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COURT
OF AUDITORS

Report on the annual accounts of the European Union Agency for Cybersecurity (ENISA) for the financial year 2019,

together with the Agency's reply

Introduction

01 The European Union Agency for Cybersecurity (“the Agency”, or “ENISA”), which is located in Athens and Heraklion¹, was created by Regulation (EC) No 460/2004 of the European Parliament and of the Council² which, following various amendments was superseded by Regulation (EU) No 2019/881³. The Agency's main mission is to achieve a high common level of cybersecurity across the Union, including by actively supporting Member States, Union institutions, bodies, offices and agencies in improving cybersecurity. ENISA shall act as a reference point for advice and expertise on cybersecurity for Union institutions, bodies, offices and agencies as well as for other relevant Union stakeholders.

02 *Graph 1* presents key figures for the Agency⁴.

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

¹ The Agency's operational staff was relocated to Athens in March 2013.

² OJ L 77, 13.3.2004, p. 1.

³ OJ L 151, 07.6.2019, p. 15.

⁴ More information on the Agency's competences and activities is available on its website: www.enisa.europa.eu.

work of other auditors and an analysis of information provided by the Agency'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 Agency which comprise the financial statements⁵ and the reports on the implementation of the budget⁶ 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.

⁵ 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.

⁶ 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, the 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, 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 transactions

17 We observed a number of weaknesses in the Agency's audited public procurement procedures. In three of the four cases audited, we noted an overlap between selection criteria and award criteria. A lack of clear separation between the two constitutes a procedural weakness that exposes the Agency to the risk of the tendering procedure being annulled if a dispute arises. Also, in three of the four cases, ENISA did not comply with the deadlines laid down in the Financial Regulation for the publication of the award notice in the Official Journal. This internal weakness detracts from the transparency of the procurement procedure.⁷

18 In two of the four framework services contracts we audited the price criterion had been based exclusively on the daily rates charged for each category of experts to be involved. Other qualitative and quantitative criteria were not included in the tender specifications based on different case-scenarios (e.g. the specific approach to be applied and the number of person-days per category of experts required). The fact that the tender specifications did not provide precise information (about the method for comparing the financial offers based on case-scenarios) introduces the risk that the contract(s) will not ensure the most economical implementation of the related projects.

⁷ Articles 38 and 163 FR and Points 2.3, 2.4, 3.2 and 3.3 Annex 1 FR.

Observations on sound financial management

19 In three audited procurements, we found that the Agency had included a selection criterion in the tender specifications relating to bidders' minimum average annual turnover. Such criterion is allowed under the Financial Regulation⁸: their purpose is to ensure that bidders have the capacity to actually implement the contract in full, and to prevent contractors from becoming overly financially dependent on the Agency. However, the Agency set a minimum value, which was too low. The Agency had set the threshold at a fixed sum of 50 000 euros for each of the three contracts, irrespectively of the value and the scope of the contract. The Agency did not carry out any assessment on whether such value would mitigate the risk linked to the actual implementation of the contract and the risk inherent to the financially dependency of the contractor to ENISA.

20 ENISA uses temporary agency workers (or interim staff) to support it in performing some of its tasks. It has signed a framework contract with a temporary work agency to this end. In December 2019, in addition to its own 75 staff, ENISA had 30 active interim staff. In December 2018, it had 15. The 2019 figure – which represents 29 % of the total actual workforce – is a significant increase on the previous year. It indicates that the Agency increased its dependency on interim workers. Interim staff are employed in many different areas of the Agency's operations, such as legal and recruitment, facilities, finance and procurement, security and standardisation, operational security, and human resources. ENISA paid approximately 923 000 euros for these services throughout 2019 (i.e. 5,6 % of the Budget).

21 In addition, there are specific legal provisions governing the use of interim staff. Temporary work agencies and the user undertakings are subject to various different obligations. According to Directive 2008/104/EC and certain provisions of Greek labour law 4052/2012, interim workers should have the same working conditions as directly employed workers. The contract between ENISA and the temporary-work agency does not stipulate the basic terms of employment in order to justify the category under which the interim worker is hired. Nor do interim staff members enjoy the same social benefits as ENISA's employees. However, since a case concerning the application of Directive 2008/104/EC of the European Parliament and of the Council⁹, on temporary

⁸ Annex 1, paragraph 19.1 of the Financial Regulation: "... the minimum yearly turnover shall not exceed two times the estimated annual contract value, except in duly justified cases linked to the nature of the purchase, which the contracting authority shall explain in the procurement documents."

⁹ OJ L 327, 5.12.2008, p. 9.

agency work to EU Agencies is currently pending before the Court of Justice (CJEU), the Court will refrain from making observations on the regularity of the Agency's approach concerning this matter until the CJEU has issued a final ruling in this case.

Follow-up of previous years' observations

22 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)
2015	The Agency has plans to relocate administrative staff to Athens, but its founding Regulation stipulates that the Agency's administrative staff must be based in Heraklion.	Completed
2016	The Agency moved eight additional staff to Athens, reducing the number of staff in Heraklion to 14 (according to ENISA, at the end of 2019 this number was further reduced to 7). It is likely that costs could be further reduced if all staff were centralised in one location.	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
2017	The Agency did not carry out a comprehensive analysis of the impact of the United Kingdom's withdrawal from the European Union.	Completed
2018	The Agency did 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 was not in line with the Agency's internal control standards. The Agency should adopt and implement such a sensitive post policy.	Outstanding

The Agency's reply

18. ENISA welcomes this finding as it helps to further fine-tune its internal processes thereby bringing greater assurance on the compliance in the procurement area. In particular, the price criterion has been since re-assessed and relevant future tenders will fully take into consideration the Court's observation.

19. ENISA welcomes this finding and appropriate action has since been implemented by setting the minimum average annual turnover requirement to 100% of the estimated annual contract value for all its future tenders.

20. To fully execute its Annual Work Programme, ENISA does rely on interim staff to perform some of its tasks but only in case of unfilled vacant posts and of heavy workloads.

To mitigate risks linked to vacant posts, ENISA has re-defined its recruitment strategy. The Agency has indeed launched two combined vacancy notices for Temporary Agents and for Contract Agents respectively likely to yield a large number of new recruits that will meet to a great extent the staff levels required under the Cybersecurity Act. The Agency has also made good progress to attract a diversified set of Seconded National Experts, reducing further its lag in this area. A steep reduction on its dependency on interim agents is thus expected. However, interim agents are likely to continue rendering services particularly in areas in which currently there is high demand.

21. With regard to employment conditions and benefits, the Agency has updated the basic terms of employment in order to justify the category under which the interim worker is hired by among other adding a job description to the contract. ENISA has also revised the modest extra-legal benefits and the categories of staff benefiting from it to ensure that interim workers have the same working conditions as directly employed workers.

In response to the Court recommendations and by following the above mentioned approach, the Agency is likely to remain a fairly attractive place to work, mitigate any legal concerns of its interim agents and duly motivate its decision to dispense of its appropriations accordingly.

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