staff operate.	Ongoing (Not under the Agency's control)

THE AGENCY'S REPLY

3.12.8. The Agency is undergoing a major re-organisation to respond to its new tasks. As part of this and in line with the action plan agreed with the IAS, a proper segregation of duties for the accounting officer shall be put in place.

3.12.9. As recognised by the Court the contract was used according to the contractual provisions as laid down in the DIGIT framework contract DI07360. Any further considerations as regards sound financial management shall be notified to the contract manager, namely DG DIGIT.

3.13. EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

INTRODUCTION

3.13.1. The European Securities and Markets Authority (hereinafter 'the Authority', aka 'ESMA'), which is located in Paris, was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹¹²⁾

3.13.2. . The Authority's task is to improve the functioning of the EU internal financial market by ensuring a high, effective and consistent level of regulation and supervision, promoting the integrity and stability of the financial systems and strengthening international supervisory coordination in order to ensure the stability and effectiveness of the financial system.

3.13.3. The *Table* presents key figures for the Authority ⁽¹¹³⁾.

Table

Key figures for the Authority

	2016	2017
Budget (million euros) ⁽¹⁾	39	42
Total staff as at 31 December ⁽²⁾	204	226

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Authority.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.13.4. We have audited:

(a) the accounts of the Authority which comprise the financial statements ⁽¹¹⁴⁾ and the reports on the implementation of the budget ⁽¹¹⁵⁾ for the financial year ended 31 December 2017; and

(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

3.13.5. In our opinion, the accounts of the Authority for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Authority at 31 December 2017, 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.

⁽¹¹²⁾ OJ L 331, 15.12.2010, p. 84.

⁽¹¹³⁾ More information on the Authority's competences and activities is available on its website: www.esma.europa.eu.

⁽¹¹⁴⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹¹⁵⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.13.6. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.13.7. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Other matter

3.13.8. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. An agreement setting out the arrangements for its withdrawal will be negotiated. The Authority's budget is financed by 27 % from European Union funds, by 42 % through direct contributions from EU Member States and by 29 % from fees received from supervised entities (Credit Rating Agencies and Trade Repositories), and 2 % others sources. The departure of the UK might affect the Authority's activities since the most significant supervised entities are currently located there. A future decrease of the Authority's revenue resulting from the UK's decision to leave the EU is possible.

3.13.9. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.13.10. The Authority publishes vacancy notices on its own website and in social media, but not always on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

INFORMATION ON INTERNAL AUDIT SERVICE AND EXTERNAL EVALUATION REPORTS

3.13.11. In 2017, the Commission's Internal Audit Service issued an audit report on 'Peer Reviews of National Competent Authorities in ESMA' ⁽¹¹⁶⁾. The Authority prepared an action plan.

3.13.12. An external evaluation of the three European Supervisory Authorities ⁽¹¹⁷⁾ (authorities) was carried out in 2017 on behalf of the Commission ⁽¹¹⁸⁾.

⁽¹¹⁶⁾ We did not verify the audit work.

⁽¹¹⁷⁾ ESMA, the European Banking Authority and the European Insurance and Occupational Pensions Authority.

⁽¹¹⁸⁾ We did not verify the evaluation work.

THE AUTHORITY'S REPLY

3.13.7. ESMA acknowledges the issue and continues to monitor the progress on the Brexit negotiations.

3.13.9. EPSO decided to publish ESMA vacancy notices (VN) on its website only if the VNs are available in 24 languages. In 2017, the translation costs (5 VNs out of 16), borne by ESMA amounted to 32 431 euro. ESMA considers that the cost of translating each VN in 23 languages is not justified in terms of sound financial management and decided to use other media where most of the EU Agencies have their vacancies published.

3.14. EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK (EU-OSHA)

INTRODUCTION

3.14.1. The European Agency for Safety and Health at Work (hereinafter 'the Agency', aka 'EU-OSHA'), which is located in Bilbao, was created by Council Regulation (EC) No 2062/94⁽¹¹⁹⁾. The Agency's task is to collect and disseminate information on national and Union priorities in the field of health and safety at work, to support national and Union organisations involved in policymaking and implementation, and to provide information on preventive measures.

3.14.2. The *Table* presents key figures for the Agency⁽¹²⁰⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	17	15
Total staff as at 31 December ⁽¹⁾	65	64

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.14.3. We have audited:

(a) the accounts of the Agency which comprise the financial statements⁽¹²¹⁾ and the reports on the implementation of the budget⁽¹²²⁾ for the financial year ended 31 December 2017; and

(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

3.14.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹¹⁹⁾ OJ L 216, 20.8.1994, p. 1. The Regulation was last amended by Regulation (EC) No 1112/2005 (OJ L 184, 15.7.2005, p. 5).

⁽¹²⁰⁾ More information on the Agency's competences and activities is available on its website: www.osha.europa.eu.

⁽¹²¹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹²²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.14.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.14.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.14.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.14.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments including the hierarchical position and independence of accounting officers. The superior of the Agency's accounting officer is the Head of Resource and Service Centre. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Management Board (functional).

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.14.9. Carry-overs for Title II (administrative expenditure) and Title III (operational expenditure) were high with 40 % for each title or 3,5 million euros in total, which is in contradiction with the budgetary principle of annuality. There is no evidence that these carry-overs are related to expenditure planned during the budgeting process. As an example, in December 2017 the Agency ordered IT equipment and office furniture for an amount of 220 000 euros, of which 80 000 euros were transferred from Title III to Title II just before ordering.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.14.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹²³⁾,⁽¹²⁴⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017, the Agency had not introduced any of these tools.

3.14.11. On 29 March 2017 the United Kingdom (UK) notified the European Council of its decision to withdraw from the European Union (Brexit). Unlike most other agencies, the Agency did not carry out a comprehensive analysis of the likely Brexit impact on its organisation, operations and accounts.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹²³⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹²⁴⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The level of committed appropriations carried over to 2017 was high for Title II (administrative expenditure) at 417 279 euros, i.e. 30 %, (2015: 364 740 euros, i.e. 26 %). These carry-overs mainly concern IT services which had not yet been fully delivered or been invoiced by the end of the year. The committed appropriations carried over under Title III amounted to 3 370 616 euros, i.e. 43 % (2015: 3 383 052 euros, i.e. 41 %). These carry-overs mainly concern research projects and studies with a duration of more than one year. The Agency may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.	Ongoing
2016	In 2014 the Agency signed a framework contract (FWC) for the provision of IT consultancy services in the period 2014 to 2017 for a total amount of 1,1 million euros. Although specific contracts signed in 2016 to implement this FWC clearly define project deliverables, consultants were engaged on a 'time & means' basis where price is not fixed and directly linked to the delivery, but instead results from the number of working days spent. Moreover in 2016 some 50 % of the IT consultancy services were carried out offsite the Agency's premises, limiting the Agency's means to monitor the efficient implementation of the contracts. Payments made under this framework contract in 2016 amounted to some 0,4 million euros.	Outstanding
2016	The Agency's founding Regulation does not explicitly require external evaluations of its activities. The Commission's proposal for a new founding Regulation includes the obligation of performing an evaluation every five years.	Ongoing (Not under the Agency's control)

THE AGENCY'S REPLY

3.14.8. For organisational reasons the Accountant is assigned within RSC (Resource and Service Centre) in the organisational chart, and physically located in the area of the financial staff. However, the Accountant reports directly to the Director (not to the Head of RSC), in order to ensure his/her independence.

3.14.9. Carry-overs for Title III mainly concern large scale research projects with a duration of more than one year and are related to the 2017 annual work programme. In respect of Title II, carry-overs mainly concern services that are contracted for a period covering two calendar years.

In respect of the EUR 0,2 million, it should be noted that since 2014 and the Agency's move to new premises, which has generated savings of 0,6 million euro/year, the Title II budget has been fixed at a reduced level of 1,4 million euro. In 2017, an amending budget adopted in June further decreased the appropriations of Title II by 60 000 euro because of a decrease in the local authorities' contribution to EU-OSHA's infrastructure budget.

During the year the Agency decided to carry out on an internal office space re-organisation and associated fitting out works which had not been foreseen at the time of the budget process. Most of the IT purchases concerned were planned for 2018 (and documented as such in the DB 2017 and further budget phases) but were finally committed in 2017 (EUR 100 000) as funds were available.

As from B2019 onwards, a list of possible additional IT purchase(s) — in the case of availability of appropriations due to, for example, favourable price renegotiation — will be annexed to the Programming Document.

The transfer between titles (in line with the provisions of the Framework Financial Regulation) was communicated to the Governing Board, Parliament and Council.

3.14.10. Since the end of 2016, the Agency has been giving electronic access via its website to all the procedures launched (*ex ante* publicity for low and medium value contracts and contract notice publication), providing additionally specific email addresses for procurement.

In 2018, target date October, the Agency will introduce e-tendering for the phase of publication and management of information requests until the date of submission of tenders.

3.14.11. In the meantime, the Agency has carried out an analysis of the likely Brexit impact on its organisation, operations and accounts

3.15. EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS (EUROFOUND)

INTRODUCTION

3.15.1. The European Foundation for the Improvement of Living and Working Conditions (hereinafter 'the Foundation', aka 'Eurofound'), which is located in Dublin, was established by Council Regulation (EEC) No 1365/75⁽¹²⁵⁾. The Foundation's task is to contribute to the planning and establishment of better living and working conditions in the Union by increasing and disseminating knowledge which is relevant to this subject.

3.15.2. The *Table* presents key figures for the Foundation⁽¹²⁶⁾.

Table
Key figures for the Foundation

	2016	2017
Budget (million euros)	21	20
Total staff as at 31 December ⁽¹⁾	104	100

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Foundation.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.15.3. We have audited:

- (a) the accounts of the Foundation which comprise the financial statements⁽¹²⁷⁾ and the reports on the implementation of the budget⁽¹²⁸⁾ for the financial year ended 31 December 2017; and
- (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

3.15.4. In our opinion, the accounts of the Foundation for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Foundation at 31 December 2017, 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.

⁽¹²⁵⁾ OJ L 139, 30.5.1975, p. 1.

⁽¹²⁶⁾ More information on the Foundation's competences and activities is available on its website: www.eurofound.europa.eu.

⁽¹²⁷⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹²⁸⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.15.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.15.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.15.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.15.8. In the course of this year's audit of the EU agencies, we did an analysis of the accounting environments, including the hierarchical position and independence of accounting officers. In the Foundation, the superior of the accounting officer is the Head of Administration and Finance. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Foundation's Director (administrative) and Governing Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.15.9. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹²⁹⁾,⁽¹³⁰⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). According to information from the Commission, by the end of 2017 the Foundation had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹²⁹⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹³⁰⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	In its Report on the annual accounts for 2014, the Court reported underpayments to staff for the period 2005 to 2014 in relation to the transition to the new EU Staff Regulations in 2005. Although the reasons for the underpayments (2014: non-respect of minimum guaranteed salaries; 2015: wrong multiplication factor on salaries) are different, the Court has again found underpayments (43 350 euros) and some overpayments (168 930 euros), affecting 30 active and previous staff members. Eurofound corrected all underpayments, but will not recover the overpayments (this is in line with Article 85 of the current Staff Regulations). The Foundation should analyse again any possible mistakes in relation to the transition to the 2005 Staff Regulations and carry out a full evaluation of its payroll function.	Ongoing
2016	In its audit report dated December 2016, the Commission's Internal Audit Service (IAS) highlighted a need to improve the Foundation's management of projects, mainly in relation to governance arrangements, monitoring and reporting. The Foundation and the IAS agreed on a plan to take corrective action.	Ongoing
2016	The level of committed appropriations carried over increased for Title III (operational expenditure) at 2,8 million euros, i.e. 43 % (2015: 2,1 million euros, i.e. 31 %), mainly in relation to projects (studies and pilot schemes) going beyond the year end. The high level of carry-overs is in contradiction with the budgetary principle of annuality. The Foundation may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.	Ongoing
2016	The Foundation's founding regulation does not explicitly require external evaluations of its activities. The Commission's proposal for a new Founding Regulation includes the obligation of performing an evaluation every five years.	Ongoing

THE FOUNDATION'S REPLY

3.15.8. The Governing Board is satisfied with the current level of the Accounting Officer's independence, in particular his already existing entitlement to directly report to the Chair in accordance with Art. 6.1 of the Charter of the Accounting Officer and the Board's existing involvement in the appointment process. However, a new Founding Regulation currently discussed between the Institutions, will likely foresee the role of Appointing Authority assigned to the Governing Board rather than the Director. This will allow Eurofound to reassess the matter of greater independence of the Accounting Officer in the future.

3.15.9. Both e-Submission and e-Prior are part of the e-procurement modules developed by DG DIGIT. Two pilot agencies have, however, experienced significant problems with the software. In addition, the e-procurement software is currently only available for open tenders (but not for negotiated tenders), of which Eurofound has very few per year. Therefore, Eurofound will continue to monitor the developments and is prepared to make the investment in e-procurement once satisfied with the software's stability and functionality.

3.16. EUROPEAN GNSS (GLOBAL NAVIGATION SATELLITE SYSTEM) AGENCY (GSA)

INTRODUCTION

3.16.1. The European GNSS (Global Navigation Satellite System) Agency (hereinafter 'the Agency', aka 'GSA'), which was relocated from Brussels to Prague as of 1 September 2012⁽¹³¹⁾, was set up by Regulation (EU) No 912/2010 of the European Parliament and the Council⁽¹³²⁾, repealing Council Regulation (EC) No 1321/2004⁽¹³³⁾ on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council⁽¹³⁴⁾. The European GNSS Authority set up under Council Regulation (EC) No 1321/2004 officially took over all tasks previously assigned to the Galileo Joint Undertaking on 1 January 2007 which are continued by the Agency as 'European GNSS Agency' within the scope of Regulation (EU) No 912/2010, as amended. In addition, the Commission entrusted the exploitation of the European Geostationary Navigation Overlay Service (EGNOS) to the Agency through a delegation agreement.

3.16.2. The *Table* presents key figures for the Agency⁽¹³⁵⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros) ⁽¹⁾	626	704 ⁽²⁾
Total staff as at 31 December ⁽³⁾	160	166

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Of which 676 million euros received through delegation agreements with the Commission.

⁽³⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.16.3. We have audited:

(a) the accounts of the Agency which comprise the financial statements⁽¹³⁶⁾ and the reports on the implementation of the budget⁽¹³⁷⁾ for the financial year ended 31 December 2017; and

(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).

⁽¹³¹⁾ Decision 2010/803/EU taken by common accord between the Representatives of the Governments of the Member States (OJ L 342, 28.12.2010, p. 15).

⁽¹³²⁾ OJ L 276, 20.10.2010, p. 11.

⁽¹³³⁾ OJ L 246, 20.7.2004, p. 1.

⁽¹³⁴⁾ OJ L 196, 24.7.2008, p. 1.

⁽¹³⁵⁾ More information on the Agency's competences and activities is available on its website: www.gsa.europa.eu.

⁽¹³⁶⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹³⁷⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Reliability of the accounts*Opinion on the reliability of the accounts*

3.16.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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*

3.16.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.16.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Emphasis of matter

3.16.7. On 15 December 2016 the Agency signed a Framework Contract on the exploitation of the Galileo satellite system during the period 2017 to 2027, amounting to 1,5 billion euros. The contract was awarded following a public procurement procedure. One of the tenderers involved has launched legal proceedings against the Agency at the European Court of Justice, challenging the outcome of the procurement procedure. The ruling of the European Court of Justice will decide on the legality and regularity of the procurement procedure for the framework contract and all related specific contracts and future payments. The Agency disclosed and explained the matter in the financial statements 2017, together with the information that in 2017 49 million euros (7 % of the 2017 budget including amounts received through delegation agreements) have been paid under the framework contract.

Other matter

3.16.8. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. The negotiations to reach an agreement setting out the arrangements for its withdrawal are currently ongoing. The Agency operates both Galileo Security Monitoring Centre (GSMC) and Galileo ground stations that are located in UK territory. The Agency's financial statements report, under the chapter Events after the reporting date, the Commission decision of transferring the GSMC back-up site from the UK to Spain, adopted on 24 January 2018.

3.16.9. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.16.10. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments, including the aspect of the timely (re-)validation of accounting systems. The Agency was relocated and its mission redefined in 2013. Its Financial Regulation was revised in 2014 and the Agency delegated its accounting function to the Commission's Accounting Officer in 2015. While these events caused significant modifications to the Agency's procedures, the accounting system has not been re-validated since 2012⁽¹³⁸⁾.

⁽¹³⁸⁾ See also follow-up table for the related comment made in 2015.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.16.11. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and Agencies collectively.

3.16.12. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹³⁹⁾,⁽¹⁴⁰⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for electronic tendering in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency was not yet using any of these tools.

INFORMATION ON EXTERNAL EVALUATION REPORTS

3.16.13. A mid-term Evaluation of the Galileo⁽¹⁴¹⁾ and EGNOS programmes and of the Agency's performance in the period 2014-2016 was carried out in 2017 on behalf of the Commission⁽¹⁴²⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹³⁹⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹⁴⁰⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽¹⁴¹⁾ Galileo is the European Union's Global Satellite Navigation System (GNSS).

⁽¹⁴²⁾ We did not verify the evaluation work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	There is no insurance coverage for fixed tangible assets (net book value 1,0 million euros).	Ongoing
2015	The last validation of the accounting systems was performed in 2012. The promised validation due to the expected major changes of processes and information flow following the Agency's relocation has not occurred. The new accountant plans to perform the next validation in 2020.	Ongoing
2015	The Agency has put in place Business Continuity Plans for the security sites in France, the United Kingdom and the Netherlands. However, there is no Business Continuity Plan in place for the Headquarters in Prague and the Agency in its entirety.	Ongoing
2015	The Agency's 2015 Annual Work Programme (AWP) was only adopted in March 2015 and the adoption of its 2014-2020 Multi-annual Work Programme is outstanding. The late adoption of key planning documents puts the achievement of the Agency's objectives at risk.	Ongoing ⁽¹⁾
2015	In 2015, the Agency had a high staff turnover with 14 staff members leaving and 26 joining.	N/A
2016	In its audit report dated November 2016, the European Commission's Internal Audit Service (IAS) concluded that no Agency-wide annual risk assessment exercise was conducted in 2016 and the Agency's significant risks are not included in its planning documents or Activity reports. In addition, the IAS also noted that the terminology used for the various elements of the performance measurement system is not consistent, therefore hampering performance monitoring. The Agency and IAS agreed a plan to take corrective action.	Ongoing
2016	The level of carry-overs for committed appropriations was high for Title II (administrative expenditure) at 2,8 million euros, i.e. 46 % (2015: 2,5 million euros, i.e. 42 %). These carry-overs mainly relate to IT services provided in 2016 for which invoices were not received.	N/A

⁽¹⁾ The Decision adopting the European GNSS Agency programming document 2018-2020 was taken on 21 March 2018.

THE AGENCY'S REPLY

3.16.10. The GSA agrees with the observation of the Court. In 2015 the GSA outsourced its accounting services to the European Commission, therefore the EC Accounting Officer (within DG Budget) provides all services required by Article 50 of the Framework Financial Regulation applicable to Agencies, including the validation of local systems. The validation approach is currently subject to discussion and planning within the DG Budget services.

3.16.11. The publication of vacancy notices in the EPSO platform requires them to be translated into all EU official languages, whereas English is the sole working language of the Agency and publishing vacancies in English is seen as a useful pre-selection first step towards ensuring that our working language is understood to start with. Further, translating vacancies in all EU official languages would represent additional financial and time constraints on the Agency, the benefit of which — also given the above reasoning — is not conclusive. Instead, the GSA intends to publish all vacancy notices on the Inter-Agencies portal, which is considered equivalent to EPSO from the Agencies perspective and providing a sufficient level of transparency to EU citizens. In addition, the Agency also publishes its vacancy notices in specialised space sector websites.

3.16.12. TED e-Notices (provided by the Publications Office) for the publication of contract notices, contract award notices, corrigendum notices, modification notices, etc. is currently in use in the GSA whenever applicable as per Article 264 RAP. The Agency as well intends to use the TED e-Tendering system for the creation and publication of calls for tenders. In this respect, the GSA is currently coordinating with the Publications Office in order to register and create a system account.

With regard to high-value tenders (above the thresholds of Article 118(1) FR) the GSA is currently undertaking the necessary administrative steps to use the 'e-Submission' module of the 'e-Prior' information system developed by the European Commission (provided by DG DIGIT), in order to ensure that the electronic system which will be established for the submission of all tenders shall respect all the requirements set out in FR and RAP. It is noted that the 'e-Submission' module currently supports only open procedures and, therefore, the GSA shall use it only for such procedures. In this respect, the GSA has already held a first coordination meeting with DG DIGIT and is currently in the process of finalising and signing a Memorandum of Understanding (MoU) with DG DIGIT in order to set the framework of e-Submission and kick-off its implementation.

Agencies funded under MFF heading 2 — Sustainable growth: natural resources

3.17. EUROPEAN ENVIRONMENT AGENCY (EEA)

INTRODUCTION

3.17.1. The European Environment Agency (hereinafter 'the Agency', aka 'EEA'), which is located in Copenhagen, was established by Council Regulation (EEC) No 1210/90 ⁽¹⁴³⁾. The Agency is responsible for setting up an observation network to provide the Commission, the Parliament, the Member States and, more generally, the public with reliable information on the state of the environment. This information should, in particular, enable the European Union and the Member States to take action to safeguard the environment and assess the effectiveness of such action.

3.17.2. The *Table* presents key figures for the Agency ⁽¹⁴⁴⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	50,5	70
Total staff as at 31 December ⁽¹⁾	208	212

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency; includes both core and non-core budget.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.17.3. We have audited:

(a) the accounts of the Agency which comprise the financial statements ⁽¹⁴⁵⁾ and the reports on the implementation of the budget ⁽¹⁴⁶⁾ for the financial year ended 31 December 2017; and

(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

3.17.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹⁴³⁾ OJ L 120, 11.5.1990, p. 1.

⁽¹⁴⁴⁾ More information on the Agency's competences and activities is available on its website: www.eea.europa.eu.

⁽¹⁴⁵⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁴⁶⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.17.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.17.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.17.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.17.8. In the course of this year's audit of all EU agencies, the Court analyses the accounting environments, including the hierarchical position and independence of accounting officers. The superior of the Agency's accounting officer is the Head of Administrative Services. We see a need to strengthen the accounting officer's independence by making her directly responsible to the Agency's Director (administrative) and Management Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.17.9. The EEA was confronted with significant delays in the implementation of the 2016 action plan of one the European Topic Centres (ETC ICM, In land Coastal and Maritime Waters). As a result, the EEA rejected some deliverables, as well as part of the costs claimed by the ETC. The correction in the amount of the final payment also shows the further improvement of the financial and performance checks for grants to the ETCs.

3.17.10. Some weaknesses were identified in several public procurement procedures. The tender specifications used by the Agency for different calls for tenders did not specify any minimum requirements for the selection criteria with respect to economic and financial capacity. As a result, these criteria cannot fulfil their objective of determining whether a bidder has the necessary capacity to implement the contract.

3.17.11. The price competition for several high-value calls for tender was exclusively based on the daily rates offered for certain profiles, and not on the estimated time needed to complete the tasks. Framework contracts were signed with one tenderer only whereas a reopening of competition between different tenderers would lead to better results for the specific contracts.

3.17.12. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹⁴⁷⁾,⁽¹⁴⁸⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.

3.17.13. Several weaknesses were noted in the recruitment procedures organised by the Agency. In particular, the minutes of the selection committee did not provide sufficiently detailed justifications for the choices made. There is a need to better define the criteria used at each stage of the selection procedure and the role of each member of the selection committee, in order to strengthen transparency and equal treatment of candidates.

