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Contents

IV Notices

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

Court of Auditors

2019/C 417/01	Annual report on EU agencies for the financial year 2018	1
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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES,
OFFICES AND AGENCIES

COURT OF AUDITORS

Annual report on EU agencies for the financial year 2018

(2019/C 417/01)

CONTENTS

	<i>Page</i>
LIST OF EU AGENCIES AND OTHER UNION BODIES COVERED BY THIS REPORT	4
CHAPTER 1 The EU agencies and the Court's audit	6
INTRODUCTION	6
THE EU AGENCIES	6
Different types of agencies help the EU design and implement EU policies	6
Agencies are financed from various sources and under different MFF headings	9
Budgetary and discharge arrangements are similar for all agencies, except for EUIPO, CPVO and SRB	15
The EU Agencies Network facilitates inter-agency cooperation and communication with stakeholders	16
OUR AUDIT	16
Our mandate covers annual audits, special audits and opinions	16
Our audits are designed to address key risks	17
We report suspected fraud to OLAF	18
We provide information on audits by the Commission's internal audit service (IAS) and on external evaluation reports	18
CHAPTER 2 Overview of audit results	19
INTRODUCTION	19
RESULTS FROM THE ANNUAL AGENCY AUDITS FOR THE YEAR 2018 ARE POSITIVE OVERALL	19
'Clean' opinions on the reliability of all agencies' accounts	19
'Clean' opinions on the legality and regularity of the revenue underlying all agencies' accounts	20
'Clean' opinions on the legality and regularity of the payments underlying the agencies' accounts, except for EASO	20
Our observations address areas for improvement in 36 agencies	22
AUDIT RESULTS FROM OTHER AGENCY-RELATED PRODUCTS ISSUED BY THE COURT	31
ECA Special report No 29/2018: EIOPA made an important contribution to supervision and stability in the insurance sector, but significant challenges remain	31

ECA 2017 specific annual report pursuant to Article 92(4) of Regulation (EU) 806/2014 on any contingent liabilities arising as a result of the performance by the Single Resolution Board, the Council and the Commission of their tasks under this Regulation for financial year 2017	32
Other ECA special reports also referring to one or more agencies	32
THE EU AGENCIES NETWORK'S REPLY	33
CHAPTER 3 Statements of Assurance and other agency-specific audit results	34
3.1. Information in support of the Statements of Assurance	34
AGENCIES FUNDED UNDER MFF HEADING 1A — COMPETITIVENESS FOR GROWTH AND JOBS	36
3.2. Agency for the Cooperation of Energy Regulators (ACER)	36
3.3. Agency for Support for Body of European Regulators for Electronic Communications (BEREC Office)	40
3.4. European Centre for the Development of Vocational Training (Cedefop)	44
3.5. European Aviation Safety Agency (EASA)	48
3.6. European Banking Authority (EBA)	52
3.7. European Chemicals Agency (ECHA)	57
3.8. European Insurance and Occupational Pensions Authority (EIOPA)	62
3.9. European Institute of Innovation and Technology (EIT)	66
3.10. European Maritime Safety Agency (EMSA)	72
3.11. European Union Agency for Network and Information Security (ENISA)	76
3.12. European Union Agency for Railways (ERA)	80
3.13. European Securities and Markets Authority (ESMA)	85
3.14. European Agency for Safety and Health at Work (EU-OSHA)	90
3.15. European Foundation for the Improvement of Living and Working Conditions (Eurofound)	94
3.16. European GNSS (Global Navigation Satellite System) Agency (GSA)	98
AGENCIES FUNDED UNDER MFF HEADING 2 — SUSTAINABLE GROWTH: NATURAL RESOURCES	102
3.17. European Environment Agency (EEA)	102
3.18. European Fisheries Control Agency (EFCA)	106
AGENCIES FUNDED UNDER MFF HEADING 3 — SECURITY AND CITIZENSHIP	109
3.19. European Union Agency for Law Enforcement Training (CEPOL)	109
3.20. European Asylum Support Office (EASO)	113
3.21. European Centre for Disease Prevention and Control (ECDC)	121
3.22. European Food Safety Authority (EFSA)	124
3.23. European Institute for Gender Equality (EIGE)	128
3.24. European Medicines Agency (EMA)	132
3.25. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)	137
3.26. European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)	141
3.27. The European Union's Judicial Cooperation Unit (Eurojust)	146

3.28. European Union Agency for Law Enforcement Cooperation (Europol)	150
3.29. European Union Fundamental Rights Agency (FRA)	154
3.30. European Border and Coast Guard Agency (Frontex)	158
AGENCIES FUNDED UNDER MFF HEADING 4 — GLOBAL EUROPE	164
3.31. European Training Foundation (ETF)	164
AGENCIES FUNDED UNDER MFF HEADING 5 — ADMINISTRATION	167
3.32. Euratom Supply Agency (ESA)	167
SELF-FINANCED AGENCIES	170
3.33. Community Plant Variety Office (CPVO)	170
3.34. European Intellectual Property Office (EUIPO)	174
3.35. Single Resolution Board (SRB)	181
3.36. Translation Centre for the Bodies of the European Union (CdT)	186
COMMISSION EXECUTIVE AGENCIES	190
3.37. Education, Audiovisual and Culture Executive Agency (EACEA)	190
3.38. Executive Agency for Small and Medium-sized Enterprises (EASME)	194
3.39. European Research Council Executive Agency (ERCEA)	198
3.40. Innovation and Networks Executive Agency (INEA)	202
3.41. Research Executive Agency (REA)	206
3.42. Consumers, Health, Agriculture and Food Executive Agency (Chafea)	210

LIST OF 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	Agency for Support for 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	Paris, France
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
ELA	European Labour Authority	Bratislava, Slovakia
EMA	European Medicines Agency	Amsterdam, The Netherlands
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction	Lisbon, Portugal
EMSA	European Maritime Safety Agency	Lisbon, Portugal
ENISA	European Union Agency for Network and Information Security	Heraklion, Greece
EPPO	European Public Prosecutor's Office	Luxembourg, Luxembourg
ERA	European Union Agency for Railways	Valenciennes, France
ERCEA	European Research Council Executive Agency	Brussels, Belgium
ESA	Euratom Supply Agency	Luxembourg, Luxembourg
ESMA	European Securities and Markets Authority	Paris, France

Acronym	Full name	Location
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
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**INTRODUCTION**

1.1. The European Court of Auditors (ECA) was established as the external auditor of the EU's finances by the Treaty on the Functioning of the European Union ⁽¹⁾. 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 revenue and payments, for EU institutions, agencies and other Union bodies ⁽³⁾.

1.3. This report presents the results of our annual audit of the EU agencies and other Union bodies (collectively referred to as 'the agencies') for the financial year 2018, as well as additional agency related audit results from other tasks such as special audits or opinions. The report is structured as follows:

- Chapter 1 describes the agencies and the nature of our audits;
- Chapter 2 presents the overall results of our annual audit and makes reference to other agency related audit results and opinions;
- Chapter 3 contains the *statement of assurance* for each of the 41 agencies, together with our opinions and observations on the reliability of the agencies' accounts and on the legality and regularity of the underlying revenue and payments.

THE EU AGENCIES**Different types of agencies help the EU design and implement EU policies**

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

1.5. 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 currently stands at 43 (Box 1.1), including two new agencies which are currently being created. These are the European Public Prosecutor's Office (EPPO), for which the constituent regulation has already been in force since 2017, and the European Labour Authority (ELA), the founding regulation for which entered into force in August 2019.

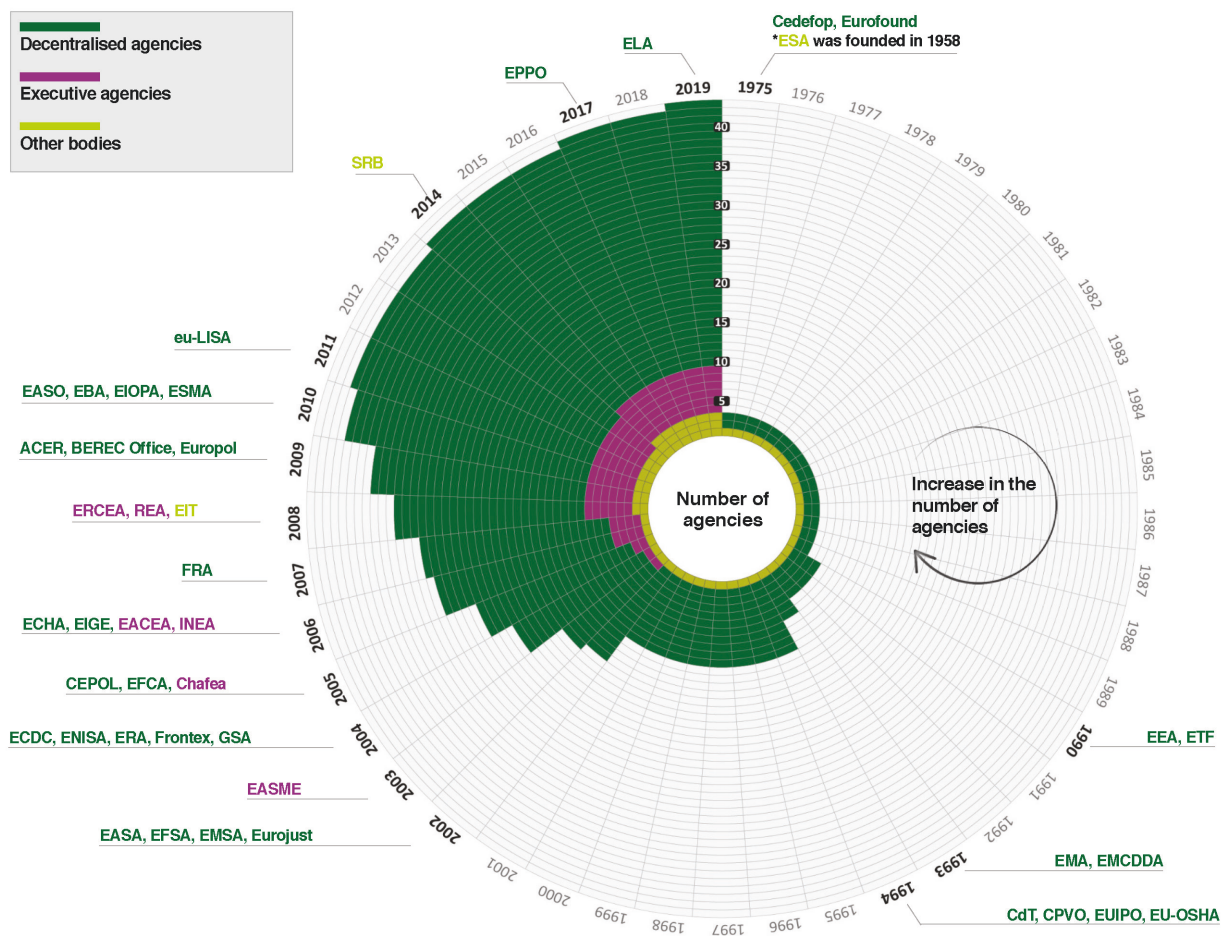
⁽¹⁾ Articles 285 to 287 (OJ C 326, 26.10.2012, p. 169).

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

⁽³⁾ Three agencies working in the field of defence (the European Defence Agency, the European Institute for Securities 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



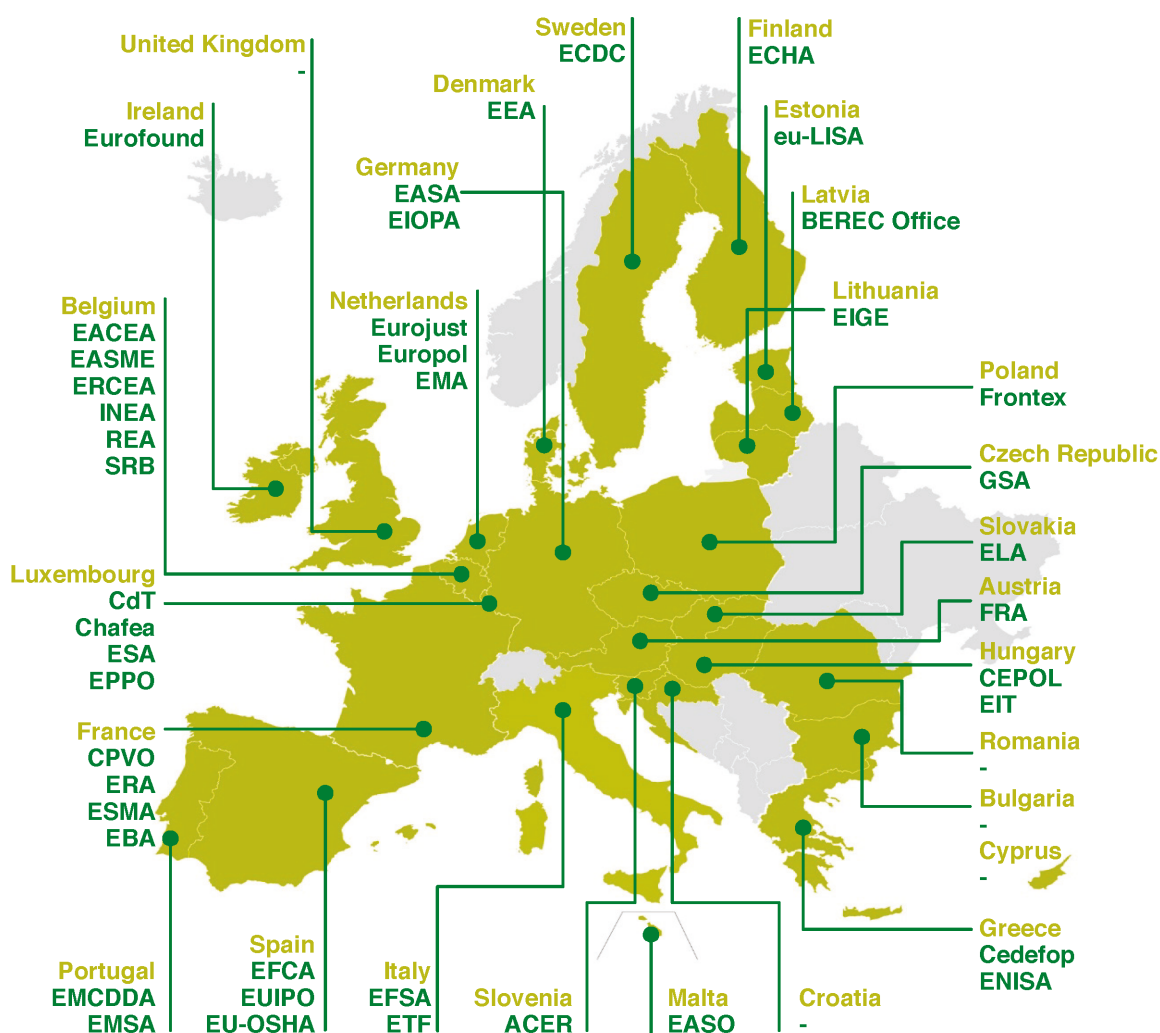
Source: ECA.

1.6. 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 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.

Following the United Kingdom's decision to leave the EU, EMA and EBA were relocated to Amsterdam and Paris respectively during the first half of 2019. The EPPO will be located in Luxembourg and ELA in Bratislava, Slovakia.

Box 1.2

Agencies' location across the Member States



Source: ECA.

Decentralised agencies address specific policy needs

1.7. The **34 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.

1.8. The newly established EPPO is the independent and decentralised prosecution office of the European Union, with the competence to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud. The ELA's mandate will be to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations, as well as develop further initiatives in support of fair mobility. Both agencies will become subject to our audit from the financial year 2019.

⁽⁴⁾ ACER, BEREC Office, Cedefop, CdT, CEPOL, CPVO, EASA, EASO, EBA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EIOPA, ELA, EMA, EMCDDA, EMSA, ENISA, EPPO, ERA, ESMA, ETF, EUIPO, eu-LISA, EU-OSHA, Eurofound, Eurojust, Europol, FRA, Frontex, GSA.

1.9. All 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 ⁽⁵⁾ 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.

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 were 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. 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. 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, ESA and the SRB.

1.12. The European Institute of Innovation and Technology (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.

1.13. The Euratom Supply Agency (ESA) in Luxembourg was created for an indefinite period by the Council to ensure a regular and equitable supply of nuclear fuels to EU users, in line with the Euratom Treaty. To this end, ESA applies a supply policy based on the principle of equal access of all users to ores and nuclear fuel and focuses on improving the security of supply to users located in the EU, thus also contributing to the viability of the EU nuclear industry. An Advisory Committee composed of members from Member States assists the ESA in carrying out its tasks by giving opinions and providing analysis and information. ESA is headed by a director-general who works in close cooperation with the Commission.

1.14. The Single Resolution Board (SRB) is the central resolution authority within the Banking Union and has its seat in Brussels. Its mission is to ensure 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.

Agencies are financed from various sources and under different MFF headings

1.15. In 2018, the total budget of all agencies (excluding SRB) amounted to 4,2 billion euros (an increase of 20 % compared with the budget of 3,5 billion euros in 2017) which is equivalent to some 2,9 % of the 2018 EU general budget (2017: 2,7 %) as shown in Box 1.3. The agencies with the highest absolute increase in their budgets from 2017 to 2018 were EIT, EMSA and ECHA, which are financed under MFF heading 1a (Competitiveness for growth and jobs) and eu-LISA, Frontex, EMA, EASO and Europol financed under MFF heading 3 (Security and citizenship).

⁽⁵⁾ According to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1), the possibility of having two different boards is provided: management board and executive board.

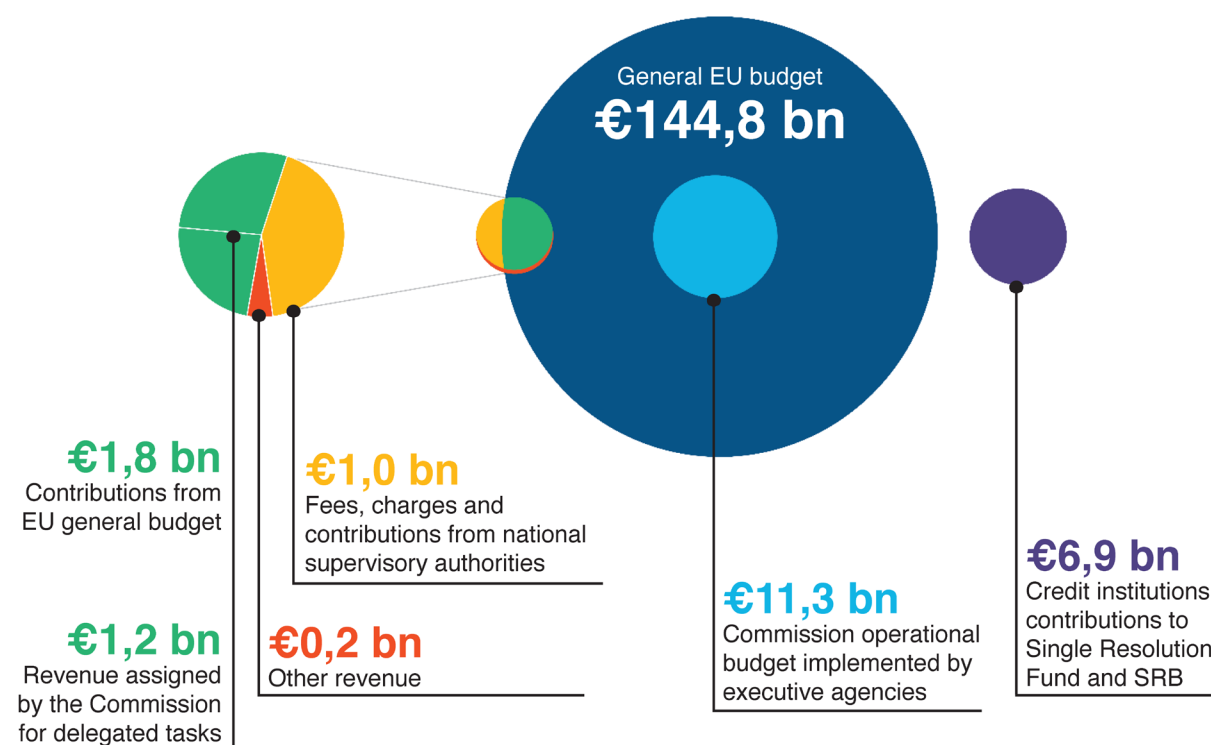
⁽⁶⁾ Chafea, EACEA, EASME, ERCEA, INEA, REA.

1.16. In addition, the 2018 budget of the SRB amounted to 6,9 billion euros (2017: 6,6 billion euros). This consists of contributions from credit institutions to set up the Single Resolution Fund and to finance the SRB's administrative expenditure.

1.17. The budgets of the decentralised agencies and the other bodies cover their staff, administrative and operational expenditure. The executive agencies implement programmes financed by the Commission's budget, and their own budgets (in 2018 some 249 million euros in total) only cover their staff and administrative expenditure. The Commission operational budget (commitment appropriations) implemented by the six executive agencies in 2018 amounted to some 11,3 billion euros (2017: 11 billion euros).

Box 1.3

Agencies' financing sources for 2018



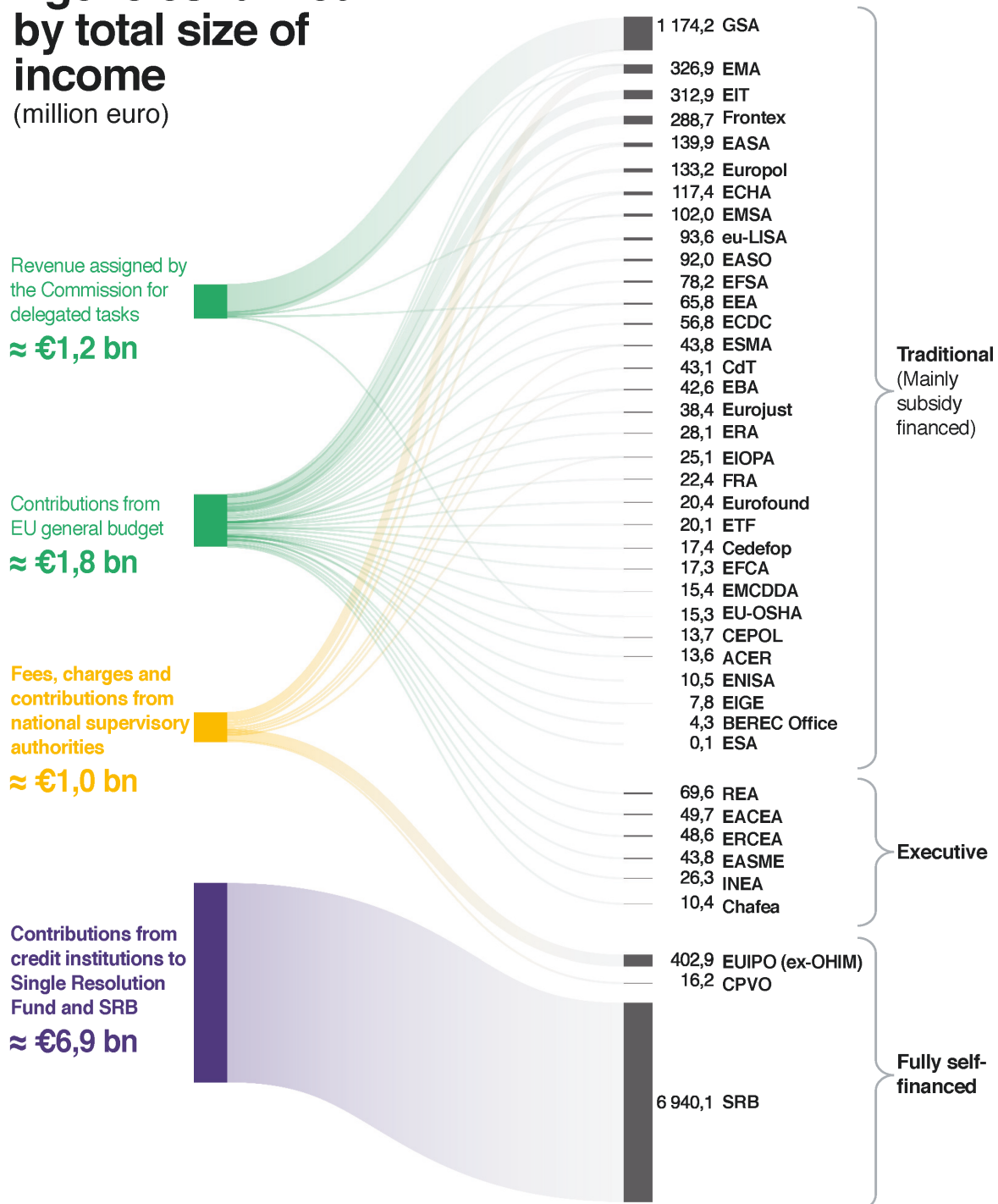
Source: EU general budget 2018 and agencies' budgets 2018, compiled by ECA.

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 countries participating in their activities: Member States, EFTA countries, etc. For the financial year 2018, agencies' budgets were mainly financed by some 1,8 billion euros from the EU general budget, some 1 billion euros by fees, charges and contributions from national supervisory authorities and some 1,2 billion euros as revenue assigned by the Commission for the execution of specific (delegated) tasks. Box 1.4 shows a breakdown of the agencies' budgets by source of revenue.

Box 1.4

Agencies' 2018 budgets by source of revenue

Agencies ranked by total size of income (million euro)



Source: Agencies' budgets 2018, compiled by ECA.

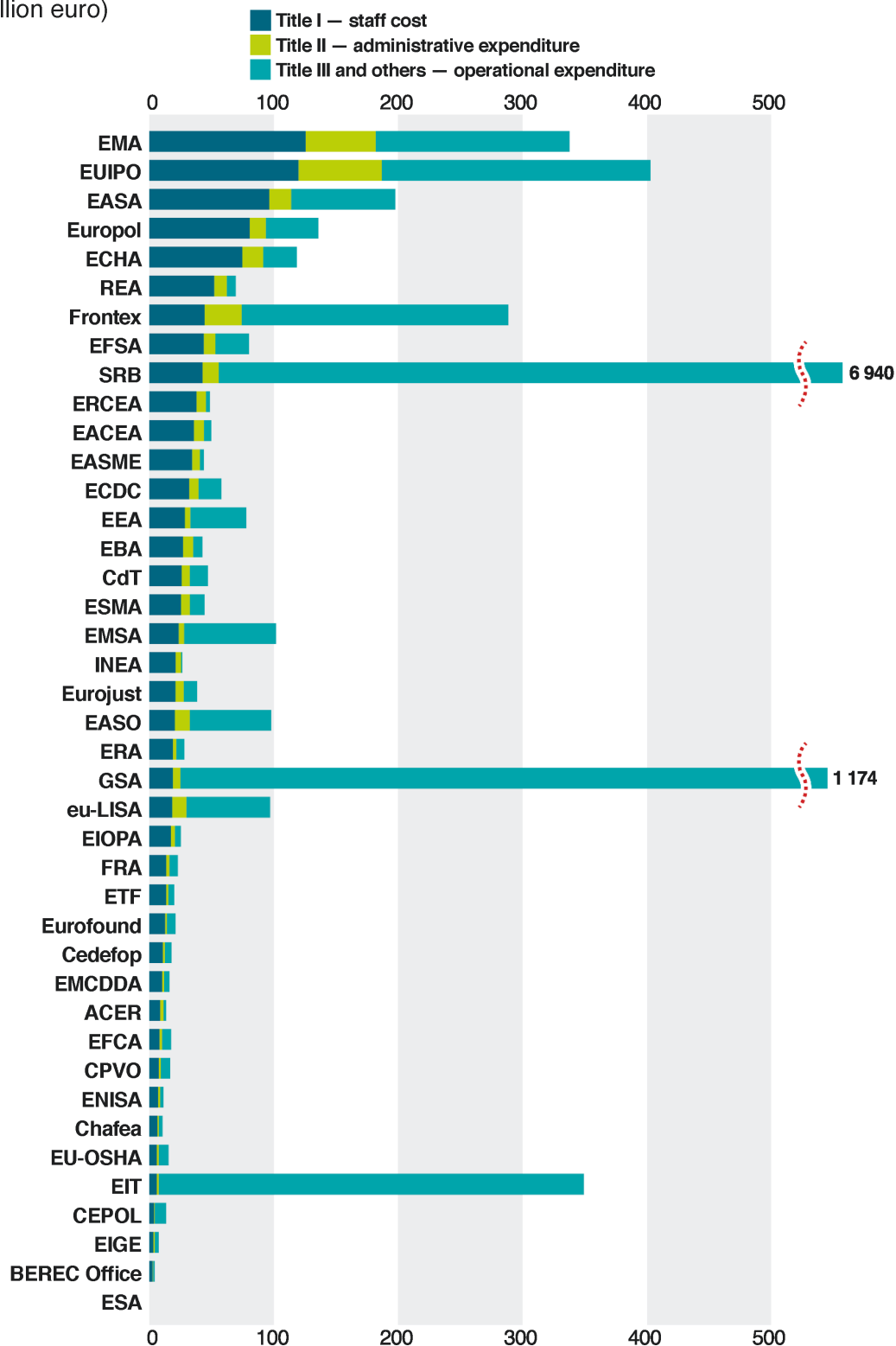
1.19. Box 1.5 below presents the agencies' 2018 budgets as published in the EU Official Journal. They are broken down by type of expenditure (Title I staff cost, Title II administrative expenditure and Title III operational expenditure together with any other titles used), not by activity.

Box 1.5

Agencies' 2018 budgets as published in the EU Official Journal

Budget per title

(million euro)

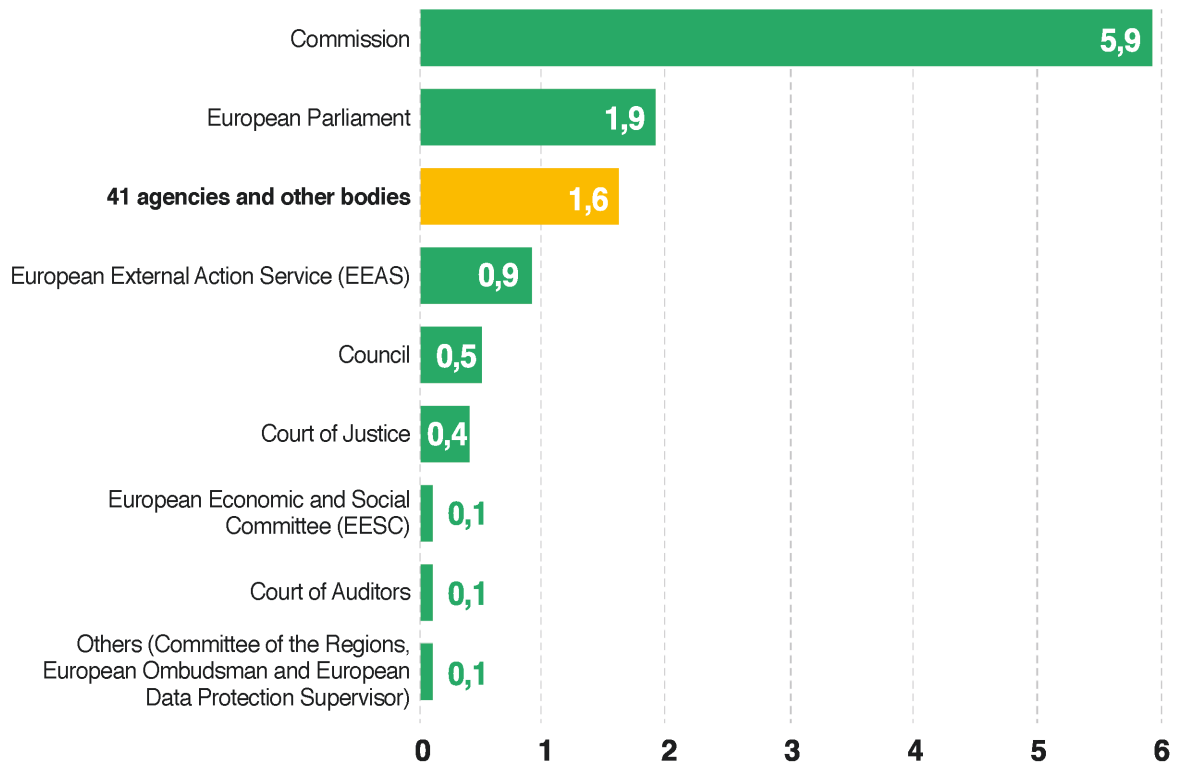


Source: Agencies, compiled by ECA.

1.20. Most of the agencies do not implement big operational spending programmes or other cost intensive operations, but rather deal with tasks of a technical, scientific and/or regulatory nature. Therefore, in most of the cases their budgets consist of staff and administrative expenditure mainly (Box 1.5). Overall, agencies staff and administrative expenditure represent some 14 % of all EU institutions' and other bodies' expenditure of this type (Box 1.6).

Box 1.6

Staff and administrative expenditure (*) of EU institutions and bodies (billion euros) in 2018



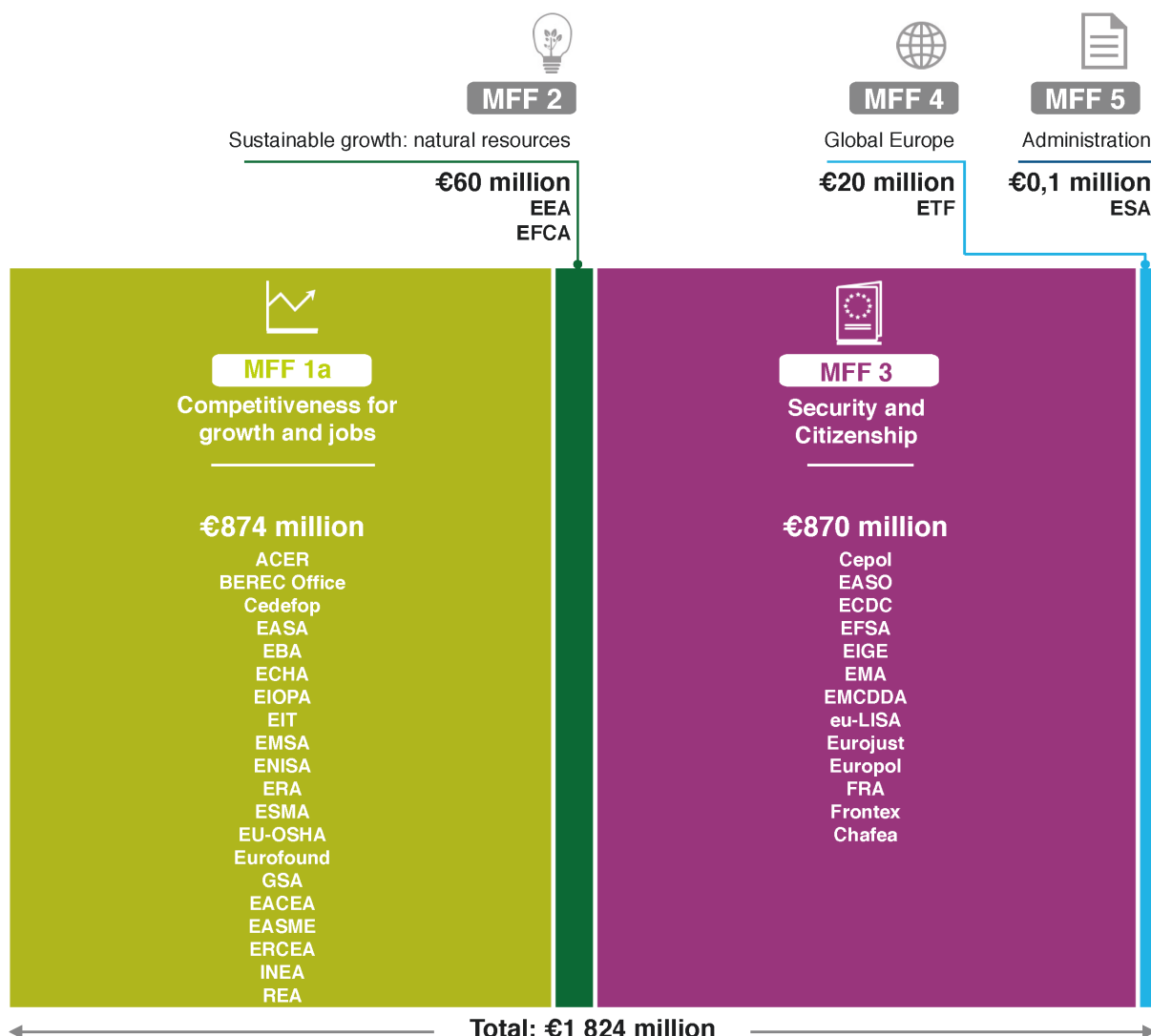
(*) Staff expenditure includes those for staff working both on operational and administrative activities.

