



EUROPEAN  
COURT  
OF AUDITORS

# **Report on the annual accounts of the European Banking Authority (EBA) for the financial year 2019,**

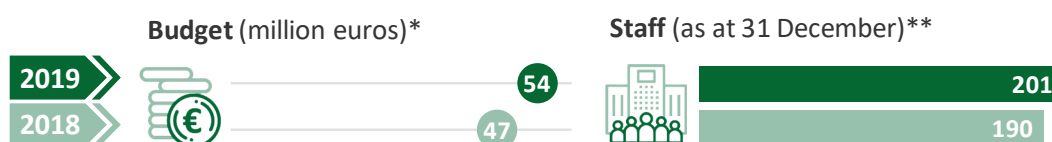
together with the Authority's reply

# Introduction

**01** The European Banking Authority (“the Authority”, or “the EBA”), is now situated in Paris<sup>1</sup>. The Authority’s task include contributing to the establishment of high-quality common regulatory and supervisory standards and practices; contributing to the consistent application of legally binding Union acts; stimulating and facilitating the delegation of tasks and responsibilities among competent authorities; monitoring and assessing market developments in the area of its competence; and fostering depositor and investor protection.

**02** *Graph 1* presents key figures for the Authority<sup>2</sup>.

## Graph 1: Key figures for the Authority



\* 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 Authority.

## 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 Authority’s supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of information provided by the Authority’s management.

<sup>1</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council (OJ L 331, 15.12.2010, p. 12).

<sup>2</sup> More information on the Authority’s competences and activities is available on its website: [www.eba.europa.eu](http://www.eba.europa.eu).

## 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 Authority which comprise the financial statements<sup>3</sup> and the reports on the implementation of the budget<sup>4</sup> 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 Authority for the year ended 31 December 2019 present fairly, in all material respects, the financial position of the Authority 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.

#### Emphasis of matter

**06** We draw attention to note II.3 of the financial statements of the Authority final accounts, which provides for 10,1 million euros provision related to the lease agreement of the EBA London Office.

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<sup>3</sup> 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.

<sup>4</sup> 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

**07** 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

**08** 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

**09** 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

**10** In accordance with Articles 310 to 325 of the TFEU and the Authority's Financial Regulation, the Authority's management is responsible for preparing and presenting the Authority'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 Authority'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 Authority's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the Authority's accounts.

**11** In preparing the accounts, the Authority's management is responsible for assessing the Authority's ability to continue as a going concern. It must disclose, as applicable, any matters affecting the Authority'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.

**12** Those charged with governance are responsible for overseeing the Authority's financial reporting process.

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

**13** Our objectives are to obtain reasonable assurance about whether the accounts of the Authority 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 Authority'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.

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

**15** 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 Authority accepts the justification by clearing the advance payment, whether in the same year or later.

**16** 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 Authority'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 Authority 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 Authority'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 Authority, 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.

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

### **Observations on the legality and regularity of transactions**

**18** Since June 2019, EBA has used framework contracts with an IT company to provide the services of IT consultants on a 'quoted time and means' basis. The consultants work on the EBA's premises. We found that the EBA had issued work instructions to some of these IT consultants directly, and not through the IT company. This could lead to the line between the EBA's staff and the IT consultants becoming blurred. The provision of interim workers can only be done through contracts with authorised temporary work agencies and in accordance with Directive 2008/104/EC of the European Parliament and of the Council<sup>5</sup>, 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. The Authority should make sure that contracts avoid any confusion between the procurement of IT services and of interim workers.

### **Observations on budgetary management**

**19** The EBA's budget includes contributions made by National Competent Authorities (NCAs), the European Commission, and EFTA Members' National Competent Authorities. But the contributions in the 2019 budget were not calculated according to the formula set out in that very same budget. According to the formula, EFTA Members' NCA contributions should have been added on top of the

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<sup>5</sup> OJ L 327, 5.12.2008, p. 9.

contributions made by the European Commission and by EU Members' NCAs. Instead, the contributions of the EFTA Members' NCAs were added to the contributions of EU Members' NCAs. This reduced the total amount of contributions paid by all NCAs. Consequently, EU and EFTA Members' NCAs paid 711 247 euros less to the EBA budget in 2019 than they should have done.