⁽¹⁴⁷⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹⁴⁸⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

3.17.14. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively. The main reason provided by the agency is high translation cost for EPSO publications since this requires translations in all EU official languages.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.17.15. In order to implement the Copernicus delegation agreement with the Commission, the Agency entered into several Copernicus-related legal commitments before having received the pre-financing from the Commission. Although these commitments were covered by an exception report signed by the Agency Director, such procedure is at odds with the Rules of Application of the Financial Regulation. Timely pre-financing payments by the Commission are essential to allow the implementation of delegation agreements.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The Agency updated its Security Policy in 2016 but many other internal procedures are outdated. The senior management approved an action plan which includes the review and update of the business continuity plan. The Agency also intends to review its document management policy which it adopted in 2009 in line with the new Security Policy. Similarly, the Agency envisages to review and update its internal control standards, where necessary.	Completed
2016	The Commission's Internal Audit Service (IAS) carried out a performance audit on the 2015 State of the Environment Report (SOER) preparation processes. In its audit report of July 2016, the IAS concluded that the SOER processes were generally fit for purpose. The Agency and the IAS however agreed on a plan to further improve them.	N/A
2016	In 2014 the Commission, on behalf of more than 50 EU Institutions and bodies (including the Agency) signed a framework contract (FWC) with one contractor for the acquisition of software, licences and the provision of related IT maintenance and consultancy. The framework contractor acts as an intermediary between the Agency and suppliers that can address the Agency's needs. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. The FWC explicitly stipulates that it does not confer any exclusive right to the contractor. In 2016 the Agency used this FWC to purchase software licences for a total of 442 754 euros. Most of these purchases were for products belonging to a particular category that should only be used on an exceptional basis, for which prices were neither quoted during the tender process nor in the FWC. This procedure does not ensure sufficient competition and the application of the most economical solution. Moreover the uplifts charged by the framework contractor were not adequately checked. The largest order concerned the renewal of software licences provided by an exclusive Scandinavian reseller (112 248 euros). In this instance, there was no justification for the use of the FWC which resulted in an unnecessary uplift cost.	Ongoing

THE AGENCY'S REPLY*COMMENTS ON THE RELIABILITY OF THE ACCOUNTS*

3.17.8. The Agency has discussed the Court's observation with the Accountant and is confident that the fact that the Accountant is an official with a high grade (AD12) and with direct access to the Management Board ensures functional independence.

COMMENTS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.17.9. The Agency appreciates the acknowledgement that its management of ETCs has further improved, both in terms of financial and operational verification. To prevent a repeat of the problem in 2017 in the case of ETC/ICM, the task in question has been removed from the annual action plan and internalised at the Agency. The Agency strives to maintain and improve the current level of checks of ETC grants.

3.17.10. The Agency confirms that it has modified the requirements associated with the verification of the financial capacity of tenders in the course of 2017, which now consists of requesting tenderers to provide information on financial ratios (liquidity, solvency and profitability) and in setting a requirement of a minimum turnover equivalent to at least two times the estimated annual contract value, in accordance with the provisions in Article 147(1)(a) of the RAP.

3.17.11. The Agency reiterates that the choice of awarding framework contracts to single contractors is deliberate and with due consideration to the limited competition prevailing on the relevant markets as well as the nature and the complexity of the services to be procured. When placing specific contracts under the framework contracts, the Agency considers not only the contractually agreed daily rates, but also the estimated number of days required to perform the tasks in order to calculate the estimated budget for a particular specific contract. Only then are negotiations with the contractor on the details of its offer initiated, always with a view to achieve best value for money. With a reopening of competition, the Agency will have no leverage to negotiate further the offers with the contractors.

3.17.12. Following the Management Board decision of 9 November 2015 to implement an e-Procurement solution at the EEA, the Agency has introduced e-invoicing for certain procedures in the course of 2014 and is now in the process of extending it to all its procedures, whereas e-Tendering is been implemented since 1 January 2015 for all open calls for tenders. The on-boarding process for e-Submission started in December 2017 and the first call for tenders using that module was launched on 18 June 2018 (EEA/COM/18/002 — Provision of publishing services for the EEA).

3.17.13. The Agency takes note of the Court's observation and confirms that it is in the process of adapting its selection/recruitment procedures on the following aspects:

- (a) add a 'time-stamp' (not only a date) for each action undertaken at the different stages (preliminary screening, screening, interview and written test) in the relevant documents;
- (b) produce systematically expected answers to the pre-defined questions for interview and written test at the preliminary screening stage;
- (c) implement an electronic (paperless) procedure with a view to improve reporting.

3.17.14. The Agency was prohibited by EPSO from publication because of not fulfilling the required condition of translation of every vacancy notice in all official languages. However, the Agency has neither the budget nor the resources to satisfy EPSO's request. Moreover, in addition to the translation of every vacancy notice, applications will have to be dealt with in all languages as well, which is a prohibitively high extra cost. Like most other EU agencies, the Agency has therefore been looking for an alternative to the EPSO website and is using since May 2018 an equivalent website for its publications which is developed and maintained by the EU Agencies Network, namely the 'Agencies Job Advertisement Board'. The Agency is furthermore using LinkedIn and its own website and Facebook pages to ensure maximum exposure.

COMMENTS ON BUDGETARY MANAGEMENT

3.17.15. Prior to entering into the Copernicus Delegation Agreement (DA) with DG GROW, the Agency highlighted that the pre-financing terms were in conflict with the Financial Regulation (Article 7 RAP of the 2014 FR). Initially, DG GROW responded sympathetically, but a change to the DA was prevented by DG BUDG, who are responsible for the standard template for DAs. On commencement of the DA, the Agency continued to report the problems and its need to regularly file exceptions to be able to continue operational activity, which eventually triggered DG GROW to amend the pre-financing terms of the DA in August 2017 and provide additional pre-financing in November 2017.

3.18. EUROPEAN FISHERIES CONTROL AGENCY (EFCA)

INTRODUCTION

3.18.1. The European Fisheries Control Agency (hereinafter 'the Agency', aka 'EFCA'), which is located in Vigo, was established by Council Regulation (EC) No 768/2005⁽¹⁴⁹⁾. The Agency's main task is to organise the operational coordination of fisheries control and inspection activities by the Member States in order to ensure an effective and uniform application of the rules of the common fisheries policy.

3.18.2. The *Table* presents key figures for the Agency⁽¹⁵⁰⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros) ⁽¹⁾	10	17
Total staff as at 31 December ⁽²⁾	64	72

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.18.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽¹⁵¹⁾ and the reports on the implementation of the budget⁽¹⁵²⁾ for the financial year ended 31 December 2017; and
- (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

3.18.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹⁴⁹⁾ OJ L 128, 21.5.2005, p. 1.

⁽¹⁵⁰⁾ More information on the Agency's competences and activities is available on its website: www.efca.europa.eu.

⁽¹⁵¹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁵²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.18.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.18.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.18.7. The observations which follow do not call the Court's opinion into question.

Information on internal audit service and external evaluation reports

3.18.8. In November 2017, the Commission's Internal Audit Service issued an audit report on the Agency's 'IT Governance and Project Management' ⁽¹⁵³⁾. The Agency and the IAS agreed on a plan to take corrective action.

3.18.9. In 2017 an external evaluation of the Agency was carried out on behalf of the Administrative Board ⁽¹⁵⁴⁾. The Agency prepared a plan to implement its recommendations.

⁽¹⁵³⁾ We did not verify the audit work.

⁽¹⁵⁴⁾ We did not verify the evaluation work.

THE AGENCY'S REPLY

The Agency has taken note of the Court's report.

Agencies funded under MFF heading 3 — Security and citizenship

3.19. EUROPEAN UNION AGENCY FOR LAW ENFORCEMENT TRAINING (CEPOL)

INTRODUCTION

3.19.1. The European Union Agency for Law Enforcement Training (hereinafter ‘the Agency’, aka CEPOL), located in Budapest, was established by Regulation (EU) 2015/2219 of the European Parliament and of the Council ⁽¹⁵⁵⁾ replacing and repealing Council Decision 2005/681/JHA ⁽¹⁵⁶⁾. The Agency’s task is to function as a network and to bring together the national police training institutes in the Member States to provide training sessions, based on common standards, for senior police agents.

3.19.2. The *Table* below presents key figures for the Agency ⁽¹⁵⁷⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	10	9
Total staff as at 31 December ⁽¹⁾	51	53

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT’S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR’S REPORT

OPINION

3.19.3. We have audited:

(a) the accounts of the Agency which comprise the financial statements ⁽¹⁵⁸⁾ and the reports on the implementation of the budget ⁽¹⁵⁹⁾ for the financial year ended 31 December 2017; and

(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

3.19.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹⁵⁵⁾ Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA (OJ L 319, 4.12.2015, p. 1).

⁽¹⁵⁶⁾ OJ L 256, 1.10.2005, p. 63.

⁽¹⁵⁷⁾ More information on the Agency’s competences and activities is available on its website: www.cepol.europa.eu.

⁽¹⁵⁸⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁵⁹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.19.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.19.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.19.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.19.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments, including the aspect of the timely (re-)validation of accounting systems. The Agency delegated its accounting function to the Commission's Accounting Officer in 2014. In 2014, the Agency was also relocated and in 2016 its mandate was redefined. While these events caused modifications to the Agency's procedures, the accounting system has not been re-validated since 2013.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.19.9. In December 2016 the Agency signed a four-years framework contract of 1,6 million euros for the provision of temporary staff with one economic operator. The only competitive criterion for the procurement procedure was price. A framework contract with multiple suppliers selected on the base of price and quality criteria would have been preferable to support the timely delivery of high quality services.

3.19.10. On 29 March 2017 the United Kingdom notified the European Council of its decision to withdraw from the European Union (Brexit). The Agency did not carry out any analysis of the likely Brexit impact on its organisation, operations and accounts, as most of the other agencies did.

3.19.11. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.19.12. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹⁶⁰⁾,⁽¹⁶¹⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing and e-tendering, but not e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.19.13. In 2017, the Commission's Internal Audit Service issued an audit report on 'Needs assessment, Planning and Budgeting of Training activities' at CEPOL⁽¹⁶²⁾. The Agency prepared an action plan to address potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁶⁰⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹⁶¹⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽¹⁶²⁾ We did not verify the work carried out by the Commission's Internal Audit Service.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Carry-overs of committed appropriations were high for Title II (expenditure for support activities) at 140 055 euros, i.e. 30 % (2015: 212 456 euros, i.e. 49 %). They mainly refer to IT consulting and IT related goods and services ordered late in the year.	N/A
2016	There is a high staff turnover which may impact business continuity and the Agency's ability to implement the activities foreseen in its work programme. In 2016, 11 staff members left the Agency, while 21 were recruited. The low number of applications, particularly from Member States other than the host state, puts at risk the Agency's ability to recruit suitable candidates. Between 2013 and 2016 staff from the host state increased from 1 to 16, representing 31 % of total staff in 2016. Possible reasons for the limited number of applications from other Member States are the salary correction coefficient applied for the host state (69 %) and competition with another EU body located in Budapest.	Ongoing

THE AGENCY'S REPLY

3.19.8. CEPOL agrees with the observation of the Court. In 2014 CEPOL outsourced its accounting services to the European Commission, therefore the EC Accounting Officer (within DG Budget) provides all services required by Articles 50 of the Framework Financial Regulation applicable to Agencies, including validation of local systems. The validation approach is currently subject to discussion and planning within DG Budget services.

3.19.9. The Agency has taken note of the Court's comments although not sharing the same opinion. The quality criteria were embedded in the technical specifications and tenderers not confirming their ability to comply with them were to be disqualified. The choice to award a single framework contract is based on prior experience and specificities of the national labour market. Nevertheless, CEPOL will give due consideration to the Court's recommendations for future procurements, as applicable.

3.19.10. The Agency has taken note of the Court's comments. Brexit has been discussed in management meetings; the discussions in NAPO (inter-agency network for Procurement Officers) and IALN (inter-agency legal network) as well as the communications received from the Commission were followed closely. The risks for CEPOL were assessed as limited, although not formally documented.

3.19.11. The Agency has taken note of the Court's comments. The estimated costs of translation of vacancy notices in all EU languages, as required for publication on the EPSO website, is considered to be too high in relation to expected benefits. As from 2018, CEPOL will publish all vacancies also on the interagency job board that has been developed by the EU Agencies Network.

3.19.12. The Agency has taken note of the Court's comments and confirms progress is made in cooperation with DG DIGIT to introduce e-submission.

3.19.13. The Agency confirms progress was made towards implementation of the action plan, of which 2 out of 4 recommendations were assessed as implemented by the Internal Audit Service.

3.20. EUROPEAN ASYLUM SUPPORT OFFICE (EASO)

INTRODUCTION

3.20.1. The European Asylum Support Office (hereafter 'the Office' or 'EASO'), located in Valletta, was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council⁽¹⁶³⁾ with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need. Since 2015, the Office has provided support to Greece and Italy in the context of the migration crisis.

3.20.2. Table 1 presents key figures for the Office⁽¹⁶⁴⁾.

Table 1
Key figures for the Office

	2016	2017
Budget (million euros) ⁽¹⁾	53	79
Total staff as of 31 December ⁽²⁾	125	200

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff, and seconded national experts.

Source: data provided by the Office.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.20.3. We have audited:

- (a) the accounts of the Office, which comprise the financial statements⁽¹⁶⁵⁾ and the reports on the implementation of the budget⁽¹⁶⁶⁾ for the financial year ended 31 December 2017; and
- (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

3.20.4. In our opinion, the accounts of the Office for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Office at 31 December 2017, 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.

⁽¹⁶³⁾ OJ L 132, 29.5.2010, p. 11.

⁽¹⁶⁴⁾ More information on the Office's competences and activities is available on its website: www.easo.europa.eu.

⁽¹⁶⁵⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁶⁶⁾ The reports on implementation of the budget aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.20.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Basis for an adverse opinion on the legality and regularity of the payments underlying the accounts

3.20.6. Paragraphs 3.20.9 to 3.20.31 describe material and systematic instances of non-compliance of payments with the Office's Financial Regulation and other applicable rules and provisions, mainly related to public procurement and recruitment procedures underlying payments. The systematic nature of non-compliances demonstrates an inadequate internal control system. The combined error from non-compliant payments amounts at least to 7,7 million euros or 10,3 % of the Office's total payments made in 2017.

Opinion on the legality and regularity of payments underlying the accounts

3.20.7. In our opinion, because of the significance of the matters described in the paragraph 'Basis for an adverse opinion on the legality and regularity of the payments underlying the accounts', the payments underlying the accounts for the year ended 31 December 2017 are materially affected by error.

Emphasis of matter

3.20.8. As from the end of 2017, the human resources situation at the Office has deteriorated exponentially. For the Office's management, out of 10 head of unit posts, 4 were vacant and out of 27 head of sector posts, 18 were vacant. In the Administrative Department, out of 4 head of unit posts, 3 were vacant and out of 10 head of sector posts, 5 were vacant. This creates considerable managerial challenges to the Office. Furthermore, by the end of May 2018, 129 temporary staff posts were occupied while 78 were still vacant. As for contract staff, 71 posts were occupied and 13 were still vacant. The Office currently does not have the administrative capacity to fill such a high number of vacancies (See Table 2). Overall, this situation causes a significant risk to the continuation of the Office's operations at the current scale.

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF PAYMENTS AND RELATED INTERNAL CONTROLS**There are major risks inherent to the nature of the Office's activities**

3.20.9. Since 2016, the Office has been facing an unprecedented expansion of tasks and activities to provide Member States with operational and technical assistance in the context of the migration crisis. This is mirrored by a budget increase from initially 19 million euros in 2016 to 79 million euros after the second amendment to the 2017 budget. The number of procurement procedures increased from 87 in 2015 to 140 in 2017. The number of payments increased by 225 % from 2 578 in 2015 to 8 381 payments in 2017.

3.20.10. The Office is one of the few multi-location EU agencies. Besides the headquarters in Malta, where 179 statutory staff are based, the Office manages two major support operations in Greece and Italy involving 747 experts from Member States and Associate Countries, 202 cultural mediators (interpreters), 178 interim staff and 21 of the Office's own statutory staff in 2017.

3.20.11. As we addressed already in our special report 2017/06 'EU response to the refugee crisis: the "hotspot" approach' the Office is highly dependent on sufficient resources being made available by Member States. A particular obstacle to the efficiency of operations is the very short deployment period (6 to 8 weeks) of Member State's experts.

The extraordinary operational challenge caused by the migration crisis was not mitigated by a solid governance structure and effective internal controls

3.20.12. When launching in 2015 the operations in support of Greece and Italy, the Office faced a situation where resources provided for deployment operations by Member States were insufficient. Even before, the Office had faced difficulties filling the staff posts in its establishment plan. Since 2014, one recurring observation was that the Office suffered from high staff turnover. We have consistently stressed in our previous annual reports that such situations create a considerable risk to the achievement of the objectives set in the annual and multi-annual work programmes. Despite the Office's repeated attempts (36 recruitment procedures and 100 new contracts in 2017), it did not succeed in recruiting and retaining enough staff (see also the emphasis of matter, paragraph 3.20.8.).

3.20.13. The extraordinary operational challenge caused by the migration crisis was not mitigated by a solid governance structure. The Management Board did not establish an internal audit capability within the Office and the operations in Greece and Italy were not covered by any internal audit activity. Until the end of 2017, the Management Board's supervision of financial management was limited.

3.20.14. The Office has neither an internal legal service nor a systematic internal review of legal documents. The Office outsources most of the legal issues (mainly staff and procurement issues) without clear internal decisions or guidelines defining who is authorised to outsource what kind of matters, to which law firm and under which conditions. While the Office uses at least 8 different law firms, there is no comprehensive register of all related contracts, cases and opinions.

3.20.15. The Office lacks an adequate verification of legal services to ensure that services are used for the purpose of defending the Office only and not to defend the interests of individuals. The related procedures to protect against conflict of interests are not always effective. In general, using the services of external lawyers diminishes the possibility to stop disputes at the pre-litigation state.

3.20.16. Matters stated in paragraphs 3.20.13. and 3.20.14. expose the Office to risks of financial losses or reputational damages. The Office is carrying out an internal inquiry into these matters.

Lack of internal controls led to numerous instances of material non-compliance*Payments for interim services*

3.20.17. In 2017, payments for interim services amounted to 7,7 million euros. In the absence of a competitive public procurement procedure, the contract for interim services in Greece was considered irregular by the Court in its 2016 audit. Nevertheless, the Office still paid 4,8 million euros under this irregular contract in 2017.

3.20.18. The procurement procedures carried out in 2017 for interims in Malta (in 2017 payments amounted to 1,0 million euros) were poorly managed (e.g. short deadlines for submission of offers, lack of transparency when extending the deadlines), affecting competition as one of the main public procurement principles. As a result, the procurements had to be relaunched a number of times because there were no offers.

3.20.19. The Office did not carry out an adequate assessment of needs and of alternative solutions before entering into multi-million euros contracts. The monitoring of contracts for compliance with national rules on temporary employment was poor, which exposed the Office to significant financial and reputational risks. In addition, there were significant weaknesses in the verification of timesheets from interims and irregularities identified. The Office is carrying out an internal inquiry into this matter.

Payments for staff expenditure

3.20.20. In 2017, payments in respect of staff amounted to 13,5 million euros. We found serious weaknesses in four of the fourteen recruitment procedures audited.

3.20.21. As an example, the Office did not issue a vacancy notice to fill a senior adviser post, but instead recruited directly from a reserve list established for the post of head of department which is irregular. The Office also systematically extended deadlines for applications without neither formally approving this nor documenting the reasons. The number of applications received by the initial deadlines did not always justify the need for the extensions.

3.20.22. Some recruitment procedures for administrative officers were not suitable for the grade advertised. In the recruitment procedure for the position of a manager in the administration department, the vacancy notice was more restrictive than those for the same posts in other departments. In another procedure, the Office did not adequately document the eligibility checks of candidates.

Payments for rent and related works

3.20.23. Total rent paid for all offices at their different locations amounted to two million euros in 2017. We found that the Office had entered into the lease contracts for the extension of the Malta headquarters and several new offices in Athens, Lesbos and Chios without having carried out an adequate local market analysis.

3.20.24. In June 2017, the Office entered into a lease agreement for office space in Lesbos. The Office also accepted a contract with the lessor — without any competition — for the works to adapt the rented building to the Office's needs. The value of the works contracts (0,7 million euros during the first months of the lease) was several times the annual value of the lease contract. Investing a considerable amount of money in premises that are rented entails considerable financial and operational risks.

3.20.25. In 2018, the Office decided to terminate a lease agreement for office space in Chios and works contracts related to it. The Office is currently pursuing to limit the financial exposure resulting from the termination.

Payments for travel expenditure

3.20.26. A contract amounting to 4 million euros for travel services was considered irregular by the Court in its 2016 audit. The contract was awarded to a tenderer who did not fulfil all selection criteria. The Office still paid 1,5 million euros in 2017 on the basis of this irregular contract.

3.20.27. In 2017, the Office noted significant weaknesses in the acceptance of travel services, in particular, the lack of supporting documents proving such travel services were indeed requested or delivered. The Office is carrying out an internal inquiry into this matter.

Other payments

3.20.28. In addition, other services such as for cleaning services, security services, interpreters and consultants based on public procurement procedures were systematically affected by similar weaknesses. We found significant weaknesses in the assessment of the Office's needs; the drafting of tender specifications; the choice of the type of contract, the procurement procedures followed; the deadlines set for the submission of tenders; the evaluation and award methods (i.e. the weighting of price versus quality criteria); the amendments and extensions of contracts; the execution of contracts and the verification of services provided. Such weaknesses affect the principles of competition, transparency, equal treatment and non-discrimination of tenderers. They may eventually prevent the Office from obtaining best value for money procurements. The following paragraphs provide some examples of the above weaknesses.

3.20.29. In 2017, the Office awarded a service contract directly for consultancy services for the implementation of the action plan on Greek islands. The public procurement procedure was awarded to a single preselected economic operator without applying any of the procurement procedures laid down in the Financial Regulation. Therefore, the public procurement procedure and all related payments (992 000 euros) were irregular.

3.20.30. Since 2016, the Office has made several amendments to the original contract signed in 2016 with one law firm for an initial amount of 5 000 euros, increasing it to 259 000 euros in 2018. Total payments for the contract amounted to 98 332 euros in 2017, partly relating to consultancy services for which a competitive public procurement procedure was required. The consultancy related amendments and payments were therefore irregular.