Source: 2018 consolidated accounts of the EU.

1.21. The 1,8 billion euros in contributions from the EU general budget are financed under different MFF headings as illustrated in Box 1.7.

Box 1.7

Agency financing by EU general budgets' MFF heading



Source: EU Multiannual financial framework covering the period 2014-2020 and agencies' budgets 2018, compiled by ECA.

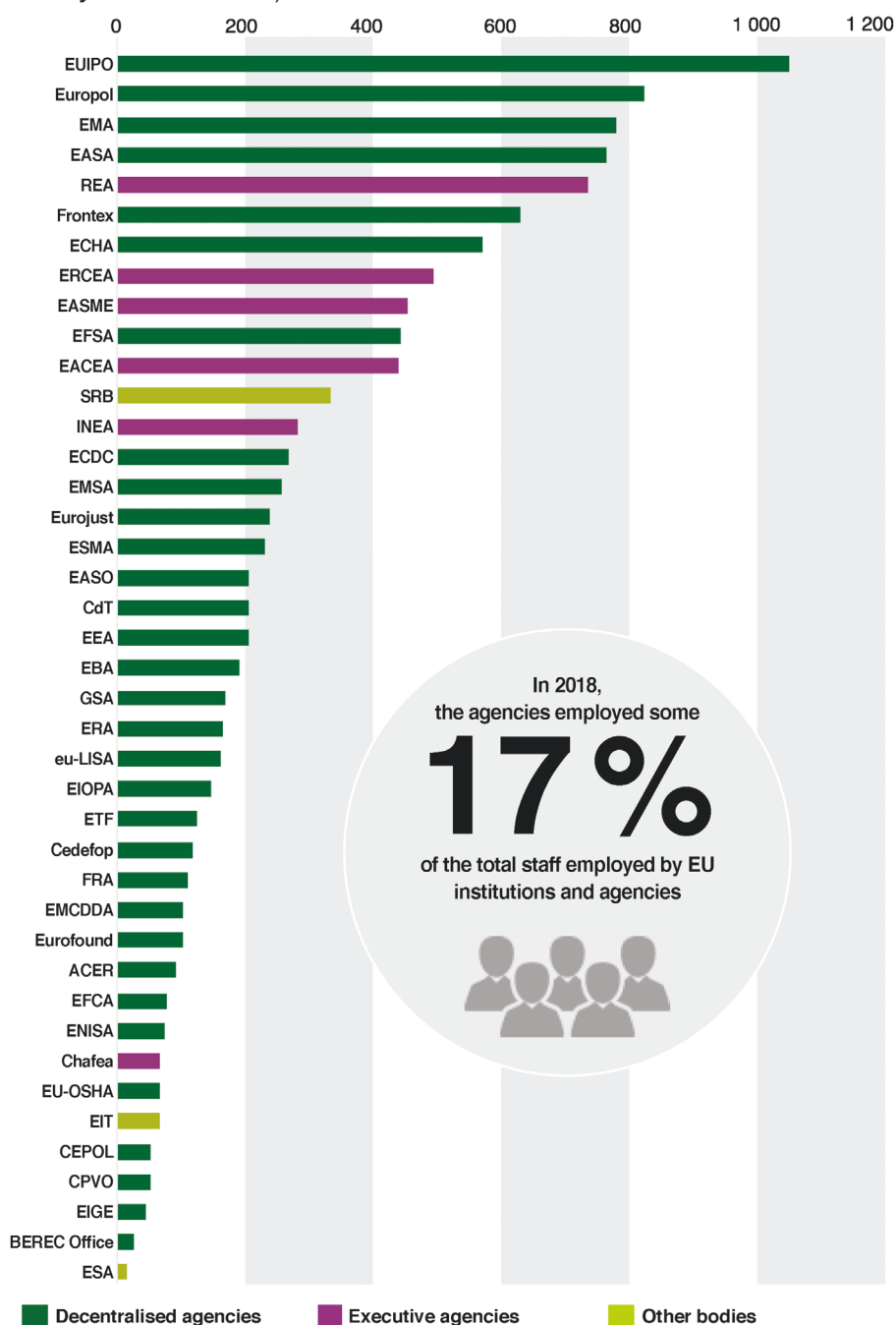
1.22. With regard to staff, at the end of 2018 the agencies employed some 11 400 staff (2017: some 11 000), about one fifth of the total staff employed by EU institutions and agencies. These staff figures include officials, temporary and contract staff as well as seconded national experts. The breakdown of the total staff by agency is presented in Box 1.8. In 2018, in addition to their own staff, agencies also used a considerable number of interim staff from temporary work agencies and consultants working in different areas.

Box 1.8

Numbers of staff per agency at the end of 2018

Staff number

(ranked by number of staff)

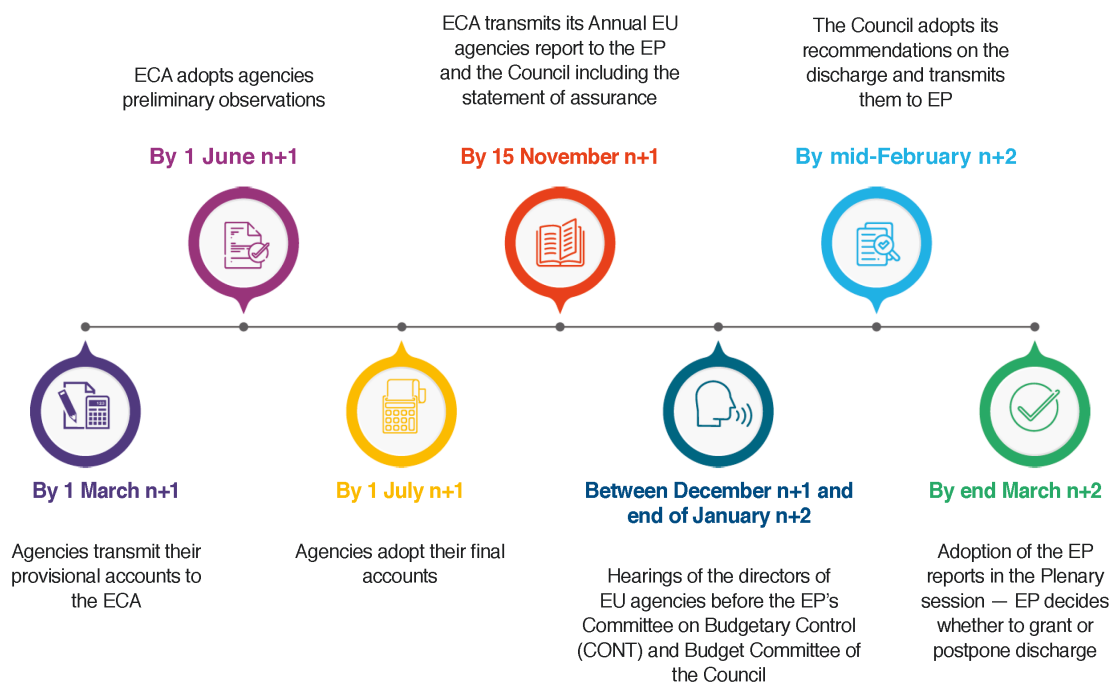


Source: Agencies, compiled by ECA.

Budgetary and discharge arrangements are similar for all agencies, except for EUIPO, CPVO and SRB

1.23. For most decentralised agencies and other bodies and for all Commission executive agencies, the European Parliament and the Council are responsible for the annual budgetary and discharge procedures. The timeline of the discharge procedure is shown in Box 1.9.

Box 1.9

Discharge procedure for most agencies

Source: ECA.

1.24. However, one of the three fully self-financed decentralised agencies (EUIPO) is subject to a discharge procedure by its Budget Committee, but not by the European Parliament and the Council. Similarly, the CPVO's and SRB's (the other two fully self-financed decentralised agencies) annual budgetary and discharge procedures are the responsibility of their Boards.

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

1.25. 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

Our mandate covers annual audits, special audits and opinions

1.26. As required by Article 287 of the Treaty on the Functioning of the European Union (TFEU), we have audited ⁽⁷⁾:

- (1) the accounts of all agencies, which comprise the financial statements ⁽⁸⁾ and the reports on the implementation of the budget ⁽⁹⁾ for the financial year ended 31 December 2018; and
- (2) the legality and regularity of the transactions underlying those accounts.

⁽⁷⁾ ELA and the EPPO were not audited in 2018, as their first year of budget implementation will be 2019.

⁽⁸⁾ 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.

⁽⁹⁾ The reports on implementation of the budget are reports which aggregate all budgetary operations and explanatory notes.

1.27. 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.

1.28. Moreover and pursuant to Article 287(4) of the Treaty on the Functioning of the European Union, we also carry out audits and publish special reports on specific topics. We also deliver opinions at the request of one of the other institutions or bodies of the Union, which provide our views on new or updated laws and regulations with a significant impact on EU financial management. See Chapter 2 of this report, section '*Audit results from other agency-related products issued by the Court*'.

Our audits are designed to address key risks

1.29. All our audits are designed in such a way that they address the key risks identified. The 2018 annual audit of EU agencies' accounts and underlying revenue and payments was carried out in response to our risk assessment, which is briefly presented below.

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

1.30. Overall, we consider the risk to the reliability of the 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. However, the increasing number of delegation agreements with the Commission assigning specific additional tasks and revenue to agencies represents a challenge in terms of the consistency and transparency of the agencies' accounting (and budgetary) treatment.

Risk to the legality and regularity of revenue is low overall, with exceptions

1.31. The risk to the legality and regularity of revenue underlying the accounts is low for the majority of agencies. These are fully financed by contributions from the EU general budget and, as laid down in their regulations, budgets and resulting revenue are agreed with the budgetary authorities during annual budget procedures. However, risk is medium for the (partly) self-financed agencies ⁽¹⁰⁾ where specific regulations are applicable to charging and collecting service fees and contributions from economic operators or cooperating countries.

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

Title I (Staff expenditure)

1.32. 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.

Title II (Administrative expenditure)

1.33. 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. A new risk identified is the increased use of external staff through IT service contracts or from temporary work agencies, for which specific EU and national legal frameworks apply, imposing multiple obligations to user undertakings.

Title III (Operational expenditure)

1.34. 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.

⁽¹⁰⁾ CdT, CPVO, EASA, EBA, ECHA, EIOPA, EMA, ESMA, EUIPO, SRB.

Risk to Sound Financial Management (SFM) is medium overall

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

1.36. The need to have separate administrative structures and procedures for all agencies constitutes an inherent risk to administrative efficiency.

Other risks

1.37. Following the observations raised in previous years and due to the known EU policy developments in certain areas, the risk identified in relation to the level of cooperation of Member States is high for some agencies: Frontex, EASO, ECHA, SRB.

We report suspected fraud to OLAF

1.38. We cooperate closely with the European Anti-Fraud Office (OLAF) in fighting fraud against the EU budget. We forward to OLAF any suspicion of fraud, corruption or other illegal activity affecting the EU's financial interests that we identify in the course of our audit work. These cases are then followed up by OLAF, which decides on any resulting investigation and cooperates as necessary with Member State authorities.

1.39. Although our audits are not designed to specifically search for fraud, we detect cases in which we suspect that irregular or fraudulent activity may have taken place. During 2018, we did not communicate to OLAF any such cases of suspected fraud (2017: 3 cases) that we had identified during our audit work. However, on the request of OLAF, we did provide information on several instances of suspected fraud concerning recruitment procedures in different agencies.

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

1.40. In the agency specific sections of Chapter 3 of this report we also inform about audit reports prepared by the IAS and external evaluations carried out for the agencies in 2018. We did not verify the related audit or evaluation processes.

CHAPTER 2

Overview of audit results**INTRODUCTION**

2.1. This Chapter presents an overview of the results from the Court's annual audits of the agencies for the year 2018 as well as other agency-related audit work carried out by the Court in the course of 2018.

The statements of assurance (audit opinions) on the reliability of the agencies' accounts and the legality and regularity of 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 of this report.

RESULTS FROM THE ANNUAL AGENCY AUDITS FOR THE YEAR 2018 ARE POSITIVE OVERALL

2.2. Overall, our audit of the annual accounts of the agencies for the year ended 31 December 2018 and the revenue and payments underlying them confirmed the positive results reported in previous years.

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

2.3. 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 of 31 December 2018 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 ⁽¹⁾.

Emphasis of matter paragraphs are important for the understanding of the accounts (EBA, EMA, Frontex and SRB)

2.4. Emphasis of matter paragraphs draw the readers' attention to matters of importance that are fundamental to the users' understanding of the accounts. For the financial year 2018, we address emphasis of matter paragraphs for four agencies: **EBA**, **EMA**, **Frontex** and **SRB**.

2.5. For **EBA** and **EMA**, the previously London-based agencies, we draw attention to the fact that they left the UK in 2019 and that their accounts include provisions for the related removal costs. The accounts of EBA for the financial year ended 31 December 2018 include such provisions amounting to 4,7 million euros and a provision for the remaining future contractual payments for the office in London amounting to 10,4 million euros. The accounts for EMA for the financial year ended 31 December 2018 include provisions for removal related costs amounting to 17,8 million euros. The lease agreement for the Agency's previous premises in London sets a rental period until 2039 with no exit clause. On 20 February 2019, the High Court of Justice of England and Wales ruled against EMA's request to cancel the lease. However, the lease agreement allows reassigning or subletting the premises to third parties. When the Agency's final accounts were signed, negotiations between the Agency and potential subtenants were still ongoing and the future net cost of the uncancellable lease agreement was unknown ⁽²⁾. The notes to the Agency's accounts for the financial year ended 31 December 2018 disclose the full amount of 468 million euros in rent remaining to be paid until 2039, of which an amount of 465 million euros for the lease period after the Agency's removal to Amsterdam is disclosed as a contingent liability. Moreover, at the time of our audit of EMA, there was no certainty yet about the total loss of staff following the agency's relocation. This uncertainty represents a significant business continuity risk to the agency. For both EBA and EMA we also referred to possible decreases in revenue following the UK's departure from the EU.

⁽¹⁾ These are based on internationally accepted accounting standards for the public sector.

⁽²⁾ According to the Agency, a sublease with effect from 1 July 2019 was concluded after the closure of 2018 accounts. We did not yet audit the sublease agreement.

2.6. Concerning **Frontex**, the Agency managed financing agreements with cooperating countries for operational activities amounting to 171 million euros (189 million euros in 2017), representing 59 % of the Agency's 2018 budget. A new simplified financing scheme was introduced covering human resources expenditure declared under such financing agreements. In late 2018, the Agency also introduced a new ex-post control system covering all types of expenditure, and modified its system of ex-ante checks embedded in the financial circuits. The Court will assess the impact of these developments in coming audits. However, the reimbursement of equipment-related expenditure (some 35 % of total expenditure for operational activities or some 60 million euros) is still based on actual cost. A pilot project in 2018 to also move to unit cost-based reimbursements for this type of costs has, so far, been unsuccessful in its current form. The Court has consistently reported since 2014 that proof of equipment-related cost claimed by cooperating countries is often insufficient, which was again confirmed by this year's audit results. Frontex's ex ante verifications of these costs are ineffective as long as reimbursements of costs which are not substantiated by supporting documents are continued. In addition, as in the previous year, Frontex did not carry out any ex post verifications, further increasing the risk of unjustified cost reimbursements.

2.7. Concerning the accounts of the **SRB**, we point out that 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 related to decisions on the adoption of resolution schemes were not subject to our audit. Their possible impact on the Board's financial statements for the financial year ended 31 December 2018 (in particular on contingent liabilities, provisions and liabilities) is subject to a specific annual audit and audit results will be published by 1 December 2019, as stipulated under Article 92(4) of the SRM Regulation.

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

2.8. 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 2018. 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

2.9. 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 2018. In our opinion, payments were legal and regular in all material respects for these agencies.

2.10. For **EASO** we issued a qualified opinion in relation to our findings reported for the financial years 2016 and 2017, when we had concluded that contracts on the provision of interim workers in Greece, travel services to the Office and rent for the Office's premises in Lesbos are irregular. Payments made in 2018 under these contracts amounted to 3 405 970 euros (4 % of total 2018 payments). Overall, we conclude that the unsatisfactory situation reported for the year 2017 as regards the Office's governance and internal control arrangements and the legality and regularity of transactions is only slowly improving and that the corrective actions launched by the Office's management still need to be completed. This is also reflected by the fact that the major procurement procedure carried out by the Office in 2018 (contract volume of some 50 million euros) was again irregular due to major weaknesses in the procedure. There were no payments made yet under the related contracts in 2018.

Other matter paragraphs address issues of specific importance (EASO, EBA, ECHA, EIOPA, ESMA, SRB and GSA)

2.11. Other matter paragraphs draw the readers' attention to particular matters of importance not directly linked to the understanding of the accounts.

2.12. For **EBA**, **EIOPA** and **ESMA** we draw 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.

2.13. Furthermore, as identified by **ESMA** already fees charged to credit rating agencies are based on their revenue as legal entities, but not as a group or group of related entities. This creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU. The likely financial effect of this loophole in the regulations is unknown. The Authority correctly applied the Regulation, identified the risk and addressed it to the Commission.

2.14. For **EASO**, we continue to draw attention to the fact that as from the end of 2017, the human resources situation at the Office had deteriorated exponentially. The majority of vacancies were still not filled at the end of 2018. Of particular concern is the lack of managers in the administration department. Overall, this situation causes a significant risk to the continuation of the Office's operations at the current scale.

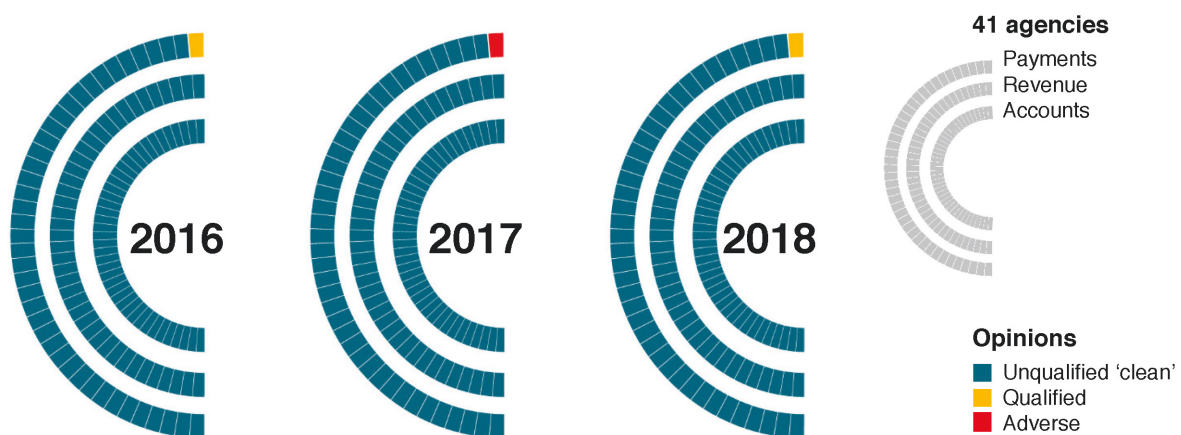
2.15. For **ECHA**, the Court again emphasises that the Agency is partly self-financed and receives a fee from every company applying for the registration of chemicals as required under the REACH Regulation ⁽¹³⁾. The Agency calculates and invoices the fees on the basis of information provided by the 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 2018. This observation demonstrates the limitations of a system that relies excessively on self-declarations made by applicants.

2.16. In the case of the **SRB** we reiterate that the Single Resolution Fund contributions are calculated on the basis of information provided by credit institutions to the Board through the national resolution authorities. Given that the Single Resolution Mechanism Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, no checks are carried out at the level of the credit institutions. However, the SRB performs consistency and analytical checks of the information. 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.

2.17. For the **GSA**, we again draw attention to the fact that the procurement procedure for a Framework Contract for the exploitation of the Galileo satellite system during the period 2017 to 2027, amounting to 1,5 billion euros has been challenged by one of the tenderers. 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 2018 financial statements, together with the information that 121 million euros, representing 10 % of the 2018 budget including amounts received through delegation agreements, have been paid under the framework contract.

Box 2.1

2016-2018 annual audit opinions on agencies' accounts, revenue and payments



Source: ECA.

⁽¹³⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Our observations address areas for improvement in 36 agencies

2.18. In addition to the opinions and accompanying 'Emphasis of matter' and 'Other matter' paragraphs, we also made around 100 observations concerning 36 agencies to address areas where further improvements are needed. Most of these observations concern shortcomings in public procurement procedures, as was the case in previous years.

Public procurement management remains the most error-prone area

2.19. The objective of public procurement rules is to ensure fair competition between economic operators and to achieve the most economically advantageous purchases, thereby respecting the principles of transparency, proportionality, equal treatment and non-discrimination.

2.20. Our samples for the 2018 audit included framework, specific and direct contracts covered all agencies. These contracts in 27 agencies worth in total 221 million euros (related 2018 payments of 18 million euros) were affected by public procurement shortcomings of different kinds. However, there is only one agency (EASO) where the irregularities on public procurement procedures and the related payments have led to a qualified audit opinion (see *paragraph 2.10*).

Frequent procurement related findings

2.21. In relation to the *legality aspect* (**CPVO, EASA, EASO, EIGE, EMCDDA, ERA, EUIPO, eu-LISA, Eurojust, Europol, REA, SRB**) recurrent ⁽¹⁴⁾ shortcomings refer to the excessive and non-justified use of negotiated procurement procedures without prior publication of contract notice; mistakes in the tender specifications, extensions of contract duration and increases of the initial contract price beyond the legal limit, financial inconsistencies between framework and specific contracts and the conclusion of contracts without evidence on exclusion criteria for tenderers.

Box 2.2

Example of a non-justified use of negotiated procurement procedure without prior publication of contract notice

Following a negotiated procurement procedure without prior publication of a contract notice, an agency signed a 3-year IT framework contract (FWC) with a company which had provided the same services under a previous FWC. The FWC was signed for a total amount of 450 000 euros (150 000 euros per year). Under the Financial Regulation, such simplified procedure is only acceptable under specific circumstances which were not substantiated by the agency.

2.22. In relation to *sound financial management* observations (**BEREC Office, Cedefop, CEPOL, EBA, ECHA, EEA, EIOPA, EMCDDA, ESMA, ETF, EUIPO, Frontex**), recurrent ⁽¹⁵⁾ shortcomings refer to the excessive dependency on contractors, external consultancy and interims; to the use of inadequate award criteria and the conclusion of contracts with abnormally low tenderers without reasonable justification. Several EU agencies have outsourced, extensively, regular activities and occasionally core business activities, which weakens the internal expertise and control over contract execution. Some EU agencies have not ensured a sound balance between price and quality award criteria, namely because the price components did not have a sufficient competitive nature. In other cases, contracts were awarded to tenderers whose prices were significantly lower than those of other candidates, without having analysed the reasons for the potentially abnormally low offers and without having obtained the formal and substantial evidence enabling such derogation. Ultimately, these weaknesses may impair fair competition and the achievement of best value for money procurements.

⁽¹⁴⁾ Similar observations were made for several agencies in previous years' audit reports.

⁽¹⁵⁾ Similar observations were made for several agencies in previous years' audit reports.

Box 2.3

Example of dependency on contractors

Under several framework contracts with the same company, an agency paid 793 000 euros for the purchase of various types of services (clerical and secretarial support, organisation of events, wellbeing and integration of staff, etc.). This amount represents 37 % of its non-salary related 2018 budget, indicating that the agency is dependent on external resources and on one company. This creates a risk to business continuity.

2.23. In relation to procurement related *internal controls* observations (**ECDC, EFCA, EIT, EMSA, ERA, Eurofound**), we refer to an inter-institutional framework contract for the provision and maintenance of IT equipment put in place by the Commission and used by several agencies. The terms of this contract were weak in so far as they allowed the purchase of items not specifically mentioned therein and not subject to an initial competitive procedure. It also allowed the contractor to charge uplifts on the prices of items purchased from other suppliers. Although agencies have no power to change the basic contractual arrangements, we found that their related ex ante controls did not always check that the contractor offered the most suitable solutions for competitive prices, nor the accuracy of the up-lifts charged by the contractor. The weak contractual arrangements in combination with the partially weak internal controls did not ensure best value for money procurements. The framework contract has expired in the meantime and the succeeding contract is better designed, thereby addressing our finding.

Actions to be taken 1

Public procurement errors remain the most frequent type of errors detected through our audits. The agencies are encouraged to further improve their public procurement procedures, ensuring full compliance with the applicable rules and best value for money procurements.

Actions to be taken 2

When using inter-institutional contracts, agencies remain responsible for the application of public procurement principles for their specific purchases. Agencies' internal controls must ensure they are respected.

The use of framework contracts by some of the agencies may limit competition

2.24. Framework contracts are agreements with suppliers to establish terms governing specific purchases during the life of the agreement. They are used for a precisely defined subject, but where the exact quantities and delivery times cannot be indicated in advance. The main reason for the use of framework contracts is to achieve administrative efficiency and economies of scale. However, we identified cases (EASA and EUIPO) where the use of large framework contracts covering a multitude of different services caused a risk to competition. This is particularly the case when the actual services to be provided during the lifetime of the agreement cannot be clearly specified at the time of the initial procurement procedures, which is typically the case for services like IT and business consulting.

Box 2.4

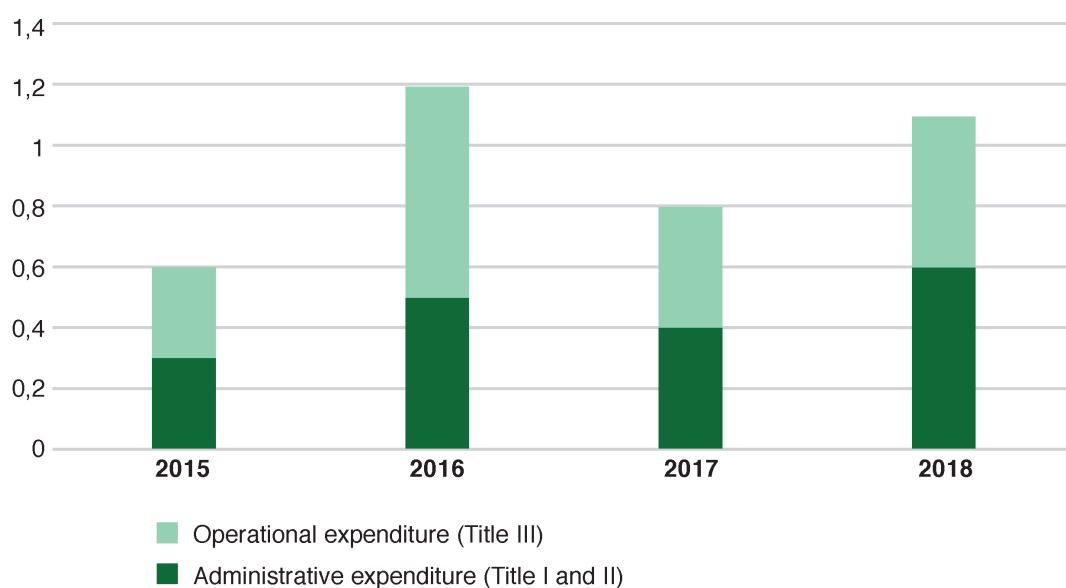
Example of a FWC lacking specifications

For the procurement of data analytics services for a volume of up to 5 million euros, one agency chose to use a framework contract with a single operator resulting from an open procedure. However, the terms used in the framework contract were not specific enough to allow fair competition, because the concrete requirements concerning the services to be provided were not yet known at the time of the procurement procedure. According to the rules of application of the Financial Regulation, in such circumstances, the contracting authority has to award a framework contract to multiple operators and a competitive procedure between the selected contractors must be held for the specific purchases.

2.25. Box 2.5 shows values of FWC signed by the agencies between 2015 and 2018. In 2018, the agencies signed multi-annual framework contracts totalling some 1,1 billion euros ⁽¹⁶⁾.

Box 2.5

Total value of FWCs signed between 2015-2018 (billion euros)



Source: Agencies' network, compiled by ECA.

Actions to be taken 3

The use of framework contracts must not hinder a fair and competitive procurement procedure. Competition on price must take into account all major price elements, such as unit prices and the related quantity of units to be charged for the specific services.

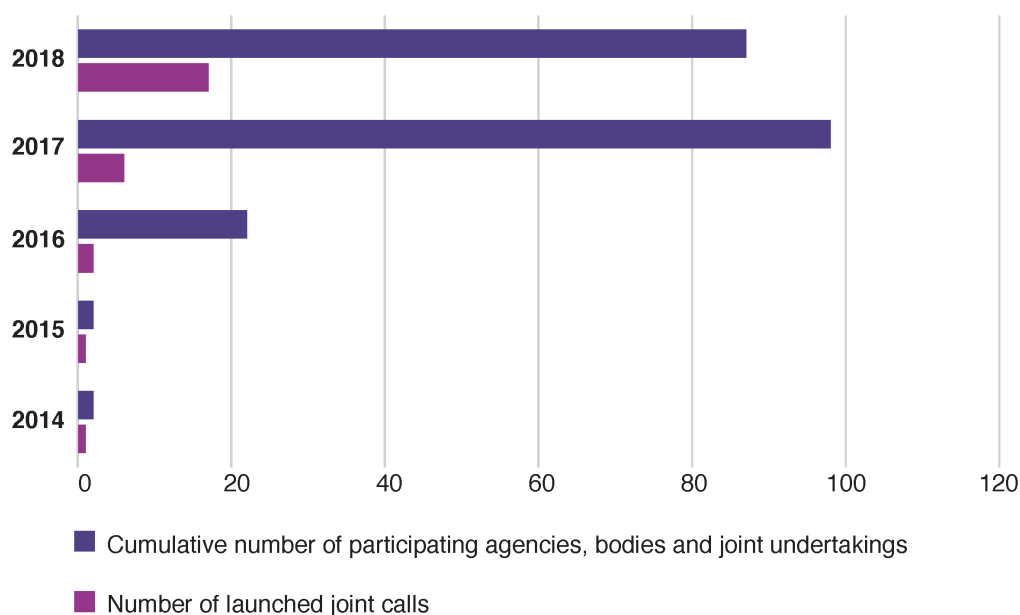
Joint procurement procedures may achieve efficiency gains and economies of scale

2.26. The 35 decentralised agencies and other bodies, together with the eight EU joint undertakings (EU bodies), also push for increased administrative efficiency and economies of scale through an increased use of joint procurement procedures where two or more agencies and joint undertakings in need of similar services carry out a procurement procedure jointly and together they become owners of the contract (Box 2.6). The number of joint calls for tenders launched by EU bodies increased from 1 to 17 between 2014 and 2018 and by the end of 2018 30 EU bodies had participated in one or more joint procurements ⁽¹⁷⁾. However, despite the promising trend, attempts for joint procurement procedures were not always successful, for instance due to inadequate market analysis.

⁽¹⁶⁾ Figure provided by the Network of EU agencies (EUAN).

⁽¹⁷⁾ Figures provided by the Network of EU agencies (EUAN). Because of their administrative link to the Commission, the executive agencies and ESA usually participate in the procurement procedures launched by the Commission.

Box 2.6

Substantive increase in number of joint calls

Source: Agencies' network, compiled by ECA.

Box 2.7

Examples of unsuccessful joint procurements

In the absence of appropriate market analysis for two pan-European calls for telecommunication and for banking services, no compliant offers covering the required local markets were received and the procedures failed, causing administrative inefficiency. Also, despite the common location of two agencies, the joint procurement procedure for their new premises was not successful.

Actions to be taken 4

Agencies are encouraged to continue using joint procurement procedures or inter-institutional framework contracts, in order to achieve efficiency gains and economies of scale. For new agencies like EPPO and ELA, participating in joint procurements instead of establishing their own, stand-alone contracts, can be particularly beneficial. However, before launching joint procurement procedures and spending the related administrative efforts, market analysis should prove the feasibility of a joint procedure.

Temporary agency workers and consultants are not always used in compliance with the legal framework

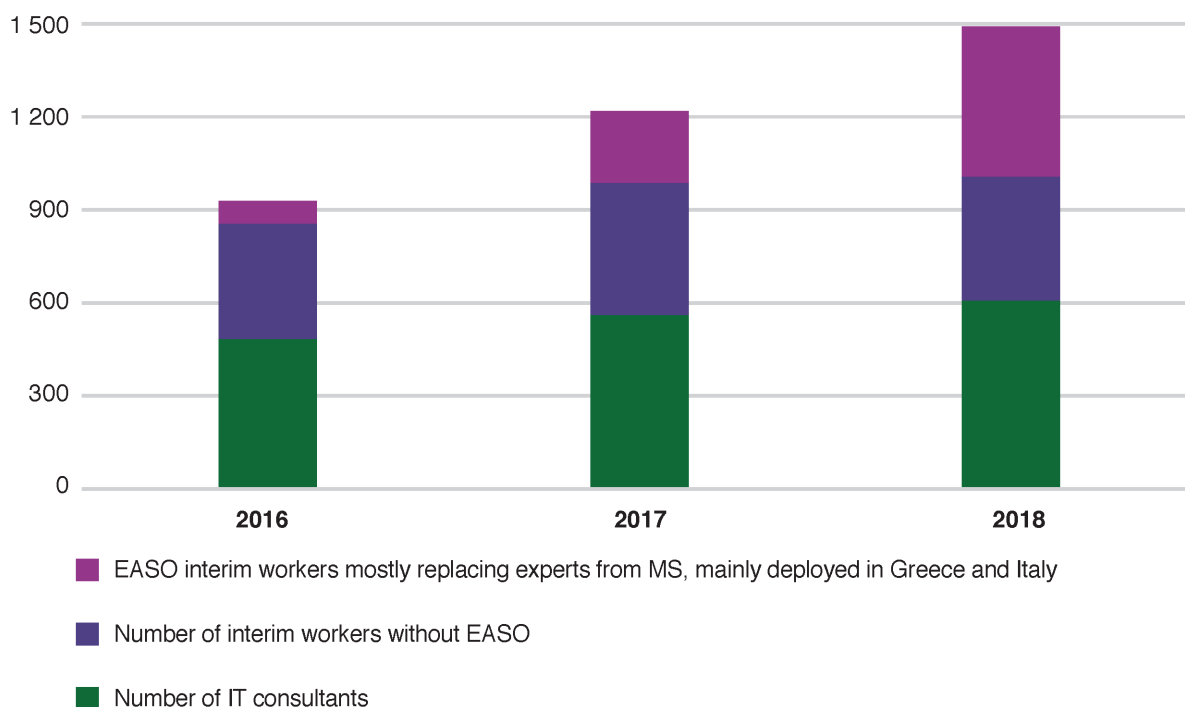
2.27. In 2017, the Court issued a rapid case review ⁽¹⁸⁾ on how EU institutions and agencies implemented the commitment made to cut 5 % of staff in their establishment plans during the period 2013-2017 (for agencies 2014-2018). For the agencies, we concluded that the 5 % reduction had been implemented, albeit with some delays.