**20** In 2019, NCAs contributed 1 810 400 euros for pensions contributions to be paid by the employer (the EBA). This amount was based on estimated figures. The NCAs' contributions were never adjusted to match the actual figures (1 755 144 euros). Nor did we see any evidence that plans had been made to make such an adjustment.

Moreover, in 2019, the amount of the contributions made by NCAs and the EU was reduced by 1 823 361 euros. This was because, in 2017, EBA had a budgetary surplus. But in 2017, the EU had contributed 37,16 % of the budget, and the NCAs 62,84 %. The reduction brought about by the budget surplus should have been distributed along the same lines: a ratio of 37,16 % to 62,84 %. Instead, the surplus from 2017 was divided differently: by a ratio of 40 % to 60 %. Consequently, the NCAs' contributions should have been reduced by a further 51 783 euros.

All of these differences, taken together, mean that the NCAs' contributions should have been 604 208 euros more.

**21** The EBA moved its headquarters to Paris in 2019. The new host Member State, France, contributed toward the costs incurred as a result of this move, including Paris office rental costs. It contributed 2 500 000 euros in January 2019, and 500 000 euros in January 2020. The amended 2019 budget includes these contributions with the remark 'pro memoria'. The 2020 budget does not mention them at all. Both budgets were adopted in December 2019, when the amount of the new host Member State's contributions were already certain. The amended 2019 budget and the 2020 budget do not contain adequate information on the new host Member State's contributions to the EBA's running costs.

## Observations on internal controls

**22** As from May 2019, the EBA has a framework contract in place with an IT company. Under the contract, the IT company has provided consultants who work on the EBA's premises. The IT company is not domiciled in France. The Authority was unable to confirm to the auditors whether the IT consultants providing services on its premises qualified for posted worker status under the provisions of the French law concerning the transposition of the Posting of Workers Directive (Directive 96/71/EC of



the European Parliament and of the Council<sup>6</sup>) and the Enforcement Directive (Directive 2014/67/EU of the European Parliament and of the Council<sup>7</sup>).

As required by the Financial Regulation applicable to the general budget of the Union, the EBA, as contracting authority, is responsible for verifying the declarations of compliance with EU and national social and labour law made by contractors (including legislation concerning the posting of workers). The EBA should have fulfilled this requirement by asking its contractor for a list of these workers and asking it to submit evidence that it complied with the national legislation in the host Member State (e.g. proof that the contractor had notified the host Member State about the posted workers). The absence of such checks exposes the EBA to legal and reputational risks.

**23** According to information provided by the EBA, on 2 August 2019, the EBA's Executive Director resigned. He gave notice of his intention to take on the role of Chief Executive Officer of the Association for Financial Markets, which represents the finance industry in Europe. Current and former EBA staff are subject to restrictions if they want to take on new roles in this way. One of these restrictions is that their new activity must be approved by the EBA's Board of Supervisors. Based on the Staff Regulations and on the EBA's founding Regulation, the Board of Supervisors may, in the interest of the service, either forbid former staff members from undertaking subsequent activities, or give its approval subject to any conditions it sees fit. In this case, the Board of Supervisors gave its approval for the former Executive Director to take on the new role, subject to some conditions.

**24** The European Ombudsman has opened an inquiry into the situation in January 2020. On 7 May 2020, the European Ombudsman found that the EBA's decision not to forbid its Executive Director from becoming the CEO of a financial industry lobby was maladministration<sup>8</sup>. "Forbidding the job move would have been a necessary and proportionate measure in this particular case."<sup>9</sup> The Ombudsman also found there was maladministration in that the EBA did not immediately withdraw its Executive Director's access to confidential information. The Ombudsman made

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<sup>6</sup> OJ L 18, 21.1.1997, p. 1.