3.20.31. The implementation of the 120 000 euros contract signed in 2013 (amended to 132 000 euros in 2017) for the organisation of four to six major events at one international hotel over a span of four years was not in line with the contract's initial purpose. The Office used the contract for approximately 50 smaller events instead. Therefore, the implementation of the contract was irregular.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.20.32. According to arrangements between the European Union and the Kingdom of Norway, the Swiss Confederation, and the Principality of Liechtenstein (also referred to as associated countries) for their participation in the Office, the associated countries participate fully in the work of the Office and are entitled to receive support actions from the Office. In 2016, the Office received a grant from the Commission to ensure adequate capacity-building in Greece, to support the implementation of the European Union — Turkey Statement and to accelerate substantially the implementation of relocation in order to ease the heavy burden that presently weighs on Greece. All these activities are the core business of the Office, supporting actions of common interest. The Office used the grant to pay commitments for these activities amounting to 6,4 million euros in 2016 and 1,7 million euros in 2017. However, the Office did not include these amounts in the calculation of contributions from associated countries. If they would be included, associated countries would have to pay 0,5 million euros more.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	Of the total number of payments, 446 (18 %) were made after the time limits set in the Financial Regulation. The average delay for late payments was 21 days.	Ongoing ⁽¹⁾
2013	Six of the 16 internal control standards have not been fully implemented.	N/A ⁽²⁾
2014	The Office made 1 062 (28,6 %) payments after the time limits set in the Financial Regulation. The average delay for late payments was 24 days.	Ongoing
2014	The Office has a high staff turn-over, 14 staff left the Office in 2014, including four in key positions. This high turn-over of staff causes a considerable risk to the achievement of the objectives set in the annual and multi-annual work programme.	Outstanding
2014	According to a decision by the Executive Director, participants in meetings organised by EASO are classified in one of the three categories (A, B or C) for cost reimbursements. Total 2014 reimbursements to meeting participants amounted to 997 506 euros. Category 'A' participants, who are supposed to assume a specific duty in the meetings, receive a flat rate reimbursement for travel and daily subsistence costs, whereas Category 'B' participants receive a flat rate reimbursement for travel costs only. Category 'C' participants are not eligible for any reimbursement. The number of participants classified as recipients of category 'A' reimbursements increased from 61 % in 2013 to 69 % in 2014. There is no documentation justifying the classification of participants in the three categories.	Ongoing
2016	Two of the three tenderers participating in one audited procurement procedure for the provision of travel services under a framework service contract amounting to 4 million euros for the period 2016 to 2020 were asked to provide additional information in relation to the same selection criteria. Although neither of them submitted the requested information (CVs of the persons to perform the task at EASO's premises), only one of them was excluded from the procedure for this reason. The other one was awarded the contract on the basis that the relevant CVs would be provided following the award of the contract. The procurement procedure therefore did not comply with the principle of equal treatment and the contract was awarded to a tenderer who did not fulfil all selection criteria. The framework contract and associated 2016 payments, amounting to 920 561 euros, are therefore irregular.	Outstanding in 2017 ⁽³⁾

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>In February 2016 the Office directly awarded a framework contract (FWC) for interim services to support it in its response to the migration crisis for a period of 12 months amounting to 3,6 million euros. The FWC was awarded to a single preselected economic operator without applying any of the procurement procedures laid down in the EU Financial Regulation. The award was therefore not in compliance with the relevant EU rules and associated 2016 payments, amounting to 592 273 euros, are irregular.</p>	Outstanding in 2017 ⁽⁴⁾
2016	<p>In August 2016 the Office launched an open procedure (five lots) to award a FWC to cover its needs for cultural mediators/interpreters in different countries. The total amount of the FWC for the four lots signed and audited (Lots 2 to 5) was 60 million euros over four years. These four lots were awarded to the same tenderer as first contractor-in-cascade. This contractor met the financial requirements of the selection criteria (1 million euros annual turnover) except for one of the three prior years, for which an avilment contract was signed with a non-profit organisation which committed to make its 'turnover' available to the contractor. The Financial Regulation permits reliance on financial and economic capacities of other entities. However, in this case it is not clear how the 'turnover' of this entity can be made available, nor given the nature of its activities whether it can support the delivery of the services to be provided. The Office should have rejected the offer as it did not demonstrate compliance with the tenderers economic and financial capacity requirements. In consequence the framework contract and all related payments are irregular (no payments made in 2016).</p>	N/A
2016	<p>The special meeting of the European Council on 23 April 2015 and the 10 point plan on migration adopted by the Foreign and Interior Affairs Ministers on 20 April 2015 called upon Member States to ensure fingerprinting of all migrants. To meet this requirement there was an urgent need to increase the fingerprinting capacity of the Greek authorities. The Commission assigned this task to the Office. It necessitated the purchase and subsequent donation to the Greek State of 90 fingerprint-scanning machines and 90 compatible computers (equipment) for an amount of 1,1 million euros under a grant agreement between the Commission and the Office. The grant agreement required delivery of the equipment to the IT Division of the police in Athens and from there distribution to the hotspots located on the Greek Islands. The description of the action required Office staff to be on the spot to ensure a proper delivery, installation and subsequent ownership transfer to the Greek police. However, Office staff were not on the spot to meet this requirement and confirmation from the relevant Greek authorities that the equipment had been delivered to the hotspots in February and early March 2016 and is being used for its intended purpose was only received in July 2017.</p>	Completed

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Contracting authorities shall request in writing details of the constituent elements of the price or cost, if these appear to be abnormally low, and shall give the tenderer the opportunity to present its observations ⁽⁵⁾ . For two of the lots (Lots 3 and 5) procuring cultural mediators/interpreters in different countries (see also paragraph 21), the Office received financial offers which were 50 % and 31 % respectively lower than the next lowest offers. Whilst this is indicative of the offers being abnormally low, the Office did not consider it necessary to request any further explanation from the tenderer in this regard.	N/A
2016	In its audit report dated October 2016, the Commission's Internal Audit Service (IAS) highlighted that there is no adequate planning for procurement procedures for administrative expenditure and that the monitoring of procedures and specific contracts concluded under framework contracts is weak. The Office and the IAS agreed on a plan to take corrective action.	Ongoing ⁽⁶⁾
2016	In 2016 the Office faced several challenges in its operating environment, including not only a substantial increase in its budget and expansion of its tasks, but also a significant increase in the number of transactions, a change of the accounting officer (accountant) with several interim solutions and the introduction of a paperless workflow system. This situation of considerable change and instability was neither mitigated by a re-validation of the accounting system nor by introducing a system of regular <i>ex post</i> verifications of transactions.	Completed ⁽⁷⁾
2016	In 2014, the Commission on behalf of more than 50 EU Institutions and bodies including the Office signed a framework contract with one contractor for the acquisition of software licences and the provision of maintenance and support. The framework contractor acts as an intermediary between the Office and suppliers that can address the Office's needs. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2016, total payments to the framework contractor amounted to 534 900 euros. The Office did not systematically check prices and uplifts charged with the suppliers' quotes and invoices issued to the framework contractor.	Ongoing ⁽⁸⁾
2016	An external evaluation of the Office's performance in the period 2011 to 2014 was prepared on behalf of the Commission and the final report was delivered in December 2015. It confirmed the relevance of the Office's mission and tasks and concluded an overall effective implementation of its key tasks and that the majority of expected results had been achieved. The evaluation also referred to a need to increase the efficiency of operations and to further ensure cooperation and coherence of activities with other EU and international institutions and bodies working on migration issues. The Office is implementing an action plan agreed with the Management Board in the light of its extended mandate, with the final implementation report planned for June 2017.	N/A

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The Office purchased and installed 65 containers to be used as mobile offices on the Greek and Italian hot-spots for a total amount of 852 136 euros. Some of the containers were placed in a location where similar containers not belonging to the Office were later destroyed by riots. The Office has not covered the containers against this risk with an insurance contract.	N/A ⁽⁹⁾
2016	The Office has not recovered all its due receivables in a timely manner. VAT reimbursements for the years 2014 (180 919 euros) and 2015 (245 960 euros) remained unrecovered at the end of 2016.	Ongoing ⁽¹⁰⁾
2016	The level of committed appropriations for Title II (administrative expenditure) carried over was high at 2,5 million euros, i.e. 43,9 % (2015: 1 076 583 euros, i.e. 36,9 %). The carry-overs mainly relate to IT infrastructure, translations and publications, business consultancy and Management Board meeting cost for which contracts were signed towards the end of 2016 and/or invoices were only issued in 2017.	N/A

⁽¹⁾ The late payment ratio decreased from 65 % in January 2017 to 10 % in December 2017, whilst the total number of transactions increased in 2017 by 72 % compared to 2016.

⁽²⁾ Internal control standards were changed by the Commission to the Internal control framework.

⁽³⁾ The new contract for the provision of travel agency services was signed in March 2018.

⁽⁴⁾ The new contract for the provision of interim services for EASO in Greece was signed in March 2018.

⁽⁵⁾ Article 151 of Commission delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

⁽⁶⁾ The implementation of the recommendations has been reported by the Office to IAS as 'ready for review' in September 2017.

⁽⁷⁾ The accounting system was validated in May 2018. *Ex post* verifications of transactions are outsourced to private audit companies.

⁽⁸⁾ The Office plans to introduce systematic checks for every quotation above 135 000 euros made after 1 January 2018. So far, none of the transactions referenced are above this threshold.

⁽⁹⁾ The quotations requested by the office have not been provided by the insurance companies.

⁽¹⁰⁾ The Office has submitted VAT claims for all periods up to 31 December 2017 to the Maltese Tax Authorities. In 2017, a total amount of 203 277 euros of VAT (2014 and Q3 2016) was recovered.

THE OFFICE'S REPLY

EASO thanks the Court for the very useful report received. This report identifies a series of weaknesses, EASO is taking these extremely seriously and has started putting corrective measures in place.

At the same time EASO is grateful that the Court recognises the extremely difficult situation the agency was under during the reference period, namely the unprecedented expansion of tasks that EASO needed to carry out to support Member States and contribute in the implementation of EU-level initiatives, including relocation and EU TR statement, the budget increase, the exponential increase in payments as well as the increase in procurement procedures (increase in number and complexity). On top of this, EASO needs to manage multi locations without many management positions being in place (heads of department, heads of unit and heads of sectors).

In this reply, EASO will elaborate on some of the observations made by the Court, however the agency globally accepts the report and its findings.

3.20.6. and 3.20.13. With regard to the systemic nature of non-compliance in EASO, the Agency — under new leadership — has started to take the necessary steps to ensure that compliance is front and centre in the culture and conduct of all its activities. This includes an objective, honest and frank internal control 'self-assessment'.

3.20.13. EASO accepts that, in the past, governance and internal control structures, which fall within its responsibility, have not received the attention necessary to provide adequate assurance of legality and regularity. Again, under new leadership, building the structures and systems to ensure legality and regularity are systematised and assured (and that reporting is similarly accurate and comprehensive) is a top priority.

3.20.6., 3.20.8. and 3.20.12. The Court rightly highlights the deterioration and inadequacy of the HR situation in EASO, which also stands as a handicap to the proper functioning of the internal control system. The current HR situation represents one of the greatest challenges the Agency is facing to overcome the weaknesses identified in ECA's observations, as those can be seen as largely symptomatic of the lack of resources to operate in a structured and regular fashion. EASO is facing this challenge head on, and on the basis of a solid recruitment plan based on a needs assessment exercise is urgently recruiting to fill management positions and other key roles (operational and administrative).

The Agency is also investing in staff satisfaction in order to address the issue of staff turnover. While it has to be acknowledged that the coefficient plays an important role here due to it being low in comparison with the rather high cost of living in Malta, EASO recognises that more needs to be done to improve staff satisfaction. Some measures are already being implemented such as flexible ways of working, improved internal communication and the organisation of staff events.

3.20.9. and 3.20.19. ECA correctly illustrates the challenges and speedy growth experienced by EASO in absolute numbers of financial transactions and procurement procedures. These numbers are stark in themselves, but in fact, do not adequately reflect the pressures in finance and procurement. These numbers do not take account of other associated facts and activities swelling the pressure on procurement, including the following two examples:

- The use of Externally Remunerated Experts (Article 204 and 287 FR), which presents a substantial amount of work in the procurement sector. This is set to grow in the coming years with the Agency relying on [Medical] Experts in support of Medical Country of Origin Information tasks.
- Market specific difficulties and limitations related to our geographical areas of activity. Rural areas of Italy and Greece are not vibrant in terms of a competitive market for provision of services and products to EASO. EASO is even an atypical customer, in terms of size, for economic operators in Malta, who largely do not have the capacity to meet the requirements of EASO's larger contracts.

3.20.10. to 3.20.12. and 3.20.19. The ECA report importantly recognises the fact that EASO is one of few 'multi-location' Agencies. This characteristic is fundamental in understanding the relatively high burden on administrative support as well as the highly complex environment for implementing functioning internal control structures. It should also be noted that EASO is unusually reliant on contractors as a result of its operational activities, geographical spread and (as correctly identified by ECA) the limitations on deployment of MS experts. This is a multiplication factor on the tasks associated with procurement and finance (including decentralised financial actors), as Operational Bases in Greece, Italy and Cyprus, as well

as hotspots in Greece and Italy require their own cross section of contracts (lease agreements, cleaning, security, water, as well as critical contracts such as interim and interpretation services). Again, human resources will be key, and EASO (in recognition of the multiplication factor of being 'multi-location') is currently assessing the possibility to allocate the resources necessary to provide adequacy, quality as well as assurance of legality and regularity to the full procurement and financial cycles and an assessment of decentralisation through a consultancy.

3.20.14., 3.20.15. and 3.20.16. EASO recognises and accepts the need for an internal legal capability. The post of Senior Legal Officer will be published soon. In addition, it is accepted without reservation that legal support shall always be strictly in the interest of the Agency, and not individual persons (although not mutually exclusive). EASO recognises that the engagement of external legal services have not been adequately controlled. As stated in the ECA report, internal inquiries continue into this matter and the results will be communicated to ECA.

3.20.17. and 3.20.26. EASO accepts the comments. The referenced irregular contracts for interim services and travel agency services have been replaced by EASO during 2017. The rectification of this situation was initiated immediately after ECA identified their irregularity in their audit of 2016 (ECA report received in September 2017). Unfortunately, based on the timelines, and the fact that EASO replaced the contracts as quickly as possible after they were found to be irregular, payments under the contract did indeed occur in 2017.

3.20.18. and 3.20.19. EASO accepts the comments, and reiterates that such problems can be seen as symptomatic of inadequate resources and lack of internal control and governance factors, all identified by ECA in the report.

3.20.23. to 3.20.25. EASO accepts the comments.

3.20.27. As referred to in the ECA report, an internal inquiry continues into the matter.

3.20.29. to 3.20.31. EASO accepts the comments.

3.20.32. Concerning the final point of the report (Art. 43) the agency has doubts based on the fact that EASO operates as agreed with DG BUDG during 2016. The agency has gone back to DG BUDG on this issue to clarify the case once more and will not hesitate to react immediately should DG BUDG change their former communicated position.

3.21. EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL (ECDC)

INTRODUCTION

3.21.1. The European Centre for Disease Prevention and Control (ECDC — hereinafter ‘the Centre’), which is located in Stockholm, was established by Regulation (EC) No 851/2004 of the European Parliament and of the Council⁽¹⁶⁷⁾. The Centre’s main tasks are to collect and disseminate data on the prevention and control of human diseases and to provide scientific opinions on this subject. The Centre is also required to coordinate the European network of bodies operating in this field.

3.21.2. The *Table* presents key figures for the Centre⁽¹⁶⁸⁾.

Table
Key figures for the centre

	2016	2017
Budget (million euros)	58	58
Total staff as at 31 December ⁽¹⁾	260	279

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Centre.

THE COURT’S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR’S REPORT

OPINION

3.21.3. We have audited:

- (a) the accounts of the Centre which comprise the financial statements⁽¹⁶⁹⁾ and the reports on the implementation of the budget⁽¹⁷⁰⁾ for the financial year ended 31 December 2017; and
- (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

3.21.4. In our opinion, the accounts of the Centre for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Centre at 31 December 2017, 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.

⁽¹⁶⁷⁾ OJ L 142, 30.4.2004, p. 1.

⁽¹⁶⁸⁾ More information on the Centre’s competences and activities is available on its website: www.ecdc.europa.eu.

⁽¹⁶⁹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁷⁰⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.21.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.21.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	The Court found various weaknesses affecting the transparency of the audited procurement procedures, such as lack of a clear link with the Centre's annual work programme, insufficient substantiation of the estimated contract value and absence of a financial benchmark (threshold) to assess the tenderer's financial capacity.	Completed
2016	In May 2015, the Centre's Director <i>ad interim</i> was appointed by a Management Board decision. As of 31 December 2016, this posting exceeded the one year maximum period stipulated in the Staff Regulations by eight months. This has also resulted in 15 additional <i>ad interim</i> arrangements for other staff.	Completed ⁽¹⁾
2016	In its audit report dated October 2016, the Commission's Internal Audit Service (IAS) highlighted that, while acknowledging the Centre's ongoing efforts to strengthen its internal procurement controls, there are still significant weaknesses in the procurement process. The IAS concluded that the planning and the monitoring of procurements are weak and that procurements are not always covered by the Annual Work Programme or financing decision. Reference is also made to the Court's Report on the annual accounts of the Centre for the financial year 2015 and the reported weaknesses affecting the transparency of procurement procedures. The Centre and IAS agreed on a plan to take corrective action.	Completed ⁽²⁾
2016	As in previous years carry-overs of committed appropriations were high for Title III (operating expenditure) at 7,9 million euros, i.e. 41 % (2015: 7,5 million euros, i.e. 42 %). The carry-overs mainly relate to multiannual projects in the areas of scientific advice (2,4 million euros), surveillance (1,3 million euros), public health training (1,4 million euros) and public health IT (2,1 million euros). The Centre may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.	N/A

⁽¹⁾ Following a selection procedure, the Director *ad interim* has been appointed Director in 2017.

⁽²⁾ The centre has implemented new IT tools to improve the planning and monitoring of the procurement process.

THE CENTRE'S REPLY

The Centre has taken note of the Court's report.

3.22. EUROPEAN FOOD SAFETY AUTHORITY (EFSA)

INTRODUCTION

3.22.1. The European Food Safety Authority (hereinafter ‘the Authority’, aka ‘EFSA’), which is located in Parma, was established by Regulation (EC) No 178/2002 of the European Parliament and of the Council⁽¹⁷¹⁾. The Authority’s main tasks are to supply the scientific information needed for Union legislation to be drawn up concerning food and food safety, to collect and analyse data that allow risks to be identified and monitored, and to provide independent information on these risks.

3.22.2. The *Table* presents key figures for the Authority⁽¹⁷²⁾.

Table
Key figures for the Authority

	2016	2017
Budget (million euros) ⁽¹⁾	79	81
Total staff as at 31 December ⁽²⁾	443	443

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Authority.

THE COURT’S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR’S REPORT

OPINION

3.22.3. We have audited:

- (a) the accounts of the Authority which comprise the financial statements⁽¹⁷³⁾ and the reports on the implementation of the budget⁽¹⁷⁴⁾ for the financial year ended 31 December 2017; and
- (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

3.22.4. In our opinion, the accounts of the Authority for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Authority at 31 December 2017, 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.

⁽¹⁷¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽¹⁷²⁾ More information on the Authority’s competences and activities is available on its website: www.efsa.europa.eu.

⁽¹⁷³⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁷⁴⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.22.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.22.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.22.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.22.8. In the course of this year's audit of all EU agencies, the Court analyses the accounting environments, including the hierarchical position and independence of accounting officers. The superior of the Authority's accounting officer is the Head of Administration/Corporate Services. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Management Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.22.9. In May 2017, the Authority awarded, on behalf of nine agencies participating in the open call for tender, three framework contracts in cascade, covering a wide range of audit services. While inter-agency procurements provide a good opportunity to improve administrative efficiency, framework contracts with reopening of competition for each specific contract are more appropriate than cascades to support good value for money for procurements where the concrete services to be delivered are not known when the call is launched.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.22.10. In 2017, the Commission's Internal Audit Service issued an audit report on 'The process for Evaluation of Regulated Products: Assessment Phase in Pesticides Authorisation'⁽¹⁷⁵⁾. The Authority is preparing an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁷⁵⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	The Authority has not yet put in place a clear and comprehensive financial <i>ex post</i> control strategy covering all areas of operations and specifying the frequency and scope of such controls.	Completed
2016	In its audit report dated November 2016 the Commission's Internal Audit Service (IAS) concluded that the controls in place for IT project management are adequate, but referred to significant weaknesses in relation to IT governance. It recommended updating EFSA's IT governance policy, to introduce an organisation-wide IT risk management framework and risk register and to separate the information security function from the IT Unit. EFSA agreed with the IAS on a plan to take corrective actions.	Completed

THE AUTHORITY'S REPLY

3.22.4. EFSA welcomes the unqualified opinions issued by ECA on the reliability of the accounts and on the legality and regularity of the transactions underlying the accounts. This evidences that the control system in place at EFSA adequately ensures overall compliance.

3.22.8. To ensure the independence of the accounting officer, the formal requirement set by the EFSA Financial Regulations is translated into the following EFSA reality: The EFSA Management Board appointed the current accounting officer in 2008. The accounting officer reports to the Head of the Bus Department and to ensure the functional independence of the accounting officer in the performance appraisal workflow, the Head of BuS Department is the reporting officer and the Chair of the Audit Committee the Countersigning officer. The accounting officer may at any time be suspended temporarily or definitely from his duties by the Management Board.

3.22.9. As for reopening versus cascading mechanisms in framework contracts, there is no obligation to use the reopening model and both models can be fit for purpose depending on the specific scenario. In the EFSA's view, reopening competition is more appropriate for standardised services and is used in EFSA contracts covering statistical services, systematic literature review and audience research. EFSA uses the cascading model in a context where a long term contractual relationship is more important. In the particular case of the framework contract on external audit services, mainly to ensure (i) an adequate understanding of EFSA's activities, (ii) a consistent audit methodology and, (iii) credibility at all governance levels. EFSA has control of the budget for proposals put forward by the contractor in the cascading model. When receiving an offer in line with the required specification, EFSA has the right to negotiate and recalibrate the offer received exercising therefore control on budget beyond assignment and timing. EFSA could trigger the cascading mechanism if the contractor is unable to propose the team, budget and timing meeting EFSA needs.

3.22.10. EFSA will duly implement the agreed action plan following the IAS Audit on the Evaluation of Regulated Products: Assessment Phase in Pesticides Authorisation.

3.23. EUROPEAN INSTITUTE FOR GENDER EQUALITY (EIGE)

INTRODUCTION

3.23.1. The European Institute for Gender Equality (hereinafter 'the Institute', aka 'EIGE'), which is located in Vilnius, was established by Regulation (EC) No 1922/2006 of the European Parliament and of the Council ⁽¹⁷⁶⁾. The Institute's task is to collect, analyse and disseminate information as regards gender equality and to develop, analyse, evaluate and disseminate methodological tools in order to support the integration of gender equality into all Union policies and the resulting national policies.

3.23.2. The *Table* presents key figures for the Institute ⁽¹⁷⁷⁾.

Table
Key figures for the Institute

	2016	2017
Budget (million euros)	8	8
Total staff as at 31 December ⁽¹⁾	45	45

⁽¹⁾ Staff includes officials, temporary and contract agents and seconded national experts.

Source: data provided by the Institute.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.23.3. We have audited:

- (a) the accounts of the Institute which comprise the financial statements ⁽¹⁷⁸⁾ and the reports on the implementation of the budget ⁽¹⁷⁹⁾ for the financial year ended 31 December 2017; and
- (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

3.23.4. In our opinion, the accounts of the Institute for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Institute at 31 December 2017, 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

⁽¹⁷⁶⁾ OJ L 403, 30.12.2006, p. 9.

⁽¹⁷⁷⁾ More information on the Institute's competences and activities is available on its website: www.eige.europa.eu.

⁽¹⁷⁸⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁷⁹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.23.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.23.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.23.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.23.8. At the end of financial year 2017, the Institute was a defendant in four cases related to three procurement procedures which were brought to the General Court by unsuccessful tenderers. In each of these cases, the applicant requested the annulment of the award decision and the award of damages. Total damages claimed in those four cases amount to 700 000 euros or 9 % of the Institute's yearly budget. In line with the assessment of the Institute's external lawyer, a provision of 75 000 euros or 1 % of the Institute's yearly budget, has been recorded to address the likely losses. The rulings of the General Court in each of these cases will decide on the legality and regularity of the procurement procedures for these contracts and the future payments.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.23.9. In 2016, the Institute organised a call for tender for travel services. The tender specifications and the evaluation process did not provide sufficient guarantees ensuring best value-for-money. The award formula and the pricing mechanism were not appropriate since they did not allow a proper assessment of the offers submitted by the bidders. The framework contract was signed for a maximum period of four years and a maximum amount of 700 000 euros. Payments made in 2017 amounted to 137 000 euros.