⁽¹⁸⁾ Rapid case review on the implementation of the 5 % reduction of staff posts; published on 21 December 2017.

2.28. It is in this context that this year's observations on the use of consultants and interim workers by some of the agencies are of particular importance. While we did not audit the use of external staff horizontally for all agencies, payments in our audit samples indicate a trend to compensate shortages of own statutory staff by external staff. Box 2.8 presents information collected by the Network of EU agencies (EUAN) on the increasing number of IT consultants working in the premises of the agencies and other bodies on times and means contracts and interim staff used by the 33 agencies who replied to a respective survey.

Box 2.8

Number of IT consultants and interim agents (33 agencies)



Source: Network of EU agencies (EUAN), figures compiled by ECA.

2.29. For eight agencies (**BEREC Office, Chafea, CPVO, EASO, ERCEA, ESMA, SRB, EUIPO**), we found that they used contracts on the provision of IT and other consultancy services which were formulated and/or implemented in a way that, in practice, might result in the assignment ('mise à disposition') of temporary agency workers instead of the provision of clearly specified services or products. The provision of interim workers can only be done through contracts with registered temporary work agencies and in accordance with Directive 2008/104/EC of the European Parliament and of the Council ⁽¹⁹⁾, and according to the specific rules adopted by the Member States in the transposition of that Directive. The use of service contracts for the provision of labour is not compliant with the EU Staff Regulations and EU social and employment rules and exposes these agencies to legal and reputational risks.

2.30. Furthermore, seven agencies (**EASO, EBA, EIOPA, EIGE, EMCDDA, ERCEA, SRB**) engaged in the use of interim workers provided by registered temporary work agencies, but did not respect all the rules laid down in both the Directive and in the respective national law, for instance as regards working conditions for interim workers.

Actions to be taken 5

The agencies may analyse, together with the budgetary authorities, whether the use of external staff is cost efficient as compared to the use of own statutory staff.

⁽¹⁹⁾ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

Actions to be taken 6

Where external staff is used, full compliance with the applicable EU and national legal framework is required as a matter of principle, but also to avoid litigation risks and reputational damage.

Consultancy and non-consultancy services in EUIPO

2.31. Given the scale of consulting services used by EUIPO, we carried out an analysis of the Office's management of consulting services. The main contract for consultancy services has a volume of 80 million euros for four years. The number of external staff provided by service providers under these and similar contracts went up from around 250 in 2011 to a peak of more than 350 in 2014 falling to 215 at the beginning of 2018 (equal to some 20 % of the Office's statutory staff).

2.32. We noted that, while a part of the services delivered under these contracts is indeed consultancy (for example project management support, business process analysis), another part is rather on administrative support (for example secretarial support, administrative clerks preparing reports, support for internal and external communication activities). The latter part represents a purchase of labour or loan of staff, which is strictly regulated by European and national labour law. Only registered temporary work agencies are authorised to make external staff available and such service cannot be provided by consultancy companies.

The implementation of a new internal control framework is on the way

2.33. Internal control applies to all financial and non-financial activities and is a process that helps an organisation to achieve its objectives and sustain performance, respecting rules and regulations. It supports sound decision making, taking into account risks to achieve objectives and reduce them to acceptable levels through cost-effective controls. In April 2017, the Commission approved a revised internal control framework (ICF).

2.34. The new ICF is designed to provide reasonable assurance regarding the achievement of five objectives set in the Financial Regulations: (1) effectiveness, efficiency and economy of operations; (2) reliability of reporting; (3) safeguarding of assets and information; (4) prevention, detection, correction and follow-up of fraud and irregularities, and (5) adequate management of the risks relating to the legality and regularity of the underlying transactions. It supplements the Financial Regulation with a view to align internal control standards to the highest international standards as set by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) framework.

2.35. As was the case for the Commission's internal control standards which are being replaced by the ICF, entrusted bodies such as agencies are expected to implement the ICF by analogy. By the end of 2018, the boards of 29 agencies had adopted the ICF while 15 agencies also reported its implementation.

Actions to be taken 7

The adoption and implementation of the Commission's Internal Control Framework (2017) by all agencies is a necessity in order to align internal control standards to the highest international standards and make sure internal controls support decision making effectively and efficiently.

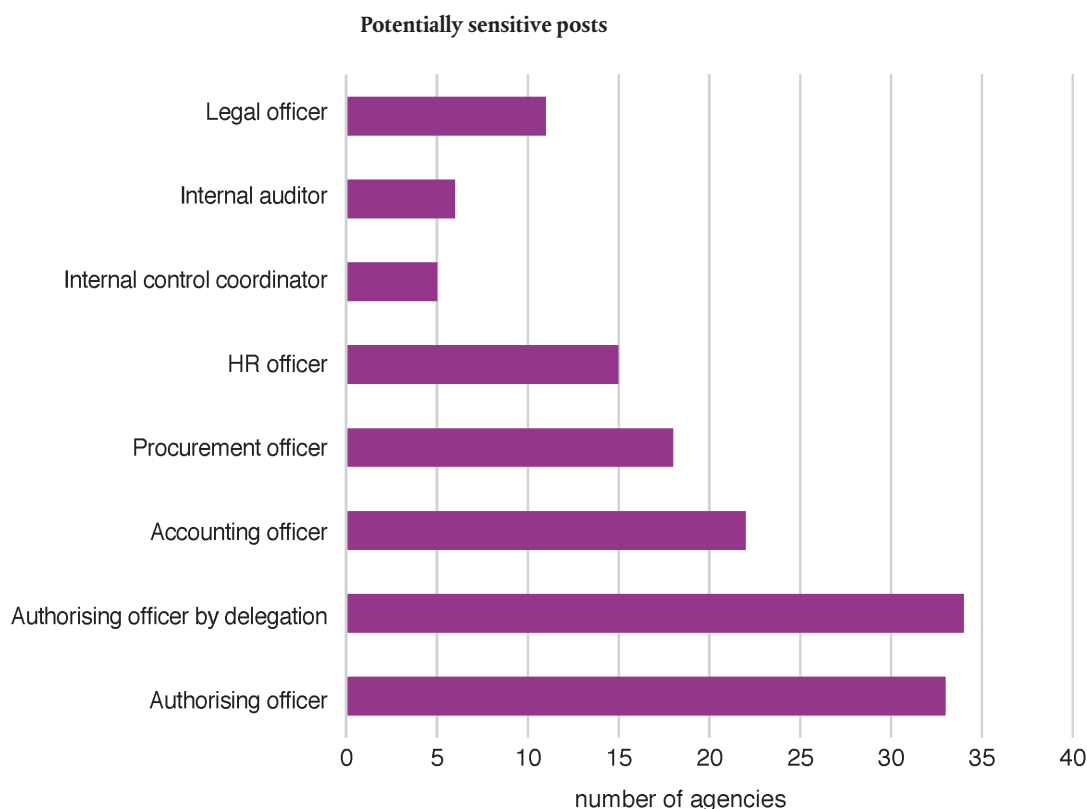
Not all agencies have a sensitive posts policy in place

2.36. Management of sensitive functions is a standard element of internal control, which aims to reduce the risk of the misuse of powers delegated to staff to an acceptable level. Sensitive functions are those where a member of staff executing an activity has a degree of autonomy and/or decisional power sufficient to permit them, should they so wish, to misuse these powers for personal gain ⁽²⁰⁾. In an effective internal control framework, risks associated with sensitive functions are managed through mitigating controls and ultimately staff mobility. We found that seven agencies (**EASO**, **EASME**, **ECHA**, **EEA**, **ENISA**, **Frontex**, **SRB**) do not have policies in place defining their sensitive functions and related mitigating controls.

⁽²⁰⁾ European Commission (SEC 2008 (77)), Guidance on sensitive functions, 19 December 2007.

2.37. Even though agencies have a similar administrative structure and the roles of the financial actors are governed by similar financial regulations, they apply different interpretations of what posts should be considered potentially sensitive. Box 2.9 below shows the number of agencies that consider a specific post potentially sensitive.

Box 2.9



Source: ECA.

2.38. The main controls put in place by agencies in order to mitigate sensitive posts related risks are the segregation of duties and application of the 4-eyes-principle for the initiation and authorisation of transactions. However, a policy of mandatory mobility for staff holding sensitive posts exists in one third of the agencies only.

Actions to be taken 8

The agencies are invited to agree on which posts are to be considered sensitive and to introduce or align their sensitive posts policies in order to mitigate the risk of misuse of powers for personal gain.

There is scope for more meaningful budget structure and reporting

2.39. As in previous years, the number and volume of delegation and grant agreements concluded between the Commission and a number of agencies has further increased in 2018. Under these agreements, agencies receive funds from the Commission assigned for the execution of specific tasks on behalf of the Commission.

2.40. Although these funds become part of the budget revenue (assigned revenue) of the agencies concerned, they can be used only for the purposes defined in the delegation agreements. If tasks last for more than one year, agencies are supposed to keep the part of the funds not spent at the end of the year in order to use them for the remaining tasks to be delivered until the end of the agreement. Only then, remaining funds have to be returned to the Commission. As a consequence, these funds have to be eliminated from the calculation of the agencies' 'own' annual budgetary result, which forms part of their financial statements. Most of the agencies include a correction figure to this effect in their calculations of the budget result. However, with the increasing number and volume of these agreements, we see the need for a more comprehensive and standardised reporting on assigned revenue and related expenditure for the calculation of agencies' budgetary results.

Actions to be taken 9

In order to increase the transparency of budgetary reporting, agencies implementing assigned revenue are encouraged to include in their financial statements a standardised overview disclosing the assigned revenue and related expenditure per Commission delegation agreement.

2.41. Furthermore, the planning procedures implemented by all agencies and resulting in annual and multi-annual work programmes (or single programming documents) are based on activities. For each of these activities, specific work programmes have to contain information on the resources planned (human and financial). However, we noted that the published budgets of all agencies are presented by type of expenditure (staff expenditure, administrative expenditure and operational expenditure, *see Box 1.5 in Chapter 1*), but not by activity. As a consequence, resources spent for the different activities are not visible.

Actions to be taken 10

A publication of agency budgets by activity would allow linking resources to the activities they are used for.

There are risks to the correct calculation of registration and service fees

2.42. A number of agencies (**CdT**, **CPVO**, **EASA**, **EBA**, **ECHA**, **EIOPA**, **EMA**, **ESMA**, **EUIPO**, **SRB**) collect revenue from service or registration fees charged to economic operators (*see Chapter 1, boxes 1.3 and 1.4*). We noted risks concerning the correct calculation of such fees.

2.43. **ECHA** receives a fee from every company requesting the registration of chemicals ⁽²¹⁾ which depends on the size of the companies (micro, small, medium, large) and the volume of chemicals (different thresholds) registered. Based on ECHA's own verifications carried out since 2011 and completed so far, some 52 % of the companies checked, which claimed to be of a micro, small or medium size (11 % of all companies) had categorised their size incorrectly resulting in lower fees ⁽²²⁾. While the Agency has made considerable progress in recovering undue fee reductions and collecting overdue administrative charges, the verification work is still causing a significant workload in terms of identifying and correcting these cases. Furthermore, the quantities of chemicals to be registered form an important element for the calculation of the registration fees. However, ECHA has no verification rights as to the accuracy of these quantities, which are with the Member States.

2.44. The fees charged by **ESMA** to credit rating agencies are based on their revenue as legal entities, but not as a group or group of related entities. A gap in the related fees regulation creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under the EU jurisdiction to their related entities outside the EU. The Authority correctly applied the regulation, identified the risk and addressed it to the Commission.

2.45. Credit institutions' contributions to the Single Resolution Fund managed by the **SRB** are calculated on the basis of information provided by the credit institutions to the Board through the national resolution authorities. Given that the Single Resolution Mechanism Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, no checks are carried out at the level of the credit institutions. However, the SRB performs consistency and analytical checks of the information. Furthermore, 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.

Actions to be taken 11

The agencies concerned are invited to consult the Commission concerning any need to adjust the legal framework in order to ensure fee calculations on the basis of accurate information reflecting economic reality.

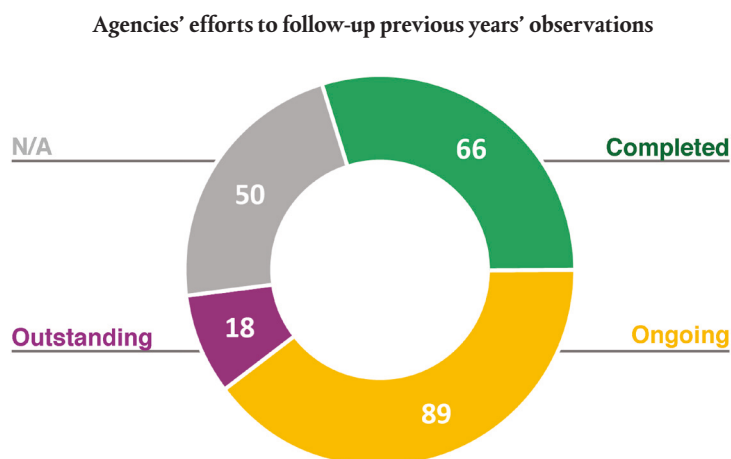
⁽²¹⁾ No fee is levied for registrations of a substance in a quantity of between 1 and 10 tonnes under certain conditions.

⁽²²⁾ In 4 % of cases checked, the wrong size meant that the company had self-declared too large of a size and was entitled to a refund.

Agencies are following-up on previous years' audit findings

2.46. We provided a status on follow-up actions taken by the agencies in response to observations from previous years. Box 2.10 shows that for the 223 observations that had not been addressed at the end of 2017, corrective action was completed or ongoing in most cases in 2018. Out of the 107 outstanding and ongoing observations, the necessary corrective action to address 13 observations was not under the agency's (sole) control.

Box 2.10

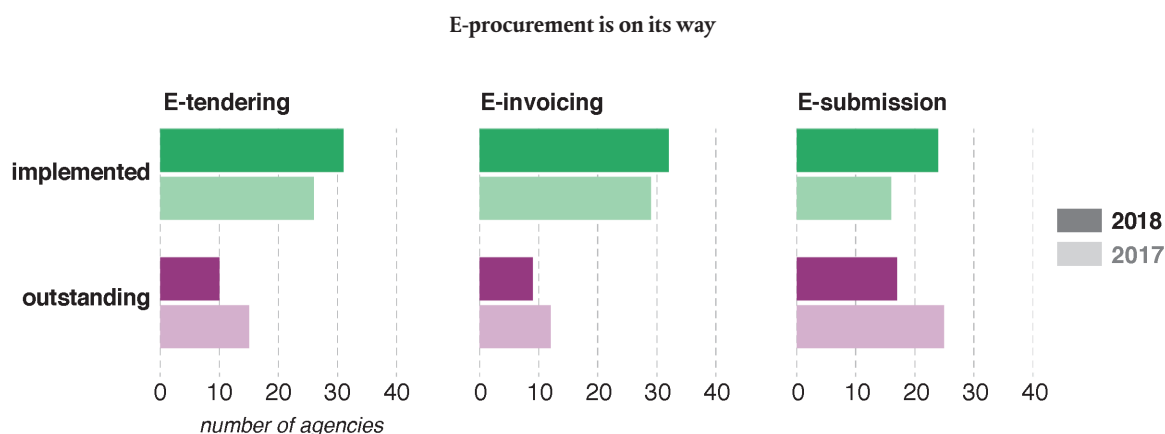


Source: ECA.

2.47. In the course of last year's annual audit, we reviewed agencies' accounting environments, which are an important element for the preparation of reliable accounts. We raised observations on the independence of accounting officers in the execution of their duties for 13 agencies. Following the Court's observations, the majority of agencies addressed the issue in 2018, except for two (**EACEA**, **EFSA**). A similar trend was observed concerning outstanding (re) validations of accounting systems. All seven agencies for which we reported such a need in 2018 had completed corrective action in 2018.

2.48. Good progress was also made in relation to the introduction of e-procurement. As reported last year, 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). Box 2.11 below shows the progress made in introduction of the tools by the end of 2018.

Box 2.11

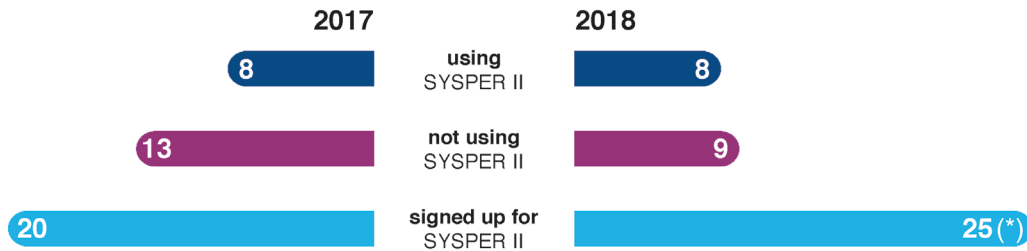


Source: ECA.

2.49. Some progress was also made in 2018 in relation to the introduction of SYSPER II, the HR management tool on human resources developed by the Commission. Box 2.12 below shows that in 2018 five additional agencies signed up for the tool. The Commission reported good cooperation with the agencies in general. However, the project being complex and each agency having its own specificities, the progress in the implementation of the SYSPER II varies. Some agencies struggle to assign the necessary resources to the project and thus are facing some delays.

Box 2.12

Introduction of SYSPER II HR tool



(*) Figure in the last line for 2018 includes also EPPO.

Source: ECA.

Not all agencies are subject to the same budgetary and discharge procedure

2.50. Unlike other agencies, the fully self-financed decentralised agency EUIPO is subject to discharge procedure by its Budget Committee, rather than by the European Parliament and the Council (*see Chapter 1, paragraphs 1.23 and 1.24*). Similarly, for the other two fully self-financed agencies SRB and CPVO, the annual budgetary and discharge procedures are the responsibility of their Boards. These different procedures are provided by their founding regulations.

2.51. These are self-financed agencies and bodies, whose budgets do not form part of the general budget of the Union, however their revenue stems from the exercise of a public authority on the basis of EU law. Thus, the ECA has consistently stated that the same principles of accountability and transparency should be applied to all EU-related bodies. For EUIPO, the ECA expressed concerns about the Office's budgetary discharge procedure in its opinions issued in 2015 ⁽²³⁾ and 2019 ⁽²⁴⁾. For SRB ⁽²⁵⁾ and CPVO ⁽²⁶⁾, the Court equally addressed its concerns in opinions published in 2015.

AUDIT RESULTS FROM OTHER AGENCY-RELATED PRODUCTS ISSUED BY THE COURT

ECA Special report No 29/2018: EIOPA made an important contribution to supervision and stability in the insurance sector, but significant challenges remain

2.52. EIOPA was established in 2011, following the reform of EU financial sector supervision after the financial crisis of 2007-2008. EIOPA acts as an independent advisory body to the European Commission, the Parliament and the Council.

2.53. In a special audit carried out in addition to our annual financial and compliance audit of EIOPA, we examined whether the authority makes an effective contribution to supervision and financial stability in the insurance sector. In particular, we analysed EIOPA's actions in the field of supervision and supervisory convergence (co-operation with National Competent Authorities (NCAs), their work on internal models and cross-border business), the 2016 insurance stress test as well as the adequacy of EIOPA's resources and governance.

2.54. Our overall conclusion is that EIOPA has made good use of a wide range of tools to support supervisory convergence and financial stability. However, there are still significant challenges to be addressed by EIOPA itself, by national supervisors and by legislators, for example in the context of the European Supervisory Authorities' (ESAs) and Solvency II reviews. Moreover, we recommended that for improving the efficiency and effectiveness of EIOPA's actions, the Authority should strengthen human resources assigned to supervision.

2.55. The full audit conclusions, together with the related recommendations and the authority's replies, are addressed in our Special report No 29/2018 which is available on our website eca.europa.eu

⁽²³⁾ See ECA Opinion No 5/2015 concerning the proposal for an amended Regulation of the Budget Committee of the Office for Harmonisation in the Internal Market laying down the financial provisions applicable to the Office.

⁽²⁴⁾ See ECA Opinion No 1/2019 concerning the proposal for regulation BC-01-2019 of the Budget Committee of the European Intellectual Property Office laying down the financial provisions applicable to the Office.

⁽²⁵⁾ See ECA Opinion No 3/2015 on a proposal for the Financial Regulation of the Single Resolution Board laying down the financial provisions applicable to the Board.

⁽²⁶⁾ See ECA Opinion No 2/2015 on a proposal for an amended of the Financial Regulation of the Community Plant Variety Office.

ECA 2017 specific annual report pursuant to Article 92(4) of Regulation (EU) 806/2014 on any contingent liabilities arising as a result of the performance by the Single Resolution Board, the Council and the Commission of their tasks under this Regulation for financial year 2017

2.56. Pursuant to Article 92(4) of the SRM Regulation we audit annually the existence of any contingent liabilities arising as a result of the performance by the Single Resolution Board, the Council and the Commission of their tasks under this Regulation.

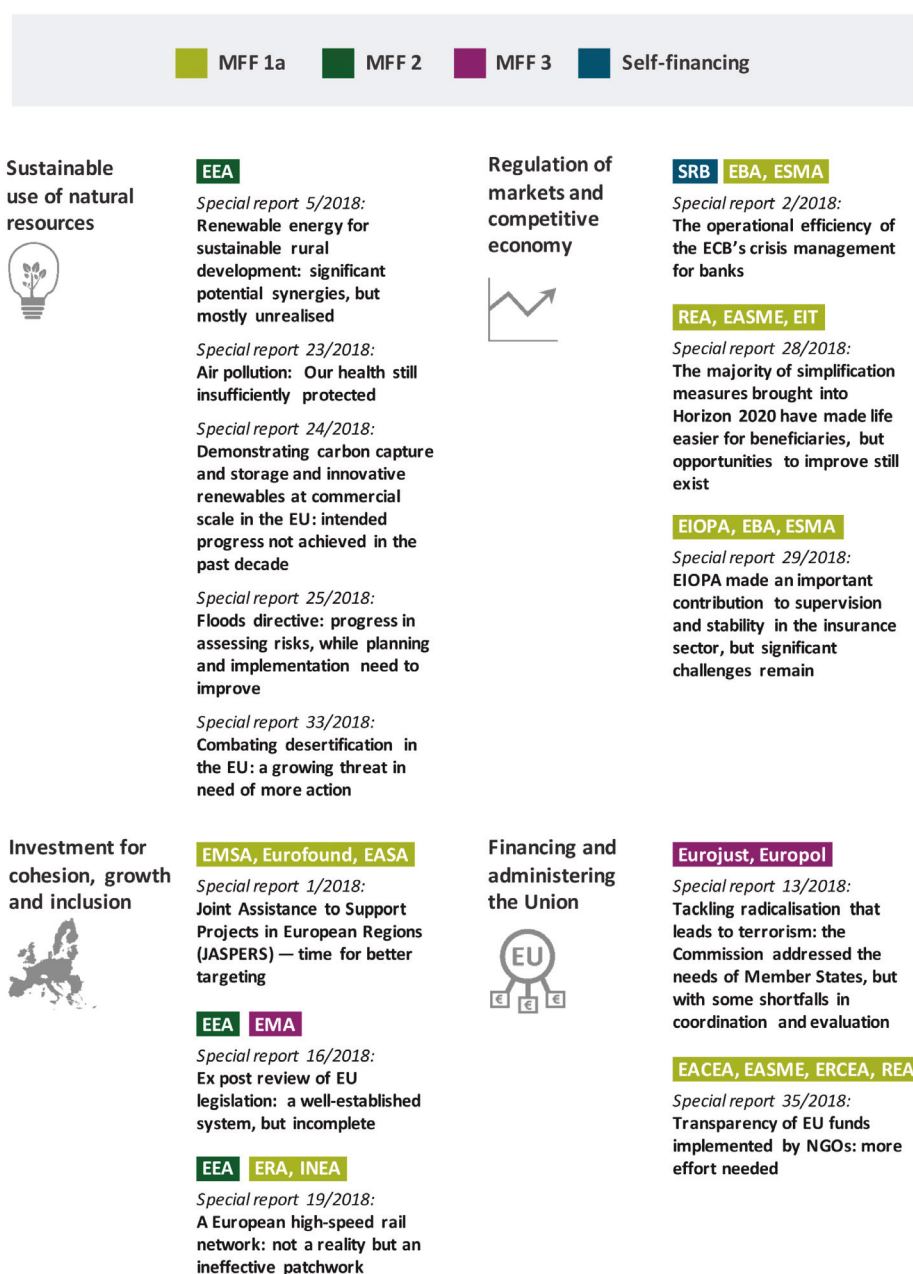
2.57. The audit conclusions for the financial year 2017, together with the related recommendations and the SRB's replies, are addressed in our specific report, which is available on our website eca.europa.eu

Other ECA special reports also referring to one or more agencies

2.58. Apart from audit reports specifically dedicated to the agencies, in the course of 2018 we also issued a number of special audit reports on EU policy implementation which referred to a number of agencies (Box 2.13).

Box 2.13

Other ECA special audit reports referring to agencies



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.

2.21, 2.22 and 2.28. The Network would like to highlight that the observations in the area of financial management, procurement related internal controls and the procurement of interim services consist of highly diverse cases and differ from Agency to Agency, therefore the Network would like to make reference to Agency's individual responses in Chapter 3.

2.29. Indeed EU Agencies have to conclude the contracts for interim/temporary workers in accordance with the applicable EU Financial Rules and the relevant national legislation transposing Directive 2008/104/EC on temporary agency work. The temporary-work companies contracted by the EU Agencies are obliged to comply with the conditions laid down by national legislation (transposing the relevant EU legislation) for the contract of employment for temporary work concluded with each interim worker and subject to possible litigation regarding its execution. The (standard) service contract concluded between the EU Agency and the temporary-work company usually refers to this obligation.

2.31. The Office has a strict separation between the concept of staff and external resources; hence the concept of external staff does not exist at the EUIPO. Besides, the Office mainly contracts external services through the fixed price modality. Therefore, the number of resources is not a good indicator. Moreover, the budget allocated to consultancy has been steadily decreasing over recent years.

2.32. Regarding the use of the FWC, for requesting services which could appear to be of an administrative nature, the Office does not consider it can be associated with 'a loan of staff'. As a general policy such contracted administrative support is provided in the context of projects and not core business. In general, the use of non-statutory staff for the provision of administrative support outside projects is limited to agency workers (interim).

2.37. The Network wishes to stress its commitment to aligning policies. In case of the matter at stake ('potentially sensitive post'), a possible alignment should be carefully considered in relation to the identification of possible sensitive positions and the nature and level of the risks inherent to the latter. The mitigating measures that may be considered necessary/proportional to address these risks, depend, quite substantially, on factors such as the size of the Agency and/or the nature and scope of its mandate/core business. Any non-proportionate 'harmonisation', or 'one-size-fits-all' solution, should be avoided, in particular the possible use/application of 'mandatory mobility' for certain pre-defined positions. Such a measure should always rely on the actual assessment of its proportionality and effectiveness in relation to each Agency, by considering the actual risks at stake, as well as its potential disruptive effect on the regular functioning of the Agency.

2.50 and 2.51. EUIPO would like to highlight the decision of the legislators which was confirmed during the last legislative reform. According to Article 176(2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR), 'the Budget Committee shall give a discharge to the Executive Director in respect of the implementation of the budget'. Such discharge is strongly based on the annual reports issued by the ECA.

CHAPTER 3

Statements of Assurance and other agency-specific audit results**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 Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA Code) and 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, the agencies' managements are 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. The 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.

The 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. 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 overriding of internal controls.

- Obtain an understanding of internal controls 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 controls.
- Evaluate the appropriateness of the 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 ⁽²⁷⁾, where applicable.

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 controls that we identify during our audit. From the matters on which we 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.

⁽²⁷⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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', or 'ACER'), which is located in Ljubljana, was created by Regulation (EC) No 713/2009 of the European Parliament and of the Council ⁽²⁸⁾. 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 ⁽²⁹⁾, 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 ⁽³⁰⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	13	14
Staff as at 31 December ⁽²⁾	91	90

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽³¹⁾ and the reports on the implementation of the budget ⁽³²⁾ for the financial year ended 31 December 2018; 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

3.2.4. In our opinion, the accounts of the Agency for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽²⁸⁾ OJ L 211, 14.8.2009, p. 1.

⁽²⁹⁾ Regulation No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (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.

⁽³⁰⁾ More information on the Agency's competences and activities is available on its website: www.acer.europa.eu

⁽³¹⁾ 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.

⁽³²⁾ 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*

3.2.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 are legal and regular in all material respects.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.2.7. In 2018, the Commission's Internal Audit Service issued an audit report on 'IT security in ACER and Information Security in the "REMIT" domain' ⁽³³⁾. The Agency prepared an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽³³⁾ 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)
2014	There is no European School yet in Slovenia as stipulated in the Seat Agreement.	Completed
2016	The Agency may consider introducing differentiated budget appropriations to better reflect the multiannual nature of operations.	Ongoing
2017	Despite significant changes in the accounting environment, the last validation of the accounting system was done in 2011.	Completed
2017	The Agency's disaster data recovery site is located at the same place as the original data.	Ongoing
2017	The Agency did not carry out a comprehensive Brexit impact analysis.	Completed
2017	The Agency publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO) ⁽¹⁾ .	Ongoing
2017	E-procurement: by the end of 2017, the Agency had not yet introduced any of the IT tools developed by the Commission ⁽²⁾ .	Ongoing

⁽¹⁾ The Agency also publishes some vacancy notices on the EPSO website.

⁽²⁾ In 2018 the agency introduced e-submission, but had not yet introduced e-tendering or e-invoicing.

THE AGENCY'S REPLY

The Agency for the Cooperation of Energy Regulators (ACER) has taken note of the Court's report.

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

INTRODUCTION

3.3.1. The Agency for Support for Body of European Regulators for Electronic Communications (hereinafter ‘the Office’), which is located in Riga, was established by Regulation (EU) 2018/1971 of the European Parliament and of the Council ⁽³⁴⁾, replacing the previous Regulation (EC) No 1211/2009 of the European Parliament and of the Council ⁽³⁵⁾. 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 ⁽³⁶⁾.

Table

Key figures for the Office

	2017	2018
Budget (million euros) ⁽¹⁾	4	4
Staff as at 31 December ⁽²⁾	27	27

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽³⁷⁾ and the reports on the implementation of the budget ⁽³⁸⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Office at 31 December 2018, 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.

⁽³⁴⁾ OJ L 321, 17.12.2018, p. 1.

⁽³⁵⁾ OJ L 337, 18.12.2009, p. 1.

⁽³⁶⁾ More information on the Office’s competences and activities is available on its website: www.berec.europa.eu

⁽³⁷⁾ 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.

⁽³⁸⁾ 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 2018 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 2018 are legal and regular in all material respects

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

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.3.8. On 4 May 2018, the Office signed a framework contract with one company for the provision of clerical and secretarial support services for a duration of 4 years and a maximum amount of 433 000 euros (2018 payments: 27 655 euros). As from June 2018 on average four of that company's staff were working at the Office in addition to its own 27 employees. The loan of staff (interim workers) can only be done through contracts with authorised temporary work agencies and in accordance with Directive 2008/104/EC, and with the specific rules adopted by the Member States in the transposition of that Directive. The use of this service contract for the provision of labour is not in compliance with EU social and employment rules and exposes the Office to legal and reputational risks.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.3.9. In 2018, under several framework contracts with one and the same company, including the contract mentioned above, the Office paid 793 000 euros for the purchase of various types of services (clerical and secretarial support, organisation of events, wellbeing and integration of staff, etc.). This amount represents 37 % of its non-salary related 2018 budget, indicating that the Office is dependent on external resources and on one company, which creates a risk to business continuity. The Office should make sure that staff needs are covered in a regular manner either by addressing the need for statutory staff to the budgetary authorities, or by a legal and regular use of interim workers.

3.3.10. In March 2018, the Office launched a call for tender to conclude a three-year framework contract for the development and maintenance/support of a Network Neutrality Measurement Tool, with an estimated market value of 240 000 euros. The award criterion was the most economically advantageous offer on the basis of a 70 %/30 % quality/price ratio. All three tenders received passed the minimum quality threshold. The tenderer awarded the contract proposed a price 59 % lower than the estimated amount of the contract and 51 % lower than the average of the two other offers. The contract was awarded without requesting any explanation from the winning tenderer for the potentially abnormally low tender. Payments made in 2018 under the contract amounted to 16 745 euros. For potentially abnormally low tenders, the Office should request and analyse the reasons in order to ensure the sustainability of the tenders.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.3.11. In 2018, the Commission's Internal Audit Service issued an audit report on 'Planning, Budgeting, Monitoring of Activities and Reporting in the BEREC Office' ⁽³⁹⁾. The Office and the IAS agreed on a plan to take corrective action.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽³⁹⁾ 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)
2014	In the absence of agreements with EFTA countries, they do not contribute to the budget.	Completed
2016	The Office's founding regulation does not require periodical external performance evaluations.	Completed
2017	There was no justification for four translation requests.	N/A
2017	Despite significant changes there had been no re-validation of the Office's accounting system since 2013.	Completed
2017	The Office signed commitments for a training event planned for the end of March 2018 which was in contradiction with the annuality principle.	N/A
2017	The procurement procedure to conclude a four-year multiple framework service contract in cascade (a ranking system) for the organisation and planning of events did not ensure adequate competition on price and the contract may not represent the most economically advantageous offer.	N/A
2017	E-procurement: by the end of 2017 the Office had introduced e-tendering for certain procedures, but not e-invoicing and e-submission.	Ongoing
2017	The Office did not carry out a comprehensive Brexit impact analysis.	Completed

THE OFFICE'S REPLY

3.3.8. To be able to allocate the necessary resources for increasing the professional support to BEREC, the BEREC Office Management Committee (MC) requested the Agency to consider different options for externalizing daily and routine tasks. Following an open tender procedure, the BEREC Office concluded a framework contract for the provision of clerical and secretarial support services to the BEREC Office, guaranteed over the whole duration of the contract, which is different from the use of interim workers.

The BEREC Office would like to emphasize that according to the tender specifications, which are annexed to the framework contract, the contractor has the obligation to comply with the applicable EU and national legal framework.

3.3.9. The BEREC Office takes due note of the concerns of the Court and, as suggested, will address the issues pertaining to the establishment plan to the budgetary authority. The Agency would like to underline the fact that all mentioned contracts were concluded following open procurement procedure and other companies had the chance to participate. Unfortunately, for the type of services concerned, the local competition may be very limited and foreign companies are not necessarily interested. For the most important services, the Agency usually endeavour to conclude framework contracts in cascade in order to ensure business continuity in case the first contractor would fail to deliver. Currently, the tasks entrusted to the contractor concerned are of administrative nature.

3.3.10. The BEREC Office did not have until 2018 separate guidance on abnormally low tender prices. The price offers in the procurement in subject were checked against the detailed technical offers and the contracting authority found the winning offer reasonable. Following the comments received from the auditors, the BEREC Office took note of the Court finding and introduced the definition of abnormally low tender price (30 % lower than the estimated amount of the contract) in its internal procurement manual.

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', or 'Cedefop'), which is located in Thessaloniki, was established by Council Regulation (EEC) No 337/75 ⁽⁴⁰⁾, which was repealed by Regulation (EU) 2019/128 of the European Parliament and of the Council ⁽⁴¹⁾. 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 ⁽⁴²⁾.

Table

Key figures for the Centre

	2017	2018
Budget (million euros) ⁽¹⁾	18	18
Staff as at 31 December ⁽²⁾	117	116

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁴³⁾ and the reports on the implementation of the budget ⁽⁴⁴⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Centre at 31 December 2018, 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.

