



EUROPEAN
COURT
OF AUDITORS

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

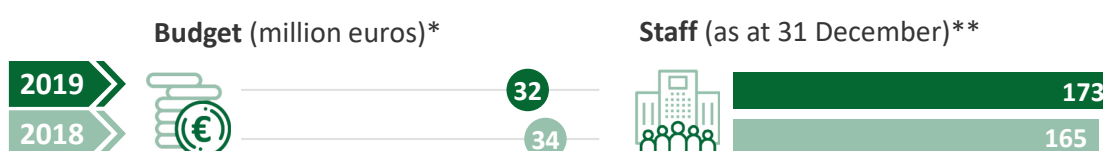
together with the Agency's reply

Introduction

01 The European Union Agency for Railways (“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, which was replaced in 2016 by Regulation (EU) 2016/796 of the European Parliament and of the Council¹. 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.

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 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.

² More information on the Agency’s competences and activities is available on its website: www.era.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 transactions

17 At the end of 2018 ERA launched a call for tenders with an estimated market value of 720 000 euros for assistance in the approval process for the European Rail Traffic Management System. In 2019, as a result of this procurement procedure, the agency signed separate four-year framework contracts "in cascade" with three companies. The aim of this type of contract is that, if one company proves unable to perform the work set out in the contract, the work can be passed to the other contractors in succession. The Financial Regulation stipulates that this can be done without reopening the tendering procedure, as long as the framework contract precisely sets out all of the terms governing the provision of the works, supplies or services concerned. In this case, the framework contract is not sufficiently specific. Also, the bidders' financial offers were based only on a daily rate for a day of work, without considering important elements such as worker profiles or the complexity of the work. The use of this sort of framework contract was not appropriate considering the level of detail available on the work to be performed. Nor was the financial data sufficiently detailed to ensure that the work was performed as economically as possible.

18 For one procurement procedure concerning the provision of catering services, with a ceiling of 500 000 euros, one member of the evaluation committee was never formally appointed. The member's participation in the evaluation committee without being officially appointed is an internal weakness which detracts from the transparency of the procurement procedure.

19 The European Commission, under a service level agreement, invoiced ERA for the provision of different IT services. This included a fee of 26 400 euros for hosting an IT system, charged for on the basis of the number of users. The number of users used as a basis for the invoice was incorrect. The Commission therefore overcharged the Agency by 4 675 euros. The Agency approved the invoice and made the payment to the European Commission without noticing the error. This indicates weaknesses in the internal controls of the Agency: it demonstrated that no check was made as to whether the invoiced amount corresponded to the actual terms of the service level agreement.

Follow-up of previous years' observations

20 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)
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.	Outstanding (Not under the Agency's control)
2017	In the case of one audited payment of 47 000 euros, the Agency purchased IT services through a framework contract with an intermediary contractor without any competitive procedure or prior market research. In 2017, total payments to the contractor amounted to 1,1 million euros.	Completed
2018	The procurement plan for 2017 included the conclusion of a direct contract for the organisation of a Safety Conference in April 2018. The contract was amended in February 2018 in order to allow the payment of all related services (conference venue, catering, transport, etc.) via the local service provider. The contract and all related payments are irregular. The Agency should ensure that procurement procedures are chosen in compliance with the Financial Regulation.	Completed

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2018	<p>The Commission 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 Agency purchased 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. The Agency should adapt the ex-ante controls on payments under such contracts and ensure there is a competitive procedure for all procurements.</p>	Completed
2018	<p>In 2019, the Agency will start collecting fees and charges for certification tasks. The new Regulation required that the specific needs of small and medium-sized enterprises (SME) must be taken into account. The Agency should introduce effective controls to check the SME status of applicants.</p>	Outstanding
2018	<p>According to the Regulation (EU) 2016/796 of the European Parliament and of the Council, fees and charges represented assigned revenue for 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. Fees and charges can only be invoiced after a service is rendered, and interim invoices can be issued only every six months. The Agency will have to monitor costs closely and invoice interim amounts as soon as possible.</p>	Ongoing

The Agency's reply

17. The above tender concerns assistance for the Agency for the new task of the approval of trackside equipment that contains ERTMS (European Rail Traffic Management System) as defined in the 4th Railway Package (see Article 22 of the Regulation (EU) 2016/796 and Article 19 of Directive (EU) 2016/797).

It would not be proportionate to organise a reopening of competition (lasting at least 3 weeks) for a technical assistance which would last maximum 15 days when the legal requirement to assess the completeness of an application file is one month.

18. The Agency acknowledges the clerical mistake. We will add a systematic verification step for all appointments and changes to the composition of the Committees, even when there are changes at the last moment.

19. The Agency missed the update of the SLA with DG DIGIT for the hosting fee, leading to a wrong invoicing of the costs (26.400 euros instead of 21 725 euros). As soon as the Court identified this mistake, the Agency informed DG DIGIT and the corresponding debit note was issued to recover the undue payment (4.675 euros).

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