3.23.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹⁸⁰⁾,⁽¹⁸¹⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). According to information from the Commission, by the end of 2017 the Institute had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

3.23.11. The Institute publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.23.12. In 2017 the Commission's Internal Audit Service issued an audit report on 'Stakeholder relations management and external communication' by EIGE⁽¹⁸²⁾. The Institute prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁸⁰⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹⁸¹⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽¹⁸²⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>The level of committed appropriations carried over remained high for Title III (operational expenditure) at 1,7 million euros, i.e. 51 % (2015: 2,2 million euros, i.e. 60 %), mainly in relation to studies going beyond the year end. The Institute may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.</p>	Completed
2016	<p>In 2016 the Institute launched an open call for tender for a framework contract on the maintenance and update of its gender statistics tools and resources for a maximum amount of 1,6 million euros. The call was split into two lots without indicating the respective amounts per lot. Following a question from one tenderer, the Institute clarified on its website that the maximum amount per lot was estimated at 800 000 euros. However, two separate framework contracts were signed with the same tenderer for a maximum amount of 1,6 million euros per lot and an option to further increase the amounts by up to 50 % per lot, allowing the Institute to sign specific contracts over the maximum duration of the FWC (four years) for up to 4,8 million euros or three times the amount announced in the contract notice. Furthermore, price competition in the call for tender was based on daily rates only and not also on the time needed to complete the tasks, not allowing to identify and choose the most economically advantageous offers and to ensure best value for money. These weaknesses might have affected competition. Payments made in 2016 amounted to 87 920 euros. In reaction to the audit, the Institute signed amendments to both FWC, reducing the maximum amounts to 800 000 euros each (with a potential increase by maximum 50 %).</p>	Completed
2016	<p>The invitation to tender under a negotiated procedure with a single tenderer to procure maintenance and support for IT tools and databases capped the maximum price for all three defined outputs at 81 000 euros (excluding VAT), specifying that any offer exceeding this amount would not be considered. Having received a tender for two of the three requested outputs, the Institute signed a service contract for a price of 97 410 euros. Payments made in 2016 amounted to 73 057 euros.</p>	N/A

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	In January 2016, the Institute published its external evaluation. It concluded that the Institute's activities were consistent with its mandate and that its administration scores relatively well in terms of governance and efficiency. However, the evaluation included several recommendations to improve the Institute's operations, for instance by setting clearer priorities, better targeting its outputs, developing synergies with relevant external actors and also by strengthening the role of its Management Board and clarifying the role of the Experts' Forum. The Institute has started to implement an action plan addressing the recommendations.	Ongoing

THE INSTITUTE'S REPLY

3.23.8. EIGE takes note of the comment. EIGE has examined the weaknesses and, irrespective of the General Court's decisions in these cases, will adjust the procurement procedures to minimise the risk of future legal cases and potential dissatisfaction among unsuccessful tenderers.

3.23.9. EIGE takes note of the comment and underlines that internal controls are in place to check and control the pricing of flight and hotel offers submitted by the contractor. EIGE will raise this issue with the EU Agencies Network in order to exchange the best practices. In addition, EIGE expressed interest to participate in a joint procurement procedure organised by the Commission services (PMO). Following the award of this contract, EIGE intends not to renew its existing framework contract for provision of travel, accommodation and related services.

3.23.10. EIGE takes note of the comment. EIGE is implementing relevant e-procurement modules: e-submission (which includes TED e-notices and e-tendering platforms) and e-invoicing in compliance with the timelines set by the European Commission (EC). E-submission and e-invoicing modules are planned to be fully implemented in EIGE in 03 and 04 of 2018. EIGE examined a possibility of optional implementation of e-submission and e-invoicing modules before the deadlines which were set by the EC. Taking into consideration the limited number of procedures and the high cost of the services, EIGE decided to decline this option in line with the cost efficiency and proportionality principles.

3.23.11. EIGE takes note of the comment. Taking into consideration the financial restraints for providing vacancy titles in all 24 official EU languages and the fact that the specificity of some job vacancies is better addressed through other vacancy advertising channels, EIGE is of the opinion that the channels currently used for publication of its vacancies ensure proper transparency and publicity.

3.23.12. In line with the recommendations of the audit report EIGE has prepared an action plan that is regularly monitored and updated. The agreed timeline to implement all actions is 31 December 2018 and the implementation is well advanced.

3.24. EUROPEAN MEDICINES AGENCY (EMA)

INTRODUCTION

3.24.1. The European Medicines Agency (hereinafter 'the Agency', aka 'EMA'), which is located in London, was established by Council Regulation (EEC) No 2309/93, which was replaced by Regulation (EC) No 726/2004 of the European Parliament and of the Council⁽¹⁸³⁾. The Agency operates through a pan-EU network and coordinates the scientific resources made available by the national authorities in order to ensure the evaluation and supervision of medicinal products for human or veterinary use.

3.24.2. The *Table* presents key figures for the Agency⁽¹⁸⁴⁾

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	305	331 ⁽¹⁾
Total staff as at 31 December ⁽²⁾	768	766

⁽¹⁾ Adopted budget. The final budget depends on the fees and charges generated in 2017.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.24.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽¹⁸⁵⁾ and the reports on the implementation of the budget⁽¹⁸⁶⁾ for the financial year ended 31 December 2017; and
- (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

3.24.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽¹⁸³⁾ OJ L 214, 24.8.1993, p. 1, and OJ L 136, 30.4.2004, p. 1. In accordance with the latter Regulation, the Agency's original name, the European Agency for the Evaluation of Medicinal Products, was changed to the European Medicines Agency.

⁽¹⁸⁴⁾ More information on the Agency's competences and activities is available on its website: www.ema.europa.eu.

⁽¹⁸⁵⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁸⁶⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.24.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.24.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Emphasis of matter

3.24.7. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. An agreement setting out the arrangements for its withdrawal is currently being negotiated. The accounts and related notes of the Agency, which is located in London, were prepared using the information available at the date of signature (1 June 2018).

3.24.8. On 20 November 2017, the General Affairs Council of the European Union agreed to move the seat of the Agency to Amsterdam, The Netherlands. The removal to temporary premises is planned for the beginning of 2019 and the Agency's accounts include provisions for related costs amounting to 18,6 million euros.

3.24.9. Moreover, the lease agreement for the Agency's current premises in London sets a rental period until 2039 with no exit clause. The notes to the accounts disclose an amount of 489 million euros remaining rent until 2039, of which a maximum amount of 465 million euros corresponding to the lease period after the Agency's planned move to Amsterdam is disclosed as a contingent liability.

3.24.10. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.24.11. In the course of this year's audit of all EU agencies, we did an analysis of their accounting environments, including the hierarchical position and independence of their accounting officers. In the Agency, the superior of the accounting officer is the Head of Finance. We see a need to strengthen the accounting officer's independence by making her directly responsible to the Agency's Director (administrative) and Management Board (functional).

3.24.12. Furthermore, since 2014 the Agency has undergone two major re-organisations and in parallel new major tasks were assigned to the Agency (see paragraphs 3.24.15 to 3.24.17.). While these events caused modifications to the Agency's procedures and its accounting system, no re-validation of the accounting system was carried out since 2013.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.24.13. The Agency publishes vacancy notices on its website, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency and publicity and allow citizens to identify vacancies published by the different European agencies collectively.

3.24.14. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹⁸⁷⁾,⁽¹⁸⁸⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017, the Agency had introduced e-tendering for certain procedures, but not e-invoicing and e-submission.

Management of consulting services

3.24.15. In the course of last year's audit we did an analysis of the Agency's management of consulting services. The work included reviewing two selected projects linked to the implementation of the Regulations on Pharmacovigilance (Regulation (EU) No 1027/2012 of the European Parliament and of the Council⁽¹⁸⁹⁾) and Clinical Trials (Regulation (EU) No 536/2014 of the European Parliament and of the Council⁽¹⁹⁰⁾) which necessitated the establishment of complex pan-EU network systems requiring extensive technical IT development. Since there was no increase in the Agency's staff establishment plan that could enable it to build-up the necessary expertise in-house, the Agency used consulting firms to address the tasks. However, the excessive use of consulting firms led to a critical dependency of the Agency on this external expertise. We also reported that control over project development and implementation was inadequate and that projects were considerably delayed and costs were escalating.

3.24.16. In the course of 2017 the Agency implemented several measures to improve the situation. A comprehensive policy to govern engagements of consulting firms was put in place. In order to get projects back under the Agency's own control, functions that must be kept in-house and cannot be externalised were defined. Also, the Agency is moving to the use of fixed price rather than time & means based consulting contracts, allowing for a better cost management. Furthermore, a more adequate procedure for the authorisation of project changes was put in place.

3.24.17. However, to reduce the Agency's critical dependence on consulting firms will take time and the impact of the measures taken can only be seen over the years. One of the two major projects audited in 2016, the Pharmacovigilance project (Eudravigilance Database Adverse Drug Reactions) has been completed in 2017 with an additional cost of some 0,5 million euros. The Clinical Trials project is still ongoing with no GO-LIVE date defined and a budget that was again increased in 2017 by additional 4,9 million euros⁽¹⁹¹⁾.

	Initial date for GO-LIVE	GO-LIVE date planned 31 December 2016	Actual/planned GO-LIVE date 31 December 2017	Initial Budget (euros)	Budget as at 31 December 2016 (euros)	Budget as at 31 December 2017 (euros)
Eudravigilance Database Adverse Drug Reactions	Q3 2015	Q4 2017	Q4 2017	3,7 million	14,3 million	14,8 million
Clinical Trials & EU Database	Q1 2017	Q3 2018	Not defined	6,1 million	24,3 million	29,2 million

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.24.18. The Commission's Internal Audit Service in 2017 carried out an audit of the Agency's 'Implementation of the pharmacovigilance fees Regulation'⁽¹⁹²⁾,⁽¹⁹³⁾. The Agency prepared an action plan to address any potential areas for improvement.

⁽¹⁸⁷⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹⁸⁸⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽¹⁸⁹⁾ OJ L 316, 14.11.2012, p. 38.

⁽¹⁹⁰⁾ OJ L 158, 27.5.2014, p. 1.

⁽¹⁹¹⁾ In 2018 the Clinical Trials project was merged with a new project (SUSAR — CTIS — Clinical Trials Information Systems) with an estimated total budget of 34,3 million euros.

⁽¹⁹²⁾ Regulation (EU) No 658/2014 of the European Parliament and of the Council (OJ L 189, 27.6.2014, p. 112).

⁽¹⁹³⁾ We did not verify the audit work.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	The Agency's fee regulation provides due dates for the collection of fees from applicants and the Agency's related payments to National Competent Authorities (¹). These due dates were not respected for most of the transactions audited by the Court.	Ongoing (fee collection) Completed (payments to NCAs)
2014	In 2014, the Agency carried out an administrative procedure against its Information, Communication and Technology (ICT) manager. Significant weaknesses in management control were reported, implying considerable operational and financial risks to the Agency. An action plan to address the issue was established and implemented. However, the effectiveness of the measures taken has yet to be evaluated by the Agency.	Completed
2014	One of the Agency's tasks is to distribute appropriate pharmacovigilance information to Member States and to the general public. This information is collected from individual national authorities and verified with the pharmaceutical companies concerned. However, the Agency is largely dependent on controls and inspections carried out by Member States' authorities. These determine the completeness and accuracy of information disseminated to the public.	N/A (Not under the Agency's control)
2016	Since the introduction of a new IT accounting system in 2011, reporting on commitment workflow and consumption has not been sufficiently transparent. Although the matter was repeatedly addressed to the Agency, no corrective action has been taken.	Ongoing
2016	The Agency concluded Corporate Rate Agreements for the provision of accommodation for experts with 25 hotels in London without using a competitive procurement procedure. For six hotels, payments made in 2016 were above the Financial Regulation's threshold for which an open or restricted competitive procurement procedure is required. The six Corporate Rate Agreements and the related 2016 payments, amounting to some 2,1 million euros are therefore irregular.	Ongoing
2016	In 2014 the Commission, on behalf of more than 50 EU Institutions and bodies (including the Agency) signed a framework contract with one contractor for the acquisition of software, licences and the provision of related IT maintenance and consultancy. The framework contractor acts as an intermediary between the Agency and suppliers that can address the Agency's needs. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2016, total payments to the framework contractor amounted to 8,9 million euros. The Agency did not systematically check prices and uplifts charged with the suppliers' quotes and invoices issued to the framework contractor.	Completed

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>Since 2014 the Agency has undergone two major re-organisations including the internal re-allocation of top and middle management positions. The re-allocation of key staff in the area of IT and administration was not successful, causing material risk of instability to the Agency and its operations. Moreover, there is no system in place to analyse skills availability, identify gaps and to recruit and allocate appropriate staff.</p>	Completed
2016	<p><i>Consultancy</i></p> <p>In addition to the annual audit work carried out for all agencies, the Court did an analysis of the Agency's use of consulting services in relation to two major projects.</p> <p>The Agency has been tasked by Parliament and Council with the implementation of the Regulations on Pharmacovigilance (Regulation (EU) No 1027/2012) and Clinical Trials (Regulation (EU) No 536/2014) which necessitate the establishment of complex pan-EU network systems. This requires extensive technical IT development and participation, as well as input from multiple stakeholders, and in particular Member States.</p> <p>These tasks were assigned to the Agency when it was expected to reduce staff in accordance with the Inter-Institutional Agreement on budgetary discipline adopted on 2 December 2013. There was no increase in the Agency's staff establishment plan that would enable it to built-up the necessary expertise in the areas of business and IT development.</p> <p><i>Extensive use of external consultants</i></p> <p>Given that the Agency had just 13 staff employed in the I-Delivery Department, it engaged consulting companies in the areas of business analysis, information technology, project management and quality assurance. In the second quarter of 2016 the Agency had 131 consultants on site and an additional 60 consultants off site.</p> <p>The Agency therefore is critically dependent on external expertise since the start of the projects, yet there is no policy in place to govern the use of consultants. For instance, the profiles the Agency's own staff should occupy are not defined (Project Management, Business Analysis, Business Architects, Solution Architects, Data Architects, etc.). Such profiles have at times been assigned to external consultants.</p> <p><i>Inadequate control over project development and implementation</i></p> <p>When the Agency was entrusted with the new tasks in 2012 and 2014 it did not have an adequate methodology in place to manage projects of such scale. A new methodology was introduced in 2014 which had to be considerably refined in September 2016.</p>	Ongoing (See paragraphs 3.24.15.-3.24.17.)

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)															
	<p>In a number of instances alterations from the planned activities or approach occurred before they were authorised via a formal change request. Such practice not only impairs management's ability to supervise and monitor project development and implementation but can also undermine projects' coherence.</p> <p>Until mid-2016 all external consultants were engaged on the basis of time and means contracts although project deliverables were clearly defined. Also, a considerable part of the consulting engagements was carried out in another Member State since all London-based external resources had been exhausted. This limited the Agency's ability to monitor the implementation of the projects in a timely manner. Quality issues identified upon receipt of deliverables required rectification for which additional cost was charged to the Agency.</p> <p><i>Delay and escalating cost</i></p> <p>The Agency has experienced delays and escalating costs in developing the systems. Frequent changes in project scope, budget and deadlines were due mainly to evolving system requirements taking into account changing needs of Member States ⁽²⁾. There is no certainty yet regarding final costs and go-live dates. See examples in the table below for two major projects:</p> <table border="1" data-bbox="336 913 1029 1310"> <thead> <tr> <th></th> <th>Initial date for GO-LIVE</th> <th>Current planned date for GO-LIVE</th> <th>Initial Budget (euros)</th> <th>Budget as at 31 October 2016 (euros)</th> </tr> </thead> <tbody> <tr> <td>Eudravigilance Database Adverse Drug Reactions</td> <td>Q3 2015</td> <td>Q4 2017</td> <td>3,7 million</td> <td>14,3 million</td> </tr> <tr> <td>Clinical Trials & EU Database</td> <td>Q1 2017</td> <td>Q3 2018</td> <td>6,1 million</td> <td>24,3 million</td> </tr> </tbody> </table>		Initial date for GO-LIVE	Current planned date for GO-LIVE	Initial Budget (euros)	Budget as at 31 October 2016 (euros)	Eudravigilance Database Adverse Drug Reactions	Q3 2015	Q4 2017	3,7 million	14,3 million	Clinical Trials & EU Database	Q1 2017	Q3 2018	6,1 million	24,3 million	
	Initial date for GO-LIVE	Current planned date for GO-LIVE	Initial Budget (euros)	Budget as at 31 October 2016 (euros)													
Eudravigilance Database Adverse Drug Reactions	Q3 2015	Q4 2017	3,7 million	14,3 million													
Clinical Trials & EU Database	Q1 2017	Q3 2018	6,1 million	24,3 million													
2016	The founding Regulation requires an external evaluation of the Agency and its operations by the Commission every ten years. The last evaluation report was issued in 2010. Such a long time span does not ensure timely performance feedback to stakeholders.	Ongoing															

⁽¹⁾ Agency's fee regulation, Articles 10(1) and 11(1).

⁽²⁾ Telematics governance bodies where Member States are represented to elaborate and endorse requirements of future IT systems.

THE AGENCY'S REPLY

3.24.8. The Agency takes note of the comment.

3.24.9. The Agency takes note of the comment.

3.24.11. The Agency takes note of the comment of the Court and is considering what changes could be introduced. The Agency follows the requirements of EMA Financial Regulation: it is already the case that the Management Board appoints the accounting officer in accordance with Article 50(1) of EMA Financial Regulation and the Board has also adopted detailed charter of tasks and responsibilities of the accounting officer. Risks in relation to independence are mitigated by this framework. The representation letter signed by the accounting officer and the Executive Director reinforces further such independence.

3.24.12. The validation of the Agency's accounting systems has been launched in March 2018.

3.24.13. EMA provides the necessary level of transparency and publicity by publishing on or having access to EMA website, LinkedIn, Interagency job advertisement board, specialised publications depending on profiles. As a result, EMA receives a lot interest from candidates across the Union, some selection procedures having reached more than 1 000 candidates.

Moreover, the general implementing provisions on the procedure governing the engagement and use of temporary staff foresee that the selection notices of temporary agents falling within Article 2(f) of the CEOS may be published only in the working languages of the agencies, while those agencies that have not adopted a working language shall publish the selection notices in all official languages of the EU. EMA's working language has been established as being English since June 2015 by an Executive Director's decision, supported by the Management Board. However, EPSO has informed EMA that, in order to publish via the EPSO website, EPSO still requires the EMA to translate vacancy announcements into all official EU languages and make these language versions available on the EMA website.

It is of note that publications of vacancies in all EU languages has a significant impact on selection procedure times lines and higher cost.

3.24.14. By the end of 2017 the Agency had introduced e-tendering for all procedures above the directive threshold and email tender procedures for procedures below the directive threshold. The Agency has not introduced e-invoicing and e-submission, but in September 2017 the Agency signed a Memorandum of Understanding with the European Commission for access to and the use of e-submission and is awaiting a date from the European Commission for the same.

3.24.16. The Agency welcomes the Court's recognition that several important measures have been implemented by the Agency to respond to their 2016 audit observations in relation to the management of consulting services.

3.24.17. For the two projects audited, it is recognised that Clinical Trials needed an additional budget because of the complexity of the stakeholder eco-system and of the requested system to be built. This change request was requested and approved through the portfolio governance structure, and the status of the project has been discussed in full detail with the EMA Management Board.

3.24.18. The Agency takes note of the comment.

3.25. EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION (EMCDDA)

INTRODUCTION

3.25.1. The European Monitoring Centre for Drugs and Drug Addiction (hereinafter 'the Centre', aka 'EMCDDA'), which is located in Lisbon, was created by Council Regulation (EC) No 302/93 ⁽¹⁹⁴⁾. The Centre's main task is to collect, analyse and disseminate information as regards drugs and drug addiction in order to prepare and publish information at European level that is objective, reliable and comparable. The information is intended to provide a basis for analysing the demand for drugs and ways of reducing it, as well as, in general, phenomena associated with the drug market.

3.25.2. The *Table* presents key figures for the Centre ⁽¹⁹⁵⁾.

Table
Key figures for the Centre

	2016	2017
Budget (million euros) ⁽¹⁾	15	16
Total staff as at 31 December ⁽²⁾	101	111

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Centre.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.25.3. We have audited:

- (a) the accounts of the Centre which comprise the financial statements ⁽¹⁹⁶⁾ and the reports on the implementation of the budget ⁽¹⁹⁷⁾ for the financial year ended 31 December 2017; and
- (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

3.25.4. In our opinion, the accounts of the Centre for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Centre at 31 December 2017, 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.

⁽¹⁹⁴⁾ OJ L 36, 12.2.1993, p. 1. This Regulation and its amendments were repealed by Regulation (EC) No 1920/2006 of the European Parliament and of the Council (OJ L 376, 27.12.2006, p. 1).

⁽¹⁹⁵⁾ More information on the Centre's competences and activities is available on its website: www.emcdda.europa.eu.

⁽¹⁹⁶⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽¹⁹⁷⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.25.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.25.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.25.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.25.8. In the course of this year's audit of all EU agencies, we did an analysis of their accounting environments, including the hierarchical position and independence of their Accounting Officers. In the Centre, the superior of the accounting officer is the Head of Administration/Corporate Services. We see a need to strengthen the Accounting Officer's independence by making him directly responsible to the Centre's Director (administrative) and Management Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.25.9. The Centre publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.25.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽¹⁹⁸⁾,⁽¹⁹⁹⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Centre was not yet using any of these tools.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.25.11. In 2017 the Commission's Internal Audit Service issued an audit report on the Centre's 'Management of Data Collection, Validation and Quality Assurance'⁽²⁰⁰⁾. The Centre prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁹⁸⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽¹⁹⁹⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽²⁰⁰⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	In 2012 the Centre signed a framework contract with a maximum amount for signing specific contracts of 250 000 euros, which was specified in the contract notice. However, the Centre did not respect this ceiling. By the end of 2015 the total payments made under this contract amounted to 382 181 euros; i.e. exceeded it by 50 %. The payments made above the ceiling indicate that the Centre's procedure for monitoring framework contracts should be improved.	N/A ⁽¹⁾
2016	For two framework contracts with maximum values of 135 000 euros and 650 000 euros one of the Centre's employees acted as Authorising Officer by delegation when appointing the evaluation committee, taking the award decisions and signing the contracts. However, the delegation granted by the Authorising Officer was limited to 130 000 euros and did not explicitly refer to framework contracts. Payments made in 2016 amounted to 35 310 euros.	N/A
2016	In its audit report of January 2016, the Commission's Internal Audit Service (IAS) highlighted a strong need to improve the Centre's management of IT projects. The IAS concluded in particular that there is no overarching long-term strategic vision for the IT systems supporting the Centre's core operational processes, that its IT project management methodology was only partially adapted to its needs and that the process to manage system requirements is inadequate. The Centre and the IAS agreed on a plan to take corrective action.	Ongoing

⁽¹⁾ The contract was closed and there were no payments in 2017.

THE AGENCY'S REPLY

3.25.8. In the EMCDDA's view the current organisational setting has not affected the independence of the EMCDDA accounting officers. Indeed this independence has been consistently ensured in accordance with the relevant rules, in particular via the appointment of the accounting officers by the EMCDDA Management Board, the functional reporting and accountability of these officers to the Board, and the diligent application of the rules on the segregation of the duties of the different EMCDDA financial actors. In this context, the EMCDDA is ready to follow up on the recommendation of the Court, while ensuring that this follow up is proportionate to the size of the organisation and preserves the effectiveness and efficiency of its functioning.

3.25.9. As a standard procedure, the EMCDDA also publishes its vacancy notices by means of dissemination to the members of its governing bodies, to the Reitox National Focal Points and to the other EU agencies. Furthermore, the next EMCDDA selection processes are also going to be published on the Inter-Agency Job-Advertisement Portal, the online shared platform developed by the network of EU agencies to increase the public visibility of agencies' recruitment processes. In this context the EMCDDA will assess the cost-benefit of a further publication via EPSO portal.

3.25.10. The EMCDDA is complying with the 'e-procurement' related requirements in accordance with the relevant EU legal framework and the timetable established in this context for the rollout of 'e-procurement' in the EU. Indeed since August 2015 the EMCDDA has set up, in cooperation with the relevant EC services, the technical configuration/ICT tool required for 'e-invoicing' (as made available by EC/DG DIGIT for the execution of DIGIT's framework contracts). Furthermore, since 2017 the EMCDDA has planned the preparatory operations required to be able to use 'e-tendering' and 'e-submission' from October 2018, as required by the abovementioned legal framework. The execution of this plan is in progress and the EMCDDA expects to meet this deadline with no major problems.

3.26. EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE (EU-LISA)

INTRODUCTION

3.26.1. The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), hereinafter 'the Agency', which is located in Tallinn, Strasbourg and St. Johann im Pongau, was established by Regulation (EC) No 1077/2011 of the European Parliament and of the Council ⁽²⁰¹⁾. 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 the European System for the comparison of fingerprints (Eurodac).