⁽⁴⁰⁾ OJ L 39, 13.2.1975, p. 1.

⁽⁴¹⁾ OJ L 30, 31.1.2019, p. 90.

⁽⁴²⁾ More information on the Centre's competences and activities is available on its website: www.cedefop.europa.eu

⁽⁴³⁾ 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.

⁽⁴⁴⁾ 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 2018 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 2018 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. We audited two recruitments made in 2018 from two reserve lists established in 2015 and 2016 ⁽⁴⁵⁾. Both procedures were inadequately managed and documented, as had been the case for several other recruitment procedures audited in previous years. The Centre's procedure to identify and manage potential conflict of interest situations for selection board members was not effective. This was particularly evident in the case of two internal candidates for which none of the selection board members had declared a potential conflict of interest, although some had been working together with the candidates. Also, the initially agreed scoring method was altered during the evaluation and not applied in a transparent way. Moreover, one of the two reserve lists was irregularly prolonged. The identified weaknesses undermine the principles of transparency and equal treatment of applicants. The Centre should immediately take corrective action to ensure regular recruitment procedures.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.4.9. The Centre has not had an internal legal officer since November 2017. All legal issues are thus outsourced by using service level agreements with the Commission and with another EU agency, or by contracting external law firms. Total payments made for legal services in 2018 amounted to 181 039 euros. Given the high number of legal cases the Centre is confronted with, such a full outsourcing model creates a risk to the consistent treatment of cases and the principle of sound financial management, namely the principle of efficiency. As regards transparency in dealing with legal cases, although several improvements were introduced in this area by the Centre in the second half of 2018, the constraints managers face when they wish to access external legal services, and the fact that there was no audit trail for some legal expenditure, create a risk to transparency in this area. The Centre should reassess the way it deals with legal cases to ensure an efficient and transparent legal service function.

3.4.10. In the procurement procedure for the Centre's travel agency services, price and quality award criteria were not always detailed enough and adequate to ensure the procurement of the best value for money contract. In addition, the Centre's methodology and documentation of potentially abnormally low offers was insufficient. The Centre should use more appropriate contract award criteria. For potentially abnormally low tenders the Centre should request and analyse the reasons in order to ensure the tenders are sustainable.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.4.11. In 2018, the Commission's Internal Audit Service (IAS) issued an audit report on 'Human Resource Management and Ethics in Cedefop' ⁽⁴⁶⁾. The Centre prepared an action plan to address all the areas for improvement identified by the IAS.

⁽⁴⁵⁾ No recent recruitment procedures had been finalised by the time of the audit (November 2018).

⁽⁴⁶⁾ 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)
2017	The management of two recruitment procedures for management positions was weak and the procedures are considered irregular.	Ongoing
2017	The Centre publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Centre had not introduced any of the IT tools developed by the Commission.	Ongoing

THE CENTRE'S REPLY

3.4.8. Cedefop acknowledges the observation from the Court on the two recruitments and the weaknesses identified. Cedefop is undergoing a thorough process to improve the selection procedures in general. As part of this undertaking, Cedefop has already revised its conflict of interest procedure. The scoring methods and documentation of the whole selection process are also being reviewed as part of the improvement of Cedefop selection procedures. Finally, necessary measures are being taken to ensure that any prolongation of a reserve list will take place in a regular manner.

3.4.9. Cedefop acknowledges the weaknesses highlighted by the Court in relation to the full externalisation of the legal service since November 2017. As acknowledged by the Court, in the second half of 2018 Cedefop's management had already taken urgent measures to address some of the critical areas identified, in particular the lack of transparency and the severe lack of documentation, which characterised the legal arrangements post-November 2017. Measures taken include: new guidelines for requesting legal advice and related workflow, facilitating easier access to legal advice; setting up a central repository of all existing electronic legal records; setting up online collaboration tools for all ongoing legal cases and transferring physical legal files to Cedefop's archives.

Cedefop also acknowledges the remark of the Court that the full outsourcing model has created a risk of inconsistent treatment of cases, especially considering the number of external legal service providers. Nevertheless, all requests for legal advice have been appropriately addressed, although with increased administrative constraints and at a higher cost. Informal legal advice is however not available and still considered as a major issue.

With a view to addressing the weaknesses identified by the Court, Cedefop will reassess the way its legal function is organised and will reiterate the risks with its supervisory body.

3.4.10. We acknowledge the observations from the Court. Travel agency services market is a specific sector, operating with particular costing schemes. Cedefop used the travel agency fees as the most relevant measure of the price element, while the same quality award criteria have been consistently used over past calls for tenders. However, the Centre will focus its efforts on improving the application of quality award criteria in future calls for similar services. As regards the abnormally low offers' evaluation, Cedefop has already adjusted the formula used to identify potential abnormally low tenders, in the second semester of 2018. The Centre will ensure that additional information will be consistently requested and analysed in case of offers, which after application of the formula, appear abnormally low, and be accounted for in the decision to award a contract.

3.5. EUROPEAN AVIATION SAFETY AGENCY (EASA)

INTRODUCTION

3.5.1. The European Aviation Safety Agency (hereinafter 'the Agency', or 'EASA'), which is located in Cologne, was established by Regulation (EC) No 1592/2002 of the European Parliament and of the Council ⁽⁴⁷⁾, which was repealed by Regulation (EC) No 216/2008 ⁽⁴⁸⁾. 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 ⁽⁴⁹⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	192	198
Staff as at 31 December ⁽²⁾	771	767

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁵⁰⁾ and the reports on the implementation of the budget ⁽⁵¹⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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

3.5.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

⁽⁴⁷⁾ OJ L 240, 7.9.2002, p. 1.

⁽⁴⁸⁾ OJ L 79, 19.3.2008, p. 1.

⁽⁴⁹⁾ More information on the Agency's competences and activities is available on its website: www.easa.europa.eu

⁽⁵⁰⁾ 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.

⁽⁵¹⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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 2018 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 LEGALITY AND REGULARITY OF TRANSACTIONS

3.5.8. Framework contracts are agreements with suppliers to establish terms governing specific purchases during the life of the agreement. For the procurement of data analytics services for a volume of up to 5 million euros (2018 payments: 0 euros), the Agency chose to use a framework contract with a single operator resulting from an open procedure published in the Official Journal of the EU. However, the terms used in the framework contract were not specific enough to allow fair competition, because the concrete requirements concerning the services to be provided were not yet known at the time of the procurement procedure. According to the rules of application of the Financial Regulation, in such circumstances, the contracting authority has to award a framework contract to multiple operators and a competitive procedure between the selected contractors must be used for the specific purchases. The Agency is encouraged to design framework contracts which allow fair competition and ensure value for money.

3.5.9. In another procurement procedure for the core business of the Agency, namely outsourcing of certification tasks for a volume of 7 700 000 euros (2018 payments: 16 747 euros), the Agency awarded the contracts solely on the basis of the quality of the services without evaluating their price. Furthermore, the Agency signed a contract with one operator before having received proof that the contractor was not in an exclusion situation. Neither aspect complied with the Financial Regulation. The Agency should base its award decision on both quality and price aspects and ensure that contracts are signed only after having verified the exclusion criteria.

3.5.10. The Agency committed the funds for a 115 000 euro agreement with the Commission on archiving services about 8 months after the renewal of the agreement. According to the Financial Regulation, the commitment of funds should be recorded before entering a legal obligation in order to ensure that funds are available. The Agency should enter budgetary commitments before legal commitments.

INFORMATION ON INTERNAL AUDIT SERVICE AND EXTERNAL EVALUATION REPORTS

3.5.11. In 2018, the Commission's Internal Audit Service issued an audit report on 'Strategic Risk Assessment including IT in EASA' ⁽⁵²⁾. The Agency prepared an action plan to address some potential areas for improvement.

3.5.12. An external evaluation of the processes that lead to the development of EASA's Single Programming Document (SPD) and of the ways in which the Agency's key stakeholders (European Commission, Member States authorities and industry representatives) are consulted in the establishment of the SPD, was carried out in 2018 ⁽⁵³⁾. The Agency is preparing an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁵²⁾ We did not verify the audit work.

⁽⁵³⁾ We did not verify the external evaluation work.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	The Agency has accumulated a 52 million euros surplus from industry-financed activities over the years ⁽¹⁾ , for which there is no provision in the Agency's Founding Regulation.	Ongoing (Not under the Agency's control)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Management Board (functional).	Completed
2017	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 (a ranking system). 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.	N/A
2017	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.	N/A
2017	In the case of one audited payment amounting to some 300 000 euros the Agency purchased IT services, through the framework contractor, without any competitive procedure. In 2017, total payments to the framework contractor amounted to 2 million euros.	N/A
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Agency had introduced e-tendering and e-submission for certain procedures, but not e-invoicing.	Outstanding

⁽¹⁾ In 2014 and 2015, there were surpluses of 15,3 million and 16,9 million euros, respectively. By the end of 2018, the surplus amounted to 52 million euros.

THE AGENCY'S REPLY

3.5.8. As noted by the Court, the Agency launched an open procedure allowing for full transparency and competition in line with the Financial Regulations. The Agency chose a Single Framework Contract rather than a Multiple Framework Contract with a rationale being based on Sound Financial Management and coherence in the implementation of the contract. Using a Multiple Framework Contract would have resulted in a change of contractor during the lifetime of the framework contract which would not only have had severe consequences on the contract implementation in terms of coherence (the contractor takes part in the governing boards of the programme, which requires its **continuous** participation and contribution) and timely completion, but also not be in line with the principle of sound financial management given the additional effort, time and resources it would take to on-board a new/different contractor for each specific contract under this framework contract (amounting to 30 000 euros under the first specific contract and 100 000 euros under the third specific contract).

3.5.9. Price is one element amongst others used to identify the best suitable provider during the contract implementation. This is due to the specificity of the services of this core business of the Agency. Taking price into account at an earlier stage bears the risks of giving advantage to a less suitable tenderer and may limit fair competition for SMEs. The Agency ensured that none of the procurement principles had been violated and notes that this Agency specific activity is not reflected in the Financial Regulation. There was furthermore no risk that the Agency would ask services from an ineligible provider as evidence regarding exclusion criteria was submitted prior to any accreditation/assignment of tasks. The Agency will re-consider the approach to obtaining services from QEs.

3.5.10. The 115 000 euros were allocated on the dedicated budget line and approved, though not formally committed prior to the renewal of the above mentioned agreement in the second year of the contract. The commitment was signed before the reception of the invoice but after the beginning of the service. This *a posteriori* was therefore covered by an exception.

3.6. EUROPEAN BANKING AUTHORITY (EBA)

INTRODUCTION

3.6.1. The European Banking Authority (hereinafter 'the Authority', or 'EBA'), which has been relocated to Paris, was established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁵⁴⁾. 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 ⁽⁵⁵⁾.

Table

Key figures for the Authority

	2017	2018
Budget (million euros) ⁽¹⁾	38	43
Staff as at 31 December ⁽²⁾	190	190

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁵⁶⁾ and the reports on the implementation of the budget ⁽⁵⁷⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Authority at 31 December 2018, 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.

Emphasis of matter

3.6.5. 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 taking place gradually as of March 2019 and the Authority's accounts for the financial year ended 31 December 2018 include provisions for related costs amounting to 4,7 million euros and provisions for remaining future contractual payments for its offices in London amounting to 10,4 million euros.

⁽⁵⁴⁾ OJ L 331, 15.12.2010, p. 12.

⁽⁵⁵⁾ More information on the Authority's competences and activities is available on its website: www.eba.europa.eu

⁽⁵⁶⁾ 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.

⁽⁵⁷⁾ 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*

3.6.6. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

Other matter

3.6.7. Furthermore, 40 % of the Authority's budget is financed from European Union funds and 60 % through direct contributions from EU Member States. It is possible that the Authority's revenue will decrease in future as a result of the UK's decision to leave the EU.

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

3.6.8. In our opinion, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.6.10. 2018 was marked as a preparation year for the relocation of the Authority to Paris. One of the key elements was a procurement procedure for the renting of office space in Paris. EBA tried to cooperate with the European Securities and Markets Authority (ESMA), which is located in Paris and was also preparing a joint procurement procedure for the renting of office space at the time. However, the joint procurement procedure was stopped and both authorities carried out separate procurement procedures, not only for office space but also for other related services such as property advice, office space design and project management. This was a missed opportunity for economies of scale and efficiency gains. The authorities should strengthen their cooperation and use joint procurement procedures wherever possible.

3.6.11. The Authority made significant efforts in the preparation of tender documents and in tender evaluation methodology. However, there is still scope to apply more meaningful award criteria. For the procurement procedure for the Authority's future premises, tenderers received extra evaluation points for declaring that they could offer space sufficient to also host ESMA in the same building. The winning tenderer had received these points, but finally did not apply for ESMA's premises.

3.6.12. The EBA engaged in the use of temporary-agency workers (hereafter, interim workers) through framework contracts with two temporary-work agencies. In 2018, the Authority used 42 interim workers in addition to its own 190 staff. Related payments made in 2018 amounted to 2 888 262 euros. The Authority used 27 of the interim workers for IT related functions, with only 13 of its own staff working in IT. This caused a critical dependency on the interim agency in an area that is key for the EBA's operations. The Authority should address the budgetary authorities on this considerable risk to business continuity when discussing the number of EU statutory staff.

OBSERVATIONS ON INTERNAL CONTROLS

3.6.13. Furthermore, for contracts on the use of interim workers, a specific legal framework applies, imposing multiple obligations on temporary work agencies and user undertakings. As one main obligation, according to Directive 2008/104/EC and UK labour law, interim workers should work under the same working conditions as workers employed directly by the user undertaking. However, the contracts did not require the temporary work agencies explicitly to respect these conditions and there is no evidence that the Authority itself carried out any comparison between the working conditions for its own and interim staff. This causes litigation and reputational risks. The Authority should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.6.14. In 2018, the Commission's Internal Audit Service issued an audit report on 'The Single Rulebook — Questions & Answers in the European Banking Authority' ⁽⁵⁸⁾. The Authority prepared an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽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)
2017	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.	Completed
2017	The Authority publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Authority had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.	Completed

THE AUTHORITY'S REPLY

3.6.10. EBA and ESMA tried to run joint procurement procedures relating to the buildings, but decided not to go ahead with this, for two principal reasons. Firstly, the EBA's market research indicated that only a small number of buildings in the Paris region would be capable of hosting both authorities within the required timeframe, whereas the EBA with its smaller space requirement would have a significantly larger market to choose from if it ran its own procurement. This choice was borne out by the high number of building invited to tender by the EBA (28) and the number of bids received (12). Furthermore, expected potential savings that would have been achieved through joint procurement were not corroborated by the joint market survey run by the two agencies. Secondly, there was also a timing issue, with the EBA needing to have a building available eight months earlier than ESMA.

3.6.11. The EBA included the expansion criterion as a compromise element aiming to increase the possibility of procuring space in a building that could host both agencies, while not running a joint procurement.

3.6.12, 3.6.13. This reply is to both observations on the use of interim workers. The EBA has taken action to ensure knowledge transfer from the previous UK-based interim workers to the contractor providing IT services in Paris. Furthermore, with the move to Paris, the EBA is taking a different approach to interim workers, significantly reducing or eliminating the use of interim workers in the Authority by adopting service based contracts whenever possible, which correspondingly reduces or eliminates the risk identified by the Court.

3.7. EUROPEAN CHEMICALS AGENCY (ECHA)

INTRODUCTION

3.7.1. The European Chemicals Agency (hereinafter 'the Agency', or 'ECHA'), which is located in Helsinki, was set up by Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽⁵⁹⁾. 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 ⁽⁶⁰⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	112	119
Staff as at 31 December ⁽²⁾	563	572

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁶¹⁾ and the reports on the implementation of the budget ⁽⁶²⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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 396, 30.12.2006, p. 1.

⁽⁶⁰⁾ More information on the Agency's competences and activities is available on its website: www.ECHA.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*

3.7.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

Other matter

3.7.6. Without calling into question its opinions expressed on the reliability of the accounts and on the legality and regularity of revenue underlying the accounts, 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⁽⁶³⁾. The applicable fees depend on the size of the companies (micro, small, medium, large) and the volume of chemicals registered (different thresholds).

3.7.7. As laid down in the Implementing Regulation⁽⁶⁴⁾, 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 27 % of the companies have claimed to be micro, small or medium size. The Agency made considerable effort 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 carried out since 2011 and completed so far, some 52 % of the above mentioned companies which claimed to be of a micro, small or medium size (11 % of all companies) had categorised their size incorrectly resulting in lower fees⁽⁶⁵⁾. This finding demonstrates the limitations of a system that relies excessively on self-declarations made by applicants.

3.7.8. In order to mitigate this situation, the Agency has invoiced over the years fee corrections as well as administrative charges amounting to some 17,9 million euros (16,4 million euros until end 2017) following ex post verifications⁽⁶⁶⁾. In 2018, the agency made considerable progress in recovering undue fee reductions and collecting overdue administrative charges. As of 31 December 2018, the amount of overdue administrative charges to be recovered stood at 1,45 million euros (3,18 million in 2017). However, there is still a considerable verification workload ahead and the remaining amount of necessary fee corrections was unknown at the end of 2018.

3.7.9. 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.

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

3.7.10. In our opinion, the payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON THE INTERNAL CONTROLS

3.7.12. The Agency does not have a sensitive post policy which would identify sensitive functions, keep them up to date and define appropriate measures to mitigate the risk of vested interests. This is not in line with the Agency's internal control standards. The Agency should adopt and implement such a sensitive post policy without delay.

⁽⁶³⁾ Regulation (EC) No 1907/2006.

⁽⁶⁴⁾ Article 13 of Commission Regulation (EC) No 340/2008 of 16 April 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).

⁽⁶⁵⁾ Figures vary between years. In 2018 the figure was 32 %.

⁽⁶⁶⁾ At end-February 2019, ECHA had verified all SME registrants from the years 2008-2012 and, following a prioritisation approach, 48 % of SME registrants from the years 2013-2015. From beginning-2020, ECHA will commence prioritised verifications of a third batch (2016-2019).

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.7.13. ECHA, as a partially self-financed agency, has revenues coming from both fees and charges payable by industry and a balancing subsidy from the EU budget. Due to the design of the REACH Regulation, which contains distinct registration deadlines, a large part of the agency's own income can only be generated at particular points in time. Following the third and last registration deadline under the REACH Regulation in May 2018, the agency expects fees and charges to drop significantly from 2019 onwards. There is a risk that relatively stable expenditure and much less predictable revenue may have a negative effect on the agency's operations and budget implementation. The Agency, together with the Commission and the budgetary authorities, should launch a discussion on a new, viable financing model.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.7.14. In a procurement procedure for a framework contract for the provision of IT infrastructure services for an estimated amount of 35,4 million euros, five companies presented tenders in a range from 10 to 38,2 million euros. ECHA awarded the framework contract for a value of 30 million euros to the tenderer who had submitted a 12 million euros offer, which was considered the most economically advantageous. The significant difference between the value of the contract and the actual offers raises concerns in terms of sound financial management. The Agency should apply a rigor financial management of IT contracts.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.7.15. In 2018, the Commission's Internal Audit Service issued an audit report on 'Conflict of Interest and Ethics in ECHA' ⁽⁶⁷⁾. The Agency is preparing an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁶⁷⁾ 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)
2014	The expenditure for the implementation of the Regulation concerning biocidal products was partly financed by EU contributions to the Agency's budget and not by fees.	Ongoing
2016	There was a high level of carry-overs, which is in contradiction with the budgetary principle of annuality. The Agency may consider increasing the use of differentiated budget appropriations.	Completed
2016	Unlike most other agencies, ECHA's founding regulation does not explicitly require periodical external evaluations	Outstanding (Not under the Agency's control)
2017	The Agency's ex post verifications have demonstrated that more than half of the companies incorrectly declared their size, affecting fee calculations and the Agency's revenue significantly. There is an urgent need to speed up and finalise ex post verifications.	Ongoing
2017	Whenever errors are found, the Agency issues correcting invoices. However, the Agency seems to encounter difficulties in recovering the corrected 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).	Ongoing
2017	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. The Agency's ability to fulfil its mandate depends on the national authorities. However, 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.	Ongoing (Not under the Agency's control)
2017	The Agency publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO).	Ongoing

THE AGENCY'S REPLY

3.7.12. The Agency takes note of the Court's preliminary observation and is aware that this is a horizontal issue pertinent to a number of Agencies. The Agency will consider the adoption of a policy in this respect, taking account of the specificities of the Agency and the practicalities to ensure effective implementation of the policy.

3.7.13. The Agency confirms that it has initiated discussions with the Commission on a new, viable financing model.

3.7.14. The Agency initially estimated the value of the Framework Contract (35,4 million euros) in accordance with the Vade-mecum on public procurement in the Commission, on the basis of an ex-ante evaluation, its previous experience, previous similar contracts and the information available on the market. The Agency selected the competitive procedure with negotiation to encourage the widest possible competition among the diverse technical and financial solutions available on the market for its specific needs in order to obtain best value for money. The range of offers received (five offers, ranging from 38,2 million euros to 10 million euros) provides evidence that the Agency's estimate was appropriate.

The final ceiling of the Framework Contract was established in accordance with the Vade-mecum on public procurement in the Commission. The financial evaluation was based on the application of unit prices to a representative scenario to facilitate a valid comparison of the offers. When determining the final value of the Framework Contract, the Agency increased its estimate for the required volume of services in response to increased capacity needs triggered by new mandates received from the Commission during the period of the procurement procedure.

3.8. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

INTRODUCTION

3.8.1. The European Insurance and Occupational Pensions Authority (hereinafter ‘the Authority’, or ‘EIOPA’), which is located in Frankfurt, was established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽⁶⁸⁾. 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 ⁽⁶⁹⁾.

Table

Key figures for the Authority

	2017	2018
Budget (million euros) ⁽¹⁾	24	25
Staff as at 31 December ⁽²⁾	151	146

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁷⁰⁾ and the reports on the implementation of the budget ⁽⁷¹⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Authority at 31 December 2018, 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 331, 15.12.2010, p. 48.

⁽⁶⁹⁾ More information on the Authority’s competences and activities is available on its website: <https://eiopa.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.

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 2018 is legal and regular in all material respects.

Other matter

3.8.6. EIOPA's budget is 40 % financed from European Union funds and 60 % through direct contributions from EU Member States. It is possible that the Authority's revenue will decrease in future as a result of the UK's decision to leave the EU.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.8.7. In our opinion, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON INTERNAL CONTROLS

3.8.9. EIOPA engaged in the use of temporary-agency workers (hereafter, interim workers) through framework contracts with temporary work agencies. In 2018, the Authority used 29 interim workers in addition to its own 146 staff. Related payments made in 2018 amounted to 763 035 euros. For contracts on the use of interim workers a specific legal framework applies, imposing multiple obligations on temporary-work agencies and user undertakings. As one main obligation, according to Directive 2008/104/EC and German labour law, interim workers should work under the same working conditions as workers employed directly by the user undertaking. However, the contracts did not require the temporary work agencies explicitly to respect these conditions and there is no evidence that the Authority itself carried out any comparison between the working conditions for its own and interim staff. This causes litigation and reputational risks. The Authority should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT

3.8.10. For one procurement procedure on the provision of interim workers carried out in 2018, EIOPA applied award criteria that consisted mostly of non-competitive price elements. There is therefore no evidence that the procurement procedure led to the award of the best value for money contract. The Authority should use award criteria that focus on competitive price elements.

INFORMATION ON ECA SPECIAL REPORT

3.8.11. In 2018, we issued a special audit report on EIOPA's contribution to supervision and stability in the insurance sector ⁽⁷²⁾. EIOPA's mission, as one of the three European Supervisory Authorities (ESAs), is to support the stability of the financial system and protect consumers in the fields of insurance and occupational pensions. The insurance market with assets worth around two-thirds of EU Member States' combined GDP is a significant part of the financial market in Europe. Its failure would have a negative effect on the real economy and consumers' well-being. We examined whether EIOPA made an effective contribution to supervision, supervisory convergence and financial stability. For the latter, we focused on the 2016 insurance stress test. We concluded that EIOPA has made good use of a wide range of tools, although their design and follow-up should be improved. We found a number of systematic challenges with regard to supervision of cross-border businesses and internal models. They need to be addressed by EIOPA itself, by national supervisors and by legislators, particularly in the context of the ongoing ESAs' review.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.8.12. In 2018, the Commission's Internal Audit Service issued an audit report on 'Stress Tests in EIOPA' ⁽⁷³⁾. The Authority has prepared an action plan to address some potential areas for improvement.

⁽⁷²⁾ Special report No 29/2018.

⁽⁷³⁾ 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)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Authority's Director (administrative) and Management Board (functional).	Completed
2017	The Authority publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing

THE AUTHORITY'S REPLY

3.8.9. EIOPA acknowledges the importance of the principle of equal treatment and would like to stress its full commitment to honour this key principle at all times. The obligation to comply with the German law implementing Directive 2008/104/EC (i.e. the Arbeitnehmerüberlassungsgesetz, AÜG) is included in EIOPA's framework contracts for interim services. In addition, the interim staff members' integration into EIOPA's work environment respected equal treatment (e.g. same rights to use shared facilities and services, same working hours, rest periods, public holidays, etc.). Therefore, EIOPA is of the understanding it has acted in compliance with the AÜG and will ensure that it continues to do so in the future. Nevertheless, EIOPA will explore additional ways to follow up on the Court's recommendations.

3.8.10. The price elements used for the award criteria consisted of the hourly rate paid to the interim staff member by the staff agency plus the staff agency's fee. While EIOPA believes that both criteria cover competitive elements, the authority understands the concerns raised by the Court and will consider alternative evaluation criteria in the future.

3.9. EUROPEAN INSTITUTE OF INNOVATION AND TECHNOLOGY (EIT)

INTRODUCTION

3.9.1. The European Institute of Innovation and Technology (hereinafter 'the Institute', or 'EIT'), which is located in Budapest, was created by Regulation (EC) No 294/2008 of the European Parliament and of the Council ⁽⁷⁴⁾. 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. In 2018, operating expenses in relation to the KIC grants amounted to 387 million euros ⁽⁷⁵⁾, representing 97 % of the Institute's budget.

3.9.2. The Table presents key figures for the Institute ⁽⁷⁶⁾.

Table

Key figures for the Institute

	2017	2018
Budget (million euros) ⁽¹⁾	303	350
Staff as at 31 December ⁽²⁾	61	64

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁷⁷⁾ and the reports on the implementation of the budget ⁽⁷⁸⁾ for the financial year ended 31 December 2018; 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 2018 of the Institute present fairly, in all material respects, the financial position of the Institute at 31 December 2018 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.

⁽⁷⁴⁾ OJ L 97, 9.4.2008, p. 1.

⁽⁷⁵⁾ In terms of initial payment appropriations.

⁽⁷⁶⁾ More information on the Institute's competences and activities is available on its website: <https://eit.europa.eu/>

⁽⁷⁷⁾ 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.

⁽⁷⁸⁾ 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 2018 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 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.9.8. In relation to staff costs, the Institute paid nearly 3 000 euros in education allowances to five staff members for whom the Institute was already paying tuition fees directly to the schools. In our view, this represents an irregular double financing of education cost which is not covered by the EU Staff Regulations. The Institute should regularise the situation and cover education cost in compliance with the legal framework.

3.9.9. In another case, the Institute paid the remuneration of a member of the Governing Board to the wrong person over a period of one and half years. In total, ten payments for an accumulated amount of 20 000 euros were made to a person with the same name but of a different identity. The Institute became aware of this error only after the person had contacted the Institute. Although the money has been recovered, the Institute should strengthen internal control procedures to make sure that payments are made to the correct recipients.

OBSERVATIONS ON INTERNAL CONTROLS

3.9.10. In 2014, the Commission, on behalf of more than 50 EU Institutions and bodies (including EIT), signed a framework contract with one contractor for the acquisition of software, licences and the provision of related IT maintenance and consultancy. Due to the volatility of the software market the contract contains no price list. The framework contractor acts as an intermediary between the Institute and suppliers that can address the Institute's needs. For these intermediary services, the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2018, total payments to the framework contractor amounted to 64 000 euros. The ex-ante controls performed were not effective, as they did not check that the framework contractor's prices and uplifts were correct. The framework contract itself may restrict competition, as there is no evidence that the framework contractor chooses suppliers on a competitive basis. The Institute should adapt ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.9.11. In 2018, the Institute was late in paying the agreed pre-financing to two KICs, despite grant operations being the Institute's core business. Interest on late payments amounted to 27 000 euros in 2018. The Institute, together with the Commission, as treasurer and accountant of the EIT, should manage cash needs in a timely manner and avoid any risk of late payment interest and of reputational damage.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.9.12. Although sustainability plans in line with the EIT guidance were adopted for all KICs, actual progress towards sustainability remains limited. In particular, the three first-wave KICs ⁽⁷⁹⁾ are a cause for concern due to their low financial sustainability indicators, which display only modest growth. At the same time, the management cost claimed by the KIC with the lowest score, EIT Climate-KIC, remains relatively high (17 %). The EIT should, together with the KICs, concentrate on lean management structures, review the portfolio of activities pursued and promote alternative revenue sources to increase financial independence from the EIT.

⁽⁷⁹⁾ EIT Climate-KIC, EIT Innoenergy and EIT Digital in operation since 2010. The two second-wave KICs, EIT Health and EIT Raw Material, perform considerably better in this respect, mainly because of higher priority given to financial sustainability from the outset of operations.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.9.13. In 2018, the Commission's Internal Audit Service carried out an audit on 'Ex ante verification of payments to the KICs in the European Institute of Innovation and Technology' ⁽⁸⁰⁾. The Institute is preparing an action plan to address those recommendations accepted ⁽⁸¹⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁸⁰⁾ We did not verify the audit work.

⁽⁸¹⁾ The EIT did not accept two recommendations.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	The Institute overestimated its budgetary needs. The low implementation rate is mainly related to non-used appropriations to fund KIC activities.	N/A
2014	While the KICs are to develop strategies for financial sustainability, they remain dependent on funding by the EIT and KIC partners.	Ongoing
2015	The Court in its Special report No 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.	Ongoing (Not under the Institute's control)
2015	The EIT founding regulation provides that 'the EIT shall mobilise funds from public and private sources ... and seek to raise a significant and increasing proportion of its budget from private sources and from income generated by its own activities'.	Ongoing
2015	For the EIT Digital Master's programme in which 16 European universities participate, the Institute should introduce a clear and formally defined funding model.	Completed
2016	The grants for the 2015 period were awarded only in April 2015 and the GAs were signed in June and July 2015. For the 2016 period, grants were awarded and the GAs signed in April 2016.	N/A
2016/2017	The EIT's Director changed four times between its creation in 2008 and July 2014. Since August 2014 the position of the Director has been filled on an <i>ad interim</i> basis.	Ongoing (Not under the Institute's control)
2016	Procurement procedures carried out by KIC LEs showed significant weaknesses. The 2016 payments related to irregular procurement procedures amounted to 2,2 million euros. The Institute put in place an action plan.	N/A
2016	Despite the large increase in the budget from 309 million euros (2008-2013) to 2,4 billion euros (2014-2020) and the increase in KICs from three to six at the end of 2016, the Institute's authorised number of posts did not change significantly.	Outstanding (Not under the Institute's control)
2017	The EIT signed amendments to the specific grant agreements with three KICs shortly before the end of the eligibility period, for one KIC even after, thereby increasing single reimbursement rates. This practice does not encourage KICs to find their own sources of financing and could also affect fair competition between the KICs.	N/A
2017	The amendments of the business plans for two KICs also added retroactively activities not provided for in the initial business plans, which can affect the award decisions and equal treatment of the KICs, and are not compliant with the Financial Regulation.	N/A
2017	In 2017 the Institute introduced a paperless system for payments, entailing modifications to the Institute's procedures and its accounting system. However, the accounting system was not re-validated since 2012.	Ongoing
2017	The business continuity and disaster recovery plans of the EIT were adopted in 2013 and are outdated.	Completed
2017	As in previous years, the KICs did not fully use the grant amounts awarded by the EIT.	Ongoing
2017	The EIT monitored KIC's performance and calculated some performance corrections. These corrections, however, have had no financial impact for any of the KICs, because EIT applies only the higher of the financial and performance corrections.	Ongoing (Not under the Institute's control)

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	In 2017 all KICs have adopted sustainability strategies in line with the EIT's guidance, which was an important step towards a more sustainable future for the KICs. However, revenue generated by the KICs and co-funding by KIC-partners remains very low.	Ongoing
2017	The EIT publishes vacancy notices on its own website and on the DG HR website, but usually not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Institute had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Ongoing
2017	According to its statutes, the EIT can only offer their temporary staff fixed-term contracts with a maximum duration of five years, extendable once for another five years. This could potentially hamper the continuity of operations.	Ongoing (Not under the Institute's control)

THE INSTITUTE'S REPLY

3.9.8. The EIT has performed a thorough review of pre-school allowance payments to all eligible staff members covering the last five years. As a result, the EIT has established the amounts to be recovered from each staff member and put in place additional control measures to strengthen control environment for staff entitlements. The amounts unduly paid are planned to be recovered from staff members in the course of 2019. Furthermore, the Commission service, which is responsible for the payments of salaries and allowance to EIT staff, has been officially notified to discontinue the pre-school allowances to the staff members in question.

3.9.9. This one-off error was due to a misunderstanding and had already been detected and corrected by the EIT at the time of the ECA visit. The likelihood of a similar situation repeating itself is very low. Appropriate controls to prevent payments to wrong beneficiaries are in place and financial actors have been instructed to strictly follow the relevant standard operating procedures.

3.9.10. The EIT is one of the participating bodies in the framework contract (FWC) in question, which is managed by the Commission, hence the Institute is not in a position to question the conditions of the framework contract itself. The EIT has strictly followed the mechanism prescribed in the FWC, which requires that the price and uplift are quoted in one and not separately. Therefore, and contrary to the opinion of the European Court of Auditors, the EIT is of the opinion that the Institute's ex-ante controls functioned properly, as the FWC has been implemented in line with the conditions set therein. In case the contractor deliberately provided a price quote, which did not respect the underlying conditions, this should be treated as irregularity and investigated accordingly. In regard to future periods, this issue should have been tackled, since the FWC in question has expired and has been replaced by a new one, which provides that each quotation shall provide a split between the original pricing and the Contractor's uplift.

3.9.11. The late payment of the pre-financing to KICs was caused by the non-availability of cash on the EIT's bank account and is not due to any shortcomings in the EIT's grant operations. The EIT planned and initiated the request of the Commission subsidy in line with the relevant procedures, considering also the possible impact of a negative interest the EIT has to pay on large amounts of cash held with the bank. Unfortunately, this resulted in a payment delay of one working day. While this short delay had indeed a relatively high financial impact, it was beyond EIT's control.

3.9.12. The EIT, together with the KICs, continuously implement the objective of KIC's Financial Sustainability. There has been very significant progress in this field, as the revenues generated by KICs have increased from 23,7 million euros (2017) to 38,4 million euros (2018) and assets, which will ensure future revenues, are being built by KICs. Further to the revenues generated by KICs, KIC Partners also contribute substantial co-financing to the costs of KIC activities. In order to further reduce the level of KICs' management costs, the EIT has specified appropriate ceilings for EIT-funded management costs at both KIC level (maximum 12 % of total EIT funding) and the level of individual staff members (benchmarked to the salaries specified in the EU Staff Regulation).

3.10. EUROPEAN MARITIME SAFETY AGENCY (EMSA)

INTRODUCTION

3.10.1. The European Maritime Safety Agency (hereinafter ‘the Agency’, or ‘EMSA’), which is located in Lisbon, was set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽⁸²⁾. 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 ⁽⁸³⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	79	77
Staff as at 31 December ⁽²⁾	250	256

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁸⁴⁾ and the reports on the implementation of the budget ⁽⁸⁵⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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

3.10.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

⁽⁸²⁾ OJ L 208, 5.8.2002, p. 1.