<sup>7</sup> OJ L 159, 28.5.2014, p. 11.

<sup>8</sup> See paragraph 33 or page 11 of the Recommendation of the European Ombudsman in case 2168/2019/KR.

<sup>9</sup> See paragraph 33 or page 11 of the Recommendation of the European Ombudsman in case 2168/2019/KR.

recommendations to strengthen how the EBA deals with any such future situations<sup>10</sup> (case 2168/2019/KR).

The Ombudsman's recommendation, issued on 7 May 2020, required the EBA to send a detailed reply to the Ombudsman by 31 August 2020. The EBA sent this reply on 28 August 2020<sup>11</sup>. In its reply, the EBA stated that it had adopted a new policy to address the Ombudsman's detailed recommendations.

## Follow-up of previous years' observations

**25** 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*

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<sup>10</sup> See page 11 of the Recommendation of the European Ombudsman in case 2168/2019/KR.

<sup>11</sup> <https://www.ombudsman.europa.eu/en/correspondence/en/131987>

## 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	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).	Completed
2018	The joint procurement procedure for the rental of office space in Paris between EBA and ESMA failed, creating a missed opportunity for economies of scale and efficiency gains. The authorities should improve their cooperation and use joint procurement procedures wherever possible.	N/A
2018	The Authority made significant efforts in the preparation of tender documents and in tender evaluation methodology but more rigour and comprehensive award criteria are still needed.	Completed
2018	The EBA engaged in the use of interim workers with two temporary-work agencies, which caused a critical dependency on the interim-work agency. The Authority should address the budgetary authorities on this considerable risk to business continuity when discussing the number of directly employed statutory staff.	Ongoing

## THE AUTHORITY'S REPLY

18. In 2019, the EBA IT has moved away from its London operating model, which was highly dependent on temporary IT workers, and adopted in Paris a service-oriented delivery model with an IT Supplier using quoted time and means (QTM) contracts. In 2020 and beyond, the EBA will continue to mature and entrench service-based consumption of IT services with its main IT supplier. In doing so, EBA will observe the need for clarity of demarcation while allowing tight 3rd party service integration, which is needed for service quality and efficiency.

19. Due to the timing of the discovery of the error, it was not possible to correct it in the 2019 budget year. Given the 97.3 % budget execution rate in 2019, the impact of this error is to reduce the total value of the surplus. The EBA has identified a way forward to correct this matter equitably for the EC and the NCA, by adjusting the split of the 2019 surplus that will be returned to the EC and the NCA in 2021.

20. The ECA observation does not mention that the Commission also provides for employer pension contributions. However, the EBA recognises the Court's need for further clarity in the rules regarding contributions to the EBA.

21. The EBA will address this observation in future budgets.

22. The EBA recognizes the need to check and independently assess the full compliance of its Contractors with French Law. In 2019, the EBA began to set up a system for verification of declarations of compliance. Work on this will be completed in 2020 and will be updated to contain information relating to 2019 and ongoing compliance.

23. The EBA's former Executive Director informed the EBA two days after receiving an offer letter from his prospective new employer. In relation to the period during which he was an applicant for the position, the EBA's review of former Executive Director's responsibilities and tasks during that period did not demonstrate that they caused a risk of conflict of interest. This is the case in relation to the EBA's policy work in particular, based on a review of the agenda items for the meetings of the Board of Supervisors that were held in this period.

24. The EBA has received the Ombudsman's findings and will be providing its detailed opinion by 31 August 2020 in accordance with the Ombudsman's request. The EBA is taking steps to implement the Ombudsman's recommendations and, in particular has adopted internal processes on withdrawing access to confidential information when staff move to another job.

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