3.26.2. The *Table* presents key figures for the Agency ⁽²⁰²⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros) ⁽¹⁾	82	79
Total staff as at 31 December ⁽²⁾	144	152

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.26.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽²⁰³⁾ and the reports on the implementation of the budget ⁽²⁰⁴⁾ for the financial year ended 31 December 2017; and
- (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

3.26.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁰¹⁾ OJ L 286, 1.11.2011, p. 1.

⁽²⁰²⁾ More information on the Agency's competences and activities is available on its website: www.eulisa.europa.eu.

⁽²⁰³⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁰⁴⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

3.26.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.26.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.26.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.26.8. In 2017 the Agency encountered difficulties in attracting sufficient competition for several middle-value procurement procedures. In each of the procedures audited, the Agency did not receive more than one offer.

3.26.9. EU-LISA currently manages three separate, non-integrated large-scale IT systems (SIS II, VIS and Eurodac) all dealing with data in the Union's policy area of freedom, security and justice. Such approach may prevent the Agency from realizing economies of scale and synergies between the different systems. Current considerations to extend the Agency's mandate to the management of several additional IT systems in coming years make this matter even more acute. The Agency should, in consultation with the Commission and Member States, prepare a detailed cost-benefit analysis to support a discussion on the future development strategy for the systems.

3.26.10. The project for the construction of a new building on the Strasbourg site suffered considerable delays. Although the Agency had already paid the full price for construction works in 2016, the construction works were still not finalised by the end of 2017 and only some 70 % of the works were covered by the accepted works progress reports. Part of the Agency's staff has nevertheless already moved to the new building still under construction while the works were still ongoing. The Agency and the contractor blame each other for the delays and the contractor in December 2017 submitted a financial claim to the Agency and filed a court case. The Agency is considering its own legal claim against the contractor⁽²⁰⁵⁾.

3.26.11. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.26.12. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²⁰⁶⁾,⁽²⁰⁷⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.

Consulting

3.26.13. Given the nature of its operations, the Agency uses consultancy services mainly in relation with IT projects. According to the agencies records, in 2017 IT projects were implemented within the budgets and timeframes set. For the few evolutive maintenance projects that were slightly behind schedule exception reports were prepared.

⁽²⁰⁵⁾ See also the Agency's 2017 accounts, section 2.1.5 'Post balance sheet events'

⁽²⁰⁶⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽²⁰⁷⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

3.26.14. For the development and implementation of IT projects the agency applies an outsourcing model where some 90 % of the related work is carried out by contractors. There are three main IT framework contracts in place with three consortia, one for each system. Payments made in 2017 under these framework contracts amounted to 3 million euros for Eurodac, 16 million euros for SIS II and 13 million euros for VIS. Although all phases of IT projects from the definition of requirements and milestones to the go-life of new system components are owned by and under control of the Agency, a model under which the evolution and development activities for such sensitive IT systems is outsourced to such an extent creates considerable risks of over-reliance and dependency on contractors. This is even more the case since the number of potential contractors to deal with systems of that scale and requirements is limited for operational and security reasons.

3.26.15. At the same time, the small number of staff in key operational units, in particular in the 'Application Management and Maintenance' unit (AMM), creates significant risks for the continuity of operations. In the second half of 2017, the head of the AMM unit also occupied *ad interim* the posts of 'Head of the Operations Department' and 'Head of the Operations and Infrastructure Unit', thereby combining the three highest management posts in the Operations Department, which creates further continuity risks.

3.26.16. The framework contracts (FWCs) signed with the respective consortia for the operation of the main IT systems do not only cover normal maintenance but also evolutive maintenance for which the price cannot be calculated on the basis of the price quotes attached to the FWC, which creates a risk of overpayment. For the calculation of prices for the specific contracts, the Agency applies a combination of fixed price and quoted time and means approach aiming at sound cost control. For the VIS contract, the Agency also applied IFPUG⁽²⁰⁸⁾, a standard methodology using function points for the determination of price for development activities. The agency may consider using IFPUG also for the other systems.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.26.17. The Agency entered into global commitments for a total amount of 69,9 million euros, to cover future expenditure related to new tasks and IT systems which were initially foreseen to be entrusted to the Agency in 2017 but for which the legal basis was not yet adopted by year-end (Eurodac recast and Dublin allocation system) or only shortly before (Entry/Exit system Regulation adopted on 30 November 2017). The corresponding payment appropriations were reduced by two amending budgets by 85,6 million euros, from 153,3 million euros in the initial voted budget to 67,7 million euros in the final adopted budget.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.26.18. In December 2017, the Commission's Internal Audit Service (IAS) issued a report on 'Audit on the controls over the procurement process in eu-LISA'⁽²⁰⁹⁾. The Agency has prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁰⁸⁾ International Function Point Users Group

⁽²⁰⁹⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	According to the Agency's Founding Regulation, countries associated with the implementation, application and development of the Schengen <i>acquis</i> and Eurodac-related measures must make a contribution to the Agency's budget. Although Schengen associated countries were using the systems managed by the Agency in 2013 the Commission's negotiations were still ongoing.	Ongoing (Not under the Agency's control)
2015	The Agency signed a two million euros 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 identifies 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 fails 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.	Outstanding
2015	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 Title III (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.	Ongoing (Not under the Agency's control)
2015	The audited procurement procedures showed that the Agency engaged in contractual agreements or negotiations with a single contractor without precisely defining the services requested. This limits competition and increases dependence upon the contractor. The Agency should conclude agreements with multiple suppliers or define the services required more precisely, whenever possible.	Outstanding
2016	In 2016 the Agency received and accepted supplies amounting to 2,8 million euros without having budget and legal commitments (contracts) in place. These were made retroactively in order to regularise the purchases.	N/A

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>In its audit report of July 2016, the Commission's Internal Audit Service (IAS) concluded that the overall design and practical implementation of processes ensures that eu-LISA operates the SIS II, VIS and Eurodac IT systems in a way that allows the continuous and uninterrupted exchange of data between the national authorities using them. Although the IAS did not highlight any very important issues, it considered that there is room for improving the efficiency of the processes in relation to configuration management and change management, release and test management, problem management, as well as service and incident management. The Agency and the IAS agreed on a plan to take corrective actions.</p>	Ongoing
2016	<p>Appropriations carried over under Title II (administrative expenditure) are high with 5 million euros, i.e. 63 % of committed appropriations (2015: 9 million euros, i.e. 50 %). They mainly concern building maintenance and consultancy services to be delivered in 2017. Such high level of carry-overs to cover next year's activities is in contradiction with the budgetary principle of annuality.</p>	N/A
2016	<p>In June 2015, the Agency signed a construction contract for its premises in Strasbourg for an amount of 21,5 million euros. Stage payments were agreed as the main payment method. However, in order to increase budget consumption, the Agency amended the contract in July 2015 to make advance payments the preferred method. By November 2016 the Agency had paid the full contract amount although less than half of the works had been completed.</p>	Ongoing
2016	<p>In one of its meetings held in 2016 the Commission's representative in the Agency's Management Board addressed the issue of the increasing maintenance costs. While there are several arguments to explain this, such as the continued development and increased functionalities of the systems, the Court identified procurements where the Agency did not check for the most economical solution. For example, the Agency purchased a new software licence for an amount of 4,6 million euros under a framework contract (FWC) without checking that the framework contractor, who acted as an intermediary between the Agency and potential software suppliers, had found the best price.</p>	N/A
2016	<p>In May 2016 the Agency signed a FWC with a Consortium for 194 million euros for the further development and maintenance of the Visa Information System (VIS) and of the Biometrics Matching System (BMS) for a maximum period of six years. The contract was awarded through a public procurement procedure. One main requirement for tenderers to be accepted was having commercial access to the BMS technology. However, since the company that developed the BMS technology was not contractually obliged to grant commercial access to any interested tenderer, there was a potential risk for the competitiveness of the procedure.</p>	N/A

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	An external evaluation of the Agency was carried out on behalf of the Commission from March to December 2015 and results were presented in the final evaluation report in March 2016. The evaluation concluded that the Agency contributes to the operational management of large-scale IT systems in the area of freedom, security and justice and effectively fulfils its tasks. In order to improve operational management further, the evaluators made 64 recommendations, seven of which are considered to be critical and 11 very important. The Agency has prepared a plan to address the recommendations that is under implementation.	N/A

THE AGENCY'S REPLY

3.26.8. The Agency acknowledges the comment. For middle-value procurement, the Agency systematically publishes *ex ante* notices on its website in accordance with Article 103(2) of Financial Regulation.

3.26.9. In December 2017, the Commission put forward two proposals for a Regulation establishing a framework for interoperability between EU information systems (in the borders and visa areas as well as in the police and judicial cooperation, asylum and migration areas). Moreover, revision of mandate of the Agency (in the final stages to be adopted) establishes the responsibility for the development of interoperability actions subject to the adoption of the relevant legislative proposals. The Agency has so far supported the discussions at The High Level Expert Group on information systems and interoperability with technical expertise and knowhow. At the same time, a study (ongoing) was undertaken in order to have a clear picture related to the future architecture for interoperable IT systems. The study comprises also an impact assessment and migration as well as integration plan for interoperability components of existing and future systems.

3.26.10. The Agency confirms the delay in the implementation of construction project in Strasbourg. Please note that prepayments to the contractor were covered with sufficient bank guarantees, which are released progressively upon acceptance of works.

Relocation of staff to the new office building was done upon preliminary acceptance of works. Construction works continue in the other building and are related to the data centre.

The Agency signed a contract with an external law company to acquire legal support for this construction contract. They analysed the contractor's claim and, on behalf of eu-LISA, registered a statement of defence to the Administrative Court in Strasbourg. The Court's decision is pending.

3.26.11. The Agency acknowledges the comment. Please note that the Agency also publishes vacancy notices on the EU Agencies Network and EU-Training websites. However, additional financial resources are required for this purpose in order to comply with EPSO's language regime requiring translation of vacancy notices into all EU languages (e.g. the cost estimate of the translation of one vacancy notice into all EU languages amounts to EUR 12 000).

3.26.12. The Agency acknowledges the comment. As regards e-submission, technical issues in the platform managed by EC-DG DIGIT prevented the use of the tool; as other agencies, the Agency was therefore not in a position to reliably deploy the platform in 2017. Once the platform becomes stable, the Agency intends to use it in its procurement activities.

3.26.13. The Agency acknowledges the findings. The Agency aims at reducing further the number of projects behind schedule and has therefore started to implement actions in order to improve the planning process (see also finding 3.26.16.). According to Agency's Corporate Key Performance Indicator framework (number 22) presented in the Consolidated Annual Activity Report 2017, it results that the 'completed projects against defined quality, cost, and time parameter' has an actual of 8,79 %, which is within the defined target of 10 %. Additionally, in 2017, eu-LISA Project Management Methodology has been tailored and updated towards better alignment with the Agency's strategy and compliance with PRINCE2 methodology. An Enterprise Project Management Tool has been recently deployed in order to enable more accurate reporting and enhanced resource allocation across the Agency.

3.26.14. The Agency confirms the high level of involvement of external contractors in IT projects (operational and corporate).

Such high level of outsourcing is directly linked with EC Communication COM(2013) 519 on Programming of human and financial resources for decentralised agencies 2014-2020. When the Agency was created in 2012, the adopted establishment plan did not foresee sufficient posts for the volume of tasks given to the Agency. Moreover, since 2013, the volume of tasks under Agency responsibility had been substantially increased, but its requests for additional staff were rejected while the Agency had to implement the staff reduction required in the EC Communication (seven posts in total).

In order to ensure proper segregation of duties, contractors involved in quality assurance are not involved in providing external support to the operational management of operational large scale IT systems.

3.26.15. The Agency acknowledges this extraordinary situation when one staff member had to temporarily take over additional tasks. The appointment was necessarily due to a long term absence of the Head of Operations Department and the ongoing recruitment to replace the other vacant managerial position.

As a mitigating measure, the Agency appointed another staff member, the Head of Security Unit, as *ad interim* Head of Operations and Infrastructure Unit until the newly recruited manager is in place starting on the 1st of July 2018.

3.26.16. The Agency acknowledges the comment. System evolutions can only be summarily described at the launch of the FWC tender, thus requiring the negotiation of specific evolutions when requirements are known (for example when the legal basis of the Systems changes). In the framework of the revision of its sourcing strategy, the Agency shall address contracting options, including the adoption of IFPUG-sponsored methodology, with a view at reducing reliance on a single contractor for evolutions. The action plan to the 2017 Commission's Internal Audit Service (IAS) audit on the controls over the procurement process includes elements pertinent to this comment.

3.26.17. The Agency acknowledges the comment. The scenario and associated risks were identified already in 2016, and reflected in the Agency's estimates of revenue and expenditure 2017. Throughout the year, the Management Board was regularly kept informed on the risk and constraints of adopting large global commitments due to the delays in the adoption of the legal basis of the new tasks.

3.26.18. The Agency confirms the information.

3.27. THE EUROPEAN UNION'S JUDICIAL COOPERATION UNIT (EUROJUST)

INTRODUCTION

3.27.1. The European Union's Judicial Cooperation Unit (hereinafter 'Eurojust'), which is located in The Hague, was set up by Council Decision 2002/187/JHA⁽²¹⁰⁾ with a view to reinforcing the fight against serious organised crime. Its objective is to improve the coordination of cross-border investigations and prosecutions between the Member States of the European Union, and between Member States and non-Member States.

3.27.2. The *Table* presents key figures for Eurojust⁽²¹¹⁾.

Table
Key figures for Eurojust

	2016	2017
Budget (million euros)	44	48
Total staff as at 31 December ⁽¹⁾	245	242

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by Eurojust.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.27.3. We have audited:

(a) the accounts of the Eurojust which comprise the financial statements⁽²¹²⁾ and the reports on the implementation of the budget⁽²¹³⁾ for the financial year ended 31 December 2017; and

(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

3.27.4. In our opinion, the accounts of Eurojust for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Eurojust at 31 December 2017, 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.

⁽²¹⁰⁾ OJ L 63, 6.3.2002, p. 1.

⁽²¹¹⁾ More information on Eurojust's competences and activities is available on its website: www.eurojust.europa.eu.

⁽²¹²⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²¹³⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.27.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.27.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.27.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

3.27.8. Eurojust publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	In the report for the financial year 2010, the Court noted that there was scope to reconsider the definition of respective roles and responsibilities between the Director and the College of Eurojust in order to avoid the overlap of responsibilities, currently resulting from the Founding Regulation. No corrective measures were taken in 2011 ⁽¹⁾ .	Ongoing (Not under the Agency's control)
2016	Carry-overs of committed appropriations were high for Title II (expenditure for support activities) at 6 446 530 euros, i.e. 40 % (2015: 1,6 million euros or 22 %). They mainly relate to works beyond year-end and purchases ordered in preparation of Eurojust's move to new premises in 2017 (4 867 482 euros).	N/A

⁽¹⁾ The new Eurojust Regulation is still under consideration by the legislator.

EUROJUST'S REPLY

3.27.8. The statement concerning Eurojust not using EPSO for recruitment processes is correct. This approach is due to the financial constraints deriving from EPSO's requirement of translating the vacancy notices into all 24 official EU language.

3.28. EUROPEAN UNION AGENCY FOR LAW ENFORCEMENT COOPERATION (EUROPOL)

INTRODUCTION

3.28.1. The European Union Agency for Law Enforcement Cooperation (hereinafter 'the Agency', aka 'Europol'), which is located in The Hague, was established by Regulation (EU) 2016/794 of the European Parliament and of the Council⁽²¹⁴⁾ replacing and repealing Council Decision 2009/371/JHA⁽²¹⁵⁾. The objective of the Agency is to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by Union policy.

3.28.2. The *Table* presents key figures for the Agency⁽²¹⁶⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	104	118
Total staff as at 31 December ⁽¹⁾	737	804

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.28.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²¹⁷⁾ and the reports on the implementation of the budget⁽²¹⁸⁾ for the financial year ended 31 December 2017; and
- (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*

3.28.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²¹⁴⁾ OJ L 135, 24.5.2016, p. 53.

⁽²¹⁵⁾ OJ L 121, 15.5.2009, p. 37.

⁽²¹⁶⁾ More information on the Agency's competences and activities is available on its website: www.europol.europa.eu.

⁽²¹⁷⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²¹⁸⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.28.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.28.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.28.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.28.8. The Agency publishes vacancy notices on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.28.9. In 2017, the Commission's Internal Audit Service issued an audit report on 'Procurement in the European Police Office' ⁽²¹⁹⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²¹⁹⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	As in previous years carry-overs of committed appropriations have been high for Title II (administrative expenditure) at 3,5 million euros, i.e. 39 % (2015: 4,2 million euros, i.e. 41 %). They mainly concern 2016 expenditure for the Office's headquarters which will only be invoiced by the Host State in 2017 (2 million euros).	N/A

THE AGENCY'S REPLY

3.28.8. Over 220 Liaison Officers from EU Member States, as well as third states and organisations work at Europol. The common working language across Europol is English, thus the internal language arrangements of Europol, adopted by the Management Board, determine that recruitment procedures shall be carried out in English, unless otherwise specified. Against this background, Europol's vacancy notices are released in English language. Europol operates an effective and transparent recruitment process, with a vacancy rate of 0% by the end of 2017, while in each of the 89 recruitment procedures run in 2017, there were 58 applicants on average per selection. The publication through the website of the European Personnel Selection Office (EPSO) requires translation of vacancy notices, beyond English, into the official EU languages. Considering the high number of vacancy notices published yearly, translation in all EU official languages would entail high costs and delay in the process. Europol prioritises its budget expenditure on operational delivery needs, a translation of vacancy notices for all EU official languages, including publication through EPSO, is therefore initiated in individual cases only (e.g. in relation to the (Deputy) Executive Director(s)).

3.29. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA)

INTRODUCTION

3.29.1. The European Union Agency for Fundamental Rights (hereinafter ‘the Agency’, aka ‘FRA’), which is located in Vienna, was established by Council Regulation (EC) No 168/2007⁽²²⁰⁾. The objective of the Agency is to provide the relevant authorities of the Union and its Member States with assistance and expertise when implementing Union law relating to fundamental rights.

3.29.2. The *Table* presents key figures for the Agency⁽²²¹⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	21	23
Total staff as at 31 December ⁽¹⁾	105	108

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.29.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²²²⁾ and the reports on the implementation of the budget⁽²²³⁾ for the financial year ended 31 December 2017; and
- (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

3.29.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²²⁰⁾ OJ L 53, 22.2.2007, p. 1.

⁽²²¹⁾ More information on the Agency's competences and activities is available on its website: www.fra.europa.eu.

⁽²²²⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²²³⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

3.29.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.29.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.29.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.29.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments, including the hierarchical position and independence of accounting officers. In the Agency, the superior of the accounting officer is the Head of Corporate Services. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Governing Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.29.9. In 2017, the Agency encountered some difficulties in procuring studies due to unrealistic market estimation. At least three open calls for tenders were unsuccessful because the Agency only received offers, with the required quality, which significantly exceeded the defined maximum contract value. The Agency finally awarded these contracts through another procedure after having revised the tender specifications. This led to additional administrative expense to the Agency and affected the timing of operations.

3.29.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²²⁴⁾,⁽²²⁵⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE AND EXTERNAL EVALUATION REPORTS

3.29.11. In 2017, the Commission's Internal Audit Service carried out an audit on 'Governance and ethics' in the Agency⁽²²⁶⁾. The Agency has prepared an action plan to address any potential areas for improvement.

3.29.12. An external evaluation of FRA's performance in the period 2013 to 2017 was carried out in 2017 on behalf of the Commission⁽²²⁷⁾. The Agency has prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²²⁴⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽²²⁵⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽²²⁶⁾ We did not verify the audit work.

⁽²²⁷⁾ We did not verify the evaluation work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Formal (sub-)delegations from authorising officers (by delegation) were not always consistent with the authorisation rights for transactions in the ABAC workflow system.	Completed
2016	Carry-overs of committed appropriations were high for Title III (operating expenditure) at 5,2 million euros, i.e. 68 % (2015: 5,7 million euros, i.e. 70 %). They mainly reflect the nature of the activities which involve financing studies that span over several months, often beyond year-end. The Agency may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and inevitable delays between the signature of contracts, deliveries and payments.	Ongoing

THE AGENCY'S REPLY

3.29.8. Following the re-organisation of the Agency, which will be finalised by the end of 2018, the position of the Accounting Officer will be placed under the administrative responsibility of the Director, reporting directly to the Management Board (as has always been the case). In order to maintain existing synergies, the Accounting Officer will continue to work closely with Corporate Services.

3.29.9. All of the studies concerned were launched as open calls for tender and so were open to all economic operators. The types of large studies undertaken by the FRA are fairly unique in the EU, given both the subject matter and the need for them to be undertaken across all EU Member States. In addition, the Agency has limited available funds for these actions. However, when launching such calls for tender in future, the Agency will consider conducting market research; reviewing, if necessary, the technical requirements; and if possible, re-assessing the priority of the studies that need to be undertaken. Notwithstanding the above, having more funds available for operational expenditure would considerably ease this problem.

3.29.10. E-tendering and e-submission is compulsory as from 01/01/2019. In 2018 the Agency started the process of introducing such systems and these will be available by the stated deadline.

3.30. EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX)

INTRODUCTION

3.30.1. The European Border and Coast Guard Agency (hereinafter 'the Agency', aka 'Frontex'), was created by Regulation (EU) 2016/1624⁽²²⁸⁾ of the European Parliament and of the Council ('new founding Regulation') repealing Council Regulation (EC) No 2007/2004⁽²²⁹⁾. The Agency has been developed from the European Agency for the Management of Operational Cooperation at the External Borders of the Member States and maintained the short name 'Frontex' and the seat of its headquarters 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.

3.30.2. The *Table* presents key figures for the Agency⁽²³⁰⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	251	281
Total staff as at 31 December ⁽¹⁾	365	526

⁽¹⁾ Actual staff working at the Agency including officials, temporary and contract staff and seconded national experts. The number of posts authorised under the final 2017 Staff Establishment Plan was higher with 352 posts for officials and temporary agents and 303 posts for contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.30.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²³¹⁾ and the reports on the implementation of the budget⁽²³²⁾ for the financial year ended 31 December 2017; and
 - (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

3.30.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²²⁸⁾ OJ L 251, 16.9.2016, p. 1.

⁽²²⁹⁾ OJ L 349, 25.11.2004, p. 1.

⁽²³⁰⁾ More information on the Agency competences and activities is available on its website: www.frontex.europa.eu.

⁽²³¹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²³²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

3.30.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.30.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Other matter

3.30.7. The Agency's grant expenditure increased considerably from 123 million euros (2016) to 167 million euros (2017). Unlike previous years, in 2017 the Agency did not carry out any *ex post* verifications on grant expenditure reimbursements. The Agency considers that their *ex ante* verifications performed before reimbursement had improved and, once the *ex ante* coverage reached a certain level, could now provide the necessary assurance. However, the Court has consistently reported since 2014 that proof of expenditure claimed by cooperating countries is often insufficient which was also confirmed by this year's audit results (see paragraphs 3.30.12 and 3.30.13).

3.30.8. In 2016, the Court recommended that the Agency should conduct a thorough analysis to identify the most appropriate funding mechanism⁽²³³⁾. In this regard, the Court notes that at the end of 2017 the Management Board decided to expand the use of unit costs instead of real cost reimbursements for operational activities. In parallel, a pilot project on the definition of unit costs for assets deployed by cooperating countries was launched in 2018. Moreover, in June 2017 the Management Board approved a new organisational structure of the Agency to take effect from 2018 which includes the creation of a new Inspection and Control Office reporting directly to the Executive Director and to the Management Board in order to adjust the existing organisation to the new mandate (see paragraph 3.30.9).

3.30.9. In response to the migration crisis faced by the Union, the mandate of the Agency was considerably extended in 2016. The Agency's budget had increased by 75 % in 2016 and its 2017 budget was again 21 % higher than that of the previous year. Staff increased by 18 % in 2016 and by another 43 % as compared to the previous year. Systems and procedures are still in the process of being adapted to cope with the new mandate and circumstances. The following observations, which do not call the Court's opinion into question, are to be read in the context of the challenges the Agency had to face.