⁽⁸³⁾ More information on the Agency’s competences and activities is available on its website: emsa.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.

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 2018 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 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. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. 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 15 000 euros the Agency purchased, through the contractor, software licences without checking that the correct price was charged by the provider or that the correct uplift to the contractor was charged. In 2018, total payments to the contractor amounted to 1 589 918 euros. The Agency should adapt the ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements ⁽⁸⁶⁾.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.10.9. In 2018, the Commission's Internal Audit Service issued an audit report on 'Visits and Inspections (focusing on the Quality Management System) in the European Maritime Safety Agency' ⁽⁸⁷⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁸⁶⁾ The 2014 framework contract has expired in the meantime and the design of the succeeding framework contract provides for greater promotion of fair competition.

⁽⁸⁷⁾ 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)
2017	The framework contractor for intermediary services 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.	Outstanding
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing and e-submission for certain procedures, but not e-tendering.	Completed

THE AGENCY'S REPLY

3.10.8. The entire tendering procedure for the FWC in question was managed by the European Commission (DG DIGIT) and the Agency was not involved in the tendering procedure (e.g. choice of procedure, contract type and implementation mechanism). The implementation mechanism for this FWC did not include a fixed price list but instead DG DIGIT decided to opt for a system of applying price uplifts. The Agency has taken note of the Court's findings and has introduced appropriate control mechanisms in the Agency contracts. EMSA was informed that the contractor has exercised its right to terminate the contract with effect on 12 October 2019.

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’, or ‘ENISA’), which is located in Athens and Heraklion ⁽⁸⁸⁾, was created by Regulation (EC) No 460/2004 of the European Parliament and of the Council ⁽⁸⁹⁾ which, following various amendments was superseded by Regulation (EU) No 526/2013 of the European Parliament and of the Council ⁽⁹⁰⁾. 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 ⁽⁹¹⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	11	11
Staff as at 31 December ⁽²⁾	74	70

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽⁹²⁾ and the reports on the implementation of the budget ⁽⁹³⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽⁸⁸⁾ The Agency’s operational staff was relocated to Athens in March 2013.

⁽⁸⁹⁾ OJ L 77, 13.3.2004, p. 1.

⁽⁹⁰⁾ OJ L 165, 18.6.2013, p. 41.

⁽⁹¹⁾ More information on the Agency’s competences and activities is available on its website: www.enisa.europa.eu

⁽⁹²⁾ 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.

⁽⁹³⁾ 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 2018 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 2018 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 INTERNAL CONTROLS

3.11.8. The Agency does not have a sensitive post policy which would identify sensitive functions, keep them up to date and define appropriate measures to mitigate the risk of vested interests. This is not in line with the Agency's internal control standards. The Agency should adopt and implement such a sensitive post policy without delay.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.11.9. In 2018, the Commission's Internal Audit Service issued an audit report on 'Stakeholders' Involvement in the Production of Deliverables in ENISA' ⁽⁹⁴⁾. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽⁹⁴⁾ 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 Agency plans to relocate admin staff to Athens while its Regulation provides that admin staff should be based in Heraklion ⁽¹⁾ .	Ongoing
2016	The Agency moved eight additional staff to Athens, reducing the number of staff in Heraklion to 14 ⁽²⁾ . It is likely that costs could be further reduced if all staff were centralised in one location.	Ongoing
2017	The new accounting officer of the Agency took over duties on 1 December 2017. The hand-over process was not carried out properly.	N/A
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	The Agency did not carry out a comprehensive Brexit impact analysis.	Completed

⁽¹⁾ The new seat agreement is currently under negotiation with the Greek government.

⁽²⁾ According to ENISA, at the end of 2018 this number was further reduced to eight members of staff.

THE AGENCY'S REPLY

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

3.12. EUROPEAN UNION AGENCY FOR RAILWAYS (ERA)

INTRODUCTION

3.1.2.1. The European Union Agency for Railways (hereinafter 'the Agency', or 'ERA'), which is located in Lille and Valenciennes, was created by Regulation (EC) No 881/2004 of the European Parliament and of the Council ⁽⁹⁵⁾, which was replaced in 2016 by Regulation (EU) 2016/796 of the European Parliament and of the Council ⁽⁹⁶⁾. 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.

3.1.2.2. The *Table* presents key figures for the Agency ⁽⁹⁷⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	31	29
Staff as at 31 December ⁽²⁾	164	165

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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

3.1.2.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽⁹⁸⁾ and the reports on the implementation of the budget ⁽⁹⁹⁾ for the financial year ended 31 December 2018; 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

3.1.2.4. In our opinion, the accounts of the Agency for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽⁹⁵⁾ OJ L 164, 30.4.2004, p. 1.

⁽⁹⁶⁾ 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.

⁽⁹⁷⁾ More information on the Agency's competences and activities is available on its website: www.era.europa.eu

⁽⁹⁸⁾ 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.

⁽⁹⁹⁾ 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 2018 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 2018 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 LEGALITY AND REGULARITY OF TRANSACTIONS

3.12.8. The procurement plan for 2017 included the conclusion of a direct contract for the organisation of a Safety Conference in April 2018 with a budget of 100 000 euros. This was organised by a local service provider for a fee below 15 000 euros allowing the Agency to use a negotiated procedure with one tenderer. According to the tender specifications, all the related services (conference venue, catering, transport, etc.) should be contracted and paid separately by the Agency. As this procedure turned out to be too complicated and time consuming, the contract was amended in February 2018 in order to allow the payment of all related services via the local service provider. The sum of all services effectively paid in 2018 amounted to 63 380 euros excluding VAT. The decision to contract and pay all related services separately was an artificial splitting of the contract. The contract and all related payments are irregular. The Agency should ensure that procurement procedures are chosen in compliance with the Financial Regulation.

OBSERVATIONS ON INTERNAL CONTROLS

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 20 000 euros the Agency purchased, through the contractor, software licences that were not specifically mentioned without checking that the correct price was charged by the provider or that the correct uplift to the contractor was charged. The ex-ante controls performed by ERA were not effective in this respect. The framework contract itself may restrict competition for the IT services not specifically mentioned as there is no evidence that the framework contractor chooses suppliers on a competitive basis. In 2018, total payments to the contractor amounted to 839 923 euros. The Agency should adapt the ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements ⁽¹⁰⁰⁾.

3.12.10. Following the Agency's enlarged mandate in its new Regulation, in 2019 the Agency will start to collect fees and charges for certification tasks. The Regulation requires that the specific needs of small and medium-sized enterprises (SME) must be taken into account in this respect. In order to ensure the correct application of fees and charges to SMEs, the Agency should introduce effective controls to check SME criteria for applicants.

⁽¹⁰⁰⁾ The 2014 framework contract has expired in the meantime and the design of the succeeding framework contract provides for greater promotion of fair competition.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.12.11. According to the new Regulation ⁽¹⁰¹⁾, fees and charges represent assigned revenue for the Agency. In order to enable the Agency to properly plan the fees and charges and corresponding commitments and payments in the budget, some amendments to the implementing rules for the Agency's Financial Regulation are necessary. Furthermore, fees and charges can only be invoiced after a service rendered has ended, and interim invoices can be issued only every six months ⁽¹⁰²⁾. The Agency will have to monitor costs relating to fees and charges closely and invoice interim amounts as soon as possible in order to prevent a budgetary deficit at year-end.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.12.12. In 2018, the Commission's Internal Audit Service issued an audit report on 'Programme, Project and Service Management (including IT) in the European Union Agency for Railways'. The Agency prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁰¹⁾ Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1).

⁽¹⁰²⁾ See Article 5(6) of Commission Implementing Regulation (EU) 2018/764 (the fees and charges regulation) (OJ L 129, 25.5.2018, p. 68).

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. It is likely that costs could be reduced if all operations were centralised in one location.	Ongoing (Not under the Agency's control)
2017	There is no clear segregation of duties between the authorising officer and the accounting officer.	Completed
2017	In the case of one audited payment amounting to some 47 000 euros the Agency purchased, through a framework contract with an intermediary contractor, IT services without any competitive procedure or prior market research. In 2017, total payments to the contractor amounted to 1,1 million euros.	Outstanding

THE AGENCY'S REPLY

3.12.8. The Agency does not share the conclusion that says 'The decision to contract and pay all related services separately is an artificial split of the contract.' However the Agency intends to prepare terms of reference to sign a framework contract with a specialized company in charge of organizing events such as conferences.

3.12.9. The Agency applied the DIGIT framework contract. However the Agency takes note of the Court's remark. The Agency is awaiting the new DIGIT framework contract where a reopening of competition shall be foreseen.

3.12.10. The Agency is aware of the fact that the specific needs of the small and medium-sized enterprises (SME) must be taken into account. As stipulated article 5 §9 of the implementing regulation on fees and charges ⁽¹⁰³⁾ the Agency shall, where the applicant is a small or medium-sized enterprise, take into account requests for a reasonable extension of the time limit for payment and payment by instalments.

3.12.11. The Agency has already submitted a derogation request to the Commission allowing for some amendments to its Financial Regulation. It is expected to obtain an opinion on this very soon. In addition a close monitoring of costs and the issuing of interim invoices will be done in order to avoid a budgetary deficit at year-end.

⁽¹⁰³⁾ Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (OJ L 129, 25.5.2018, p. 68).

3.1.3. EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

INTRODUCTION

3.1.3.1. The European Securities and Markets Authority (hereinafter ‘the Authority’, or ‘ESMA’), which is located in Paris, was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹⁰⁴⁾. 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

3.1.3.2. The *Table* presents key figures for the Authority ⁽¹⁰⁵⁾.

Table

Key figures for the Authority

	2017	2018
Budget (million euros) ⁽¹⁾	42	44
Staff as at 31 December ⁽²⁾	226	231

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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

3.1.3.3. We have audited:

- (a) the accounts of the Authority which comprise the financial statements ⁽¹⁰⁶⁾ and the reports on the implementation of the budget ⁽¹⁰⁷⁾ for the financial year ended 31 December 2018; 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

3.1.3.4. In our opinion, the accounts of the Authority for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Authority at 31 December 2018, 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.

⁽¹⁰⁴⁾ OJ L 331, 15.12.2010, p. 84.

⁽¹⁰⁵⁾ More information on the Authority’s competences and activities is available on its website: www.esma.europa.eu

⁽¹⁰⁶⁾ 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.

⁽¹⁰⁷⁾ 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

3.13.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

Other matter

3.13.6. The fees charged to credit rating agencies are based on their revenue as legal entities, but not as a group or group of related entities. This creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU. The likely financial effect of this loophole in the regulations is unknown. While the Authority has correctly applied the Regulation, it identified the risk and addressed it to the Commission. The Authority should continue the discussion with the Commission in order to agree the necessary modifications.

3.13.7. The Authority's budget is 27 % financed from European Union funds, 42 % through direct contributions from EU Member States, 29 % from fees received from supervised entities (Credit Rating Agencies and Trade Repositories), and 2 % from other sources. It is possible that the Authority's revenue will decrease in future as a result of the UK's decision to leave the EU.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.13.8. In our opinion, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.13.10. The Authority uses the contracts with IT companies which were formulated in a way that could imply the assignment ('mise à disposition') of temporary agency workers instead of the provision of clearly defined IT services or products. The provision of interim workers can only be done through contracts with authorised temporary work agencies and in accordance with Directive 2008/104/EC, and with the specific rules adopted by the Member States in the transposition of that Directive. The use of IT service contracts for the provision of labour would not be in compliance with EU social and employment rules and expose the Authority to legal and reputational risks. Related payments made in 2018 amounted to 1 257 479 euros. The Authority should make sure that contracts avoid any confusion between the procurement of IT services and of interim workers.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.13.11. The Authority charges fees to *credit rating agencies* in accordance with the related fees regulation. These fees should exclusively cover ESMA expenditure related to the registration, certification and supervision of credit rating agencies. In 2017, ESMA charged credit rating agencies fees exceeding the expenditure by 853 950 euros and spent the surplus on other activities. According to information provided by ESMA after the audit, the situation changed in 2018 when expenditure exceeded the related fees charged by 228 664 euros. The cumulated deviation over the period 2015 to 2018 amounts to 540 412 euros (or 1,6 %). Furthermore, ESMA charges fees to *trade repositories* in accordance with the related fees regulation. These fees should exclusively cover ESMA expenditure related to their registration and supervision. In 2017 the Authority's expenditure exceeded the related fees charged by 452 466 euros. According to information provided by ESMA after the audit, in 2018 the Authority's expenditure exceeded the related fees charged by 30 882 euros. The cumulated deviation over the period 2015 to 2018 amounts to 545 735 euros (or 6 %). Although the Authority followed the guidance provided on that matter by the Commission, surpluses and deficits can lead to an annual cross-financing of activities. The Authority should find a practice to avoid such cross-financings, for example by adjusting the annual fees with the surpluses and deficits from previous years or by introducing the assigned revenue model for fee-related activities.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.1.3.12. In 2018, ESMA launched the procurement procedure for the renting of new office space in Paris. Initially ESMA had planned a joint procurement procedure with other European bodies such as the European Banking Authority, which, at the time, was preparing for its relocation from London to Paris. However, the authorities analysed that the envisaged advantages of a joint procurement procedure would not materialise and both authorities carried out separate procurement procedures for the renting of their office space and other related services such as property advice, office space design and project management. This was a missed opportunity for economies of scale and efficiency gains. The authorities should continue their cooperation and use joint procurement procedures wherever possible.

3.1.3.13. ESMA made significant efforts in the preparation of tender documents for the renting of new office space and in its tender evaluation methodology. However, the Authority still needs to improve the documentation and traceability of tender evaluations. In particular, evaluation reports serve as a main reference for the subsequent stages of procurement procedures and in the event of a dispute, their content should be exhaustive and provide all the relevant details.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.1.3.14. In 2018, the Commission's Internal Audit Service issued an audit report on 'Revenues and Activity Based Management in the European Securities and Markets Authority'. ESMA prepared an action plan to address some potential areas for improvement.

ANNEX

Follow-up of previous years' observations

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	The Authority publishes vacancy notices on its own website and on social media, but not always on the website of the European Personnel Selection Office (EPSO).	Completed

THE AUTHORITY'S REPLY

3.1.3.10. ESMA agrees that it is necessary to ensure that the use of IT consultancy services is clearly distinguished from the provision of interim services, which is why ESMA has two distinctive framework contracts. At the same time, ESMA understands that the methodology and processes of how IT consultancy services are contracted by ESMA can be improved, in order to eliminate the risk mentioned by the European Court of Auditors in its finding. ESMA will continue its diligence as to avoid any potential perception of a temporary worker or an employment relationship between the Authority and the IT consultants.

3.1.3.11. ESMA, as a direct supervisor of financial entities, needs to be able to focus on key risks related to those entities. In 2017, ESMA had to reallocate resources during the year to work on a particular risk related to Trade Repositories. This resulted in a gap between the collected fees (calculated at the beginning of the year) and actual expenditures. ESMA has always used the universal budgeting model for its fees, following the Commission's guidance, which implies that potential surpluses or deficits from one activity have to be covered by other activities. In order to monitor potential gaps, ESMA has set up a well-developed Activity Based Management System (ABMS). When the ABMS identifies a significant and recurrent gap between collected fees and actual expenditures, the following budgets are adjusted accordingly. This allows any short-term imbalances (occurring only in one specific year) to be offset when looking at the long term perspective. Since ESMA has taken on direct supervisory responsibility in 2011, no other significant imbalance has occurred, including a close alignment of the (adjusted) fees and expenditure in 2018. ESMA is willing to explore all possibilities within the EU financial framework to adjust the annual fees to take into account past surpluses and deficits, while keeping the necessary flexibility to readjust resources where necessary to address through its supervision specific financial markets' risks.

3.1.3.12. ESMA proposed a joint procurement action to share a building with as many Paris-based EU agencies and institutions as possible and finally executed a joint procurement with the European Institute for Securities Studies (EUISS) — another EU agency in Paris. It is true that if more agencies had agreed to participate, this project would have brought efficiency gains. However, ESMA cannot be responsible for the decision of other entities to not participate in the proposed joint procurement, as was the case in this instance, when the European Banking Authority withdrew in April 2018 from the joint procedure.

3.1.3.13. ESMA acknowledges the observation.

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', or 'EU-OSHA'), which is located in Bilbao, was created by Council Regulation (EC) No 2062/94 ⁽¹⁰⁸⁾, which was repealed by Regulation (EU) 2019/126 of the European Parliament and of the Council ⁽¹⁰⁹⁾. 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 ⁽¹¹⁰⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	15	15
Staff as at 31 December ⁽²⁾	64	65

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹¹¹⁾ and the reports on the implementation of the budget ⁽¹¹²⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽¹⁰⁸⁾ 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).

⁽¹⁰⁹⁾ OJ L 30, 31.1.2019, p. 58.

⁽¹¹⁰⁾ More information on the Agency's competences and activities is available on its website: www.osha.europa.eu

⁽¹¹¹⁾ 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.

⁽¹¹²⁾ 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 2018 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 2018 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 BUDGETARY MANAGEMENT

3.14.8. The level of committed appropriations carried over to 2019 was high for Title II (administrative expenditure) at 468 676 euros, i.e. 35 %, (2017: 578 850 euros, i.e. 40 %) and for Title III at 4 333 792 euros, i.e. 46 % (2017: 2 933 897 euros, i.e. 40 %). The excessive amount of carry-overs for both Title II and Title III shows an overestimation of budgetary needs for 2018 and is in contradiction with the budgetary principal of annuality. Moreover, the issue outlines a tendency of recurring carry-overs of significant amounts from one financial year to the next, given that similar findings were reported for the financial years 2016 and 2017. The Agency should, together with the Commission, analyse the reasons for the constant recurrence of excessive carry-overs and improve budget planning accordingly.

INFORMATION ON INTERNAL AUDIT SERVICE AND EXTERNAL EVALUATION REPORTS

3.14.9. In 2018, the Commission's Internal Audit Service issued an audit report on 'Healthy Workplaces Campaigns and IT support in EU-OSHA' ⁽¹¹³⁾. The Agency is preparing an action plan to address some potential areas for improvement.

3.14.10. An external evaluation of the EU agencies under the remit of DG Employment (EU-OSHA, Eurofound, Cedefop and ETF) was carried out in 2018, on behalf of the Commission, with regard to their relevance, effectiveness, efficiency, coherence and EU value-added ⁽¹¹⁴⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹¹³⁾ We did not verify the audit work.

⁽¹¹⁴⁾ 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	The level of committed appropriations carried over was high. The Agency may consider introducing differentiated budget appropriations.	Ongoing
2016	The contractual arrangements for the provision of IT consultancy services did not support value for money procurements.	Completed
2016	The Agency's founding Regulation does not explicitly require external evaluations of its activities.	Completed
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Management Board (functional).	Completed
2017	Carry-overs for Title II (administrative expenditure) and Title III (operational expenditure) were high at 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.	Outstanding
2017	E-procurement: by the end of 2017, the Agency had not introduced any of the IT tools developed by the Commission.	Ongoing
2017	The Agency did not carry out a comprehensive Brexit impact analysis.	Completed

THE AGENCY'S REPLY

3.14.8. Level of carry forward for Title II is mainly due to IT services contracted at year-end following availability of appropriations and transfer to associated budget line. In order to anticipate such transfer(s) in the future, a list of potential additional IT purchases/purchases might be added and justified — in the case of , for example, favourable price renegotiation — as an annex to the Single Programming Document.

A significant proportion of the Title III appropriations carried over to 2019 correspond to the first of two specific contracts for fieldwork services under the enterprise survey ESENER. Due to the high cost of these services relative to the agency's total Title III budget, the project and procurement schedule is planned so that the fieldwork costs can be spread over two years' budgets. This project approach is the same as in the two previous editions of the survey, carried out in 2009 and 2014 and was outlined in the agency's work programme, ABB and procurement plan. It was also specified in the project's ex-ante assessment approved by the board and reflected in the tender documents. More generally, with regard to other operational activities, the programming of large-scale research projects that run over two years is an approach taken by EU-OSHA to achieve greater impact for the given resources. Carry-overs are a planned feature of such an approach and are foreseen in the agency's planning documents mentioned above

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', or 'Eurofound'), which is located in Dublin, was established by Council Regulation (EEC) No 1365/75 ⁽¹¹⁵⁾, repealed by Regulation (EU) 2019/127 of the European Parliament and of the Council ⁽¹¹⁶⁾. 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 ⁽¹¹⁷⁾.

Table

Key figures for the Foundation

	2017	2018
Budget (million euros) ⁽¹⁾	20	21
Staff as at 31 December ⁽²⁾	100	101

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹¹⁸⁾ and the reports on the implementation of the budget ⁽¹¹⁹⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Foundation at 31 December 2018, 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.

⁽¹¹⁵⁾ OJ L 139, 30.5.1975, p. 1.

⁽¹¹⁶⁾ OJ L 30, 31.1.2019, p. 74.

⁽¹¹⁷⁾ More information on the Foundation's competences and activities is available on its website: www.eurofound.europa.eu

⁽¹¹⁸⁾ 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.

⁽¹¹⁹⁾ 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 2018 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 2018 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 INTERNAL CONTROLS

3.15.8. In 2014, the Commission, on behalf of more than 50 EU Institutions and bodies (including Eurofound), signed a framework contract with one contractor for the acquisition of software, licences and the provision of related IT maintenance and consultancy. Due to the volatility of the software market the contract contains no price list, and the framework contractor acts as an intermediary between the Foundation and suppliers that can address the Foundation's needs. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2018, total payments to the framework contractor amounted to 88 166 euros. The ex-ante controls performed by Eurofound were not effective, as they did not check whether the prices and uplifts charged by the framework contractor were correct. The framework contract itself may restrict competition, as there is no evidence that the framework contractor chooses suppliers on a competitive basis. The Foundation should adapt ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements ⁽¹²⁰⁾.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS AND EXTERNAL EVALUATIONS

3.15.9. In 2018, the Commission's Internal Audit Service issued an audit report on 'Prioritisation of activities and allocation of resources (HR and financial) in Eurofound' ⁽¹²¹⁾. The Foundation and the IAS agreed on a plan to take corrective action.

3.15.10. An external evaluation of the EU agencies under the remit of DG Employment (Eurofound, Cedefop, ETF and EU-OSHA) was carried out in 2018, on behalf of the Commission, with regard to their relevance, effectiveness, efficiency, coherence and EU value-added ⁽¹²²⁾.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹²⁰⁾ The 2014 framework contract has expired in the meantime and the design of the succeeding framework provides for greater promotion of fair competition.

⁽¹²¹⁾ We did not verify the audit work.

⁽¹²²⁾ 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 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. The Foundation should analyse again any possible mistakes.	Completed
2016	The high level of budget carry-overs is in contradiction with the budgetary principle of annuality. The Foundation may consider introducing differentiated budget appropriations.	Completed
2016	The Foundation's founding regulation does not explicitly require external evaluations of its activities.	Completed
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Foundation's Director (administrative) and Governing Board (functional).	Completed
2017	E-procurement: by the end of 2017 the Foundation had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.	Ongoing

THE FOUNDATION'S REPLY

3.15.8. The contract in question was set up by the Commission's DG DIGIT (called the SIDE framework contract) in a way that prices quoted already included the uplift. Ex-ante verification was based on comparisons with past orders of similar product categories as well as with general market knowledge of software prices. Significant price increases or regular price differences would have been a reason to carry out a deeper analysis which was undertaken when required. In any case, the SIDE framework contract has recently expired and has been replaced by a multiple framework contract, SIDE II. In this contract the issues raised in the Court's observation have been addressed, namely the quotes now clearly show the original contractor's pricing plus the uplift (in %) applied.

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

INTRODUCTION

3.1.6.1. The European GNSS (Global Navigation Satellite System) Agency (hereinafter ‘the Agency’, or ‘GSA’), which was relocated from Brussels to Prague as of 1 September 2012 ⁽¹²³⁾, was set up by Regulation (EU) No 912/2010 of the European Parliament and the Council ⁽¹²⁴⁾, repealing Council Regulation (EC) No 1321/2004 ⁽¹²⁵⁾ 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 ⁽¹²⁶⁾. The European GNSS Authority set up under Regulation (EC) No 1321/2004 officially took over on 1 January 2007 all tasks previously assigned to the GALILEO Joint Undertaking. These activities are now managed by the ‘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.

3.1.6.2. The *Table* presents key figures for the Agency ⁽¹²⁷⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	704 ⁽²⁾	1 174 ⁽³⁾
Staff as at 31 December ⁽⁴⁾	166	170

⁽¹⁾ Budget figures are based on payment appropriations.

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

⁽³⁾ Of which 1 142 million euros received through delegation agreements with the Commission.

⁽⁴⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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

3.1.6.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽¹²⁸⁾ and the reports on the implementation of the budget ⁽¹²⁹⁾ for the financial year ended 31 December 2018; 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

3.1.6.4. In our opinion, the accounts of the Agency for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽¹²³⁾ Decision 2010/803/EU taken by common accord between the Representatives of the Governments of the Member States of 10 December 2010 on the location of the seat of the European GNSS Agency (OJ L 342, 28.12.2010, p. 15).

⁽¹²⁴⁾ OJ L 276, 20.10.2010, p. 11.

⁽¹²⁵⁾ OJ L 246, 20.7.2004, p. 1.

⁽¹²⁶⁾ OJ L 196, 24.7.2008, p. 1.

⁽¹²⁷⁾ More information on the Agency’s competences and activities is available on its website: www.gsa.europa.eu

⁽¹²⁸⁾ 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.

⁽¹²⁹⁾ 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*

3.16.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 are legal and regular in all material respects.

Other 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 2018 financial statements, together with the information that 121 million euros (49 million euros in 2017), representing 10 % of the 2018 budget including amounts received through delegation agreements, have been paid under the framework contract.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.16.8. In 2018, the Commission's Internal Audit Service issued an audit report on 'IT Governance in GSA' ⁽¹³⁰⁾. The Agency prepared an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹³⁰⁾ 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)
2014	There is no insurance coverage for fixed tangible assets.	Ongoing
2015	The last validation of the accounting systems was in 2012.	Completed
2015	There is no Business Continuity Plan in place for the Agency's 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.	Completed
2017	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.	Completed
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Agency was not yet using any of these IT tools developed by the Commission.	Outstanding

THE AGENCY'S REPLY

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

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’, or ‘EEA’), which is located in Copenhagen, was established by Council Regulation (EEC) No 1210/90 ⁽¹³¹⁾. 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 ⁽¹³²⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	42	43
Staff as at 31 December ⁽²⁾	212	204

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary and EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹³³⁾ and the reports on the implementation of the budget ⁽¹³⁴⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽¹³¹⁾ OJ L 120, 11.5.1990, p. 1.

⁽¹³²⁾ More information on the Agency's competences and activities is available on its website: www.eea.europa.eu

⁽¹³³⁾ 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.

⁽¹³⁴⁾ 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 2018 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 2018 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 SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.17.8. The Agency terminated a 1,4 million euro contract for IT consultancy because the contractor's performance was unsatisfactory. A few months later and following a new public procurement procedure, the Agency signed a new 2 million euro contract in cascade, for the same type of services with a consortium led by the same contractor. However, the technical specifications do not contain elements that would neutralise the risk of similar problems arising again under the new contract. The Agency should only award contracts if satisfactory performance can be expected.

OBSERVATIONS ON INTERNAL CONTROLS

3.17.9. For the provision of Copernicus local land monitoring services, the Agency contracted services for an amount that was 111 000 euros above the ceiling of the governing framework contract. To accommodate this, the Agency increased the ceiling of the framework contract by 112 000 euros. However, it did not formalise this through a contract amendment. The Agency should formalise any contract modifications in line with public procurement provisions.

3.17.10. The Agency does not have an up-to-date policy covering sensitive posts that would identify sensitive functions, keep them up to date and define appropriate measures to mitigate the risk of vested interests. The Agency should adopt and implement such a sensitive posts policy without delay.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.17.11. 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 use of a Commission inter-institutional framework contract for the acquisition of software, licences and the provision of related IT maintenance and consultancy did not ensure sufficient competition and the application of the most economical solution.	N/A
2017	There is a need to strengthen the accounting officer's independence by making her directly responsible to the Agency's Director (administrative) and Management Board (functional).	Outstanding (Agency disagrees) ⁽¹⁾
2017	The EEA saw significant delays in the implementation of the 2016 action plan of one European Topic Centre.	Completed
2017	Some weaknesses were identified in several public procurement procedures.	N/A
2017	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.	N/A
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.	Completed
2017	Several weaknesses were noted in the recruitment procedures organised by the Agency.	N/A
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	The Agency entered into several Copernicus-related legal commitments before having received the pre-financing from the Commission, which is at odds with the Rules of Application of the Financial Regulation.	Completed

⁽¹⁾ The Agency considers this issue to be closed owing to the status as Official of the Accounting Officer and her appointment by and direct access to the Management Board.

THE AGENCY'S REPLY

3.17.8. The Agency agrees that contracts should only be awarded if satisfactory performance can be expected. For that reason the framework service contract concerned is a multiple contract awarded in cascade to three economic operators, which as such mitigates the risk of potential underperformance. It ensures indeed that one or the other of the contractors can perform a contract in succession, hence avoiding dependency on one contractor and thereby ensuring business continuity in case one contractor is not in a position to deliver, or in the event one of the contracts in the cascade would have to be terminated. Furthermore, the contractor ranked in first position of the cascade is a consortium made up of two economic operators, which, with their combined technical and professional capacity acknowledged by the evaluation committee, offers additional reassurance for the satisfactory performance of the contract. Moreover, the framework contract includes provisions on liquidated damages and reduction in price, which can operate both as an incentive measure to ensure satisfactory performance and as mitigating measure in case of disagreements. Lastly, the recommendation of the appointed evaluation committee to award the contract to the tender which successfully passed the evaluation, is obviously an indication that satisfactory performance can be expected. In any case, satisfactory performance can only be tested when implementing the framework contract through a specific contract. Furthermore, effective mitigation measures may only be considered during the negotiations for the award of a specific contract based on the characteristics of the request for service and the offer proposed by the contractor.

3.17.9. The Agency considers that the increase of the budget ceiling of the framework contract is an internal decision, which does not affect the contractor insofar as it does not grant the latter a right to claim a specific volume of purchases. Furthermore, the Agency followed the instructions and guidance laid down in the Vade-mecum on Public Procurement drafted by the Central Financial Service of DG BUDG, and the responsible authorising officer signed a note to the file including the legal basis and the justification for the modification. The modification to the framework contract will be subject to a publication on the Agency's website by 30 June 2019, in compliance with the provisions laid down in the rules of application of the financial rules (FR2012).

3.17.10. With regard to the question of sensitive posts, the EEA management has carried out an inventory of the sensitive functions since 2009, including an assessment of risks and mitigating controls put in place. A reference document is available regarding the identification process and is currently under review to reflect the changes coming from EEA reorganisation done in September 2018. The reference document is called 'guidelines on the identification and management of sensitive functions'. It is aligned with the internal control guidance from the European Commission. The updated reference document (guidelines) will not deviate in its essence from the one currently in place, as the general aspects and mitigating controls remain essentially the same.

3.1.8. EUROPEAN FISHERIES CONTROL AGENCY (EFCA)

INTRODUCTION

3.1.8.1. The European Fisheries Control Agency (hereinafter ‘the Agency’, or ‘EFCA’), which is located in Vigo, was established by Council Regulation (EC) No 768/2005 ⁽¹³⁵⁾. 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.

3.1.8.2. The *Table* presents key figures for the Agency ⁽¹³⁶⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	17	17
Staff as at 31 December ⁽²⁾	72	77

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary and EU contract staff and seconded national experts, not interim workers and consultants.

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

3.1.8.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽¹³⁷⁾ and the reports on the implementation of the budget ⁽¹³⁸⁾ for the financial year ended 31 December 2018; 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

3.1.8.4. In our opinion, the accounts of the Agency for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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

3.1.8.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

⁽¹³⁵⁾ OJ L 128, 21.5.2005, p. 1.

⁽¹³⁶⁾ More information on the Agency’s competences and activities is available on its website: www.efca.europa.eu

⁽¹³⁷⁾ 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.

⁽¹³⁸⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON INTERNAL CONTROLS

3.18.8. In 2014 the Commission, on behalf of more than 50 EU Institutions and bodies (including EFCA), signed a framework contract with one contractor for the acquisition of software, licences and the provision of related IT maintenance and consultancy. Due to the volatility of the software market the contract contains no pricelist. 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 2018, total payments to the framework contractor amounted to 192 112 euros. The ex-ante controls performed by EFCA were not effective, as they did not check that the prices and uplifts charged by the framework contractor were correct. The framework contract itself may restrict competition as there is no evidence that the framework contractor chooses suppliers on a competitive basis. The Agency should adapt ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements ⁽¹³⁹⁾.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.18.9. In 2018, the Commission's Internal Audit Service issued an audit report on 'Planning, Budgeting and Monitoring in the European Fisheries Control Agency' ⁽¹⁴⁰⁾. The Agency and the IAS agreed on a plan for potential areas of improvement.

⁽¹³⁹⁾ The 2014 framework contract has expired in the meantime and the design of the succeeding framework provides for greater promotion of fair competition.

⁽¹⁴⁰⁾ We did not verify the audit work.

THE AGENCY'S REPLY

3.18.8. EFCA welcomes the comments of the ECA and will take them into consideration. Concerning the interinstitutional framework contract signed between DIGIT and Comparex, EFCA was not directly concerned with its definition and had no possibility to change the conditions and provisions of the FWC. EFCA has joined the new framework contract signed by DIGIT for the purchase of the same type of products. The issues raised concerning the old contract would seem to have been addressed, and EFCA will implement this new framework contract accordingly. In respect of the prices, EFCA had the practice of checking the quotes received against the RRP (Recommended Retail Prices) published by vendors, prices previously paid, and known prices for alternative products. EFCA consistently found the quotes to be below the RRP. In this manner it was ensured that EFCA received good value for money. Any discrepancy in the quoted price or a sudden or significant increase in price would be noticed and investigated further before signing the order.

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’, or CEPOL), located in Budapest, was established by Regulation (EU) 2015/2219 of the European Parliament and of the Council ⁽¹⁴¹⁾ replacing and repealing Council Decision 2005/681/JHA ⁽¹⁴²⁾. 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* presents key figures for the Agency ⁽¹⁴³⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	9	10
Staff as at 31 December ⁽²⁾	53	51

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary and EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁴⁴⁾ and the reports on the implementation of the budget ⁽¹⁴⁵⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽¹⁴¹⁾ 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).

⁽¹⁴²⁾ Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA (OJ L 256, 1.10.2005, p. 63).

⁽¹⁴³⁾ More information on the Agency’s competences and activities is available on its website: www.cepoleuropa.eu

⁽¹⁴⁴⁾ 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.

