



EUROPEAN
COURT
OF AUDITORS

**Report on the annual accounts of the
Agency for Support for Body of European
Regulators for Electronic Communications
(the BEREC Office)
for the financial year 2019,
together with the Office's reply**

Introduction

01 The Agency for Support for Body of European Regulators for Electronic Communications (“the BEREC Office”), which is located in Riga, was established by Regulation (EU) No 2018/1971 of the European Parliament and of the Council of 11 December 2018, replacing the previous Regulation (EC) No 1211/2009 of the European Parliament and of the Council¹. The BEREC 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.

02 *Graph 1* presents key figures for the BEREC Office².

Graph 1: Key figures for the BEREC Office



* Budget figures are based on the total payment appropriations available during the financial year.

** “Staff” includes EU officials, EU temporary agents, EU contract staff and seconded national experts, but excludes interim workers and consultants.

Source: Consolidated annual accounts of the European Union for the financial year 2018 and Provisional consolidated annual accounts of the European Union Financial year 2019; Staff figures provided by the Office.

Information in support of the statement of assurance

03 The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the BEREC Office’s supervisory and control systems. This is supplemented by evidence provided by the

¹ OJ L 337, 18.12.2009, p. 1.

² More information on the Office’s competences and activities is available on its website: www.berec.europa.eu.

work of other auditors and an analysis of information provided by the Office's management.

The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

Opinion

04 We have audited:

- (a) the accounts of the BEREC Office which comprise the financial statements³ and the reports on the implementation of the budget⁴ for the financial year ended 31 December 2019 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

05 In our opinion, the accounts of the BEREC Office for the year ended 31 December 2019 present fairly, in all material respects, the financial position of the BEREC Office at 31 December 2019, 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.

³ 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.

⁴ 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

06 In our opinion, revenue underlying the accounts for the year ended 31 December 2019 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

07 In our opinion, payments underlying the accounts for the year ended 31 December 2019 are legal and regular in all material respects.

Basis for opinions

08 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

09 In accordance with Articles 310 to 325 of the TFEU and the BEREC Office's Financial Regulation, the BEREC Office's management is responsible for preparing and presenting the BEREC Office's 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. The BEREC Office's management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the official requirements which govern those statements. The BEREC Office's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the BEREC Office's accounts.

10 In preparing the accounts, the BEREC Office's management is responsible for assessing the BEREC Office's ability to continue as a going concern. It must disclose, as applicable, any matters affecting the Office's status as a going concern, and use 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.

11 Those charged with governance are responsible for overseeing the BEREC Office's financial reporting process.

The auditor's responsibilities for the audit of the accounts and underlying transactions

12 Our objectives are to obtain reasonable assurance about whether the accounts of the BEREC Office 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 BEREC Office's 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.

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

14 For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments (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 the BEREC Office accepts

the justification by clearing the advance payment, whether in the same year or later.

15 In accordance with the ISAs and ISSAIs, we exercise our professional judgement 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 the BEREC Office'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 BEREC Office 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 BEREC Office's accounts as stipulated in Article 70(6) of the EU Financial Regulation, 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 BEREC Office, 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.

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

Observations on the legality and regularity of transactions

17 In September 2018, the BEREC Office launched a competitive procedure for the provision of legal services for its staff (a framework service contract with an estimated value of 200 000 euros). We have made three findings in connection with this procedure.

First, the contract was signed in May 2019. However, one day after the contract was signed, an unopened envelope containing a further bid was found in the office of the procurement officer. This was a result of the BEREC Office not having an effective procedure in place for receiving and recording the details of tenders, including the date of receipt.

Second, the evaluation reports for the tendering procedure did not contain sufficient details on why tenderers had been deemed to be compliant, or not, with the eligibility criteria. Third, the appointed sole evaluator had a conflict of interest with one of the bidders. This bidder was then awarded the contract. It is indeed permitted for a single person to be responsible for verifying compliance with the exclusion and selection criteria. But effective steps need to be taken to guarantee that conflicts of interest do not arise. In this case, the authorising officer did not properly guarantee the absence of conflict of interest. As a result, we consider that this procurement procedure does not comply with the principles of transparency and equal treatment. Therefore, the

contract that was signed and the payments that were made under it, which amounted to 7 420 euros in 2019, are irregular.

