



EUROPEAN
COURT
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Report on the annual accounts of the European Maritime Safety Agency (EMSA) for the financial year 2019,

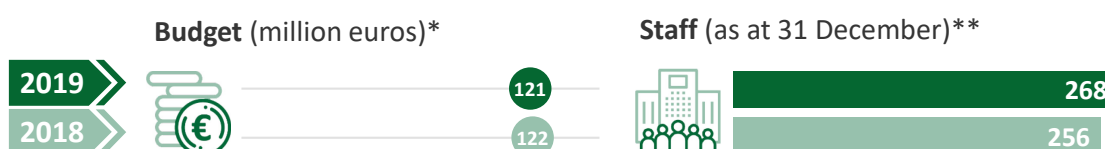
together with the Agency's reply

Introduction

01 The European Maritime Safety Agency (“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 Council¹. The Agency’s tasks are to ensure a high level of maritime safety, to prevent pollution by ships, to provide the Commission and the Member States with technical assistance, and to monitor the implementation of Union legislation, as well as to evaluate its effectiveness.

02 *Graph 1* presents key figures for the Agency².

Graph 1: Key figures for the Agency



* 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 Agency.

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 Agency’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 Agency’s management.

¹ OJ L 208, 5.8.2002, p. 1.

² More information on the Agency’s competences and activities is available on its website: www.emsa.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 Agency 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 Agency for the year ended 31 December 2019 present fairly, in all material respects, the financial position of the Agency 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 Agency's Financial Regulation, the Agency's management is responsible for preparing and presenting the Agency'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 Agency'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 Agency's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the Agency's accounts.

10 In preparing the accounts, the Agency's management is responsible for assessing the Agency's ability to continue as a going concern. It must disclose, as applicable, any matters affecting the agency'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 Agency'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 Agency 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 Agency'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 Agency'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 Agency 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 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 Agency 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 Agency'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 Agency, 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 the transactions

17 For one recruitment procedure, the selection board organised an additional written test, which was not mentioned in the vacancy notice. According to the Agency's rules for implementing the Staff Regulations, the type of tests used in a recruitment procedure must be specified in the vacancy notice. Furthermore, the pre-selection board for this procedure did not decide on the pass-marks required for candidates to progress to the next stage of the recruitment procedure before it evaluated the applications. This undermines the principle of transparency and the requirement to keep an adequate audit trail.

18 Proper management of potential conflicts of interest is important for ensuring that recruitment procedures are fair. Members of selection boards for recruitment procedures in the Agency sign a declaration to the effect that they are not affected by any conflict of interest. They make this declaration at the very beginning of the procedure, before the vacancy notices have been published and before the candidates are known. According to the declaration, if board members discover during the selection process that a conflict of interest has arisen, they must declare this immediately and resign from the selection panel. In addition to confirmed conflicts of interest of this kind, the Staff Regulations also require selection board members to declare any personal interest, which could potentially impair their independence with regard to any given candidate. We found that this rule had not always been followed. In one selection procedure that we audited, the candidate who was offered a contract was already working in the department headed by the Chair of the selection board at the time the recruitment procedure began. Despite this, none of the board members had declared any potential conflict of interest. Responsibility for deciding whether

such potential conflicts of interest could in fact impair selection board members' independence lies with the appointing authority. But if declarations to this effect are made at the sole discretion of the board member, there is a risk that some conflicts of interest may remain undetected.

19 EMSA has a framework contract with a temporary-work agency to provide temporary-agency workers (or interim workers). In 2019, the Agency used five such interim workers, in addition to its own 268 staff (as at 31 December 2019), and paid 96 574 euros for their services. A specific legal framework applies to interim worker contracts. It imposes various obligations on temporary-work agencies and the bodies where they are deployed. Directive 2008/104/EC of the European Parliament and of the Council⁵ requires that the basic employment conditions of temporary agency workers must be equal to or better than the conditions that would apply if they had been employed directly to perform the same job. We found that the remuneration of interim workers in the Agency was lower than the lowest possible remuneration that would be due to a contract agent directly employed by the Agency to perform the same task. However, since a case pending before the Court of Justice touches upon these matters, and since the ruling, when it comes, may have an impact on the Court's position as regards the use of interim workers by the Agency, we will refrain from making observations on the regularity of the Agency's approach concerning this matter, including follow-ups of observations from previous years, until the ruling has been issued.

20 The Financial Regulation states that EU bodies must make payments within prescribed timeframes. In 2019, the Agency frequently failed to do so. We found that it had paid late in 18 % of the cases. We observed similar or even higher levels of delays in 2018, 2017 and 2016. For all the years mentioned, most late payments concern the reimbursement of travel costs for participants to workshops, despite some efforts deployed to reduce this backlog. This recurrent weakness exposes the Agency to financial and reputational risk.

Follow-up of previous years' observations

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

⁵ OJ L 327, 5.12.2008, p. 9.

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

A handwritten signature in black ink, appearing to read 'K-H Le', written in a cursive style.

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	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.	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).	Completed
2018	The ex-ante controls performed by EMSA on the IT framework contract were not effective. The Agency should adapt its ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements.	Completed

The Agency's reply

17. EMSA will ensure that all future vacancy notices will be more explicit with regard to the type of tests and that the pass-marks required for candidates to progress to the next stage will be decided upfront.

18. EMSA fully acknowledges that proper management of potential conflicts of interest is important for ensuring that recruitment procedures are fair and transparent. Following the remarks of the Court, EMSA reviewed its procedure and guidelines related to the identification and management of conflict of interests of Selection Committee members. The new procedure is implemented as from early 2020.

The enforced procedure ensures a proper reporting and management of potential conflicts of interest with the aim to ensure a fair and transparent recruitment process.

19. EMSA is fully aware that the implementation of the Directive 2008/104/EC entails many legal challenges and uncertainties. Examples include the particular nature of duties exercised by the interim workers, often not comparable to existing jobs at the Agency or the categorisation of the Staff Regulations/CEOS as a “collective labour regulation instrument”, the latter being a concrete Portuguese labour instrument resulting from negotiations between, among others, the relevant Governmental authorities and the relevant workers' Unions. Acknowledging the concerns of the Court, EMSA terminated the above-mentioned contract in 2019. A new procurement procedure was launched in December 2019 following consultation with an expert in Portuguese labour law. The new contract was signed in May 2020.

20. The Agency acknowledges that during the course of the year the number of late payments has slightly increased. Despite solving the backlog of 2018, thanks to the efforts of our staff concerned, the delays for 2019 are mainly due to following reasons:

- Temporarily less staff available for processing the reimbursements due to some internal re-assignments and additional projects.
- An exceptional increase of workshops during the 1st and 3rd quarters of the year. The number of events in the last quarter, typically already a very busy period for financial staff, were also higher than normal.

Measures have been taken to avoid a similar situation during the course of this year. It should be noted that as regards invoices issued by EMSA contractors the situation is under control.

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