⁽¹⁴⁵⁾ 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 2018 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 2018 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 SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.19.8. In December 2017, CEPOL launched a call for tender to conclude a four-year framework contract with an estimated market volume of 8,5 million euros for travel arrangements for its own staff and participants in training. Award criteria were weighted with 60 % for quality and 40 % for price. Three out of the six tenders received surpassed the minimum quality threshold. The price offered by the tenderer who was awarded the contract, based on a scenario prepared by the Agency, was 56 % of the average price offered by the two other tenderers. The contract was awarded without requesting any explanation from the winning tenderer for the potentially abnormally low tender. Payments made in 2018 under the contract amounted to 2 058 073 euros. For potentially abnormally low tenders the Agency should request and analyse the reasons to ensure the tenders are sustainable.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.19.9. 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)
2016	There is a high staff turnover which may impact business continuity and the Agency's ability to implement the activities provided for in its work programme. There was only a limited number of applications from other Member States.	Ongoing
2017	Despite significant modifications to the Agency's procedures, the accounting system has not been re-validated since 2013.	Completed
2017	In December 2016 the Agency signed a four-year framework contract to the value of 1,6 million euros, with one company, for the provision of temporary staff. The only competitive criterion for the procurement procedure was price and quality was not considered.	N/A
2017	The Agency did not carry out a comprehensive Brexit impact analysis.	Completed
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing and e-tendering, but not e-submission.	Outstanding

THE AGENCY'S REPLY

3.19.8. The Agency has taken note of the Court's comments and agrees that the Financial Regulation imposes on the contracting authority the obligation to seek clarifications on tenders that appear to be abnormally low. In the case at hand, the evaluation committee did not proceed in seeking for clarifications because due to their daily work, they were aware of the prices charged by the company holding the previous contract and therefore were able to identify that the pricing provided by the newly awarded contractor was significantly higher than the old one. Furthermore, two out of the three tenders that reached the financial evaluation presented prices that were in a similar bandwidth, while the third company offered significantly higher prices. For these reasons, the Evaluation Committee dismissed the risk of abnormally low tender; however, we do accept the Court's observation that this assessment was not formalised in the evaluation report.

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 ⁽¹⁴⁶⁾ 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. Our audit opinions and observations for the financial year ended 31 December 2017 reflected the events and conditions that, per se, were prone to impact the conduct of the Office’s business in terms of compliance with the applicable legal framework (mostly in relation to procurement and recruitment). In substance, these events and conditions have not changed.

3.20.3. The Office manages the operations related to the refugee crisis in a decentralised environment, with several regional offices in Italy and Greece, and, as from 2018, in Cyprus. This decentralised environment constitutes a further important challenge to the implementation of operations in compliance with the applicable legal framework.

3.20.4. In carrying out its operations EASO, with its limited number of some 200 staff, depends on Member States’ cooperation and the secondment of national experts, as laid down in its Regulation. Given — always — limited number of national experts made available by the Member States, EASO continued to use alternative arrangements by contracting interim workers and interpretation services from economic operators. In 2018, out of the approximately 569 experts deployed in Greece, some 243 (43 %) were interim workers and out of the approximately 60 116 recorded working days, some 40 947 (68 %) were delivered by interim workers. In the same period, out of the approximately 373 experts deployed in Italy, some 221 (59 %) were interim workers and out of the approximately 43 584 recorded working days, some 35 137 (81 %) were delivered by interim workers. The delegation of EASO’s core tasks to economic operators to such an extent gives rise to a critical dependency and permanent business continuity risk to EASO in a sensitive area that is key for the effective management of migrant flows to Europe.

3.20.5. The nature of the Office’s operations makes it difficult to predict their timing and duration. As a result, it is difficult for EASO to predict what operational arrangements are most advantageous from a sound financial management point of view, be it for the engagement of internal or external staff or also for the duration of rental agreements at the various locations.

3.20.6. The long process of negotiations on the reform of the Common European Asylum System diverts EASO’s already strained resources towards a considerable burden of preparatory work, further reducing the resources available for carrying out operational tasks.

3.20.7. The *Table* presents key figures for the Office ⁽¹⁴⁷⁾.

Table

Key figures for the Office

	2017	2018
Budget (million euros) ⁽¹⁾	79	98
Staff as of 31 December ⁽²⁾	200	207

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

Source: Data provided by the Office.

⁽¹⁴⁶⁾ OJ L 132, 29.5.2010, p. 11.

⁽¹⁴⁷⁾ More information on the Office’s competences and activities is available on its website: www.easo.europa.eu

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

OPINION

3.20.8. We have audited:

- (a) the accounts of the Office, which comprise the financial statements ⁽¹⁴⁸⁾ and the reports on the implementation of the budget ⁽¹⁴⁹⁾ for the financial year ended 31 December 2018; 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

3.20.9. In our opinion, the accounts of the Office for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Office at 31 December 2018, 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

3.20.10. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

Payments

Basis for a qualified opinion on the legality and regularity of the payments underlying the accounts

3.20.11. In its audit reports for the financial years 2016 and 2017, the Court had concluded that contracts on the provision of interim workers in Greece, travel services to the Office and rent for the Office's premises in Lesbos are irregular. Payments made in 2018 under these contracts amounted to 3 405 970 euros (4 % of total 2018 payments).

Qualified opinion on the legality and regularity of payments underlying the accounts

3.20.12. In our opinion, except for the effects explained in the 'Basis for a qualified opinion on the legality and regularity of payments' paragraph, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

Other matter

3.20.13. As from the end of 2017, the human resources situation at the Office had deteriorated exponentially. In 2018, EASO made recruitment rules more transparent. By the end of 2018, EASO had 219 staff members. 89 offer letters were sent out and 60 contracts were signed. However, the actual net increase of staff at EASO was marginal in 2018 and there were still 78 vacancies to be filled by the end of year. Of particular concern is the lack of managers in the administration department. By the end of 2018, four out of five management posts were either vacant or saw the persons occupying it suspended from their duties. One management post was filled on an *ad interim* basis. Overall, this situation entails a significant risk to the continuation of the Office's operations at the current scale and the Office should make additional efforts to fill the vacant posts, in collaboration with the Commission and Member States.

3.20.14. The absence of comprehensive arrangements concerning the accommodation of asylum support teams and other EASO forces in the Member States (e.g. as regards privileges and immunities for EASO's own staff, Member States' experts and contracted experts) creates a significant operational, financial and reputational risk. The Office, together with the Commission, should continue seeking effective arrangements with Member States concerning the accommodation of asylum support teams and other EASO forces.

⁽¹⁴⁸⁾ 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.

⁽¹⁴⁹⁾ The reports on implementation of the budget aggregate all budgetary operations and the explanatory notes.

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

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.20.16. The Office uses service contracts with IT companies, which were formulated in a way that could imply the assignment ('mise à disposition') of temporary agency workers instead of clearly defined IT services or products. The provision of temporary agency workers (interim workers) to perform precise tasks for a specific duration in a user undertaking is subject to Directive 2008/104/EC on temporary agency work and to specific rules adopted by the Member States in the transposition of that directive. According to Maltese temporary agency workers regulations, only registered temporary work agencies are authorised to provide interim workers to user undertakings (here EASO). The use of IT service contracts for the provision of labour is not compliant with the EU Staff Regulations and EU social and employment rules. The Office should make sure that the contracts' formulation prevents any confusion between the procurement of IT services and of interim workers.

3.20.17. In 2018, the Office had launched an open public procurement procedure to establish framework contracts for the provision of temporary workers' services in Italy for a period of four years with a maximum amount of 50 million euros. The Office discontinued the procedure for the reason that only one tender was received. In addition, the Office considered this offer unacceptable, as the financial offer exceeded the estimated maximum budget. We found that the tender specifications contained an important mistake amounting to 25 million euros. EASO had invited candidates to provide a tender for a defined number of months and a defined gross salary to be paid to interims for a total amount of less than 50 000 000 euros. However, such an offer would only have been possible if the provider did not pay the taxes and social contributions required by Italian laws (which would amount to some 25 million euros). Therefore, it is likely that other possible candidates refrained from submitting tenders to EASO since the specifications did not allow for a lawful business case. However, the Office did not change the tender specifications and did not organise a new open procedure but instead negotiated the conditions and consequently signed the contract with the one tenderer that had responded to the initial call. In the absence of fair competition on the basis of correct tender specifications, the procurement procedure and all related contracts and future payments are considered to be irregular. There were no payments made in 2018 under this contract. The Office should apply EU public procurement rules in a rigorous manner.

OBSERVATIONS ON INTERNAL CONTROLS

3.20.18. In February 2018, the Management Board adopted a decision restricting the powers of the Executive Director in the areas of recruitment and procurement to make the relevant decisions dependent on its endorsement. In June 2018, EASO's Executive Director resigned and was replaced by an *ad interim* Executive Director. The *ad interim* Executive Director prepared the 'EASO Governance Action Plan' which was endorsed by the Management Board in autumn 2018. It included a set of priority objectives and scheduled deliverables aimed at 'trust building', 'reinforcement of the internal governance framework' and 'rebuilding internal capacity'. The EASO Governance Action Plan provided an assessment of the implementation of the Office's Internal Control Standards, which was carried out in August 2018. The assessment referred to significant weaknesses and inefficiencies for the majority of Internal Control Standards and assessment criteria. The weaknesses identified corroborate the Court's observations made in 2017.

3.20.19. EASO has taken concrete and positive steps aimed at improving organisational governance. Out of the 61 measures in the action plan, 30 were completed while 31 had an ongoing status at the time of our audit (March 2019). The measures taken are still recent and need to be completed. Therefore, the overall impact of these measures has to be assessed in the future.

3.20.20. At the end of 2018, EASO did not have an internal audit capability and there were no comprehensive IAS audit reports that had been issued since January 2018 (the IAS issued two fact finding reports in 2018 and one follow-up report in 2019). Furthermore, the creation of ex-post controls to verify the legality and regularity of transactions was in its infancy. Both an effective internal audit function and effective ex-post controls are fundamental elements in managing an organisation such as EASO involving a multitude of players working in multiple locations. The Office should establish an internal audit capability and effective ex post controls.

3.20.21. In our audit report for the financial year ended 2017, we addressed the fact that there is no internal legal function at EASO and that a multitude of law firms had been engaged under the control of the previous director. In 2018 EASO has created a list of all contracts used for legal advice, started procedures to recruit a legal advisor and to replace the previous contracts by concluding a framework contract for legal advice. The new Senior legal advisor started her duties at the Office in April 2019 while the new framework contract for legal advice was signed in January 2019. However, there was still no systematic internal review of legal documents in place while multiple inconsistencies were noted in the legal aspects of public procurement procedures in 2018. The Office should ensure a strong legal function and an effective management of legal procedures.

3.20.22. There is still no policy regarding sensitive posts at EASO. This is not in line with the Office's internal control standards, whereby sensitive functions should be clearly defined, recorded and kept up to date. The Office should establish an effective sensitive posts policy.

3.20.23. The lack of clear responsibilities and roles concerning the management of rented premises and related services and works may hamper an efficient mitigation of premises related risks. In order to mitigate this risk, the Office should establish an effective policy for the management of rented premises and related services, especially given that it manages a number of sites in different countries. We understand that the Office has taken steps in this direction.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.20.24. Limited initial annual budgets and the absence of any contingency funds in EASO's budget to cover the financing of unforeseen urgent operational needs create budgetary uncertainties and hamper emergency planning. The Office should continue addressing such budgetary constraints in consultation with the Commission and the budgetary authorities.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.20.25. 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 and 2014	A high number of payments were made after the time limits set in the Financial Regulation.	Ongoing
2014	There is high staff turn-over, engendering considerable business risk.	N/A
2014	There is no documentation justifying the classification of external meeting participants in the three different categories for cost reimbursements.	Completed
2016	Unequal treatment of tenderers for a framework contract on the provision of travel services rendered contract and associated payments irregular.	N/A
2016	The direct award of a framework contract (FWC) for interim services to support the Office in its response to the migration crisis made contract and related payments irregular.	N/A
2016	The Office did not systematically check the contractor's prices and uplifts charged by the contractor under a Commission interinstitutional framework contract on IT deliveries and services.	N/A
2016	VAT reimbursements for 2014 and 2015 remained unrecovered.	Completed
2017	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.	Ongoing (more details in paragraph 3.20.13)
2017	There was no internal audit capability and	Ongoing (more details in paragraph 3.20.20)
	Management Board's supervision of financial management was limited.	Completed
2017	The Office has neither an internal legal service nor a systematic internal review of legal documents. The Office outsources most of the legal issues without clear internal decisions or guidelines.	Ongoing (more details in paragraph 3.20.21)
2017	The procurement procedures carried out in 2017 for interims in Malta (2017 payments of 1,0 million euros) were poorly managed, affecting competition, and procurements had to be relaunched a number of times.	N/A
2017	For interim staff, the Office did not carry out an adequate assessment of needs and of alternative solutions before entering into multi-million euro contracts.	N/A
	Contract monitoring for compliance with national rules was poor. Also, there were significant weaknesses in the verification of timesheets and irregularities.	Ongoing
2017	We found serious weaknesses in four of the fourteen recruitment procedures audited.	N/A
2017	The Office had entered into the lease contracts for the extension of the Malta headquarters and several new offices in Athens, Lesvos and Chios without having carried out an adequate local market analysis.	N/A
2017	The financial management of lease agreements in Lesvos and Chios was weak and not in compliance with the principal of sound financial management.	N/A

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	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.	Ongoing
2017	There were 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, amendments and extensions of contracts; the execution of contracts and the verification of services provided.	Ongoing
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 and all related payments (992 000 euros) were therefore irregular.	N/A
2017	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. The consultancy related amendments and payments (2017 in 98 332 euros) were therefore irregular.	N/A
2017	The implementation of the 120 000 euro contract signed in 2013 (amended to 132 000 euros in 2017) for the organisation of major events was not in line with the contract's initial purpose and the contract was irregular.	N/A
2017	There was an error in the calculation of contributions to the Office's budget from Schengen associated countries.	N/A

THE OFFICE'S REPLY

3.20.14. EASO acknowledges the observation. This issue has been raised by EASO in bilateral contacts with the respective Member States, with the Commission and with the EASO Management Board since a long time:

- As regards Italy, a hosting arrangement was signed in November 2017, but still awaits ratification by the Italian Parliament.
- As regards Greece, an advance draft was achieved after several rounds of consultations, but not finalised, due to the change of government in Greece.
- As regards Cyprus, the operations have only recently reached the level of activity requiring the establishment of a proper regional EASO office and contacts have been made with the national authorities to initiate negotiations regarding the hosting arrangement.

The new Executive Director has already expressed her intention to prioritise this matter and will soon visit the aforementioned Member States and meet national authorities.

3.20.16. EASO acknowledges the observation. *Intra muros* Time and Means specific contracts are used to define the workload (e.g. person-days) and its specific needs or services for requested profiles for ICT consultants. EASO makes a clear distinction between ICT consultants who do not fall under the scope of any collective labour agreement, and temporary workers (interims) that have entered into an employment contract with a temporary employment agency to which labour law and a collective labour agreement may apply. While interims providing services at EASO are directly supervised by staff, the work performed by ICT Consultants is under the full management and supervision of the Contractor. Therefore, the *intra muros* Time & Means contracts do not include any employment law concepts or terms (i.e. employee, employer, working hours, holidays, salary, holiday allowance, etc.).

During 2018, ICT consultants worked on 34 different EASO projects and delivered in total 3 727 concrete deliverables, which are all traceable to concluded contracts, including Time and Means contracts. Nevertheless, EASO is considering reviewing its template for Time and Means contracts as to include in each contract a list of deliverables that are to be performed under the contract, and will continue its diligence as to avoid any potential perception of a temporary worker relationship or an employment relationship between EASO and the ICT Consultants.

3.20.17. While EASO acknowledges technical shortcomings in the procurement procedures, the Office is of the view that both procedures are regular. However, EASO takes notes of the finding of the Court and in order to avoid any further negative findings in relation to this contract is therefore considering adequate corrective actions while ensuring business continuity.

3.20.20. The Agency acknowledges the observation. EASO has agreed and documented corrective measures on the internal control systems as following:

- to create an internal audit capability by Q4 2019,
- to create an ex-post internal control capability by Q3 2019. The selection process has been implemented and the function will be operational by September.

3.20.21. The Agency acknowledges the observation. EASO intends to launch recruitment procedures to reinforce the internal legal function by Q3/4 2019. EASO is currently working on the centralisation of the legal affairs matters, whereby the internal legal function is acting as principal coordinator on legal matters and main contact point with internal and external stakeholders. EASO is also working on the centralisation of legal contracts and contract management, and the centralisation of pre-litigation and litigation cases in available tools, while establishing internal processes for provision of legal advice/support/review and establishing networks and regular meetings with internal/external stakeholders as needed to perform high quality legal support.

3.20.22. The Agency acknowledges the observation. The policy is being finalised and is expected to be approved by Q3 2019 and to be implemented by Q4 2019. This policy provides the guidelines and criteria for the Management Team to implement a risk assessment, identify and document the sensitive functions in EASO together with the agreed mitigating controls.

3.20.23. EASO acknowledges the observation. The delegation of responsibilities to manage EASO property and rented premises is documented in ED Decision 2016/171 on 'Internal Rules of Procedure' and in relevant job descriptions, including for the heads of sector for Italy and Greece, who are responsible for the management of the operational offices in those Member States. Moreover, EASO has implemented a selection process for the Head of General Affairs Unit, who will be responsible for the central management of all EASO premises in coordination with the relevant heads of operational offices. The Office acknowledges the need to adopt a formal policy for the management of premises and is taking steps accordingly.

3.20.24. EASO acknowledges the observation. EASO will seek to establish sound processes and timely planning for contingency situations by way of both ensuring a permanent market research on critical resources necessary for operating plans for Member States under particular pressure and also to have constant contractual readiness for emergency situations. EASO is in constant dialogue with the Commission and the budgetary authorities regarding its operational planning and resource allocation. The Agency, in full consultation with the Commission and with the approval of its Management Board, makes partially use of Associate Countries funds as contingency for operational expenditures in particular to face unplanned requests for support from Member States under particular pressure.

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

INTRODUCTION

3.21.1. The European Centre for Disease Prevention and Control (hereinafter ECDC, or ‘the Centre’), which is located in Stockholm, was established by Regulation (EC) No 851/2004 of the European Parliament and of the Council ⁽¹⁵⁰⁾. 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 ⁽¹⁵¹⁾.

Table

Key figures for the Centre

	2017	2018
Budget (million euros) ⁽¹⁾	58	58
Staff as at 31 December ⁽²⁾	266	267

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁵²⁾ and the reports on the implementation of the budget ⁽¹⁵³⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Centre at 31 December 2018, 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.

⁽¹⁵⁰⁾ OJ L 142, 30.4.2004, p. 1.

⁽¹⁵¹⁾ More information on the Centre’s competences and activities is available on its website: www.ecdc.europa.eu

⁽¹⁵²⁾ 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.

⁽¹⁵³⁾ 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 2018 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 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON THE INTERNAL CONTROLS

3.21.8. In 2014, the Commission, on behalf of more than 50 EU institutions and bodies (including the ECDC), signed an inter-institutional framework contract with one contractor for the acquisition of software, licences and the provision of related IT maintenance and consultancy. Due to the volatility of the software market the contract contains no price list, and the framework contractor acts as an intermediary between the Centre and suppliers that can address the Centre's needs. For these intermediary services, the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2018, total payments to the framework contractor amounted to 1,1 million euros. The ex-ante controls performed by ECDC were not effective, as they did not check that the framework contractor's prices and uplifts were correct. The framework contract itself may restrict competition, as there is no evidence that the framework contractor chooses suppliers on a competitive basis. The Centre should adapt ex-ante controls on order forms under such contracts and ensure there is a competitive procedure for all procurements ⁽¹⁵⁴⁾.

3.21.9. Similar control weaknesses were found for the implementation of another framework contract regarding the provision of conference and multimedia equipment and services. The Centre did not sufficiently check whether the provision of the contractual 20 % discount rate had been applied to the product price list of the contractor's major suppliers before placing order forms. The Centre should adapt ex-ante controls on order forms accordingly.

3.21.10. For two payments for meeting events, the audit found weaknesses in the structure and documentation of checks and reconciliations on order forms, deliverables and invoices. The Centre should strengthen these aspects of its control system, in particular, with respect to large and more complex meeting events.

⁽¹⁵⁴⁾ The 2014 framework contract has expired in the meantime and the design of the succeeding framework contract provides for greater promotion of fair competition.

THE CENTRE'S REPLY

3.21.8. ECDC takes note of the observation that the Court of Auditors was not satisfied with the effectiveness of the ex-ante checks carried out on orders under the contract. However, ECDC would like to emphasize that in practice it was difficult to enforce such checks, as there was no contractual obligation on the contractor to present the original pricing and the contractor's uplift separately. A complete coverage of ex-ante controls was thus not feasible. ECDC also notes that part of the observation ('The framework contract itself may restrict competition, as there is no evidence that the framework contractor chooses suppliers on a competitive basis.' and 'The Centre should [...] ensure a competitive procedure for all procurements') relates to the design of the framework contract by the European Commission and not to ECDC's implementation of the contract.

3.21.9. ECDC takes note of the observation and accepts that the checks could have been carried out in a more structured manner and be better documented. ECDC decided not to renew the audited contract at its renewal date in October 2019. ECDC, in the meantime, joined a new inter-institutional Framework Contract for AV Equipment led by the Commission (FWC Nr. SCIC-2016-S5-3471731), which will replace the audited contract as of November 2019. Due to the structure of the new contract, the issue is not expected to reoccur.

3.21.10. ECDC notes that no errors were found in the two transactions audited. However, the Centre will review the structure and documentation of checks and reconciliations in place regarding meetings, in particular for the large and more complex meetings.

3.22. EUROPEAN FOOD SAFETY AUTHORITY (EFSA)

INTRODUCTION

3.22.1. The European Food Safety Authority (hereinafter ‘the Authority’, or ‘EFSA’), which is located in Parma, was established by Regulation (EC) No 178/2002 of the European Parliament and of the Council ⁽¹⁵⁵⁾. 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 ⁽¹⁵⁶⁾.

Table

Key figures for the Authority

	2017	2018
Budget (million euros) ⁽¹⁾	81	80
Staff as at 31 December ⁽²⁾	443	444

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁵⁷⁾ and the reports on the implementation of the budget ⁽¹⁵⁸⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Authority at 31 December 2018, 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⁾ OJ L 31, 1.2.2002, p. 1.

⁽¹⁵⁶⁾ More information on the Authority’s competences and activities is available on its website: www.efsa.europa.eu

⁽¹⁵⁷⁾ 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.

⁽¹⁵⁸⁾ 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 2018 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 2018 are legal and regular in all material respects.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.22.7. In 2018, the Commission's Internal Audit Service issued an audit report on 'Human Resources Management & Ethics in EFSA' ⁽¹⁵⁹⁾. The Authority prepared an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁵⁹⁾ 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)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Authority's Director (administrative) and Management Board (functional).	Ongoing
2017	In May 2017, the Authority awarded, on behalf of nine participating agencies, three framework contracts in cascade (a ranking system), covering a wide range of audit services. Framework contracts with reopening of competition are more appropriate for this type of services.	N/A

THE AUTHORITY'S REPLY

The Authority acknowledges receipt of the clean audit report of the Court of Auditors and EFSA welcomes the unqualified audit opinions on the reliability of the accounts and the legality and regularity of the transactions underlying the accounts.

3.23. EUROPEAN INSTITUTE FOR GENDER EQUALITY (EIGE)

INTRODUCTION

3.23.1. The European Institute for Gender Equality (hereinafter 'the Institute', or 'EIGE'), which is located in Vilnius, was established by Regulation (EC) No 1922/2006 of the European Parliament and of the Council ⁽¹⁶⁰⁾. 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 ⁽¹⁶¹⁾.

Table

Key figures for the Institute

	2017	2018
Budget (million euros) ⁽¹⁾	8	8
Staff as at 31 December ⁽²⁾	45	44

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁶²⁾ and the reports on the implementation of the budget ⁽¹⁶³⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Institute at 31 December 2018, 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.

⁽¹⁶⁰⁾ OJ L 403, 30.12.2006, p. 9.

⁽¹⁶¹⁾ More information on the Institute's competences and activities is available on its website: www.eige.europa.eu

⁽¹⁶²⁾ 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.

⁽¹⁶³⁾ 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 2018 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 2018 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 the financial year 2017, the Institute was a defendant in four cases related to three procurement procedures which were brought before EU Courts by unsuccessful tenderers. In each of these cases, the applicant requested the annulment of the award decision and the award of damages. In 2018, this Court ruled on two of the four cases and dismissed the actions of the claimants without any charge for EIGE. In early 2019, this Court ruled on the two remaining cases, both linked to the same award decision and contract. The award of the contract was annulled on the basis of minor procedural weaknesses, although there is no evidence that a different tenderer should have won the procurement procedure. While claims for damages were rejected, EIGE was ordered to bear its own legal costs and 75 % of the claimants' costs. By the time of the annulment by the Court, the contract had been fully executed. Total payments made under the contract in 2018 amounted to 196 314 euros.

3.23.9. EIGE engaged in the use of temporary agency workers (hereafter, interim workers) through a framework contract with one temporary work agency. In 2018 the Institute used up to 8 interim workers in addition to its own 44 staff. Related payments made in 2018 amounted to almost 102 000 euros. For contracts on the use of interim workers, a specific legal framework applies, imposing multiple obligations on temporary work agencies and user undertakings. According to Directive 2008/104/EC and to Lithuanian labour law, interim workers should work under the same working conditions as workers employed directly by the user undertaking to occupy the same job and/or the same job functions in the same employment place. However, the contract did not require the temporary work agency explicitly to respect these conditions and there is no evidence that the Institute itself carried out any comparison between the working conditions for its own and interim staff. The Institute should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.23.10. 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)
2016	Institute's follow-up of the 2016 external evaluation.	Completed
2017	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.	N/A
2017	In 2016, the Institute organised a call for tender for travel services. The tender specifications and the evaluation process did not provide sufficient guarantees to ensure best value-for-money.	N/A
2017	E-procurement: by the end of 2017 the Institute had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Completed
2017	The Institute publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing

THE INSTITUTE'S REPLY

3.23.8. EIGE takes note of this observation. EIGE examined the reasoning of the cases and further improved the procurement procedures to minimise the risk of potential dissatisfaction among unsuccessful tenderers and of the future legal cases, which, even if dismissed, bring a substantial additional workload. The measures taken include specific training on 'lessons learnt' to staff involved in procurement processes; putting in place the risk analysis of the procurements; issue of new procurement guidelines and templates. EIGE also initiated recovery of its legal costs from the complainant in the two cases that were dismissed by the General Court without any charge for EIGE (Cases T-914/16 and T-10/17).

3.23.9. EIGE takes note of this observation. The matter raised by ECA is currently subject to an ongoing court case, in which EIGE participates as a third party. EIGE will act on the basis of the final court ruling when in effect. EIGE is of the opinion that the thorough analysis it carried out to compare the tasks of statutory staff and interims underlined that they are hardly comparable. The main difference is ensuing from the Financial Regulations stipulating that the tasks of financial actors can only be executed by the staff covered by the Staff Regulations. EIGE also points out that technical specifications, which form an annex to the framework contract, place a requirement on the temporary work agency for full compliance with the Lithuanian law and specifically refer to the Lithuanian social legislation in force with respect to the interim agents. This indeed includes also the transposition of the Directive 2008/104/EC into the Lithuanian law.

3.24. EUROPEAN MEDICINES AGENCY (EMA)

INTRODUCTION

3.24.1. The European Medicines Agency (hereinafter ‘the Agency’, or ‘EMA’), which has relocated to Amsterdam, 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 ⁽¹⁶⁴⁾. 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 ⁽¹⁶⁵⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	317 ⁽²⁾	338
Staff as at 31 December ⁽³⁾	766	781

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Final budget including fees and charges.

⁽³⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁶⁶⁾ and the reports on the implementation of the budget ⁽¹⁶⁷⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽¹⁶⁴⁾ 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.

⁽¹⁶⁵⁾ More information on the Agency's competences and activities is available on its website: www.ema.europa.eu

⁽¹⁶⁶⁾ 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.

⁽¹⁶⁷⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Emphasis of matter

3.24.5. 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 took place in March 2019 and the Agency's accounts for the financial year ended 31 December 2018 include provisions for related costs amounting to 17,8 million euros. Moreover, the lease agreement for the Agency's previous premises in London sets a rental period until 2039 with no exit clause. On 20 February 2019, the High Court of Justice of England and Wales ruled against EMA's request to cancel the lease, deciding that the UK's withdrawal from the EU and its consequences did not constitute an event that 'frustrated' the lease agreement (i.e. the High Court did not recognise this as a *force majeure* situation). However, the lease agreement allows reassignment or subletting of the premises to third parties, subject to the landlord's consent. When the Agency's final accounts were signed, negotiations between the Agency and potential subtenants were ongoing and the future net cost of the uncancellable lease agreement was unknown⁽¹⁶⁸⁾. The notes to the Agency's accounts for the financial year ended 31 December 2018 disclose the full amount of 468 million euros in rent remaining to be paid until 2039, of which an amount of 465 million euros for the lease period after the Agency's removal to Amsterdam is disclosed as a contingent liability.

3.24.6. At the time of our audit there was no certainty yet about the loss of staff following the Agency's relocation. This uncertainty represents a significant business continuity risk, although the Agency took mitigating measures, for example by prioritising tasks and facilitating staff relocation.

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

3.24.7. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

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

3.24.8. In our opinion, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.24.10. In our report on the audit for the financial year ended 31 December 2016, we concluded that the Agency had not adequately managed the use of consultancy services for its two main IT projects. The excessive use of consultancy services had led to a critical dependency on the Agency's part on external expertise and to disproportionate cost overruns and delays. The Agency started the implementation of mitigating measures in 2017, which, however, are not yet fully effective. As one example, the number of consultants working on the basis of Time and Means (T&M) contracts decreased considerably from 141 to 70 in 2018, but is still far from the maximum of 35 consultants envisaged. Furthermore, the amount spent in 2018 under T&M contracts, for which there are only very limited means of carrying out effective cost controls, still represented one third of the total IT budget. We also found that there are still T&M contracts which do not include any details on the specific services or deliverables to be provided. The Agency should speed up the implementation of mitigating action not only for the completion of the ongoing IT projects, but also to get ready for significant new projects such as the implementation of the Regulation on veterinary medicinal products⁽¹⁶⁹⁾ and the Regulation on medical devices⁽¹⁷⁰⁾.

⁽¹⁶⁸⁾ According to the agency, a sublease was concluded with effect from 1 July 2019. We did not yet audit the sublease agreement.

⁽¹⁶⁹⁾ Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC (OJ L 4, 7.1.2019, p. 43).

⁽¹⁷⁰⁾ Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.24.11. In 2018, the Commission's Internal Audit Service issued an audit report on 'Signal Management in the European Medicines Agency' ⁽¹⁷¹⁾. The Agency and the IAS agreed on a plan to take corrective action.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽¹⁷¹⁾ 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)
2014	The Agency's fee regulation provides due dates for the collection of fees and the related payments to National Competent Authorities. These due dates were not respected for most of the transactions audited.	Ongoing (fee collection) Completed (payments to NCAs)
2016	Since the introduction of a new IT accounting system in 2011, reporting on commitment workflow and consumption has not been sufficiently transparent.	Completed
2016	In the absence of competitive procurement procedures, six Corporate Rate Agreements on hotel accommodation and the related 2016 payments are irregular.	Completed
2016 and 2017	The Agency has been tasked by Parliament and Council with the implementation of the Regulations on Pharmacovigilance (1027/2012) and Clinical Trials (536/2014), requiring the development and implementation of two major pan-European IT systems. In the absence of the necessary own internal resources, the Agency used consultants to an extent that it became critically dependent on external expertise. There was no adequate control over project development and implementation and project delays and costs escalated.	Ongoing
2016	The founding Regulation requires an external evaluation of the Agency and its operations by the Commission only every ten years.	Ongoing (Not under the Agency's control)
2017	There is a need to strengthen the accounting officer's independence by making her directly responsible to the Agency's Director (administrative) and Management Board (functional).	Ongoing
2017	No re-validation of the accounting system has been carried out since 2013.	Completed
2017	The Agency publishes vacancy notices on its website, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017, the Agency had introduced e-tendering for certain procedures, but not e-invoicing and e-submission.	Outstanding

THE AGENCY'S REPLY

The European Medicines Agency welcomes the Court's positive opinion on the reliability of the 2018 accounts and on the legality and regularity of the transactions underlying the accounts.

As highlighted by the Court, 2018 was a challenging year with the relocation to Amsterdam and the necessity to operate under a business continuity plan.

3.24.5. Following the decision to exclude EMA's building from the EU/UK negotiations, the Agency has sought a solution consisting in assignment or subletting its building in Canary Wharf. A subletting solution was presented to the European Parliament and Council for agreement. The negotiations with a potential subtenant and the landlord are ongoing at the time of this reply (June 2019).

3.24.10. The Agency welcomes the Court's recognition of the Agency's efforts to decrease its dependency on external expertise and to reduce the number of Time and Means (T&M) consultants. The year 2018 was a very challenging year for the Agency. Relocation to Amsterdam triggered the business continuity plan, prioritisation of the activities and a certain staff loss. In such a context, the Agency monitors the T&M consultancy services in order to reach the envisaged number of T&M contractors (max 35 in 2019; subject to business continuity plan).

The Agency would like to highlight that the use of fixed price contract started only mid-2016. The Agency requests the services on T&M basis when a need for a certain set of skills/competencies arises; therefore specific requests refer to required professional qualifications, role specific experience and skills. This is why T&M contracts are put in place to provide the Agency with the required flexibility in terms of assigning a contractor (i.e. specific skills) to prioritised activities which depends on emerging circumstances and in order to meet internal/external stakeholders' needs. Also, EMA experienced that vendors are not always able to provide fixed price services with adequately qualified competences in highly specific technical domains (e.g. Informatica for master data management). Direct management of T&M contractors allow more cost effective delivery with adequate quality and control. For this reason EMA will further explore the use of Qualified T&M in its sourcing strategy.

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', or 'EMCDDA'), which is located in Lisbon, was created by Council Regulation (EC) No 302/93 ⁽¹⁷²⁾. 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 ⁽¹⁷³⁾.

Table

Key figures for the Centre

	2017	2018
Budget (million euros) ⁽¹⁾	16	16
Staff as at 31 December ⁽²⁾	111	103

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁷⁴⁾ and the reports on the implementation of the budget ⁽¹⁷⁵⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Centre at 31 December 2018, 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.

⁽¹⁷²⁾ 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).

⁽¹⁷³⁾ More information on the Centre's competences and activities is available on its website: www.emcdda.europa.eu

⁽¹⁷⁴⁾ 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.

⁽¹⁷⁵⁾ 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 2018 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 2018 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 LEGALITY AND REGULARITY OF TRANSACTIONS

3.25.8. The EMCDDA engaged in the use of temporary-agency workers (hereafter, interim workers) through a framework contract with a temporary work agency. In 2018, the EMCDDA used four interim workers, in addition to its own 103 staff, and paid 106 403 euros for their services. For contracts on the use of interim workers, a specific legal framework applies, imposing multiple obligations on temporary work agencies and user undertakings. According to Directive 2008/104/EC and to Portuguese labour law, interim workers should work under the same working conditions as workers employed directly by the user undertaking. However, the contract did not require the temporary work agency explicitly to respect these conditions and there is no evidence that the Centre itself carried out any comparison between the working conditions for its own and interim staff. Also, the Centre should have ensured that the tender specifications included information on the salaries paid to its own staff having similar qualifications and occupying the same job as the interim workers. We found that interim workers' remunerations are significantly lower than those of the EMCDDA's own staff, being paid almost half the lowest salary of the Centre's own staff doing similar jobs. Some interim workers were paid even less than the lowest possible salary for staff employed under the EU Staff Regulations. This engenders litigation and reputational risks. The Centre should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.