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.30.10. Following an open call for tender the Agency received four tenders for ferry services to transport migrants within Greece. Three tenders passed the selection criteria while one was excluded. The only contract award criterion was price. In April 2017 the Agency signed a 2 million euros framework contract for a period of three years with the ferry company offering the lowest price. However, the contractors transport capacity was seasonally limited and they struggled to perform the contract, leading the Agency to cancel the contract by the end of 2017. In order to ensure service continuity, the Agency signed a new framework contract amounting to 1,8 million euros for the remaining period with the second ranked tenderer in November 2017 who had offered the second lowest price. The Agency did not negotiate the conditions for this replacement contract with the second and third ranked tenderers, instead signed the new contract on the basis of the original offer submitted by the second ranked tenderer. The direct award of the replacement contract was irregular, since the initial procurement procedure was closed and no negotiated procedure took place to agree the contract conditions that would apply until a new open procedure could have been completed. There were no payments under this replacement contract in 2017.

3.30.11. 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⁽²³⁴⁾. In 2017 the Agency recruited two staff at higher AST grades (14 in 2016). The recruitments at these grades are irregular.

⁽²³³⁾ Special Report No 12 of 2016 'Agencies' use of grants: not always appropriate or demonstrably effective'

⁽²³⁴⁾ Article 53.2 of the Staff Regulation

OBSERVATIONS ON INTERNAL CONTROLS

3.30.12. In 2017, the Agency financed support to Iceland's Coast Guards for the deployment of an airplane in Greece. Before reimbursing the expenditure claimed by Iceland, the Agency asked for invoices as evidence for one category of declared expenditure. Although the invoices were never provided, the Agency reimbursed some 440 000 euros. In this case the *ex ante* verification was, therefore, ineffective.

3.30.13. The Agency also co-financed the deployment of one airplane used by the Spanish Guardia Civil. In the absence of documentation supporting the cost claimed for inspections and maintenance, the Agency reimbursed 430 000 euros on the basis of an average cost per flight hour. This average cost was calculated in accordance with cost ceilings used in contracts between Spanish authorities and private contractors for inspection and maintenance work. There is a risk that the real cost incurred was lower than what was reimbursed.

3.30.14. Although the Agency moved to its current premises already in 2014, the Agency still has no comprehensive Business Continuity Plan approved by the Management Board.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.30.15. The Agency again cancelled a high level of committed appropriations carried over from the previous year for reimbursements of expenditure to countries cooperating in joint operations with 7,7 million euros, i.e. 16,5 % (2016: 5,6 million euros, i.e. 17,6 %). This demonstrates that cooperating countries considerably over-estimated again the expenditure to be reimbursed by the Agency. Despite the fact that carry-overs for joint operations had to be cancelled for two consecutive years, in 2017 the Agency transferred 9,6 million euros from other budget lines to joint operations, contributing to a new carry-over amounting to 40,5 million euros. The joint operations account for 69 % of the total cancelled appropriations in 2017 (11,1 million euros) and 46 % of the total appropriations carried forward into 2018 (87,6 million euros).

3.30.16. In 2017, the appropriations available for return operations amounted to 66,5 million euros. However, operations did not keep pace with available appropriations. The agency therefore returned 13,5 million euros, i.e. 20,3 % (2016: 23 million euros, i.e. 37,5 %) to the Commission. In addition, the Agency returned 4 million euros from budget Title I (staff expenditure) as the planned number of new employees could not be recruited in 2017.

3.30.17. The 2017 initial budget of the Agency included an 8,8 million euros statutory financial operational reserve for financing the deployment of rapid border interventions and return interventions⁽²³⁵⁾. However, in September and again in October 2017 the Agency transferred 1,9 million euros (amounting to 3,8 million euros) from the reserve to its operational budget to fund other activities. Both transfers are not in compliance with the Agency's financial regulation.

3.30.18. The Agency's 2017 budget included a non-statutory reserve amounting to 11,9 million euros for unpredictable operational needs. Following transfers from other budget lines and an amendment of the budget, the funds used under the reserve amounted to 24,7 million euros, i.e. 8,1 % of the initial budget. However, the Agency used the reserve mainly to fund standard operations (8,4 million euros) and to fund a project on remotely piloted aerial surveillance (drones, 7 million euros) for which it had only budgeted 1,1 million euros. The budgeting and use of non-statutory reserves does not comply with the principle of budget specification and impairs budget transparency.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.30.19. The Agency publishes vacancy notices on its own website and in other channels, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

3.30.20. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²³⁶⁾,⁽²³⁷⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). According to the Commission, by the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.

⁽²³⁵⁾ Pursuant to Article 75(13) of its Founding Regulation

⁽²³⁶⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽²³⁷⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
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.	Completed
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 ⁽¹⁾ . 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.	Ongoing ⁽²⁾
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 ⁽³⁾ . For example, the calculation should be based on the final instead of the budgeted annual subsidy received from the Commission.	Completed
2015	The <i>ex post</i> audit to Iceland carried out by the Agency in October 2015 detected irregular payments totalling 1,4 million euros 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 euros.	Ongoing

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	<p>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 euros and 1 billion euros 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 ⁽⁴⁾.</p>	Ongoing
2015	<p>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 ⁽⁵⁾.</p>	Ongoing
2016	<p>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 euros. These payments are irregular.</p>	N/A
2016	<p>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 ⁽⁶⁾. In 2016 the Agency recruited 14 staff at higher AST grades. The recruitments at these grades are irregular.</p>	Outstanding
2016	<p>The level of carry-overs for committed appropriations increased for Title II (administrative expenditure) to 6,4 million euros, i.e. 43 % (2015: 3,2 million euros, i.e. 38 %) and Title III (operational expenditure) to 67,3 million euros, i.e. 37 % (2015: 40,2 million euros, 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.</p>	Ongoing

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	<p>The level of cancelled carry-overs from 2015 was high for Title III (operational expenditure) at 6,4 million euros, 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.</p>	Ongoing
2016	<p>Under the Agency's extended mandate, high importance is attached to return operations and 63 million euros had been assigned to that in its 2016 budget. However, 23 million euros, 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 euros 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.</p>	N/A
2016	<p>On 22 December 2015 the Commission and the Agency, co-beneficiary and coordinator of three other co-beneficiaries (EASO, IOM and UNHCR) ⁽⁷⁾, signed a grant agreement amounting to 5,5 million euros 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 euros 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 euros, 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.</p>	N/A
2016	<p>The Agency's establishment plan for 2016 provides for 275 posts for officials and temporary agents ⁽⁸⁾ 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 %).</p>	Ongoing

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Following the extension of its mandate, the Agency's staff will more than double from 365 in 2016 to 1 000 in 2020 ⁽⁹⁾ . This increase was not based on a thorough estimation of needs.	N/A
2016	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.	Completed

⁽¹⁾ Commission Delegated Regulation (EU) No 1268/2012 (OJ L 362, 31.12.2012, p. 1).

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

⁽³⁾ 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).

⁽⁴⁾ 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'.

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

⁽⁶⁾ Article 53.2 of the Staff Regulation.

⁽⁷⁾ European Asylum Support Office (Malta), International Organisation for Migration (Belgrade) and United Nations High Commissioner for Refugees (Geneva).

⁽⁸⁾ Additional 192 posts were authorised for contract staff and seconded national experts.

⁽⁹⁾ 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)).

THE AGENCY'S REPLY*COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS*

3.30.10. Following Frontex's decision on the termination of the contract, the continuation of the services needed to be secured, until a new contractor would be selected.

Taking into account the market limitations for the required services in the region (very few economic operators), the most appropriate option identified was to use a 'bridging contract' with the company which was second best in the initial tender procedure for the selection of ferry operators. Hence this was not a continuation of already closed tendering procedure. Frontex took into consideration that the company had previous experience in providing ferry services for Frontex with very positive feedback; the ferry proposed met all minimal technical requirements. The contractor was willing to provide the services under the same conditions which were required and offered during the initial tender procedure.

An exception was signed in November 2017 explaining the rationale behind this decision. The bridging contract was signed by both parties in December 2017 and entered into force in January 2018.

The use of the price criterion as the only criterion was carefully analysed and based on Frontex experience from the last two years of ordering ferries for readmission operations between Greek islands and Turkey. Market limitations in the geographical area — only a very limited number of operators available with a narrow offer of ferries — rendered the use of qualitative award criteria unsuitable. The services which Frontex required were short trips between Greek islands and Turkey to readmit returnees under the readmission agreement between the EU and Turkey, ensuring that those operations were carried out in a safe environment and in full respect of fundamental rights.

3.30.11. In accordance with last paragraph of Article 31.2 of Staff Regulations ('...To address specific needs of the institutions, labour market conditions prevailing in the Union may also be taken into account when recruiting officials...'), Frontex took into account labour market conditions (= low correction coefficient vs. professional experience required) allocating higher grades in AST functions group. This was fully reflected in the establishment plans (being integral part of the budget) and was never questioned by the budgetary authorities.

Since March 2017 Frontex is not appointing any external candidates for grades higher than AST4.

COMMENTS ON INTERNAL CONTROLS

3.30.12. Costs of inspections/maintenance are defined as 'Costs related to all inspections/ maintenance (...) during the entire lifetime of the mean (...). Rate based on data provided by manufacturer or by the maintenance unit of the authority deploying the mean'.

Therefore, the hourly cost may have a form of declaration of costs provided by beneficiaries based on either manufacturer's estimations, or a price based on real costs incurred in the preceding years, or cost estimation drawn from reference data of similar means if the asset is new and no data is available. The provision of invoices (or, due to amount of data, equivalent accounting records) is possible only if the hourly price is established on the basis of actual costs borne in the reference year. However, there is also an option for the beneficiary to establish an hourly rate based on average reference prices if actual invoices are not available.

This was the case for the selected payment as the Icelandic Coast Guard provided Frontex with an hourly maintenance cost estimation. The documents provided by the Icelandic Coast Guard reflect the findings of *ex post* controls performed in Iceland in 2015, when Frontex *ex post* control team visited the maintenance centre and verified the documents presented by Icelandic Coast Guard, which were the basis of their calculation methodologies.

Therefore, in Frontex's view the document presented by Iceland gives sufficient grounds for approving the expenditure.

3.30.13. The total amount of an hourly price for all inspections/maintenance of a fixed wing aircraft consists of three contracts with their specific arrangements:

- Maintenance of the engines — the contract has been signed for the maximum amount of EUR 9 010 475,50; however, the basis for payments is the hourly price for maintaining one engine. The Guardia Civil charges Frontex with the hourly price for the engine maintenance as specified in the contract. If less hours are spent for maintaining engines, the overall ceiling will not be reached. Therefore, in this case the total value of the contract is not relevant as the cost of an hour is relevant.

- General maintenance — the provisions of the respective contract define it as a total price contract (not a framework contract) with monthly invoices covering the specific activities carried out by the contractor. The Agency understanding is that the Guardia Civil at the end of the contract will pay the total amount specified in the contract. The cost of an hourly price is calculated by dividing this total cost by the number of flying hours.
- Supply of spare parts — the provisions of the contract, as above, define it as a total price contract (not a framework contract) with monthly invoices covering the specific activities carried out by the contractor. The Agency understanding is that Guardia Civil at the end of the contract will pay the total amount specified in the contract.

For the reasons mentioned above, the Agency does not share the risk assessment made by the Court as the amounts reimbursed to the Guardia Civil estimated on the basis of a total price contract would finally be equal to the amounts reimbursed on the basis of actual invoices.

3.30.14. The current Business Continuity Management Approach, Strategy and the resulting Business Continuity Plans have been developed and updated (annually) based on the legal framework and structure in place until end of 2016.

With the enhanced mandate and the responding new structure in place, especially the BCPs will be revised by the responsible business owner as the organisational change also requires a complete overhaul of the underlying business processes.

COMMENTS ON BUDGETARY MANAGEMENT

3.30.15. The main challenge is linked with the availability of commitment appropriations in the course of a year given.

In order to minimise a risk of high cancellations, in Q4 of 2016 Frontex has additionally addressed beneficiaries with a request to submit their requests for final payment for deployments completed in the 2nd half of 2016 and to provide Frontex with precise estimations of costs to be borne in case of ongoing (Dec. 2016) or planned deployment (Jan. 2017) within 2016 operational activities. The main aim of these requests was to identify any overestimations, decrease respective SFD allocations and re-use the funds still in 2016. Despite certain positive outcomes of this action the level of carry-over appropriations remained relatively high.

Consequently, even though the estimation of the real financial needs was done properly, Frontex needed additional funds to ensure financial coverage of deployments in autumn 2016 as de-commitments from the completed and ongoing deployments were not available at that stage.

The Agency developed and implements as of the operational cycle 2018 a simplified grant scheme, using to a much greater extent unit costs in grants covering up to one year; together with an enhanced monitoring of the implementation of grants, the Agency aims at reducing the cancellation of carry-overs.

3.30.16

Return:

Despite returning funds to the Commission, the main objective of the Agency in the field of return has been achieved by providing MS with technical and operational assistance to implement return operations, and through specific pre-return activities (aimed at facilitating identification of returnees, training, sharing of knowledge among MS, etc.).

In 2017 the number of return operations coordinated by Frontex considerably increased: 47 % more than in 2016, the number of irregular migrants returned increased from 10 700 in 2016 to 14 200 in 2017. This represent close to 10 % (in 2014 the share was at 2 %) of the total of the effectively returned migrants from the EU to third countries.

Recruitment:

The returns related to staff expenditure were mainly due to the challenges and linked delays in the recruitment process: lengthy procedures, long periods of notice, insufficient number of candidates and lack of geographical balance due to low correction coefficient. Nevertheless, the Agency considers it as an achievement to take on board and accommodate more than 250 new staff members in one year.

3.30.17. 2017 was the first year of implementation of the new EBCG Regulation for the Agency. Pursuant to Art. 75 (13), the Agency had to include a mandatory financial operational reserve in its budget, to finance rapid border interventions (RABITS) and return interventions, amounting to 4 % of the allocation foreseen for the operational activities. On 1 October each year, at least one-quarter of the reserve should remain available in order to cover needs arising until the end of the year.

The idea behind the mandatory operational reserve was that at any moment of the year the Agency will have a certain reserve to deploy RABITS, so the initial costs of such sudden deployment could be covered. The European Parliament (EP) had amended the initial text of the EBCG regulation proposed by the Commission (COM) by adding that on 1 October only $\frac{1}{4}$ of the reserve should be maintained corresponding with the remaining three months of the year. The EBCG Regulation is silent about what should happen to the remaining $\frac{3}{4}$ of the reserve after 1 October; there is a lack of clarity.

The first transfer at the end of September was to finance enhanced operational activities at air and sea and to purchase own air surveillance services; the second transfer was after 1 October. The Management Board was informed in the monthly reporting about the transfers.

The Agency considers that the legislator shall provide for clarification.

3.30.18. The non-statutory reserve was already envisaged in the course of the preparations of the Single Programming Document (SPD) 2017-2019. In line with the EBCG Regulation Art. 75.3ff, the preparation of the SPD and the estimate of revenue and expenditure started in the year N-2, and was finalised in late autumn N-1. The EBCG Regulation entered into force in October 2016.

The Agency had to plan the detailed Annual Work Programme 2017 (part of the SPD 2017-2019) throughout 2016, without having the final outcome of the negotiations for the EBCG Regulation, thus without a clearly defined legal basis.

Towards the end of 2016, the SPD 2017-2019 was already finalised and to be adopted by the Management Board, which supported fully the creation of the non-statutory reserve in times of change to the European Border and Coast Guard.

The Commission in its opinion on the SPD 2017-2019 (C92016)8722 stated in point 63: 'The Commission welcomes that the contingency planning became one of the guiding principles for the elaboration of the annual work programme and that the Agency intends to allocate nearly 10 % of its operational budget to the so called "operational flexibility" (...) In this context, the Commission invites the Agency to set up two separate reserves within its budget: the first one being fully in compliance with Article 75 (13) of the EBCG Regulation and the second one offering the Agency a possibility to keep the operational flexibility to address any emergency situations other than rapid interventions.'

COMMENTS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.30.19. Frontex publishes its vacancies in English while EPSO requires translations in all EU official languages, in view of numerous vacancy notices this would represent significant financial costs and potential delay in the recruitment process. Frontex distributes information on its vacancy posts using other channels i.e. EU Agencies Network, Management Board, Permanent Representations, EuroBrussels and social media.

3.30.20. Frontex is in a process of setting-up of e-Submission tools. The start of the implementation of the tool will begin after the signature of Memorandum of Understanding with the Commission (DG DIGIT). The formal deadline for this instrument is set for end October 2018 as laid down in Art 90(2) of the Public Procurement Directive applied by the Commission by analogy for agencies; Frontex will meet this deadline.

Agencies funded under MFF heading 4 — Global Europe

3.31. EUROPEAN TRAINING FOUNDATION (ETF)

INTRODUCTION

3.31.1. The European Training Foundation (hereinafter ‘the Foundation’, aka ‘ETF’), which is located in Turin, was established by Council Regulation (EEC) No 1360/90⁽²³⁸⁾ (recast Regulation (EC) No 1339/2008⁽²³⁹⁾). The Foundation’s task is to support the reform of vocational training in the European Union’s partner countries. To do this, it assists the Commission in the implementation of various vocational training programmes.

3.31.2. The *Table* presents key figures for the Foundation⁽²⁴⁰⁾.

Table
Key figures for the Foundation

	2016	2017
Budget (million euros)	21	20
Total staff as at 31 December ⁽¹⁾	130	125

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Foundation.

THE COURT’S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR’S REPORT

OPINION

3.31.3. We have audited:

- (a) the accounts of the Foundation which comprise the financial statements⁽²⁴¹⁾ and the reports on the implementation of the budget⁽²⁴²⁾ for the financial year ended 31 December 2017; and
- (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

3.31.4. In our opinion, the accounts of the Foundation for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Foundation at 31 December 2017, 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.

⁽²³⁸⁾ OJ L 131, 23.5.1990, p. 1.

⁽²³⁹⁾ OJ L 354, 31.12.2008, p. 82.

⁽²⁴⁰⁾ More information on the Foundation’s competences and activities is available on its website: www.etf.europa.eu.

⁽²⁴¹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁴²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.31.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.31.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.31.7. The information presented below does not call the Court's opinion into question.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.31.8. In 2017, the Commission's Internal Audit Service issued an audit report on 'Progress monitoring in Vocational and Educational Training through the Torino process in ETF' ⁽²⁴³⁾. The Foundation prepared an action plan address any potential area for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁴³⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	In 2016 an external evaluation of the Foundation was carried out on behalf of the Commission. This was the first step in a cross cutting evaluation of the four agencies working in the area of employment, social affairs and inclusion ⁽¹⁾ . The evaluation concluded that the considerable re-organisation of the ETF since 2011 had no significant negative effects and has been viewed mainly positively by internal and external stakeholders, especially in terms of strategy and effectiveness. Governance of the ETF was viewed as efficient and effective. The evaluation also highlights that the ETF has continued to enhance its monitoring capacity since 2011 but that there is still scope to present a clearer picture of its activities and achievements. Unifying and simplifying indicators around one single intervention logic and using a common terminology across the organisation would help to improve the situation. The Foundation prepared a plan to implement the evaluators' recommendations.	N/A
2016	In its Report on the annual accounts of the Foundation for the year 2011 the Court highlighted already that the situation regarding the Foundation's premises is unsatisfactory and puts activities at risk of disruption. The situation remains at a standstill since the Consortium that managed and occupied part of the complex went into liquidation in 2011 and left part of the complex empty. There is an urgent need for the host country to find a solution to this matter. Under the host agreement, appropriate facilities are guaranteed until 2027.	Completed

⁽¹⁾ The other Agencies which will be covered are the European Foundation for Living and Working Conditions (Dublin), the European Agency for Safety and Health at Work (Bilbao) and the European Centre for the Development of Vocational Training (Thessaloniki).

THE FOUNDATION'S REPLY

The Foundation has taken note of the Court's report.

Agencies funded under MFF heading 5 — Administration

3.32. EURATOM SUPPLY AGENCY (EURATOM)

INTRODUCTION

3.32.1. The Euratom Supply Agency (hereinafter 'the Agency'), located in Luxembourg, was created in 1958⁽²⁴⁴⁾. Council Decision 2008/114/EC, Euratom⁽²⁴⁵⁾ replaced the preceding Statutes of the Agency. The Agency's main task is to ensure a regular supply of nuclear materials, in particular nuclear fuels, to EU users, by means of a common supply policy based on the principle of equal access to sources of supply.

3.32.2. From 2008 up to and including 2011, the Agency did not receive a budget of its own to cover its operations. The Commission bore all costs incurred by the Agency when implementing its activities. As from 2012, the Agency was granted its own budget by the Commission, however this only covers a minor part of its expenditure.

3.32.3. The *Table* presents key figures for the Agency⁽²⁴⁶⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	0,1	0,1
Total staff as at 31 December ⁽¹⁾	17	17

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.32.4. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²⁴⁷⁾ and the reports on the implementation of the budget⁽²⁴⁸⁾ for the financial year ended 31 December 2017; and
 - (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

3.32.5. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁴⁴⁾ OJ 27, 6.12.1958, p. 534/58.

⁽²⁴⁵⁾ OJ L 41, 15.2.2008, p. 15.

⁽²⁴⁶⁾ More information on the Agency's competences and activities is available on its website: <http://ec.europa.eu/euratom/index.html>.

⁽²⁴⁷⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁴⁸⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.32.6. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.32.7. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

THE AGENCY'S REPLY

The Agency has taken note of the Court's report.

Self-financed Agencies

3.33. COMMUNITY PLANT VARIETY OFFICE (CPVO)

INTRODUCTION

3.33.1. The Community Plant Variety Office (hereinafter 'the Office', aka 'CPVO'), which is located in Angers, was created by Council Regulation (EC) No 2100/94⁽²⁴⁹⁾. Its main task is to register and examine applications for the grant of Union industrial property rights for plant varieties and to ensure that the necessary technical examinations are carried out by the competent offices in the Member States.

3.33.2. The *Table* presents key figures for the Office⁽²⁵⁰⁾.

Table
Key figures for the Office

	2016	2017
Budget (million euros)	16	16
Total staff as at 31 December ⁽¹⁾	44	51

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Office.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.33.3. We have audited:

(a) the accounts of the Office which comprise the financial statements⁽²⁵¹⁾ and the reports on the implementation of the budget⁽²⁵²⁾ for the financial year ended 31 December 2017; and

(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

3.33.4. In our opinion, the accounts of the Office for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Office at 31 December 2017, 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.

⁽²⁴⁹⁾ OJ L 227, 1.9.1994, p. 1.

⁽²⁵⁰⁾ More information on the Office's competences and activities is available on its website: www.cpvo.europa.eu.

⁽²⁵¹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁵²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.33.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.33.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.33.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON INTERNAL CONTROLS

3.33.8. In 2017, the documentation of procurement and grant award procedures was inadequate. For service procurements of low and medium value contracts, there were inconsistencies in the published tender documentation, no records explaining the preselection of the candidates for low value procurements, and for interims procurement, the Office did not prepare any evaluation reports. Moreover, the award criteria were not clearly disclosed. In respect to the award of grants, risk assessments were inadequate and expert opinions were not signed.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.33.9. According to its Financial Regulation⁽²⁵³⁾, the Office should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement). As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017, the Office had not introduced any of these tools.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁵³⁾ Article 74 'e-Government'.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	The Office uses electronic banking for most of its payments. The Accounting Officer or her two deputies can sign the payments electronically. No signature of a second person is required, which represents a financial risk for the Office.	Ongoing
2014	Although the Office became operational in 1995, there is still no seat agreement signed with its host Member State that would clarify the conditions under which the Office can operate and that it can offer to its staff.	Ongoing (Not under the Office's control)
2015	As at 31 December 2015, the fees unpaid for more than 90 days (mostly annual fees) amounted to 240 766 euros ⁽¹⁾ . The Office did not use all options provided for in its Financial Regulation to recover unpaid fees, such as enforced recovery ⁽²⁾	Ongoing
2016	The level of committed appropriations carried over was high for Title II (administrative expenditure) at 788 540 euros, i.e. 40 % (2015: 395 882 euros, i.e. 28 %). This can mainly be attributed to ongoing building renovations (284 423 euros), IT projects (253 483 euros) and costs of audits and evaluations (1 37 098 euros) for which services will partly be delivered or invoices will only be received in 2017.	N/A
2016	The cancellation rate of 2015 payment appropriations carried over to 2016 was also high for Title II at 17 % (2015: 20 %), pointing to a need to improve budget planning.	N/A
2016	The Office's founding Regulation does not require periodic external performance evaluations. Although the Office or the Commission carried out evaluations of specific topics on an ad hoc basis, the Office should, together with the Commission, consider commissioning comprehensive external performance evaluations at least every five years, as is the case for most other Agencies. Any future revision of the founding Regulation should introduce such a requirement.	Outstanding (Not under the Office's control)

⁽¹⁾ The outstanding fees unpaid at 31 December 2017 amounted to 156 600 euros.