18 We also made findings in connection with a second procurement procedure: this time, one connected with the provision of language training. Two offers were received. In December 2018 and January 2019, the BEREC Office signed two framework contracts “in cascade”, one with each of the bidding companies. These two contracts had a maximum total combined value of 200 000 euros. Under the Financial Regulation, a contracting authority must estimate the value of a purchase on the basis of previous experience, previous similar contracts or preliminary market research. However, the BEREC Office was unable to provide the Court with any evidence of such an analysis having been performed. Furthermore, the declarations of the absence of any conflict of interests for the three members of the evaluation committee were not stored in the procurement file. The BEREC Office was unable to produce them during the audit. This is a serious internal weakness, which detracts from the transparency of the procurement procedure and poses risks to the BEREC Office if a legal dispute arises.

Follow-up of previous years’ observations

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

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg on 22 September 2020.

For the Court of Auditors



Klaus-Heiner Lehne
President

Annex - Follow-up of previous years' observations

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2017	By the end of 2017, the BEREC Office had introduced e-tendering for certain procurement procedures, but not e-invoicing and e-submission.	Ongoing (e-submission adopted in 2019)
2018	The BEREC Office signed a framework contract with one company for the provision of secretarial support services. The staff (interim workers) were employed through contracts with authorised temporary-work agencies. However, the use of contracts of this kind for the provision of labour is not in compliance with EU social and employment rules, and exposes the BEREC Office to legal and reputational risks.	We note that a case pending before the Court of Justice of the EU (CJEU) case No C-948/19 (Manpower Lit), concerns several questions regarding the application of Directive 2008/104/EC, on temporary agency work, to EU Agencies. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning the Office's use of interim workers, the Court will refrain from making any observations on the regularity of the Agency's approach, including follow-ups of observations from previous years, concerning this matter until the Court of Justice CJEU has issued a final ruling in this case.

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2018	The BEREC Office spent 37 % of its non-salary-related budget with a single company, which created a risk to business continuity by making the BEREC Office dependent on external resources provided by that single company.	Ongoing
2018	The BEREC Office launched a call for tender for a Network Neutrality Measurement Tool. Three tenders passed the minimum quality threshold, but no explanation was requested from the winning tenderer for the potentially abnormally low tender price.	Completed

The Agency's reply

17. The BEREK Office discovered the mistake before the start of the use of the FWC, which was signed as result of the procurement procedure and immediately undertook all actions to open and evaluate the unopened tender. As a mitigation measure, no specific contracts under the FWC mentioned above were signed before the outcome of the evaluation was concluded and before all bidders were offered with the opportunity to make observations or to appeal. No appeals were filed.

As far as the details of the internal documents are concerned, due to its limited capacity, the BEREK Office strictly follows the templates and guidance provided by DG Budget, including for evaluation reports and evaluation of conflict of interest.

In relation to the comment concerning the conflict of interest, the sole evaluator appointed to evaluate the requests to participate in step 1 proactively informed the hierarchy about potential conflict of interest. The authorising officer assessed the facts declared by the staff member and concluded that there was no risk of compromising the impartiality of the staff member and issued written instructions that the staff member can proceed with the evaluation of the requests to participate, received by the BEREK Office.

18. The BEREK Office takes due note of the concerns of the Court of Auditors about missing document from the procurement file BEREK/2018/04/CP and would like to point out that the procurement procedure in question took place during the period in which the BEREK Office was still using decentralised procurement model.

The BEREK Office would like to reassure the Court of Auditors that, since the process of centralising the procurement procedures at the Agency was finalised on 1 July 2019, the completeness of the files is ensured by their close supervision from staff of the centralized procurement cell. Following the centralisation, the Commission Internal Audit Service audited the internal procedures in place and concluded that 'the management and internal control system set up by the BEREK Office for the procurement process and the reimbursement of missions are adequately designed and efficiently and effectively implemented.'

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