3.25.9. In 2006, the EU and Norway signed an agreement that defines the formula to calculate Norway's financial contribution to the EMCDDA as well as the minimum contribution threshold. The latter was set at 271 000 euros in 2006 and should be subject to an annual adjustment based on price trends and gross national income in the EU. While the EU budget subsidy increased by 24 % between 2007 and 2018, Norway's contribution remained almost the same. This does not reflect the contribution mechanism envisaged. The minimum contribution by Norway should be adjusted according to the agreed terms.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.25.10. In low-value procurement procedures not exceeding 60 000 euros, the EMCDDA did not attract a reasonable number of tenderers. In five of these procedures, only one candidate submitted a tender and two tenders were submitted in one procedure. With such a small number of tenders, the EMCDDA did not ensure a competitive procedure, which is not compliant with the public procurement principle of competition and does not ensure best value for money procurements.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.25.11. 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)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Centre's Director (administrative) and Management Board (functional).	Completed
2017	The Centre publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Completed
2017	E-procurement: by the end of 2017 the Centre was not yet using any of the IT tools developed by the Commission.	Completed

THE CENTRE'S REPLY

3.25.8. In the EMCDDA's view, the contracts for the engagement of the referred interim workers have been concluded and implemented in accordance with the applicable EU and Portuguese legislations, the latter transposing in Portugal the provisions of Directive 2008/104/EC. In this context, the interim workers concerned have been assigned tasks that entail a level of responsibility, duties and obligations that are lower than the ones required by and/or applying to the members of the EMCDDA's statutory staff. In particular, these workers are not bound to and/or are excluded from the responsibilities and obligations that apply to the EMCDDA's statutory staff, pursuant to the applicable EU Staff and Financial Regulations. The remuneration of these interim workers, as stated in the contracts concluded for their engagement, reflects this situation. In the EMCDDA's view, this is in line with the principle of equal treatment set by Directive 2008/104/EC, which applies to persons doing 'the same job'. In this context the actual net remuneration of the interim workers concerned corresponds to about 87 % of the referred lowest basic salary of EMCDDA staff and to 147 % of the minimum national salary, according to the Portuguese legislation. The contract between the EMCDDA and the temporary work agency explicitly refers to the obligation of the latter to comply with all aspects of the applicable legislation (the Portuguese legislation that transposes Directive 2008/104/EC). In this context, the temporary work agency is the entity legally responsible for this compliance and exposed to the risk of litigation concerning the execution of the contracts concluded with the interim workers for their assignment to the EMCDDA. Without prejudice to the above, the EMCDDA is reassessing its policy for the use of temporary workers to further rationalise the latter in line with its operating needs and the relevant legal framework.

3.25.9. No linear correlation exists between the 2007-2018 increase of the EU subsidy and of Norway's contribution. Indeed, the increase of the latter stems exclusively from the application of the formula defined in the relevant Agreement, whilst the increase of the former has been determined by the annual decision of the EU's budget authority. The aforementioned Agreement defines, in broader terms, a different formula/method for the adjustment of the minimum contribution to be made by Norway. The application of this formula/method requires some interpretation, for which the EMCDDA does not have the required legal capacity, as it is not a signing Party of the Agreement. The EMCDDA is going to address the Parties concerned to clarify and confirm the method to be used for this adjustment, in order to be able to carry out the latter as soon as possible.

3.25.10. The EMCDDA duly invited the number of tenderers required by the applicable financial rules to ensure the necessary competition, in accordance with the low value of the contracts at stake. The decision of the invited tenderers to participate or not, was exclusively determined by their free choice, which may have been motivated by different legitimate reasons, including the lack of attractiveness/interest of the contract due to its reduced scope and low value. The EMCDDA will pursue its on-going efforts to facilitate, as much as possible, the participation to its procurements for low-value contracts, without prejudice to the principles of proportionality and equal treatment of all potential tenderers.

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 (EU) No 1077/2011 of the European Parliament and of the Council ⁽¹⁷⁶⁾. 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). The mandate of the agency is being extended to the development and operational management of two new IT-systems. The Entry/Exit System (EES) is a system to register entry and exit data of non-EU nationals, and the European Travel Information and Authorisation System (ETIAS) keeps track of visitors from countries who do not need a visa to enter the Schengen Zone.

3.26.2. The *Table* presents key figures for the Agency ⁽¹⁷⁷⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	79	97
Staff at 31 December ⁽²⁾	152	162

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁷⁸⁾ and the reports on the implementation of the budget ⁽¹⁷⁹⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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 286, 1.11.2011, p. 1.

⁽¹⁷⁷⁾ More information on the Agency's competences and activities is available on its website: www.eulisa.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*

3.26.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 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 THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.26.8. In one recruitment procedure, the selection committee deviated from the published vacancy notice and applied a higher minimum score for applicants to be placed on the reserve list. This is considered a weakness in the transparency of the procedure. The Agency should make sure that published selection criteria are respected.

3.26.9. In the case of a service contract for the provision of telecommunication services, the agency awarded a contract to the sole economic operator who had submitted a tender. The awarded contract amount corresponds to the amount published in the initial contract notice (144 000 euros). However, the financial offer submitted by the operator was 45 700 euros only. The public procurement procedure resulting in the award of a contract for an amount exceeding the offer is not in line with public procurement rules. The Agency should not award contracts for prices exceeding tenderers' offers.

3.26.10. The Agency extended the duration of a direct contract for the provision of security and reception services beyond its four-year duration to six years. This has led to a cumulative increase of the contract value from 2,9 million euros to 5 million euros (73 %), which is not in compliance with the Financial Regulation. Payments executed in 2018 beyond the 4-year initial period (1 million euros) are irregular. The Agency should make sure it complies with public procurement rules.

3.26.11. Two audited payments made for the provision of 'corrective maintenance in working order of the Schengen Information System' (MWS) were (partly) irregular. The Agency had amended one specific contract by increasing the monthly maintenance charges from 361 000 euros to 568 000 euros, without amending the MWS framework contract to provide for such a price increase. Later, the agency extended the specific contract by 1,5 months after the expiry of the MWS framework contract. The additional amount paid for the monthly maintenance (207 000 euros) and the payment for maintenance after the expiry date of the MWS framework contract (552 000 euros) are irregular. The Agency should make sure it complies with public procurement rules.

3.26.12. In addition, the formula stipulated in the tender specifications for the MWS contract to identify the best quality offer was different from the one communicated in the question and answers document for bidders. We also identified other shortcomings in the quality, completeness and consistency of information, such as inconsistencies between information kept in paper files and stored electronically. Although these weaknesses had no impact on the outcome of the procurement procedure, the Agency should strengthen procurement-related internal controls.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.26.13. In 2018, the Agency managed a budget of 202 million euros in commitment appropriations and 97 million euros in payment appropriations. Budget implementation was less than planned due to the late adoption or entry into force of legal acts which were outside the control of the Agency, affecting both the evolution of existing systems and developments of new systems. In response, the Agency returned 74 million euros in payment appropriations to the Commission and carried forward 49 million euros of commitment appropriation in order to preserve them for use in the following financial years. This calls into question the underlying planning assumptions contained in the Legislative Financial Statements prepared by the European Commission, in which it assumed that the Agency could absorb significant budgetary resources already in 2018. The Agency, together with the Commission, should improve alignment of budgetary planning with the timing of the related legal acts.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.26.14. 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)
2013/2015	Schengen Associated Countries contribute to the financing of the Agency's operational expenditure, but not staff and administrative expenditure.	Ongoing (Not under the Agency's control)
2015	The audited procurement procedures limited competition and increased dependence upon the contractors.	N/A
2017	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.	N/A
2017	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 an approach may prevent the Agency from achieving economies of scale and synergies between the different systems.	Ongoing
2017	The project for the construction of a new building on the Strasbourg site suffered considerable delays.	Completed
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.	Ongoing
2017	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, creating a considerable risks of over-reliance and dependency on contractors.	Ongoing
2017	At the same time, the small number of staff in key operational units creates significant risks for the continuity of operations.	Completed
2017	The framework contracts (FWCs) signed with the respective consortia for the operation of the main IT systems create a risk of overpayment. The Agency may consider using IFPUG, a standard methodology using function points for the determination of price for development activities.	Ongoing
2017	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 planned for the Agency in 2017, but for which the legal basis was not yet adopted by year-end.	N/A

THE AGENCY'S REPLY

3.26.8. The Agency acknowledges the observation. In order to avoid interpretations diverging from the literal wording on this matter, a more stringent wording shall be used in the vacancy notices the Agency will publish in the future. Moreover, the Agency has immediately re-adjusted its practice also for the ongoing procedures. As an additional mitigating action, the guidelines on recruitment procedures will include the principle that the threshold for inclusion in the reserve list shall be established ex ante.

3.26.9. The Agency acknowledges the observation. However, the Agency points out that the financial offer was intended as a mere non-binding scenario for the purpose of tender evaluation. The actual monthly payments are based on actual rendering of the services according to the initially offered unit prices.

3.26.10. The Agency acknowledges the finding. The situation was triggered by exceptional circumstances, which were timely reported and analysed in the Agency's Register of Exceptions. Decisions have been made as required to ensure that security services would still be provided until the exceptional circumstances would be solved, and that the regularity of tendering would be preserved.

3.26.11. The Agency acknowledges the finding. Incurred delays in the launch of the successor framework contract, and additional steps taken during the award process, resulted in the requirement to ensure continuous maintenance for the System, in line with the legal obligations of the Agency. The Agency is in the process of finalizing the set of checklist and templates for procurement procedures. The Agency is also finalizing the creation of capabilities needed to support planning of operational activities and the underlying procurement e.g. vendor management, business relationship management. This is part of the implementation of new organizational structure, which is a programme that the Agency launched in March 2018 and planned to end in September 2019. Part of the same programme, recruitment of additional staff in the existing capabilities providing technical or legal inputs and controls to the procurement process will be completed by September 2019 as well.

3.26.12. Consistency checks and comparability between the tender planning and the actual contracts will be improved and documented to allow for ex-post assessment. Ex-post assessment is currently not deployed as a function within the procurement process, due to the lack of human resources allocated. See also the reply to the previous point.

3.26.13. The inscription of budgetary resources in the Agency's voted budget for legislation not yet adopted introduces significant risks to sound financial management. These risks are systematically reported to the Management Board.

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⁽¹⁸⁰⁾ 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⁽¹⁸¹⁾.

Table

Key figures for Eurojust

	2017	2018
Budget (million euros) ⁽¹⁾	48	38
Staff as at 31 December ⁽²⁾	242	238

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 Eurojust which comprise the financial statements⁽¹⁸²⁾ and the reports on the implementation of the budget⁽¹⁸³⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Eurojust at 31 December 2018, 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.

⁽¹⁸⁰⁾ OJ L 63, 6.3.2002, p. 1.

⁽¹⁸¹⁾ More information on Eurojust's competences and activities is available on its website: www.eurojust.europa.eu

⁽¹⁸²⁾ 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.

⁽¹⁸³⁾ 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 2018 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 2018 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 THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.27.8. Following a negotiated procurement procedure without prior publication of a contract notice, Eurojust signed a 3-year IT framework contract (FWC) with a company which had provided the same services under a previous FWC. The FWC was signed for a total amount of 450 000 euros (150 000 euros per year). Under the Financial Regulation, such a simplified procedure is only acceptable under specific circumstances which were not substantiated by Eurojust. The FWC, all related specific contracts and all payments made under these contracts (2018 payments amounted to 40 271 euros) are irregular.

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	There is scope for reconsidering the definition of respective roles and responsibilities between the Director and the College of Eurojust.	Completed
2017	Eurojust publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing

EUROJUST'S REPLY

3.27.8. Eurojust takes note of the Court's Observation. The Framework Contract was signed following a negotiated procedure on the basis of Article 134 (f) (i) of the Rules of Application ⁽¹⁸⁴⁾. The article states that this procedure may be used where a change of supplier would result in 'incompatibility or disproportionate technical difficulties in operation and maintenance'.

Eurojust acknowledges that the supporting documentation for the contract does not adequately substantiate the use of this procedure and will endeavour to ensure that any such future procedures are underpinned with more robust justifications. Eurojust does however remain of the opinion that on this occasion a change of supplier would have resulted in disproportionate technical difficulties in operation and maintenance, and hence the course of action decided was the one considered the most cost-effective.

⁽¹⁸⁴⁾ Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 342, 29.12.2015, p. 7).

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', or 'Europol'), which is located in The Hague, was established by Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽¹⁸⁵⁾ replacing and repealing Council Decision (2009/371/JHA) ⁽¹⁸⁶⁾. 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 ⁽¹⁸⁷⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	118	137
Staff as at 31 December ⁽²⁾	804	826

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁸⁸⁾ and the reports on the implementation of the budget ⁽¹⁸⁹⁾ for the financial year ended 31 December 2018; 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 Europol for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Europol at 31 December 2018, 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.

⁽¹⁸⁵⁾ OJ L 135, 24.5.2016, p. 53.

⁽¹⁸⁶⁾ OJ L 121, 15.5.2009, p. 37.

⁽¹⁸⁷⁾ More information on the Agency's competences and activities is available on its website: www.europol.europa.eu

⁽¹⁸⁸⁾ 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.

⁽¹⁸⁹⁾ 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 2018 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 2018 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 THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.28.8. The Agency irregularly prolonged the duration of a framework contract (FWC) for the provision of business travel services by signing amendment number 2 after the contract had expired. With the same amendment, the Agency also introduced new price aspects, not covered by the competitive procurement procedure. Thus, amendment number 2 and related 2018 payments amounting to 22 188 euros are irregular. Europol intends to use the FWC until March 2020. The observation addresses weaknesses in contract management and ex ante controls. Those should be strengthened accordingly.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.28.9. In 2018, the Commission's Internal Audit Service issued an audit report on 'Human Resources Management and Ethics in EUROPOL' ⁽¹⁹⁰⁾. 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*.

⁽¹⁹⁰⁾ 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)
2017	The Agency publishes vacancy notices on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing

THE AGENCY'S REPLY

3.28.8. Europol holds the view that proper contract management and ex ante controls were applied in the given case. The framework contract extension was initiated well in advance of its expiry at the end of March 2018. Europol had initially received assurance from the contractor that the amendment would be signed on time. Subsequently, the contractor conditioned the extension of the contract on Europol absorbing the costs triggered by changes in the airlines ticketing prices of one airline. Following negotiations, Europol accepted a higher surcharge cost of 2,50 euros per air ticket by the contractor, in relation to bookings of the airline in question, instead of higher costs of 11,00 euros per air ticket as the other alternative. Europol therefore is of the opinion that it exerted due diligence and that the delay for the extension of the contract was caused by the fact that Europol applied the principle of sound financial management, as required for in Article 29 of the Europol Financial Rules. Not extending the framework contract would have left Europol without a contract to implement an important function for the organisation (booking of travel).

3.29. EUROPEAN UNION FUNDAMENTAL RIGHTS AGENCY (FRA)

INTRODUCTION

3.29.1. The European Union Fundamental Rights Agency (hereinafter 'the Agency', or 'FRA'), which is located in Vienna, was established by Council Regulation (EC) No 168/2007 ⁽¹⁹¹⁾. 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 ⁽¹⁹²⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	23	23
Staff as at 31 December ⁽²⁾	108	110

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽¹⁹³⁾ and the reports on the implementation of the budget ⁽¹⁹⁴⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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

3.29.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

⁽¹⁹¹⁾ OJ L 53, 22.2.2007, p. 1.

⁽¹⁹²⁾ More information on the Agency's competences and activities is available on its website: www.fra.europa.eu

⁽¹⁹³⁾ 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.

⁽¹⁹⁴⁾ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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 2018 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 BUDGETARY MANAGEMENT

3.29.8. Carry-overs of committed appropriations were high for Title III (operating expenditure) at 4,9 million euros, i.e. 70 % (2017: 5,7 million euros, i.e. 70 %). They mainly reflect the nature of the activities which involve financing studies that span several months, often beyond year-end. The Agency has introduced planning procedures to monitor the inevitable delays between the signature of contracts, deliveries and payments. However, part of the carry-over is still unplanned and the Agency should further improve its budget planning.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.29.9. 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)
2016	There was a high level of budget carry-overs. The Agency may consider introducing differentiated budget appropriations.	Ongoing
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Governing Board (functional).	Completed
2017	The Agency encountered some difficulties in procuring studies due to unrealistic market estimation.	Outstanding
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Ongoing

THE AGENCY'S REPLY

3.29.8. The Agency devotes a great effort to the follow-up of the planned carry-overs. The forecast is entered in the system during the first quarter and constantly updated until the end of the year. However, there are certain factors that we can only foresee at a late stage, such the potential surpluses from Titles I and II transferred to Title III. In this case, the full committed amount is carried over to the next year. In addition, in mid-2018 we had a technical problem with the application used for the follow-up of the budget consumption that led to some inaccurate calculations. Notwithstanding this, the deviation between the initial planned and the final amount carried over was only of around 10 %, which we consider is within the margin of tolerance. In the meantime, the old application for the monitoring of the budget consumption has been replaced by a new one.

3.30. EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX)

INTRODUCTION

3.30.1. The European Border and Coast Guard Agency (hereinafter ‘the Agency’, or ‘Frontex’), was created by Regulation (EU) 2016/1624 of the European Parliament and of the Council ⁽¹⁹⁵⁾ (‘new founding Regulation’) repealing Council Regulation (EC) No 2007/2004 ⁽¹⁹⁶⁾. The headquarters is in Warsaw. The mandate of the Agency is to ensure European integrated border management as a shared responsibility of the Agency and of the national authorities at the external borders with a view to managing entries across 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, ensuring 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 ⁽¹⁹⁷⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	281	289
Staff as at 31 December ⁽²⁾	526	630

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff working at the Agency, including EU officials, EU temporary and EU contract staff and seconded national experts, not interim workers and consultants. The number of posts authorised under the final 2018 Staff Establishment Plan was higher — 760 consisting of 418 posts (2017: 352 posts) for officials and temporary agents and 342 posts (2017: 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 ⁽¹⁹⁸⁾ and the reports on the implementation of the budget ⁽¹⁹⁹⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽¹⁹⁵⁾ OJ L 251, 16.9.2016, p. 1.

⁽¹⁹⁶⁾ OJ L 349, 25.11.2004, p. 1.

⁽¹⁹⁷⁾ More information on the Agency competences and activities is available on its website: www.frontex.europa.eu

⁽¹⁹⁸⁾ 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.

⁽¹⁹⁹⁾ 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 2018 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 2018 are legal and regular in all material respects.

Emphasis of matter regarding the legality and regularity of payments underlying the accounts

3.30.7. In 2018, the Agency managed financing agreements with cooperating countries for operational activities amounting to 171 million euros (189 million euros in 2017), representing 59 % of the Agency's budget. This year was a transition year in several aspects. The Agency launched a new simplified financing scheme based largely on unit costs for expenditure related to deployments of human resources. In late 2018, the Agency also introduced a new ex-post control system covering all types of expenditure, and modified its system of ex-ante checks embedded in the financial circuits. The Court will assess the impact of these developments in coming audits. However, the Court draws the attention to the fact that reimbursement of equipment-related expenditure (some 35 % of total expenditure for operational activities or some 60 million euros) is still based on actual cost. A pilot project in 2018 to also move to unit cost-based reimbursements for this type of costs has, so far, been unsuccessful in its current form. The Court has consistently reported since 2014 that proof of actual costs claimed by cooperating countries for equipment-related cost is often insufficient, which was again confirmed by this year's audit results. Frontex's ex ante verifications of these costs are ineffective as long as reimbursements of costs which are not substantiated by supporting documents are continued. In addition, as in the previous year, Frontex did not carry out any ex post verifications on reimbursements, further increasing the risk of unjustified cost reimbursements. (See paragraphs 3.30.9 to 3.30.11).

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

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.30.9. As in previous years we found that expenditure claimed by cooperating countries is not always supported by invoices or other evidence, but reimbursed nevertheless. As an example, in 2018 the Agency financed support for the Armed Forces of Malta for the deployment of assets in Italy. Before reimbursing the expenditure claimed by Malta, the Agency asked for evidence for one category of declared expenditure. Although this was never provided, the Agency reimbursed some 100 000 euros.

3.30.10. As another example, the Agency financed the deployment of one airplane and one vessel used by the State Border Guard of the Republic of Latvia. The Agency asked for evidence for one category of declared expenditure for the vessel. Although the evidence was never provided, the Agency reimbursed some 208 000 euros.

3.30.11. In the above examples, the ex-ante verifications were, therefore, ineffective. The Agency should, together with the cooperating countries, work further on the development of a simplified and transparent financing scheme that also covers equipment-related costs. Until such a scheme is in place, Frontex should strengthen ex ante verifications and reintroduce ex post verifications to make sure that only substantiated costs are reimbursed.

3.30.12. At the same time, the Court stresses that Frontex also depends on the cooperating countries' cooperation for the financial management of the operations, and on the submission of reliable and complete evidence for any cost claimed for reimbursement.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

3.30.13. In one procurement procedure for a framework contract (FWC) on the provision of the development and maintenance of a specific ICT software (8 million euros), the Agency received six offers, two of which came from companies that had participated in the preparation of the procurement documents. For this reason, and in accordance with the Financial Regulation, the Agency required the operators concerned to undertake compensatory measures to avoid distortion of competition. One of the companies which had been involved in the preparation of this procurement procedure presented a winning offer for 5,8 million euros, covering fixed costs for all services for development and maintenance to be purchased for the full duration of the contract in accordance with the tender specifications. Ancillary consultancy services represented a minor part of the offer (3 %). Despite this, the Agency awarded a framework contract for the maximum amount of 8 million euros, equal to the initial estimate. While framework contracts do not constitute an obligation to purchase up to the maximum contract value, the considerable difference between the maximum value of the contract (8 million euros) and the winning offer (5,8 million euros), could create a significant risk to sound financial management. The possibility to purchase additional services for an amount of 2,2 million euros, or close to 30 % of the contract value, is not considered a reasonable contingency. The Agency should make more realistic estimates of its needs of services in the tender documents and apply rigorous financial management to IT contracts.

OBSERVATIONS ON INTERNAL CONTROLS

3.30.14. The Agency does not have a sensitive post policy, which would identify sensitive functions, keep them up to date and define appropriate measures to mitigate the risk of vested interests. This is not in line with the Agency's internal control standards. The Agency should adopt and implement such a sensitive post policy without delay.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.30.15. In 2018, the Agency managed a budget of 289 million euros. Budget carry-overs to 2019 amounted to 83 million euros (29 %) and were slightly lower than in the previous year (88 million euros i.e. 32 %). The rate of cancelled carry-overs to 2018 was 11 million euros (12 %), in relative terms somewhat less compared to the 11 million euros (15 %) for the previous period. The main reasons for carry-overs and cancellations were the challenges in meeting the staff establishment plan by number and profiles of staff, the delay to the launch of the building project for the Agency's new premises, the multi-annual nature of ICT projects and the fact that cooperating countries continue to overestimate the scale and cost of activities. The Agency should, together with cooperating countries, continue to strive for more precise cost estimates and budget forecasts.

3.30.16. Although the Agency continued further recruitment efforts and increased the number of staff from 526 to 630 in 2018, it still did not achieve the number of 760 staff authorised in its 2018 staff establishment plan (83 %).

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.30.17. In 2018, the Commission's Internal Audit Service carried out an audit on 'Contract Management in FRONTEX' ⁽²⁰⁰⁾. The Agency has agreed on an action plan with the IAS to address identified areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽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)
2013	For the accounts, there is a need to monitor supplier balances more regularly and to analyse differences more timely .	Completed
2014	Documentation from cooperating countries supporting the expenditure claimed is not always sufficient. Moreover, no audit certificates were requested.	Ongoing for ex ante and ex post 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 of whether more efficient and cost-effective alternative funding mechanisms could be used.	Completed
2015	The ex-post audit to Iceland carried out by the Agency in October 2015 detected irregular payments which were only partly recovered.	Completed
2015	There is an unaddressed risk of double funding from the Internal Security Fund managed by the Commission and Frontex funding.	Outstanding
2015	States participating in border operations declare the costs incurred on the basis of cost claim sheets. The Court in its Special report No 12/2016 recommended that agencies should use simplified cost options whenever appropriate to avoid such inefficiencies.	Completed for the deployment of human resources Ongoing for technical equipment
2016	The level of carry-overs was high. There is a need to obtain more precise cost estimates and more timely cost reporting from cooperating countries. The Agency may also consider introducing differentiated budget appropriations.	Ongoing
2016	Only 71 % of the posts authorised in the Agency's establishment plan were filled.	Ongoing
2017	The direct award of the replacement contract for ferry services to the second ranked tenderer was irregular, since the initial procurement procedure was closed.	N/A
2017	The Staff Regulations provide that new temporary staff can only be recruited at grades SC 1 to SC 2, AST 1 to AST 4 or AD 5 to AD 8. In 2017 the Agency recruited two staff at higher AST grades (14 in 2016). The recruitments at these grades are irregular.	N/A
2017	In 2017, the Agency fully reimbursed expenditure claimed by Iceland's Coast Guards although the invoices justifying one type of expenditure claimed were never provided.	Outstanding
2017	The Agency also co-financed expenditure claimed by the Spanish Guardia Civil although not all expenditure was supported by evidence.	Outstanding
2017	Although the Agency already moved to its current premises in 2014, the Agency still has no comprehensive Business Continuity Plan approved by the Management Board.	Ongoing
2017	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, showing again that cooperating countries considerably over-estimated the expenditure to be reimbursed by the Agency.	Ongoing

Year	Court's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	In 2017, the appropriations available for return operations amounted to 66,5 million euros. However, operations did not keep pace with available appropriations and the Agency therefore returned 13,5 million euros to the Commission. In addition, the Agency returned 4 million euros from budget Title I as the planned number of new employees could not be recruited in 2017.	Ongoing
2017	The initial 2017 Agency budget included a statutory financial operational reserve for rapid border and return interventions. In September and again in October 2017 the Agency transferred significant amounts from the reserve to its operational budget to fund other activities.	N/A
2017	The budgeting and use of non-statutory reserves does not comply with the principle of budget specification and impairs budget transparency.	Ongoing
2017	The Agency publishes vacancy notices on its own website and through other channels, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.	Outstanding

THE AGENCY'S REPLY**Observations on the legality and regularity of transactions**

3.30.9. The documents provided by the Armed Forces of Malta covering all inspections/maintenance for the aerial assets were assessed by Frontex as being sufficiently detailed and comparable to similar deployments in the past. They specified the total estimated cost of maintenance per flying hour in line with internal REM guidelines and international practices, methodologies and standards in fleet management.

3.30.10. The supporting document submitted for the purpose of an ex-ante verification of allowances for the vessel crew contained a detailed summary of costs, mentioning the names, periods of deployment, number of days and various allowances claimed, such as overtime, night shift, and other allowances. The supporting document was signed as 'certified correct' by the Commander of the Latvian State Border Guard.

3.30.11. Frontex cannot confirm at present the assessment of the ineffectiveness of payments. Ex-ante and ex-post controls are risk-based and are annually adjusted to the financing schemes in place. Taking into account the new EBCG 2.0 regulation and the financial arrangements in the future, the financing scheme(s) for operational activities will be subject to significant changes, including simplifications.

3.30.13. Frontex awarded the framework contract for the maximum amount of 8 million euros, equal to the initial estimate, accepting the offer of a successful tenderer (5 807 727 euros), including the provisions for other non-fixed costs, such as additional Time and Means services (approximately 3 %), future price revisions (margin of indexation) and a contingency security margin.

Despite the fact that a framework contract does not constitute an obligation to purchase up to the maximum value of the contract, Frontex acknowledges the room for improvement in the budget estimation of similar framework contracts and based on the lessons learned will apply more strict financial management principles to IT contracts.

Observations on internal control

3.30.14. Following the examples and learning from the experience of other EU Agencies, Frontex is currently finalising the ED decision on sensitive post policy and will adopt it until end of 2019.

Observations on budgetary management

3.30.15. As pointed out by the Court, the level of carry-overs to 2019 was slightly lower than in 2018. The level of carry-overs can be explained by the nature of the expenditures concerned. In 2018 these were mainly operational expenditures in a form of grants, which cover the operational cycle from February N to January of year N+1 as well as expenditures linked to the contracts for which payments will occur in the year N+1. The Court mentioned the main reasons behind cancellations of carry-overs; the Agency is carefully optimistic that the simplified grant scheme implemented in 2018 for a part of the operational activities will bring positive results.

3.30.16. In total 187 vacant posts were filled (temporary agents, contract agents and seconded national experts), including 13 posts of Directors, Heads of Unit, Heads of Task Forces and Heads of Sectors. However, due to a high internal and external turnover, the net staff increase in 2018 as compared to the previous year was 117 since many posts became vacant during the year. Frontex faces challenges in attracting a larger number of suitable external candidates mainly due to the low correction coefficient, which is the lowest among all EU Agencies.

Information on internal audit service reports

3.30.17. Frontex is implementing the action plan agreed with the internal audit service to address the recommendations for the IAS audit on 'Contract Management in Frontex'. Several improvement actions are to be finalised already by the end of September 2019.

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’, or ‘ETF’), which is located in Turin, was established by Council Regulation (EEC) No 1360/90 ⁽²⁰¹⁾ (recast (EC) No 1339/2008). 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 ⁽²⁰²⁾.

Table

Key figures for the Foundation

	2017	2018
Budget (million euros) ⁽¹⁾	20	20
Staff as at 31 December ⁽²⁾	125	124

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²⁰³⁾ and the reports on the implementation of the budget ⁽²⁰⁴⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Foundation at 31 December 2018, 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 131, 23.5.1990, p. 1.

⁽²⁰²⁾ More information on the Foundation’s competences and activities is available on its website: www.etf.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*

3.31.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 are legal and regular in all material respects.

3.31.7. The information presented below does not call the Court's opinion into question.

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

3.31.8. The ETF engaged in the use of temporary agency workers (hereafter, interim workers) through a framework contract with one temporary work Agency. In 2018, the ETF had five interim workers, in addition to its own 124 staff, and paid 200 181 euros for their services. For the underlying public procurement procedure, the ETF applied award criteria that consisted of mostly non-competitive price elements, such as the defined gross salary, social security contributions and taxes. There is therefore no evidence that the procurement procedure led to the award of the best value for money contract. The Foundation should use award criteria that focus on competitive price elements.

INFORMATION ON EXTERNAL EVALUATIONS

3.31.9. An external evaluation of the EU agencies under the remit of DG Employment (ETF, EU-OSHA, Eurofound and Cedefop) was carried out in 2018, on behalf of the Commission, with regard to their relevance, effectiveness, efficiency, coherence and EU value-added ⁽²⁰⁵⁾.

⁽²⁰⁵⁾ We did not verify the evaluation work.

THE FOUNDATION'S REPLY

The European Training Foundation has taken note of the Court's report.

Agencies funded under MFF heading 5 — Administration

3.32. EURATOM SUPPLY AGENCY (ESA)

INTRODUCTION

3.32.1. The Euratom Supply Agency (hereinafter ‘the Agency’), located in Luxembourg, was created in 1958 ⁽²⁰⁶⁾. Council Decision 2008/114/EC, Euratom ⁽²⁰⁷⁾, replaced the preceding Statutes of the Agency. The Agency’s main task is to ensure there is 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. The *Table* presents key figures for the Agency ⁽²⁰⁸⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	0,1	0,1
Staff as at 31 December ⁽²⁾	17	16

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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

3.32.3. We have audited:

- (a) the accounts of the Agency which comprise the financial statements ⁽²⁰⁹⁾ and the reports on the implementation of the budget ⁽²¹⁰⁾ for the financial year ended 31 December 2018; 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

3.32.4. In our opinion, the accounts of the Agency for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽²⁰⁶⁾ OJ 27, 6.12.1958, p. 534/58.

⁽²⁰⁷⁾ OJ L 41, 15.2.2008, p. 15.

⁽²⁰⁸⁾ More information on the Agency’s competences and activities is available on its website: <http://ec.europa.eu/euratom/index.html>

⁽²⁰⁹⁾ 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.

⁽²¹⁰⁾ 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

3.32.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

3.32.6. In our opinion, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

3.32.7. The information presented below does not call the Court's opinion into question.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.32.8. The cancellation rate of budget appropriations carried over from 2017 to 2018 is high, at 21 %, demonstrating unjustified commitments in the previous year. The level of new carry-overs from 2018 to 2019 for Title II (administrative expenditure) is also high at 33 % and only partially justified, leading again to the risk of high cancellations. The Agency should carry over budget appropriations only when justified.

THE AGENCY'S REPLY

3.32.8. The carry-over cancellation in 2018 had an absolute value of 6 241,16 euros only. The cancelled appropriations involved two IT contracts, connected with the move of the Agency to its new premises, which was of exceptional nature and involved, to a large extent, factors outside the Agency's control.

Based on the current budget implementation, the Agency estimates that the cancellation rate for carry-overs for Title II in 2019 will be lower than projected by the Court.

The Agency will respect the principle of annuality to the maximum extent possible in the future.

Self-financed Agencies

3.33. COMMUNITY PLANT VARIETY OFFICE (CPVO)

INTRODUCTION

3.33.1. The Community Plant Variety Office (hereinafter ‘the Office’, or ‘CPVO’), which is located in Angers, was created by Council Regulation (EC) No 2100/94 ⁽²¹¹⁾. 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 ⁽²¹²⁾.

Table

Key figures for the Office

	2017	2018
Budget (million euros) ⁽¹⁾	16	17
Staff as at 31 December ⁽²⁾	51	50

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²¹³⁾ and the reports on the implementation of the budget ⁽²¹⁴⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Office at 31 December 2018, 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.

⁽²¹¹⁾ OJ L 227, 1.9.1994, p. 1.

⁽²¹²⁾ More information on the Office's competences and activities is available on its website: www.cpvo.europa.eu

⁽²¹³⁾ 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.

⁽²¹⁴⁾ 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 2018 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 2018 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 LEGALITY AND REGULARITY OF TRANSACTIONS

3.33.8. The Office uses service contracts with IT companies in a way that in practice amounts to the assignment ('mise à disposition') of temporary agency workers (two IT consultants), instead of the provision of clearly defined IT services or products. The related payments made in 2018 amounted to 176 568 euros. The assignment of temporary agency workers (interim workers) to perform precise tasks for a temporary duration in a user undertaking is subject to Directive 2008/104/EC on temporary agency work and to specific rules adopted by the Member States in the transposition of that Directive. According to the French labour code, only registered temporary work agencies are authorised to provide interim workers to user undertakings (here CPVO). The use of IT service contracts for the provision of labour is not compliant with the EU Staff Regulations and of EU social and employment rules and exposes the Office to legal and reputational risks. The Office should make sure that staff needs are covered in a regular manner either by addressing the need for statutory staff to the budgetary authorities, or by a legal and regular use of interim workers.

3.33.9. Under the Financial Regulation, a (simplified) negotiated procurement procedure without publication of a contract notice is possible when properly justified and when the estimated contract value is below 144 000 euros. For one audited procurement procedure on cleaning services we found that the procurement file did not allow verifying that this ceiling is respected and that the simplified procurement procedure could be used. Total payments made in 2018 under the contracts signed for a period of four years amounted to 13 394 euros. The Office should use procurement procedures according to the provisions laid down in the Financial Regulation.

3.33.10. For one recruitment procedure, the eligibility checks were incomplete as they did not detect that an essential certificate in the application of a candidate who was recruited was not of the requested legal authority. The Office should apply rigour in checking eligibility criteria and running recruitment procedures.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.33.11. 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	No signature of a second person for electronic payments is required, which represents a financial risk for the Office.	Completed
2014	Although the Office became operational in 1995, there is still no seat agreement signed with its host Member State.	Ongoing (Not under the Office's control)
2015	There was a too high a level of unpaid fees.	Ongoing
2016	The Office's founding Regulation does not require periodic external performance evaluations.	Outstanding (Not under the Office's control)
2017	In 2017, the documentation of procurement and grant award procedures was inadequate.	Ongoing
2017	E-procurement: by the end of 2017, the Office had not introduced any of the IT tools developed by the Commission.	Outstanding

THE OFFICE'S REPLY

3.33.8. The CPVO takes note of the comments of the Court, and reminds that all decisions taken in the CPVO reflected legal implications and resource constraints. In the case mentioned, any potential risk has been mitigated as the majority of work is done *extra muros*.