⁽²⁾ Article 53 of the Financial Regulation of the Office.

THE OFFICE'S REPLY

3.33.8. The Office takes note of the Court's comments, and while agreeing to improve documentation, informs that the necessary assessments, evaluations and opinions were carried out as part of the procedures.

3.33.9. The Office entered a contractual arrangement with the European Commission for the provision of e-submission prior to year-end, and the CPVO own e-invoicing solution is available. There were no tenders at that time meeting the threshold for use of the tool and further, the use of the tool was not at that time obligatory.

3.34. EUROPEAN INTELLECTUAL PROPERTY OFFICE (EUIPO)

INTRODUCTION

3.34.1. The European Union Intellectual Property Office (hereinafter ‘the Office’, aka ‘EUIPO’), known as Office for Harmonization in the Internal Market (‘OHIM’) until 23 March 2016, was established in 1993. Its initial founding Regulation was revised for the last time by Regulation (EU) 2017/1001 of the European Parliament and of the Council⁽²⁵⁴⁾. The core business of the Office, which is located in Alicante, is the registration of EU trademarks and registered Community designs, which are valid throughout the EU.

3.34.2. The *Table* presents key figures for the Office⁽²⁵⁵⁾.

Table
Key figures for the Office

	2016	2017
Budget (million euros) ⁽¹⁾	421	401
Total staff as at 31 December	910	995

⁽¹⁾ Budget figure includes the reserve for unforeseen events.

Source: data provided by the Office.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.34.3. We have audited:

- (a) the accounts of the Office which comprise the financial statements⁽²⁵⁶⁾ and the reports on the implementation of the budget⁽²⁵⁷⁾ for the financial year ended 31 December 2017; and
- (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

3.34.4. In our opinion, the accounts of the Office for the year ended 31 December 2017 present fairly, in all material respects, the financial position of Office at 31 December 2017, 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.

⁽²⁵⁴⁾ OJ L 154, 16.6.2017, p. 1.

⁽²⁵⁵⁾ More information on the Office's competences and activities is available on its website: <https://euiipo.europa.eu>.

⁽²⁵⁶⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁵⁷⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.34.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.34.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.34.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.34.8. In 2017, the Office cancelled 3,2 million euros; i.e. 15,9 % of the committed appropriations carried over from 2016, indicating difficulties in planning of budgetary needs, mostly in the field of cooperation with national Intellectual Property Rights Offices.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

3.34.9. The Office continued to use mainly fixed price modality⁽²⁵⁸⁾ for contracting services. Prices for specific service contracts result from unit prices set in framework contracts (price per man-day etc.) and the estimated number of units needed for the specific service. When the Office verifies contractors' price offers, it checks the correct application of the unit prices.

3.34.10. However, in the procurement procedure for an 80 million euros framework contract for general consultancy, audits, studies and project management services the list of services to be provided under the framework contract was not exhaustive. In order to evaluate the offers, the tender specifications contained two business cases related to the management of one project and one programme including several projects. This framework contract is a multiple, mixed framework contract partially using cascade mechanism (general consultancy and project management) and partially using re-opening competition mechanism (audit and studies.). However, the estimated units had been pre-established by the Office in terms of volumes but requesting the tenderers to establish the distribution between the different profiles. Competition for the procurement of this framework contract and consequently also some of the related specific contracts was, therefore, based on unit prices, types of profiles and quality, but not on the likely number of units needed which is another crucial element for the calculation of a fixed price contract.

3.34.11. We audited one specific contract for a fixed price of 145 447,50 euros concluded under this framework contract, the primary purpose of which is to provide assistance in managing one document management project. The man-days required for these services cannot be linked to the business cases set out in the tender specifications nor to the service description in the specific contract. A fixed price as specified in this specific contract therefore entails the risk that the services are not delivered in the most economical way.

3.34.12. Where it is not possible to set out all the terms governing the provision of services when procuring the framework contract, re-opening of competition between several framework contractors for the specific contracts is more appropriate.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁵⁸⁾ See also paragraph 21 of last year's audit report

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The Office's budget implementation rate was low at 89 % which indicates an imprecise estimation of its expenditure in the 2016 budget. The preciseness of the Office's budget, where necessary through an amendment, has become more important following the recent changes in its founding and financial Regulations specifying mechanisms such as the allocation of surpluses to a reserve fund ⁽¹⁾ and the related offsetting mechanism ⁽²⁾ which are connected with the budgeted amounts.	Completed ⁽³⁾
2016	In 2014, the Office launched a call for tender to conclude a four-year framework contract (FWC) with an estimated market volume of 30 million euros to procure consultancy services covering a broad range of activities comprising audit services, project management, general consultancy and studies. However, the procurement procedure and the subsequent use of the FWC were not properly managed in parts. The objectives and activities to be carried out had not been sufficiently specified to precisely estimate the volume of the FWC. As a consequence, it was fully used within only two years and six months already. Moreover, despite the broad diversity of services to be procured and the largely varying levels of expenditure per activity, no lots had been used. Their use could have encouraged participation of smaller companies for low value activities. Finally, competition on price was neutralised and dependence upon the contractor was increased as a consequence of requesting fixed-price offers from a single contractor using the FWC. The Office should consider concluding agreements with multiple suppliers with reopening of competition whenever appropriate.	Ongoing ⁽⁴⁾
2016	The Office's mandate of registering trademark and designs for the European Single Market produces a large volume of translation work. The Office's founding Regulation establishes that the translation services required for the functioning of the Office shall be provided by the Translation Centre for the Bodies of the European Union ('CdT'), resulting in the Office being CdT's main client. The Office makes increasing use of in-house solutions such as linguistic and translation memories and related software. These tools aim to improve the Office's own cost-effectiveness and efficiency. However, from a European Union perspective the current situation may result in a duplication of effort and related costs.	Ongoing

⁽¹⁾ Article 89(1) of the Office's financial regulation provides that it shall establish a reserve fund having sufficient funds to ensure the continuity of its operations and the execution of its tasks for one year, that is, the equivalent of the estimated appropriations foreseen in Titles 1, 2 and 3 of the Office's budget.

⁽²⁾ Articles 139(4) and (6) of the Office's founding regulation provide that every year it shall offset the costs incurred by the industrial property offices of the Member States, by the Benelux Office for Intellectual Property and by any other relevant authority to be nominated by a Member State as the result of the specific tasks which they carry out as functional parts of the European Union trade mark system in the context of various services and procedures, whereby this obligation shall only apply to the extent that no budgetary deficit occurs in that year.

⁽³⁾ In 2017 the Office's budget implementation rate was 97 %.

⁽⁴⁾ See paragraph 3.34.8.

THE OFFICE'S REPLY*COMMENTS ON BUDGETARY MANAGEMENT*

3.34.8. While the rate of cancellation is slightly above 15 % the figure of EUR 3,2 million of cancelled committed carry-overs is the lowest in the last 10 years (since 2008). The Office continues to work with the National Offices in order to reduce the cancelled carry-overs through interim execution reports and mid-year reviews with increased control measures forming an integral part of each new Cooperation agreement. In addition, further measures have been reinforced in-house such as raising awareness through coaching, training, information notes and meetings with the financial actors. Moreover, the Office anticipated before year-end 2017 that the level of cancelled carry-overs would exceed 15 % and pro-actively took additional measures to reduce the carry-overs for the following year.

COMMENTS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

3.34.9. The Office takes good note of the comments of the Court.

As a preliminary comment, the established scenarios in the procurement documents were aimed at being the most illustrative and representative for the future uses of the contract and were not expected to be linked in detail to each and every specific contract.

Concerning the appropriateness of the re-opening of competition mechanism and as stated in the Office's reply to the 2016 audit, this concept has already been introduced in the assessed Framework Contract (FWC) for audits and studies. The Office has evaluated the added value brought by this mechanism in comparison with the administrative cost it entails and, given the intensive use of the consultancy and project management services by the Office, has concluded that it is not considered the most efficient way to manage the latter type of contracts. Moreover, considering that the current FWC is valid until 2020, extending this mechanism to the consultancy and project management services at this moment in time would imply a new call for tender, which the Office does not consider proportionate.

Within the existing 'cascade' mechanism for the consultancy and project management services, the EUIPO reaffirms what was replied in the 2016 audit on the use of fixed price modality. The main reason for choosing this option is that the Office is facing cases in front of the Spanish National Labour Courts related to 'illegal transfer of employees' originated, among others, by the use of 'Time and Means' modality in the past.

Within this fixed-price modality (under the 'cascade' mechanism), the Office has experience in assessing the offers. Indeed, the EUIPO has a dedicated team in place which, based on previous practice and expertise, has the acquired knowledge to estimate what resources are required to fulfil the tasks behind the fixed price services.

However, we believe the concern of the Court might be addressed through other contract modalities than 'Fixed price' such as 'Quoted Time and Means', which the Office could consider on a case by case basis in the future. Moreover, the Office commits to providing further detail and to document its own estimates of the resources required to fulfil the tasks behind the fixed price services, before launching the Request For Offer, in order to provide evidence upfront of the Office's abovementioned expertise.

3.35. SINGLE RESOLUTION BOARD (SRB)

INTRODUCTION

3.35.1. The Single Resolution Board (hereinafter 'the Board', aka 'SRB'), which is located in Brussels, was established by Regulation (EU) No 806/2014 on the Single Resolution Mechanism ('SRM Regulation')⁽²⁵⁹⁾. The mission of the Board is to ensure an orderly resolution of failing credit institutions and certain investment firms (hereinafter 'Credit Institutions') with minimum impact on the real economy and the public finances of the participating Member States of the Banking Union.

3.35.2. The Board is in charge of administrating the Single Resolution Fund (hereinafter 'the Fund') which was established by the SRM Regulation and shall support the Single Resolution Mechanism. The Fund will be gradually built up during the period 2016 to 2023 and shall reach the target of at least 1 % of the amount of covered deposits of all Credit Institutions within the European Banking Union by 31 December 2023.

3.35.3. The Board has an autonomous budget which is not part of the EU budget. Contributions are raised from Credit Institutions established in Member States participating in the Banking Union.

3.35.4. The *Table* presents key figures for the Board⁽²⁶⁰⁾.

Table
Key figures for the Board

	2016	2017
Budget (million euros)		
Part I (Board's administrative budget)	65	113
Part II (Budget of the Fund)	11 800	6 462
Total staff as at 31 December ⁽¹⁾	182	276

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Board.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.35.5. We have audited:

(a) the accounts of the Board which comprise the financial statements⁽²⁶¹⁾ and the reports on the implementation of the budget⁽²⁶²⁾ for the financial year ended 31 December 2017; and

(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

3.35.6. In our opinion, the accounts of the Board for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Board at 31 December 2017, 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.

⁽²⁵⁹⁾ OJ L 225, 30.7.2014, p. 1.

⁽²⁶⁰⁾ More information on the Board's competences and activities is available on its website: www.srb.europa.eu.

⁽²⁶¹⁾ The financial statements comprise the statement of financial position, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁶²⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

3.35.7. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

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

3.35.8. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Emphasis of matter

3.35.9. Without calling into question its opinions expressed in paragraphs 3.35.6. to 3.35.8., the Court would like to emphasise that Fund contributions are calculated on the basis of information provided by Credit Institutions (and some investment firms) to the Board. Our audit of the Board's revenue was based on this information but did not verify its reliability. The SRM Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information. Furthermore, the Court notes that the methodology to calculate contributions laid down in the legal framework is very complex, resulting in a risk to accuracy. Moreover, the Board cannot release details on the risk-assessed contribution calculations per Credit Institution as they are interlinked and include confidential information about other Credit Institutions. This affects the transparency of these calculations.

3.35.10. Administrative appeals or judicial proceedings related to Fund contributions between some Credit Institutions and national resolution authorities and the Board as well as legal actions brought before the Court of Justice of the European Union by former shareholders and creditors of the Banco Popular Español, S.A following the adoption of the Resolution scheme were not subject to our audit in order not to affect in any way the position of the parties. Detailed information is presented in paragraph 8 of the Board's annual accounts.

3.35.11. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.35.12. The Board did not ensure timely payments. Some 28 % of payments (9,5 % of total amounts paid) to contractors and reimbursements of costs to experts and staff were late.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.35.13. Article 92(4) of the SRM Regulation requires the Court to report in particular on contingent liabilities of the Board, the Council and the Commission as a result of the performance of their tasks under the SRM Regulation. The Court will publish a separate report on this matter.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.35.14. The indicative procurement plan (IPP) annexed to the 2017 Annual Work Programme (AWP) anticipated 16 different services to be procured, but only legal services were actually procured. Furthermore, the estimated contract value in the IPP for legal services was 3 million euros whereas the contracted amount was 29 million euros. There were no procurements during 2017 for the other 15 services listed in the IPP. This indicates weak procurement planning.

3.35.15. Of the 29 million euros contracted for legal services 20 million was contracted via 11 negotiated procurement procedures without prior publication. In addition, two contracts amounting to 3 million euros for economic and financial valuation services (as foreseen in the 2016 AWP) were also procured by using the same procedure. Excessive use of such procedures limits competition.

3.35.16. According to the Board's Financial Regulation, it should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement) ⁽²⁶³⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). The Board had not yet introduced any of these tools by the end of 2017.

3.35.17. The Board publishes vacancy notices on its own website and in social media, but usually not on the website of the European Personnel Selection Office (EPSO), which would respect the principle of transparency, increase publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁶³⁾ SRB Financial Regulation of 25 March 2015, Article 75

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	In 2015 the Board became operational and gradually set up its internal control environment. However a number of essential procedures and controls remain to be drafted, adopted or implemented, including the risk management and control strategy, the internal control standards, the periodic assessment of the sound functioning of the internal control system and the anti-fraud strategy.	Ongoing
2016	The Board's accounting system was not yet validated by the Accounting Officer.	Ongoing
2016	The implementation rate was low at 62 % (2015: 67 %), or 35 million euros (2015: 15 million euros) ⁽¹⁾ of available appropriations. This is mainly caused by the nature of the Board's activities and the legal budgetary framework in place. While the budget provides appropriations for the Board's daily operations and the administration of resolution cases, no resolution occurred in 2016. The unused appropriations will reduce future contributions from Credit Institutions.	Ongoing
2016	The committed appropriations carried over under budget title II (administrative expenditure) amount to 3,1 million euros, i.e. 35 % (2015: 3,3 million euros, i.e. 70 %) of total committed appropriations. They mainly concern IT contracts signed in 2016 (1,9 million euros) and security services provided in 2016 that were not yet invoiced and paid (0,6 million euros).	N/A
2016	The committed appropriations carried over under budget title III (operational expenditure) amount to 5,3 million euros, i.e. 66 % (2015: 1,6 million euros, i.e. 40 %) of committed appropriations. They mainly concern services provided by the European Central Bank (1,9 million euros), legal services (1,5 million euros) and IT contracts (1,3 million euros) for which will payments are due in 2017. Such high level of carry-overs is in contradiction with the principle of annuality.	N/A
2016	In the period July to October 2016 the Board committed 2 million euros for the procurement of legal services which were not preceded by a financing decision nor was it planned in the Annual Work Programme and budget.	Ongoing
2016	In application of the negative deposit facility rate in 2016 by the European Central Bank, the Fund paid negative interest amounting to 24 million ⁽²⁾ euros to national central banks. This reduced the amount of accumulated contributions available for future resolutions.	Ongoing (not under control of SRB)

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The Board needs to improve the speed of its recruitment procedures, set clear minimum thresholds to be met by candidates and better define roles and responsibilities of selection committee members.	Completed

⁽¹⁾ In 2017 the implementation rate was 71 % and 71 million euros.

⁽²⁾ 50 million euros in 2017.

THE BOARD'S REPLY

3.35.9. The annual *ex ante* contributions to the Fund are calculated on the basis of information provided by credit institutions and some investment firms to the Board. Even though, the SRM Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, the SRF addresses this issue to an extent possible for it. The data provided is verified against the data submitted in the previous year by the institutions as well as against the data in the ECB database. Discrepancies are flagged to the NRAs, asking for clarification, thus having been able to improve the quality of the data in the previous cycles. Moreover, the Board cannot release details on the risk-related part of the *ex ante* contribution calculations per institution as they are interlinked and would thus reveal confidential information about other institutions. However, the SRF presented the calculation methodology as well as detailed calibrations, hence ensuring transparency and cooperation.

3.35.12. In 2017, due to a combination of the unexpectedly high workload, the unfortunate turnover of staff in the Finance team and the general difficulties to find experienced staff, the capacity of the Finance team was insufficient to ensure the efficient processing of all the financial files, including invoices. This resulted in 1,1 % of invoices generating late interest payments.

Since Q4 2017, the capacity of the team is being reinforced and measures have been taken to ensure the timely processing of invoices. So far in 2018, approximately 98 % of invoices have been paid within the established time limits. Each case of late payment is now examined closely to ensure further improvement in this area.

3.35.14. The SRB's Indicative Procurement Plan 2017 was adopted in 2016, only its second full year of activity. At that time, there had been no resolution cases and the Agency had little experience on which to base its procurement plan. As a new Agency, the SRB was able to join several interinstitutional framework contracts managed by the European Commission. This resulted in several of the procurement procedures foreseen to be launched by the SRB in 2017 finally not taking place. In 2018, the implementation of the procurement plan is being closely followed and additional efforts are being made to improve the planning of procurement procedures.

3.35.15. In 2017, the SRB committed a total of EUR 20 million for legal services. Almost all negotiated procedures without prior publication of a contract notice related to litigation (8 out of the 10 contracts, with a total value of EUR 10,9 million) which is outside the scope of Directive 2014/24/EU. This includes the high number of litigation cases that were filed before the CJEU following the SRB's first resolution case. Consequently, the SRB does not consider the use of such procedures excessive. With regard to the contracts for economic and financial valuation in two out of the twelve cases in 2017, the reopening of competition proved unsuccessful and the SRB was forced to resort to a negotiated procedure. Due to the nature of the subject matter of the contract and the need for utmost confidentiality, the contract notice was not published, in compliance with the applicable rules.

3.35.16. Online access to tender documentation has been available to economic operators via the SRB's website since the SRB's creation and it has been fully integrated in the e-tendering platform since the end of 2017. In June 2017, the SRB also requested to join e-submission but has still not been given access by the Commission.

3.35.17. The SRB has observed that such publications on the EPSO website increase neither the quality nor the number of the applications while being very costly due to the mandatory translation of the vacancy notice. Therefore, the SRB's preference is to publish its vacancies on its own website, EU_CV online, LinkedIn and to inform our stakeholders (central banks, ministries of finance, national authorities, other EU agencies and permanent representations).

3.36. TRANSLATION CENTRE FOR THE BODIES OF THE EUROPEAN UNION (CDT)

INTRODUCTION

3.36.1. The Translation Centre for the Bodies of the European Union (hereinafter 'the Centre', aka 'CdT'), which is located in Luxembourg, was created by Council Regulation (EC) No 2965/94⁽²⁶⁴⁾. The Centre's task is to provide any European Union institutions and bodies which call upon its services with the translation services necessary for their activities.

3.36.2. The *Table* presents key figures for the Centre⁽²⁶⁵⁾.

Table
Key figures for the Centre

	2016	2017
Budget (million euros)	51	49
Total staff as at 31 December ⁽¹⁾	225	215

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Centre.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.36.3. We have audited:

(a) the accounts of the Centre which comprise the financial statements⁽²⁶⁶⁾ and the reports on the implementation of the budget⁽²⁶⁷⁾ for the financial year ended 31 December 2017; and

(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

3.36.4. In our opinion, the accounts of the Centre for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Centre at 31 December 2017, 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.

⁽²⁶⁴⁾ OJ L 314, 7.12.1994, p. 1.

⁽²⁶⁵⁾ More information on the Centre's competences and activities is available on its website: www.cdt.europa.eu.

⁽²⁶⁶⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁶⁷⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.36.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.36.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Other matter

3.36.7. The Centre's task is to provide the EU agencies and bodies with the translation services necessary for their activities in addition to doing so for the EU institutions which may call on its services. The founding Regulations of most of the agencies and bodies require them to use the Centre's translation services. Several of them (counting for more than half of the Centre's revenue) make increasing use of in-house and other alternative solutions. However, this means that the Centre's capacity is not used to the greatest possible extent, that there is a duplication of systems development and running costs at European level and that the Centre's business model and continuity could be at risk. In 2017, an external evaluation on the appropriateness of the Centre's business model has been carried out. The final evaluation report had not yet been adopted at the time of our audit ⁽²⁶⁸⁾.

3.36.8. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.36.9. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments including the hierarchical position and independence of accounting officers. The superior of the Centre's accounting officer is the Head of Administration. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Centre's Director (administrative) and Management Board (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.36.10. According to their Framework Financial Regulation, agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement) ⁽²⁶⁹⁾, ⁽²⁷⁰⁾. As the same requirement exists for all EU Institutions, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017, the Centre had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁶⁸⁾ We did not verify the evaluation work.

⁽²⁶⁹⁾ Commission Delegated Regulation (EU) No 1271/2013, Article 79 e-Government.

⁽²⁷⁰⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	The Centre does not yet have a Business Continuity Plan in place. It is thus not complying with Internal Control Standard 10 ⁽¹⁾ .	Completed
2016	In 2016, cash and short term deposits held by the Centre decreased to 34,2 million euros (38,3 million euros at the end of 2015) and reserves to 31,1 million euros (34 million euros at the end of 2015). This decrease results from a budgetary approach which intends to reduce the accumulated surplus from previous years ⁽²⁾ .	Ongoing

⁽¹⁾ The Centre's Internal Control Standards are based on the equivalent standards laid down by the Commission.

⁽²⁾ This trend continued in 2017.

THE CENTRE'S REPLY

3.36.9. The Accounting Officer is independent in the execution of his accounting duties. This independence is assured by the fact that he is nominated by the Management Board and he occupies a permanent post. In order to strengthen the Accounting Officer's independence, he will from 2018 be directly responsible for the accounting tasks to the Centre's Director and his annual appraisal will be undertaken by the Director.

3.36.10. The implementation of e-Tendering and e-Submission is included in the Centre's 2018 Work Programme. Both tools, developed by the Commission, will be deployed by the Centre from October 2018.

Commission Executive Agencies

3.37. EDUCATION, AUDIOVISUAL AND CULTURE EXECUTIVE AGENCY (EACEA)

INTRODUCTION

3.37.1. The Education, Audiovisual and Culture Executive Agency (hereinafter 'the Agency', aka 'EACEA'), which is located in Brussels, was established by Commission Implementing Decision No 2013/776/EU⁽²⁷¹⁾ repealing Decision No 2009/336/EC⁽²⁷²⁾. The Agency's task is to manage programmes decided by the Commission in the educational, audiovisual and cultural fields, including undertaking the detailed implementation of technical projects.

3.37.2. The *Table* presents key figures for the Agency⁽²⁷³⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	49	50
Total staff as at 31 December ⁽¹⁾	442	436

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.37.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²⁷⁴⁾ and the reports on the implementation of the budget⁽²⁷⁵⁾ for the financial year ended 31 December 2017; and
- (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

3.37.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁷¹⁾ OJ L 343, 19.12.2013, p. 46.