3.33.9. The CPVO takes note of the comments of the Court and shall ensure that documentation is comprehensive for all future procurement procedures.

3.33.10. The CPVO takes note of the comments of the Court of Auditors and shall reinforce procedures accordingly. For the recruitment in question, the necessary documentation in the required format has been received in the meantime.

3.34. EUROPEAN INTELLECTUAL PROPERTY OFFICE (EUIPO)

INTRODUCTION

3.34.1. The European Union Intellectual Property Office (hereinafter ‘the Office’, or ‘EUIPO’), known as the Office for Harmonization in the Internal Market (‘OHIM’) until 23 March 2016, was established in 1993. Its initial founding Regulation was last revised by Regulation (EU) 2017/1001 of the European Parliament and of the Council ⁽²¹⁵⁾. 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 ⁽²¹⁶⁾.

Table

Key figures for the Office

	2017	2018
Budget (million euros) ⁽¹⁾	401	403
Staff as at 31 December ⁽²⁾	995	1 050

⁽¹⁾ Budget figure includes the reserve for unforeseen events.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²¹⁷⁾ and the reports on the implementation of the budget ⁽²¹⁸⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of Office at 31 December 2018, 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.

⁽²¹⁵⁾ OJ L 154, 16.6.2017, p. 1.

⁽²¹⁶⁾ More information on the Office's competences and activities is available on its website: <https://euiipo.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

3.34.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 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 THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.34.8. In July 2018, the Office launched a call for cleaning services, waste management, special treatments and gardening services. The financial criteria were split into two parts: Part A covering standard cleaning services, waste management and special treatments, and Part B covering extraordinary cleaning services and gardening services. For Part B, the tenderer who was the incumbent service provider offered a price of 0,01 euro for each of the 54 items requested in the tender specifications. This price was 99,99 % lower than the offer of the second tenderer. The Office considered that this offer appeared abnormally low and requested further elements. The tenderer justified the offer in general terms by claiming synergies with and savings from other public contracts in the area of Alicante. This justification has been accepted by the Office and the contract has been awarded to the tenderer. We consider that the Office should have rejected this offer as abnormally low. To offer a service for free is first an unfair trade practice, second it gives an unfair competitive advantage vis-à-vis competitors and third, this advantage has been illegally obtained since the tenderer referred to an (irregular) cross-subsidisation of the contract by other public contracts. The procurement procedure and the underlying payments made in 2018 (1 456 141 euros) are irregular. The Office should analyse situations of potentially abnormal offers in a rigorous manner to ensure compliance with the Financial Regulation and fair competition.

3.34.9. For two audited payments for IT services, the Office used a specific contract in the form of a fixed price contract, while the related framework contracts establish daily rates per profile. In both cases, the fixed price in the specific contract was calculated based on 'working units' or 'blended rates' which were not part of the framework contracts. These included an uplift of 10 % and 15 % respectively on the agreed rates per profile in the framework contracts. However, this additional charge was never included in the framework contracts or in their amendments. As a consequence, the specific contracts are not clearly and transparently linked to the framework contracts as required by the Financial Regulation. Therefore, the part of the payments representing the uplifts is irregular. The Office should sign and use specific contracts only in accordance with the price schemes laid down in the related framework contracts.

OBSERVATIONS ON INTERNAL CONTROLS

OBSERVATIONS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

3.34.10. As of 31 December 2018, the cash at banks held by the Office amounted to 493 million euros. In 2018, the Office paid 1,4 million euros in negative interest. The investment policy of the Office requires the reserves to be held as cash in AAA rated credit institutions. The investment policy of the Office aims to limit any credit risk. However, this generates a substantial cost for the Office. The Office should reconsider the use of its financial resources in a more productive manner (see our Opinion No 1/2019).

Consultancy

3.34.11. In addition to the annual audit work carried out for all agencies, the Court did an analysis of the Office's use of consulting services.

Extensive use of external consultants

3.34.12. According to the Framework Financial Regulation for EU bodies, subsidised agencies may entrust technical expertise tasks and administrative, preparatory or ancillary tasks which do not involve either the exercise of public authority or the use of discretionary powers of judgment only where this proves to be indispensable. The Financial Regulation of the Office as a fully self-financed agency, however, does not contain this limitation and allows the use of external consultants as long as the principle of sound financial management is respected.

3.34.13. The Office has made extensive use of consultancy services. For example, a four-year framework contract (FWC) procured in 2014 and with a market value of 30 million euros for consultancy services covering a broad range of activities, comprising audit services, project management, general consultancy and studies, had been fully used up within only two years and six months. The succeeding FWC concluded in 2016 for a period of four years has an estimated market value of 80 million euros. The number of external staff provided by service providers under these and similar contracts went up from around 250 in 2011 to a peak of more than 350 in 2014 falling to 215 at the beginning of 2018 (similar to some 20 % of the Office's statutory staff).

Consultancy and non-consultancy services

3.34.14. The service description of the FWC contains a list of services. However, this list is not exhaustive and other subjects of interest may arise. The Court analysed a sample of specific contracts under this FWC in different domains. We noted that, while a part of the services delivered under these contracts is consultancy (for example project management support, business process analysis), another part, is rather administrative support (for example secretarial support, administrative clerks preparing reports, support for internal and external communication activities). The latter services are mostly recurrent and should not be the subject matter of outsourcing because the staff performing these tasks are necessarily under the hierarchical structure of the Office. In this case, it is not a service that it is provided but a loan of staff, which is strictly regulated and cannot be offered by consultancy companies.

3.34.15. The Office has recognised that at certain points in time, external resources have executed limited tasks of a core-business nature, which initially began as non-core, due to the evolution of the tasks and responsibilities entrusted to the Office. For this reason, in 2016 the Office started the re-internalisation of some tasks that were carried out by external resources, in order to retain essential knowledge and expertise by engaging contract staff. For 2019, the Office plans the re-internalisation of 4 tasks (12 in 2018). The annual work programme and the annual activity report do not currently contain information on the full time equivalents provided by service providers executing tasks of a non-core business nature but embedded in the core business. Such information would further increase the transparency for stakeholders in respect of the Office's own human resources and external human resources used by the Office.

3.34.16. Furthermore, the Office partly uses this consultancy framework contract in a manner which, in practice, amounts to the assignment of temporary agency workers, instead of the provision of clearly defined services or products. The assignment of temporary agency workers (interim workers) to perform precise tasks for a temporary duration in a user undertaking is subject to Directive 2008/104/EC on temporary agency work and to specific rules adopted by the Member States in the transposition of that Directive. According to Spanish labour law, only registered temporary work agencies are authorised to provide interim workers to user undertakings (here EUIPO). The use of consultancy service contracts for the provision of labour is not compliant with the EU Staff Regulations and EU social and employment rules and exposes the Office to legal and reputational risks. The Office should make sure that staff needs are covered in a regular manner either by addressing the need for statutory staff to the Office's budgetary committee, or by a legal and regular use of interim workers.

Use of fixed price specific contracts

3.34.17. Under the consultancy FWC, the Office mainly concludes specific contracts for fixed prices. Such contracts are suitable when the deliverables and their timetable can be defined in the contracts, as the risk of performance lies with the contractor. We examined a sample of fixed price specific contracts under the FWC for consultancy services and found that most of them did not contain clearly defined deliverables or timetables but defined the services to be delivered in a rather general way in order to reduce the number of contracts. As a consequence, many of these contracts have been amended several times over their duration in order to adapt the agreed price to the services actually ordered and delivered. The ordering of the services and the definition of the related deliverables are agreed between the Office and the contractor in communications which are not part of the contract. We consider that it would strengthen the position of the Office towards the contractor if all deliverables for a fixed price were clearly defined in the contracts.

3.34.18. The Office's extensive use of so-called consulting resources represents a risk to sound financial management and the Office should analyse where such use is indispensable. In particular, it should continue analysing where external resources are used for activities related to core-business tasks and continue to re-internalise such activities accordingly. Furthermore, the Office's Annual Work Programmes and Annual Activity Reports should contain information on the number of full time equivalents from external service providers who are working on activities related to core-business tasks. Fixed price consultancy contracts should clearly define the expected deliverables.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.34.19. 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)
2016	The procurement procedure and the subsequent use of a four-year 30 million euro framework contract to procure consultancy services were not properly managed.	N/A
2016	The Office's founding Regulation establishes that translation services 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 which may result in a duplication of effort and related costs ⁽¹⁾ .	Ongoing
2017	In 2017, the Office cancelled 3,2 million euros of the committed appropriations carried over from 2016, indicating difficulties in planning of budgetary needs.	N/A
2017	In the procurement procedure for an 80 million euro framework contract (FWC) for general consultancy, audits, studies and project management services, tender specifications contained two business cases. However, competition was based on unit prices, types of profiles and quality, but not on the likely number of units needed.	N/A
2017	For one specific contract on document management concluded under this framework contract, the man-days required for the services cannot be linked to the business cases set out in the tender specifications nor to the service description in the specific contract.	N/A

⁽¹⁾ The Office has initiated corrective action in cooperation with the CdT.

THE OFFICE'S REPLY

3.34.8. The Office considers that authorising officer correctly exercised the discretionary power conferred to him by the Financial Regulation.

As pointed out by the Court of Auditors the nature of the services in Part B are extraordinary and therefore rarely solicited. For this reason, they were given a weighting of only 10 percent for the financial criteria.

In addition, as described by the Court of Auditors, the Office has followed all the steps foreseen by the Financial Regulation when dealing with an offer which could potentially appear as abnormally low.

Besides, the Office does not concur with the Court's statement that offering a service (which is exceptional and rarely used) for a reduced price represents unfair practice and offers unfair competitive advantage vis-à-vis competitors.

The Office does not consider being in a position to prevent tenderers from translating their economies of scale in their offers.

It's also worth noting that the concept of abnormally low offer is aimed primarily at ensuring that the provider can carry out the necessary services throughout the duration of the contract which is the case here.

Therefore, the Office does not consider the procurement procedure and the underlying payments to be irregular.

3.34.9. A fixed price cannot coincide with a 'Times and Means' concept because it includes an additional risk for the provider which is translated by charging higher prices. In this context, the working units include a reasonable layer of overhead costs added for the management, reporting and control of the deliverables and were considered service elements which should not surpass 15 % of the overall effort.

In reaction to the Court's comments, the Office is already taking the necessary measures to mitigate this risk. The practice has been amended in line with the observation.

3.34.10. Being a prudent and accountable public body, the security of the Office's funds is indeed the main driver of its treasury guidelines which are fully aligned with the Commission's practice. Under the current market circumstances the price of security is translated into negative interest.

It is worth noting that out of the total treasury, the Office is required to keep a reserve fund (243 million euros), short-term treasury for operational expenditure (60 million euros) and accrued expenditure to be paid (30 million euros). This leaves a net treasury of 160 million euros.

The Office is reviewing its treasury guidelines in order to reduce, as far as possible, the impact of negative interest while respecting the necessary security standards.

The Court's invitation to use its financial resources in a more productive manner can only be taken within the applicable regulations in force.

3.34.12. The explicit reference to the principle of sound financial management in the Office's Financial Regulation does not constitute a gateway to outsource activities but rather serves as the guiding principle that public offices should systematically consider when assessing whether non-core tasks should be insourced or outsourced.

The Office considers this legal provision to be more objective and precise than 'when it proves to be indispensable' and not in contradiction.

3.34.13. With respect to the statement on 'extensive' use, it is subjective. At the time the 2014 FWC was signed the Strategic Plan (SP) 2016-2020 was still in its preparatory stage. As the strategic projects under the SP took shape, the Office was in a better position to estimate the external services required which were translated into an adequate volume estimation for the new FWC

3.34.14. Regarding the use of the FWC, for requesting services which could appear to be of an administrative nature, the Office does not consider it can be associated with 'a loan of staff'. As a general policy such contracted administrative support is provided in the context of projects and not core business.

In general, of non-statutory staff for the provision of administrative support outside projects is limited to agency workers (interim).

Since the Office's job mapping clearly defines the tasks that can be performed by each of the EUIPO's staff categories, it forms the basis for deciding on the need or possibility to request external services. The job mapping is a live document allowing new profiles to be integrated on the basis of new tasks or competences. In this vein, the Office has conducted an ambitious policy of internalisations, with due regard to budgetary availability, in recent years, conducting 60+ internalisations in a short period of time.

Regarding the execution of certain recurrent tasks by external resources, the EUIPO believes that recurrence does not always justify the use of statutory staff when the tasks are of a non-core business nature (i.e. not directly connected to the tasks entrusted to EUIPO by the legislation).

3.34.15. The Office welcomes the Court of Auditors' acknowledgment of the important efforts being made by the EUIPO to internalise tasks which have become core.

The Office will consider the suggestion to include information on the full time equivalents provided by service providers in the annual work programme or the annual activity report for activities performed under 'time and means' contracts.

However, the Office mainly contracts external services through the fixed price modality under which the number of resources is not known and therefore such an estimation is not possible.

Finally, the information published by the Office in the Annual Work Programme and the Annual Activity Report is exhaustive and fully compliant with the Financial Regulation.

3.34.16. The Office has a clearly defined framework on the use of temporary agency workers that is compliant with Spanish Labour Law and that is used for clearly defined tasks under the Office's job mapping. Moreover, a central verification is performed at Office level ensuring that consultancy services do not cover tasks of an agency workers nature.

3.34.17. The Office indeed mainly uses fixed price contracts which it considers the most effective modality for anticipating and controlling the costs of the services requested as well as limiting the risk of court cases in front of the Spanish National Labour Courts as the Office faced such cases in the past, among others, following the use of the times and means modality.

In the majority of cases, changes in the scope follow a request from the Office to the contractor to adapt the deliverables and not the contrary. When the scope of the contract needs to be adapted it is formally reflected in contract amendments in accordance with Article 172 of Regulation (EU, Euratom) 2018/1046.

The Office, however, takes note of the Court's suggestion to reinforce the definition of the deliverables under fixed price contracts.

3.34.18. As a result of the Office's efforts, the use of consultancy services has reduced significantly in recent years and is not considered excessive by the EUIPO.

The Office welcomes the consideration by the Court of Auditors that the internalisation efforts are recognised and encouraged. The Office will pursue them to the extent possible.

The Office will consider the suggestion to include information on the number of full time equivalents from external service providers in the annual work programme or the annual activity report for activities performed under 'time and means' contracts. However, the Office mainly contracts external services through the fixed price modality under which the number of resources is not known and therefore such an estimation is not possible.

With respect to fixed price the Office will consider reinforcing the definition of the deliverables in the specific contracts.

The Office considers fixed price the most effective modality to manage risks in terms of allocation and monitoring of financial resources.

3.34.19. Follow-up of previous years' comments

The Office is working hand in hand with the CdT, and the EUIPO-CdT cooperation programme 2019-2020 includes 5 projects to be implemented jointly by both agencies. Through the implementation of these projects, the Office confirms there is no duplication of efforts and related costs.

3.35. SINGLE RESOLUTION BOARD (SRB)

INTRODUCTION

3.35.1. The Single Resolution Board (hereinafter ‘the Board’, or ‘SRB’), which is located in Brussels, was established by Regulation (EU) No 806/2014 of the European Parliament and of the Council ⁽²¹⁹⁾ on the Single Resolution Mechanism (‘SRM Regulation’). 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 administering the Single Resolution Fund (hereinafter ‘the Fund’) which was established by the SRM Regulation and should support the Single Resolution Mechanism. The Fund will be gradually built up during the period 2016 to 2023 and should 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 ⁽²²⁰⁾.

Table

Key figures for the Board

	2017	2018
Budget (million euros) ⁽¹⁾		
Part I (Board’s administrative budget)	113	104
Part II (Budget of the Fund and Reserve)	6 462	6 836
Staff as at 31 December ⁽²⁾	276	334

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²²¹⁾ and the reports on the implementation of the budget ⁽²²²⁾ for the financial year ended 31 December 2018; 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).

⁽²¹⁹⁾ OJ L 225, 30.7.2014, p. 1.

⁽²²⁰⁾ More information on the Board’s competences and activities is available on its website: <https://srb.europa.eu>

⁽²²¹⁾ 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.

⁽²²²⁾ 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*

3.35.6. In our opinion, the accounts of the Board for the year ended 31 December 2018 present fairly, in all material respects, the financial position of the Board at 31 December 2018, 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.

Emphasis of matter

3.35.7. 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 relating to decisions on the adoption of resolution schemes were not subject to our audit. Their possible impact on the Board's financial statements for the financial year ended 31 December 2018 (in particular on contingent liabilities, provisions and liabilities) is subject to a specific annual audit, as stipulated under Article 92(4) of the SRM Regulation.

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

3.35.8. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 is legal and regular in all material respects.

Other matter

3.35.9. Without calling into question its opinions expressed above, 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. Given that the SRM Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, no checks are carried out at the level of the credit institutions. However, the SRB performs consistency and analytical checks 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.

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

3.35.10. In our opinion, payments underlying the accounts for the year ended 31 December 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.35.12. The SRB uses non-differentiated appropriations for its administrative budget, which does not allow a fair reflection of the multiannual nature of some contracts and may also lead to an overestimation of annual budgetary needs. The SRB should consider introducing differentiated budget appropriations to improve budget planning, implementation and reporting.

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.35.13. The SRB used an exceptional negotiated procurement procedure without prior publication of a contract notice and signed directly with the previous contractor a framework contract related to Information Technologies for a volume of 10 000 000 euros. Payments made under the contract in 2018 amounted to 440 020 euros. The SRB justified the use of the simplified procurement procedure by technical (captivity) and financial (investments already made to purchase the software) reasons. The SRB should avoid any dependency on the contractor which would not allow it in the future to choose alternative solutions in a competitive manner, thereby ensuring best value for money.

3.35.14. The SRB used some specific service contracts with IT companies which were formulated in a way that could imply the assignment ('mise à disposition') of temporary agency workers (24 IT consultants), instead of clearly defined IT services or products. The provision of temporary agency workers (interim workers) to perform precise tasks for a temporary duration in a user undertaking is subject to Directive 2008/104/EC on temporary agency work and to the specific rules adopted by the Member States in the transposition of that Directive. According to Belgium labour law, only registered temporary work agencies are authorised to provide interim workers to user undertakings (here SRB). The use of IT service contracts for the provision of labour would not be compliant with the EU Staff Regulations and EU social and employment rules. The SRB should make sure that contracts avoid any confusion between the procurement of IT services and of interim workers.

OBSERVATIONS ON INTERNAL CONTROLS

3.35.15. Apart from the use of IT consultants addressed above, in 2018 the Board also used 23 interim workers in addition to its own 334 staff. Related payments made in 2018 amounted to 943 673 euros. The specific contracts with the temporary work agency do not state the reasons for using interim workers, as required under Belgium labour law. Depending on the reasons, different approval and reporting requirements are to be respected. The Board should use contracts that include all the information required by law.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.35.16. 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)
2015	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.	Completed
2016	The budget implementation rate was low.	Completed
2016	The Board committed 2 million euros for the procurement of legal services which were not preceded by a financing decision nor planned in the Annual Work Programme and budget.	N/A
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 euros to national central banks.	N/A (Not under control of SRB)
2017	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.	Completed
2017	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.	N/A
2017	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 provided for in the 2016 AWP) were also procured by using the same procedure. Excessive use of such procedures limits competition.	Completed
2017	E-procurement: by the end of 2017, the Board had not yet introduced any of the IT tools developed by the Commission.	Ongoing
2017	The Board publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO).	Ongoing

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 the extent possible. 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. Validation rules have been implemented in the data collection portal and additional assurance, in the form of Agreed Upon Procedures report or Signed off form, is collected from the significant institutions. 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 to the NRAs the calculation methodology as well as detailed calibrations, hence ensuring transparency and cooperation. In addition to the ex-ante data verification steps already implemented by the SRB, ex-post checks are performed in a form of desk reviews in order to collect additional evidence on the reliability of the data.

3.35.12. The SRB agrees with the observation and has already planned to introduce differentiated appropriations in the 2020 budget.

3.35.13. The usage of the chosen solution was recommended following a 2016 market research and the SRB purchased the licences under a Commission Framework Contract. In 2018, due to regulatory obligations and related time constrictions, as well as the financial investment already made, the SRB was required to continue using the chosen solution. The Contractor is the sole provider of this licensed software and the only enterprise able to perform development. Therefore, an exceptional negotiated procedure without prior publication of a contract notice was carried out with the Contractor. However, the SRB continually evaluates the availability on the market of different solutions for its IT requirements in order to avoid, wherever possible, finding itself in a long-term situation of dependency on a sole provider.

3.35.14. The SRB is fully aware of the applicable Belgian law. In compliance with Belgian legislation, it is necessary to ensure that the use of contracts for the provision of services is clearly distinguished from the provision of temporary workers. The SRB agrees that the formulation of some of the requests for services was possibly not precise enough and could have led to misinterpretation. However, in practice, the way the specific contracts were implemented is in full compliance with the Belgian law. The SRB will ensure that, for future specific contracts, the formulation of requests will be further improved. Furthermore, in order to avoid any potential confusion, the SRB will ensure that the specific contracts clarify the type of instructions that SRB staff are permitted to give to the providers of the services.

3.35.15. The SRB has taken the necessary measures to address the observation and is already specifying the reasons for using interim workers in the contracts. This information has been part of the SRB internal approval process and documentation.

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', or 'CdT'), which is located in Luxembourg, was created by Council Regulation (EC) No 2965/94 ⁽²²³⁾. 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 ⁽²²⁴⁾.

Table

Key figures for the Centre

	2017	2018
Budget (million euros) ⁽¹⁾	49	47
Staff as at 31 December ⁽²⁾	215	206

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²²⁵⁾ and the reports on the implementation of the budget ⁽²²⁶⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Centre at 31 December 2018, 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.

⁽²²³⁾ OJ L 314, 7.12.1994, p. 1.

⁽²²⁴⁾ More information on the Centre's competences and activities is available on its website: www.cdt.europa.eu

⁽²²⁵⁾ 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.

⁽²²⁶⁾ 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 2018 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 2018 are legal and regular in all material respects.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.36.7. 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)
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).	Ongoing
2017	There is a need to clarify the future mandate and business model of the Centre.	Ongoing
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Centre's Director (administrative) and Management Board (functional).	Completed
2017	E-procurement: by the end of 2017, the Centre had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Ongoing

THE CENTRE'S REPLY

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

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', or 'EACEA'), which is located in Brussels, was established by Commission Implementing Decision 2013/776/EU ⁽²²⁷⁾ repealing Commission Decision 2009/336/EC ⁽²²⁸⁾. 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 ⁽²²⁹⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	50	50
Staff as at 31 December ⁽²⁾	436	441

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²³⁰⁾ and the reports on the implementation of the budget ⁽²³¹⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽²²⁷⁾ OJ L 343, 19.12.2013, p. 46.

⁽²²⁸⁾ OJ L 101, 21.4.2009, p. 26.

⁽²²⁹⁾ More information on the Agency's competences and activities is available on its website: <https://eacea.ec.europa.eu>

⁽²³⁰⁾ 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.

⁽²³¹⁾ 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 2018 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 2018 are legal and regular in all material respects.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.37.7. 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)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Steering Committee (functional).	Outstanding
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Completed

THE AGENCY'S REPLY

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

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’, or ‘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 ⁽²³²⁾. 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 ⁽²³³⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	43	44
Staff as at 31 December ⁽²⁾	434	453

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²³⁴⁾ and the reports on the implementation of the budget ⁽²³⁵⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽²³²⁾ OJ L 341, 18.12.2013, p. 73.

⁽²³³⁾ More information on the Agency's competences and activities is available on its website: www.ec.europa.eu/easme/

⁽²³⁴⁾ 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.

⁽²³⁵⁾ 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 2018 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 2018 are legal and regular in all material respects.

3.38.7. The following observations do not call the Court's opinion into question.

OBSERVATIONS ON BUDGETARY MANAGEMENT

3.38.8. The cancellation rate of budget appropriations carried over from 2017 to 2018 was high, at 18,5 %, demonstrating unjustified commitments in the previous year. The level of new carry-overs from 2018 to 2019 for Title III (programme support expenditure) is also high at 60 %, leading again to the risk of a high cancellation rate. The Agency should carry over budget appropriations only when duly justified.

OBSERVATIONS ON INTERNAL CONTROL

3.38.9. The Agency does not have a sensitive post policy which would identify sensitive functions, keep them up to date and define appropriate measures to mitigate the risk of vested interests. This is not in line with the Agency's internal control standards. The Agency should adopt and implement such a sensitive post policy without delay.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.38.10. In April 2018, the Commission's Internal Audit Service issued an audit report on 'H2020 Project management in EASME' ⁽²³⁶⁾. The Agency prepared an action plan to address some potential areas for improvement.

3.38.11. In March 2018, the Commission's Internal Audit Service issued an audit report on 'Limited review on the reporting on the corrective capacity' ⁽²³⁷⁾, covering the 2016 reporting year and various DGs and services of the European Commission, apart from EASME. The Agency prepared an action plan to address some 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.

⁽²³⁶⁾ We did not verify the audit work.

⁽²³⁷⁾ 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. The Agency may consider introducing differentiated budget appropriations.	N/A
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Agency's Director (administrative) and Steering Committee (functional).	Completed
2017	In 2014 the Agency's mandate was considerably extended. 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.	Completed
2017	E-procurement: by the end of 2017 the Agency had introduced e-tendering and e-submission for certain procedures, but not e-invoicing.	Completed

THE AGENCY'S REPLY

3.38.8. The cancelation of budget appropriations carried over from 2017 to 2018 was essentially linked to the provision for evaluation expenses related to the LIFE contract, which resulted to be less important than foreseen. The costs are estimated at the beginning of the proposal evaluation process, potentially resulting with a leftover once all proposals are evaluated. This risk should be reduced in the future as such evaluation expenses will be supported by the operational budget.

The level of new carryovers from 2018 to 2019 has lowered compared to the previous year, both in amounts and in percentage of the initial budget.

The Agency will continue to closely monitor the level of budget needs and to raise awareness to the concerned sectors/units to increase the budgetary consumption within the year.

3.38.9. The Agency has updated its analysis of sensitive functions in January 2019. The Agency will define the appropriate measures to mitigate the risks and update the sensitive posts policy in the short term.

3.39. EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY (ERCEA)

INTRODUCTION

3.39.1. The European Research Council Executive Agency (hereinafter 'the Agency', or 'ERCEA'), which is located in Brussels, was created by Commission Decision 2008/37/EC ⁽²³⁸⁾. 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 ⁽²³⁹⁾ the Agency's mandate was extended as it 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) ⁽²⁴⁰⁾.

3.39.2. The *Table* presents key figures for the Agency ⁽²⁴¹⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	47	49
Staff as at 31 December ⁽²⁾	477	494

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²⁴²⁾ and the reports on the implementation of the budget ⁽²⁴³⁾ for the financial year ended 31 December 2018; 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.

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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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 9, 12.1.2008, p. 15.

⁽²³⁹⁾ OJ L 347, 20.12.2013, p. 965.

⁽²⁴⁰⁾ Implementation period 2014 to 2020.

⁽²⁴¹⁾ More information on the Agency's competences and activities is available on its website: www.erc.europa.eu

⁽²⁴²⁾ 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.

⁽²⁴³⁾ 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 2018 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 2018 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 THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.39.8. The Agency uses framework contracts with IT companies for the provision of IT services by consultants on a 'time and means' basis and at the premises of the Agency. Based on the specific and general criteria provided by the Belgium Law, with regard to the implementation of said contracts, the Agency should not determine the functions assigned to the service providers' employees. We found that instructions to the IT consultants could lead to confusion as to who determines the functions assigned to the service providers' employees. The Agency should make sure that all EU and national legal provisions are respected when using IT consultants.

OBSERVATIONS ON INTERNAL CONTROL

3.39.9. In addition to the use of IT consultants explained above, in 2018 the Agency also used 36 interim workers under framework contracts with one temporary work agency. However, the related order forms do not state the reason for using interim workers, as required under Belgium labour law. Depending on the reason, different approval and reporting requirements are to be met. The Agency should use order forms that include all the information requested by the law.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.39.10. In 2018, the Commission's Internal Audit Service issued an audit report on 'Final audit report on H2020 Grant management (phase II)' ⁽²⁴⁴⁾. The Agency prepared an action plan to address some potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

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

⁽²⁴⁴⁾ 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)
2017	E-procurement: by the end of 2017 the Agency had introduced e-tendering and e-invoicing for certain procedures, but not e-submission.	Completed

THE AGENCY'S REPLY

3.39.8. ERCEA makes a clear difference between ERCEA staff and the IT consultants, as it exercises no hierarchical link towards them. All employment-related decisions such as dismissal/recruitment, employment conditions, work schedule and overtime work, disciplinary sanctions, evaluations, procedure in case of sickness or holiday applications, are taken by the contractor. ERCEA takes note of the Court's observation and will consider measures to avoid any potential confusion as to who determines the functions assigned to the IT consultants. Indeed, the Agency will implement the guidelines on the use of in house service providers that are being reviewed by the Commission.

3.39.9. The ERCEA strictly implements the inter-institutional framework contract HR/R3/PR/2014/078 for the use of interim workers and its tender specifications (TS). The later document clearly defines in Article 2.10 the mandatory requirements which must be inserted in the bon de commande/order forms ('contracts') to be addressed to the temporary work agency for each particular assignment. According to Article 1 of the TS, the justifications for using the interim workers by the agency are defined at the level of the framework contract itself. ERCEA will revise its order forms to include the applicable justification in line with the framework contract.

3.39.10. Following the IAS' approval on ERCEA action plan related to the audit on the 'H2020 Grant management phase II', the Agency is implementing the related measures according to the agreed timelines.

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 ⁽²⁴⁵⁾ 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 ⁽²⁴⁶⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	24	27
Staff as at 31 December ⁽²⁾	249	282

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²⁴⁷⁾ and the reports on the implementation of the budget ⁽²⁴⁸⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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.

⁽²⁴⁵⁾ OJ L 352, 24.12.2013, p. 65.

⁽²⁴⁶⁾ More information on the Agency's competences and activities is available on its website: www.ec.europa.eu/inea

⁽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*

3.40.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 are legal and regular in all material respects.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.40.7. 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)
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Ongoing

THE AGENCY'S REPLY

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

3.41. RESEARCH EXECUTIVE AGENCY (REA)

INTRODUCTION

3.41.1. The Research Executive Agency (hereinafter ‘the Agency’, or ‘REA’), which is located in Brussels, was set up by Commission Decision 2008/46/EC ⁽²⁴⁹⁾. 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 ⁽²⁵⁰⁾, 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* presents key figures for the Agency ⁽²⁵¹⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	67	70
Staff as at 31 December ⁽²⁾	693	736

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²⁵²⁾ and the reports on the implementation of the budget ⁽²⁵³⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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 11, 15.1.2008, p. 9.

⁽²⁵⁰⁾ OJ L 346, 20.12.2013, p. 54.

⁽²⁵¹⁾ More information on the Agency's competences and activities is available on its website: www.ec.europa.eu/rea

⁽²⁵²⁾ 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.

⁽²⁵³⁾ 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 2018 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 2018 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 THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.41.8. In 2018, the Agency concluded a specific contract for the provision of assistance in the organisation of the event marking the Agency's 10th anniversary. The specific contract implements a Commission framework contract for the organisation and management of events, which includes the possibility of supplementary services, up to 20 % of the total value of the specific contract. However, REA's specific contract had a total volume of 68 688 euros and the supplementary services procured amounted to 39 218 euros (57 %). Therefore, the procurement of the supplementary services was not in compliance with the framework contract and therefore irregular (no related payments made in 2018). The Agency should comply with contractual provisions and ceilings.

INFORMATION ON INTERNAL AUDIT SERVICE REPORTS

3.41.9. In November 2018, the Commission's Internal Audit Service (IAS) issued an audit report on the 'H2020 Grant Management in REA'. The Agency has prepared an action plan to address any potential areas for improvement.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.41.10. 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)
2017	The management of the selection process for contractual staff 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.	N/A
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	Ongoing

THE AGENCY'S REPLY

3.41.8. The services proposed by the contractor for the specific contract were accepted by REA at an early stage of the event's organisation to allow the contractor to start working on aspects requiring important preparation and securing the venue. Given the size of the event, both REA and the contractor were aware that adjustments would be necessary in the subsequent phases of the organisation. In this context, it was agreed with the contractor that, where possible, 'supplementary services' will be replaced by catalogue items from the respective lots through an amendment to the specific contract. In the meantime, REA fully defined the format of the event and requested a revised offer. An amendment reducing the share of 'supplementary services' to 4 289 euros (7,7 % of the specific contract) was signed on 17 May 2019.

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 — EAHHC — from 2008 to 2013 and Consumers, Health, Agriculture and Food Executive Agency — Chafea — as from 1 January 2014) ⁽²⁵⁴⁾. 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 ⁽²⁵⁵⁾.

Table

Key figures for the Agency

	2017	2018
Budget (million euros) ⁽¹⁾	10	11
Staff as at 31 December ⁽²⁾	61	66

⁽¹⁾ Budget figures are based on payment appropriations.

⁽²⁾ Staff includes EU officials, EU temporary agents, EU contract staff and seconded national experts, not interim workers and consultants.

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 ⁽²⁵⁶⁾ and the reports on the implementation of the budget ⁽²⁵⁷⁾ for the financial year ended 31 December 2018; 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 2018 present fairly, in all material respects, the financial position of the Agency at 31 December 2018, 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⁾ Commission Implementing Decision 2013/770/EU of 17 December 2013 establishing the Consumers, Health and Food Executive Agency and repealing Decision 2004/858/EC (OJ L 341, 18.12.2013, p. 69).

⁽²⁵⁵⁾ More information on the Agency's competences and activities is available on its website: <http://ec.europa.eu/chafea/>

⁽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

3.42.5. In our opinion, revenue underlying the accounts for the year ended 31 December 2018 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 2018 are legal and regular in all material respects.

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

OBSERVATIONS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

3.42.8. The Agency uses contracts with IT companies for the provision of IT services by consultants (13 in 2018) on a 'time and means' basis and at the premises of the Agency. Based on the specific and general criteria provided by the Luxembourgish Law, with regard to the implementation of said contracts, the Agency should not determine the functions assigned to the service providers employees. We found that instructions to the IT consultants could lead to confusion as to who determines the functions assigned to the service providers' employees. The Agency should make sure that all EU and national legal provisions are respected when using IT consultants.

FOLLOW-UP OF PREVIOUS YEARS' OBSERVATIONS

3.42.9. 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)
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.	N/A
2017	In 2017, the Agency's recruitment procedures were inadequately documented. 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.	Completed
2017	In 2017, the Agency encountered difficulties in attracting sufficient competition for low and medium value procurement procedures.	Completed
2017	E-procurement: by the end of 2017 the Agency had introduced e-tendering and e-invoicing for certain procedures, but not e-submission.	Completed
2017	The Agency's accounting officer has been absent since the end of November 2017. On 13 December 2017, the Agency's Steering Committee formally appointed an administrator as temporary accounting officer; this administrator is deputising for 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.	Completed
2017	The Agency publishes vacancy notices for temporary agents on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	Ongoing
2017	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 %.	N/A

THE AGENCY'S REPLY

3.42.8. Chafea makes a clear distinction between Chafea staff and the IT consultants, as Chafea does not exercise hierarchical link towards them. All employment-related decisions such as promotion, dismissal/recruitment, employment conditions, work schedule, overtime, disciplinary measures, sickness management, holiday request and validation are taken by the contractor. Chafea takes note of the Court's observation and will consider measures to avoid any potential confusion as to who determines the functions assigned to the IT consultants. Indeed, Chafea will implement the guidelines on the use of *Intra Muros* IT Consultant that are being reviewed by the Commission.

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg at its meeting of 24 September 2019.

For the Court of Auditors

Klaus-Heiner LEHNE

President

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