⁽²⁷²⁾ OJ L 101, 21.4.2009, p. 26.

⁽²⁷³⁾ More information on the Agency's competences and activities is available on its website: www.eacea.ec.europa.eu.

⁽²⁷⁴⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁷⁵⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.37.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.37.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.37.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.37.8. In the course of this year's audit of all EU agencies, we did an analysis of the accounting environments, including the hierarchical position and independence of accounting officers. The superior of the Agency's accounting officer is the Head of Finance, Accounting and Programming. We see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Steering Committee (functional).

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.37.9. According to the Financial Regulation executive agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²⁷⁶⁾. As the same requirement exists for all EU Institutions and agencies, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.37.10. In 2017, the Commission's Internal Audit Service issued audit reports on the 'Management of recovery orders for competition fines (including guarantees for competition fines) and for recovery orders in the context of the Commission's corrective capacity' and on 'Erasmus+ and Creative Europe — Grant Management phase 1'⁽²⁷⁷⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁷⁶⁾ Regulation (EU, Euratom) No 966/2012, Article 95 e-Government.

⁽²⁷⁷⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	When conducting its annual asset inventory in 2016, the Agency was unable to locate 46 IT items having a total initial acquisition value amounting to approximately 22 000 euros, indicating weaknesses in the safeguarding of assets.	Completed
2016	Carry-overs of committed appropriations were high for Title III (support to agency operations) at 2,3 million euros, i.e. 47 % (2015: 2,8 million euros, i.e. 50 %). They mainly relate to ongoing project audits (0,8 million euros) and IT services (0,9 million euros) which were ordered in 2016 but not yet invoiced at year-end, or will only be delivered in 2017.	N/A

THE AGENCY'S REPLY

3.37.8 The Agency is of the opinion that its Accounting Officer has a high level of independence. Apart from his nomination through the Steering Committee and the functional reporting towards the Committee it is important to note that EACEA's Accounting officer is a seconded Commission official at senior grade, a status giving him per se a much higher degree of independence compared to locally recruited Accounting Officers. The set up implies that the seconded Accounting Officer is part of the organisational structure of the parent DG — DG EAC in our case.

The Agency will analyse the Court's comment, considering potential measures taken by other EU agencies and/or corporate guidance from the Commission. As the senior management of the Agency is undergoing changes, the matter will be presented to the new Director for his consideration.

3.37.9. The Agency is following closely Commission's e-procurement project. It plans to start using e-tendering in July 2018, followed by the implementation of e-submission.

3.37.10. The two action plans have been meanwhile sent to the Internal Audit Service, who has accepted them. To be noted that almost all planned actions have been realised in the meantime.

3.38. EXECUTIVE AGENCY FOR SMALL AND MEDIUM-SIZED ENTERPRISES (EASME)

INTRODUCTION

3.38.1. The Executive Agency for Small and Medium-sized Enterprises (hereinafter 'the Agency', aka 'EASME'), which is located in Brussels, was established for the period 1 January 2014 to 31 December 2024 by Commission Implementing Decision 2013/771/EU⁽²⁷⁸⁾. Its main task is to manage, in close cooperation with seven Directorates-General of the Commission, EU actions in the fields of research and innovation, competitiveness of SMEs, environment and climate action, maritime and fisheries.

3.38.2. The *Table* presents key figures for the Agency⁽²⁷⁹⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	36	43
Total staff as at 31 December ⁽¹⁾	417	434

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.38.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²⁸⁰⁾ and the reports on the implementation of the budget⁽²⁸¹⁾ for the financial year ended 31 December 2017; and
- (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*

3.38.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁷⁸⁾ OJ L 341, 18.12.2013, p. 73.

⁽²⁷⁹⁾ More information on the Agency's competences and activities is available on its website: www.ec.europa.eu/easme/.

⁽²⁸⁰⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁸¹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.38.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.38.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.38.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON THE RELIABILITY OF THE ACCOUNTS

3.38.8. In the course of this year's audit of the EU agencies, we did an analysis of their accounting environments including the hierarchical position and independence of accounting officers, as well as the aspect of the timely (re-) validation of accounting systems. The superior of the Agency's accounting officer is the Head of Financial Department. We therefore see a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Steering Committee (functional).

3.38.9. Furthermore, in 2014 the Agency's mandate was considerably extended and now it manages EU actions in various fields in cooperation with seven Directorates General of the Commission. Despite significant changes to the Agency's procedures and a significant increase in budget and staff, the last re-validation of the accounting system took place in 2012.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.38.10. According to the Financial Regulation executive agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²⁸²⁾. As the same requirement exists for all EU Institutions and agencies, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-tendering and e-submission for certain procedures, but not e-invoicing.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.38.11. In 2017 the Commission's Internal Audit Service issued audit reports on the Agency's 'Management of the COSME Programme (Competitiveness of Enterprises and SMEs)' and 'HR management process'⁽²⁸³⁾. The Agency prepared action plans to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁸²⁾ Regulation (EU, Euratom) No 966/2012, Article 95 e-Government.

⁽²⁸³⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Carry-overs of committed appropriations were high for Title II (administrative expenditure) at 1 250 000 euros, i.e. 33 % (2015: 998 324 euros, i.e. 14 %) and for Title III (support to agency operations) at 2 550 000 euros, i.e. 62 % (2015: 4 million euros, i.e. 65 %). For Title II, they mainly relate to rent (0,6 million euros) and the acquisition of hardware not yet delivered by the year-end (0,5 million euros). Carry-overs for Title III relate to external experts' evaluations and monitoring of the Life Programme (1,5 million euros), ongoing <i>ex post</i> verifications (0,5 million euros) and IT services (0,5 million euros) which were ordered in 2016 but only partly delivered and not invoiced by the year end. The Agency may consider introducing differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.	Ongoing
2016	The cancellation of carry-overs from previous year was high for Title I (staff expenditure) at 32 000 euros, i.e. 8,3 %, indicating an overestimation of budgetary needs.	N/A

THE AGENCY'S REPLY

3.38.8. The Agency considers that its internal control system provides reasonable assurance that duties are effectively segregated and that the independence of the Accounting Officer is not impaired.

The Accounting Officer has been appointed by the Steering Committee (SC). The SC adopts the provisional and final accounts, the administrative budget and any further amendments. The main deliverables from the Accounting Officer are authorised by the Agency's Director.

Changing the current reporting and organisational structure would in its view not have a major impact on the risks and controls of the accounting transactions. However the Agency will closely monitor the situation, and will adapt the organisation and the reporting lines if necessary.

3.38.9 The accounting team has started the validation of the accounting systems in December 2017 and will finalise it during the course of 2018.

3.38.10. In the procurement field, the Agency has implemented e-invoicing for a certain number of IT providers since 2013, including a full electronic processing and automated interface with ABAC workflow. As from 2018, the electronic invoicing will be further promoted and gradually rolled out to other suppliers, depending on their infrastructure and e-readiness.

3.39. European Research Council Executive Agency (ERCEA)

INTRODUCTION

3.39.1. The European Research Council Executive Agency (hereinafter 'the Agency', aka 'ERCEA'), which is located in Brussels, was created by Commission Decision 2008/37/EC⁽²⁸⁴⁾. The Agency was established for a period beginning on 1 January 2008 and ending on 31 December 2017 with the aim of managing the 'Ideas' specific programme under the 7th Framework Programme for Research. As per Council Decision 2013/743/EU⁽²⁸⁵⁾ the Agency became the dedicated implementation structure responsible for the administrative implementation and programme execution of the Horizon 2020 research programme and implements the actions under the programme's part I 'Excellent science' which relate to the specific objective of strengthening frontier research, through the activities of the European Research Council (ERC)⁽²⁸⁶⁾.

3.39.2. The *Table* presents key figures for the Agency⁽²⁸⁷⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	43	47
Total staff as at 31 December ⁽¹⁾	461	477

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.39.3. We have audited:

(a) the accounts of the Agency which comprise the financial statements⁽²⁸⁸⁾ and the reports on the implementation of the budget⁽²⁸⁹⁾ for the financial year ended 31 December 2017; and

(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

3.39.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁸⁴⁾ OJ L 9, 12.1.2008, p. 15.

⁽²⁸⁵⁾ OJ L 347, 20.12.2013, p. 965.

⁽²⁸⁶⁾ Implementation period 2014 to 2020.

⁽²⁸⁷⁾ More information on the Agency's competences and activities is available on its website: www.erc.europa.eu.

⁽²⁸⁸⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁸⁹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.39.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.39.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.39.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.39.8. According to the Financial Regulation executive agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²⁹⁰⁾. As the same requirement exists for all EU Institutions and agencies, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-tendering and e-invoicing for certain procedures, but not e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.39.9. In 2017, the Commission's Internal Audit Service issued an audit report on the processes related to the closure of FP7⁽²⁹¹⁾ projects⁽²⁹²⁾. The Agency prepared and action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁹⁰⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽²⁹¹⁾ 7th EU Framework Programme for Research and Technological Development.

⁽²⁹²⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Opening and evaluation committee reports prepared by the Agency's public procurement and recruitment committees do not present a full and accurate record of the actual followed procedures. The inadequate reports compromise the transparency of these procedures.	Completed
2016	In its audit report dated September 2016, the Commission's Internal Audit Service (IAS) concluded that the Agency has taken a number of strategic and operational measures to enhance the process for the recruitment, retention and allocation of its staff. The IAS concluded in this context that the Agency has designed and implemented an adequate HR management process to deploy a competent and engaged workforce to ensure the achievement of its objectives. While no critical or very important issues were identified, the Agency and IAS agreed on an action plan to further improve this process in certain areas.	Ongoing
2016	The level of committed appropriations carried over was still high for Title III (operational expenditure) at 1,3 million euros, i.e. 40 % (2015: 1,5 million euros, i.e. 43 %), mainly in relation to external audits and communication, going beyond the year end. The high level of carry-overs is in contradiction with the budgetary principle of annuality.	N/A

THE AGENCY'S REPLY

3.39.8 Currently, e-Submission is limited to open procedures (its threshold is established by the Directive 2014/24/EU on public procurement which was 135 000 euro in 2017). As the Agency did not launch such a procedure in 2017 and will not launch either in 2018, the Agency was not in a position to use e-Submission in 2017. Furthermore, according to the Commission's roadmap, the use of e-submission is becoming mandatory for all EU Institutions and Agencies end of 2018. Therefore, the on-boarding process has now been started in 2018 and the Agency will be ready to use it before the end of this year. As for the negotiated procedure, the Agency will use e-Submission as soon as this option will be integrated in this module by the Commission.

3.39.9. Following the action plan established by the Agency and agreed by the IAS related to the 'Closure of FP7 projects' audit, all actions were timely implemented by the ERCEA and submitted on 9/04/2018 to the Internal Audit Service (IAS) for its follow-up.

3.40. INNOVATION AND NETWORKS EXECUTIVE AGENCY (INEA)

INTRODUCTION

3.40.1. The Innovation and Networks Executive Agency (INEA — hereinafter ‘the Agency’), which is located in Brussels, was set up by Commission Decision 2013/801/EU⁽²⁹³⁾ to replace and succeed the Trans-European Transport Network Executive Agency. The Agency was established for a period beginning on 1 January 2014 and ending on 31 December 2024 for the management of EU actions in relation to the Connecting Europe Facility, the Horizon 2020 Research and Innovation Funding Programme, the Trans-European Transport Network and the Marco Polo Programme.

3.40.2. The *Table* presents key figures for the Agency⁽²⁹⁴⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros)	22	24
Total staff as at 31 December ⁽¹⁾	225	249

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.40.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽²⁹⁵⁾ and the reports on the implementation of the budget⁽²⁹⁶⁾ for the financial year ended 31 December 2017; and
- (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*

3.40.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁹³⁾ OJ L 352, 24.12.2013, p. 65.

⁽²⁹⁴⁾ More information on the Agency's competences and activities is available on its website: www.ec.europa.eu/inea.

⁽²⁹⁵⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽²⁹⁶⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.40.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.40.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.40.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.40.8. According to the Financial Regulation, executive agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽²⁹⁷⁾. As the same requirement exists for all EU Institutions and agencies, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.40.9. In 2017, the Commission's Internal Audit Service issued a report on 'Grant Management Phase 2: Project Management and Payments for the Connecting Europe Facility in INEA'⁽²⁹⁸⁾. The Agency prepared an action plan to address any potential areas for improvement."

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁹⁷⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽²⁹⁸⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The level of carry-overs for committed appropriations was high for Title III at 0,5 million euros, i.e. 48 % (2015: 0,5 million euros, i.e. 51 %). The main cause was IT and audit contracts for which execution goes beyond the year-end.	N/A

THE AGENCY'S REPLY

3.40.8. By the end of 2017 the Agency had introduced e-invoicing for certain procedures. The use of e-tendering and e-submission was not introduced as it does not concern the Agency. In fact procurement activities are implemented only through the use of low value contracts or existing Framework contracts managed by the European Commission services.

3.41. RESEARCH EXECUTIVE AGENCY (REA)

INTRODUCTION

3.41.1. The Research Executive Agency (hereinafter 'the Agency', aka 'REA'), which is located in Brussels, was set up by Commission Decision 2008/46/EC⁽²⁹⁹⁾. The Agency was established for a limited period beginning on 1 January 2008 and ending on 31 December 2017 with the aim of managing specific Union activities in the field of research. On 15 June 2009 the Agency was officially granted its administrative and operational autonomy by the European Commission. On 13 December 2013, the Commission, by its Implementing Decision 2013/778/EU⁽³⁰⁰⁾, extended the lifetime of the REA to 2024 and delegated to it also parts of Horizon 2020, the new Framework Programme for Research and Innovation.

3.41.2. The *Table* below presents key figures for the Agency⁽³⁰¹⁾.

Table

Key figures for the Agency

	2016	2017
Budget (million euros) ⁽¹⁾	63	67
Total staff as at 31 December ⁽²⁾	628	693

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.41.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽³⁰²⁾ and the reports on the implementation of the budget⁽³⁰³⁾ for the financial year ended 31 December 2017; and
- (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

3.41.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽²⁹⁹⁾ OJ L 11, 15.1.2008, p. 9.

⁽³⁰⁰⁾ OJ L 346, 20.12.2013, p. 54

⁽³⁰¹⁾ More information on the Agency's competences and activities is available on its website: www.ec.europa.eu/rea.

⁽³⁰²⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽³⁰³⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.41.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.41.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

3.41.7. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON INTERNAL CONTROLS

3.41.8. The management of the selection process for contractual agents revealed weaknesses. The recruitment files and the minutes of the selection committee meetings do not always include the criteria used to select the candidates from the recruitment database⁽³⁰⁴⁾.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.41.9. According to the Financial Regulation executive agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽³⁰⁵⁾. As the same requirement exists for all EU Institutions and agencies, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.41.10. In May 2017, the Commission's Internal Audit Service (IAS) issued an audit report on 'The closure of FP7 projects in REA'⁽³⁰⁶⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽³⁰⁴⁾ Reference is also made to a report issued by the Commission's Internal Audit Service in 2016 on 'The management of human resources in the Agency'.

⁽³⁰⁵⁾ Regulation (EU, Euratom) No 966/2012, Article 95(2) e-Government.

⁽³⁰⁶⁾ We did not verify the audit work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	In its audit report dated December 2016, the Commission's Internal Audit Service (IAS) concluded that overall the Agency had implemented an adequate HR management process. The Agency and IAS agreed on a plan to take corrective action for the one finding reported.	Ongoing
2016	In another audit report dated May 2016, the IAS concluded that the Agency together with the Commission has set up an efficient internal control system for the management of grants within the Horizon 2020 programme. The Agency and IAS agreed, together with the Commission on a plan to take corrective action for the one finding considered very important.	Ongoing ⁽¹⁾
2016	An external evaluation of the Agency's performance in the period 2012 to 2015 was prepared on behalf of the Commission and the final report was delivered in May 2016. It concluded that the Agency performed in an effective, efficient and cost-effective way in implementing its tasks during the reference period and that its mandate remains highly relevant to the Commission and the Agency's beneficiaries and that the delegation of operational tasks from the Commission has been successful. However, the evaluators also identified scope to further increase the effectiveness and efficiency of operations and the Agency and the Commission were invited to improve their internal dialogue and cooperation, external communication as well as specific issues in the area of IT and HR management. The Agency and the Commission agreed on a plan to take corrective action.	N/A

⁽¹⁾ The IAS in 2017 did a follow-up audit and concluded that the two recommendations mentioned have been adequately and effectively implemented. At year-end three recommendations were outstanding.

THE AGENCY'S REPLY

3.41.9. The audited recruitment procedure for which weaknesses were identified was launched in 2016, leading to a reserve list adopted in 2016 and used in 2017 by issuing a job-offer. The REA selection procedure for contract agents, taking into account the 2016 IAS recommendation, has been revised and implemented later in 2017. The revised selection procedure for contract agents takes into consideration the requirements for clearly documented search criteria for CVs and eligibility checks, as well as for eligibility and selection criteria. The search criteria that the selection panels are using for screening CVs are documented in their minutes. Thereby, the updated procedure already addresses the weaknesses reported by the ECA.

3.41.10 In the field of procurement, REA uses Service Level Agreements with the Commission or framework contracts of the Commission. Only in case of a specific need not covered by any of these, REA would launch a specific procurement. In 2017 REA has only made one procurement for a low value contract. The current version of e-tendering and e-submission is limited to public procurement procedures above the threshold of 144 000 €. As REA did not launch any procedure above this threshold up to now, it was not in a position to use e-tendering and e-submission in 2017. In addition, according to the Commission's roadmap, the use of e-tendering and e-submission is becoming mandatory for all EU Institutions and Agencies at end of 2018 and the on-boarding process has only started in 2018. The Agency is already using e-invoicing and will also use the e-tendering and e-submission modules as soon as these modules will cover also middle and low value contracts should a tendering procedure be launched.

3.42. CONSUMERS, HEALTH, AGRICULTURE AND FOOD EXECUTIVE AGENCY (CHAFEA)

INTRODUCTION

3.42.1. The Consumers, Health, Agriculture and Food Executive Agency (hereinafter 'the Agency') was set up on 1 January 2005 (Public Health Executive Agency — PHEA — from 2005 to 2008, Executive Agency for Health and Consumers — EAHC — from 2008 to 2013 and Consumers, Health, Agriculture and Food Executive Agency — Chafea — as from 1 January 2014)⁽³⁰⁷⁾. The Agency is located in Luxembourg and its mandate has been extended until 31 December 2024. The Agency implements the EU Health Programme, the Consumer Programme and the Better Training for Safer Food initiative.

3.42.2. The *Table* presents key figures for the Agency⁽³⁰⁸⁾.

Table
Key figures for the Agency

	2016	2017
Budget (million euros)	9	10
Total staff as at 31 December ⁽¹⁾	58	61

⁽¹⁾ Staff includes officials, temporary and contract staff and seconded national experts.

Source: data provided by the Agency.

THE COURT'S STATEMENT OF ASSURANCE PROVIDED TO THE EUROPEAN PARLIAMENT AND THE COUNCIL — INDEPENDENT AUDITOR'S REPORT

OPINION

3.42.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements⁽³⁰⁹⁾ and the reports on the implementation of the budget⁽³¹⁰⁾ for the financial year ended 31 December 2017; and
- (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*

3.42.4. In our opinion, the accounts of the Agency for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Agency at 31 December 2017, 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.

⁽³⁰⁷⁾ Commission Decision 2013/770/EU (OJ L 341, 18.12.2013, p. 69).

⁽³⁰⁸⁾ More information on the Agency's competences and activities is available on its website: <http://ec.europa.eu/chafea/>.

⁽³⁰⁹⁾ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁽³¹⁰⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

Opinion on the legality and regularity of revenue underlying the accounts

3.42.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2017 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.42.6. In our opinion, payments underlying the accounts for the year ended 31 December 2017 are legal and regular in all material respects.

Emphasis of matter

3.42.7. The Agency's accounting officer is absent since the end of November 2017. On 13 December 2017, the Agency's Steering Committee has formally appointed an administrator as temporary accounting officer, though, this administrator is deputising the authorising officer by delegation. This contradicts Article 28 of the Agency's financial regulation, which states that the duties of the authorising officer and the accounting officer shall be segregated and mutually incompatible.

3.42.8. The observations which follow do not call the Court's opinion into question.

OBSERVATIONS ON INTERNAL CONTROLS

3.42.9. In 2017, the Agency inadequately documented recruitment procedures. Moreover, the procedures lacked anonymity and did not respect the set deadlines. This may undermine the principles of transparency and of equal treatment of candidates.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.42.10. In 2017, the Agency encountered difficulties in attracting sufficient competition for low and medium value procurement procedures. In each of the procedures audited, the Agency did not receive more than one offer.

3.42.11. According to the Financial Regulation, executive agencies should introduce a single solution for the electronic exchange and storage of information with third parties participating in public procurement procedures (e-procurement)⁽³¹¹⁾. As the same requirement exists for all EU Institutions and agencies, the Commission is developing a comprehensive IT solution covering all phases of public procurement procedures. The Commission launched tools for electronic invoicing in 2010 (e-invoicing), for the electronic publication of documents related to contract notices in the electronic version of the EU Official Journal in 2011 (e-tendering) and for the electronic submission of tenders in 2015 (e-submission). By the end of 2017 the Agency had introduced e-tendering and e-invoicing for certain procedures, but not e-submission.

3.42.12. The Agency publishes vacancy notices for temporary agents on its own website and in social media, but not on the website of the European Personnel Selection Office (EPSO), which would increase transparency, publicity and allow citizens to identify vacancies published by the different European Institutions and agencies collectively.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.42.13. The Agency's budget planning is weak. While carry-overs of committed appropriations from 2017 to 2018 were high for budget Title III at 1,6 million euros, i.e. 63 % (2016: 1,2 million euros, i.e. 48 %), the cancellation rate of budget appropriations carried over from 2016 to 2017 was high as well at 354 260 euros, i.e. 23 %.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽³¹¹⁾ Regulation (EU, Euratom) No 966/2012, Article 95 e-Government.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	The Agency cancelled 0,2 million euros, i.e. 18 % of its carry-overs to 2015 (2014: 0,1 million euros, i.e. 14 %), indicating weaknesses in their planning.	Ongoing
2016	The Agency carried over 1,1 million euros, i.e. 48 % (2015: 0,9 million euros, i.e. 52 %) of committed appropriations for Title III (expenditure linked to the Agency's operations). They mainly relate to IT services and other studies contracted but not yet carried out or finished at the year-end. Of the carry-overs made from 2015 to 2016, the Agency cancelled 0,2 million euros, i.e. 17 % indicating weak planning of needs.	N/A

THE AGENCY'S REPLY*EMPHASIS OF MATTER*

3.42.7 The final accounts were prepared and signed by the appointed accountant back in office. In the future, segregation of duties will be strictly applied.

3.42.9 The Agency accepts the Court's comment concerning the fact that the recruitment file analysed by the Court was not adequately documented. However, Chafea ensured that no candidate has been favoured in this selection process as all candidates were equally treated.

3.42.10. Chafea implemented all the steps recommended by the Financial Regulation concerning these two low and middle value procurements: *Ex ante* publicity took place as required and the legally required numbers of candidates were invited to submit an offer, all of them having strong experience in tendering procedures and with the services requested. Chafea respected the DG BUDGET Vademecum for Procurement concerning the time given to the bidders to submit their offer.

3.42.11 Chafea is currently testing several IT modules for e-procurement, including e-submission. The first tender using e-submission will be tested in the third quarter of 2018. Chafea will be fully in line with the EU Commission recommendation to have e-submission in place before the end of 2018.

3.42.12. Chafea agrees with the observation that the publication of vacancy notices for temporary agent positions on the EPSO website may increase their visibility.

3.42.13 The Agency accepts the Court's comments. The Agency shall continue its efforts to further reduce the level of carry-over and C8 cancellation rate.

This Report including 41 statements of assurance for each agency/body was adopted by Chamber IV, headed by Mr Neven MATES, Member of the Court of Auditors, in Luxembourg at its meeting on 18 September 2018.

For the Court of Auditors

Klaus-Heiner LEHNE

President