



EUROPEAN  
COURT  
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# **Report on the annual accounts of the European Border and Coast Guard Agency (Frontex) for the financial year 2019,**

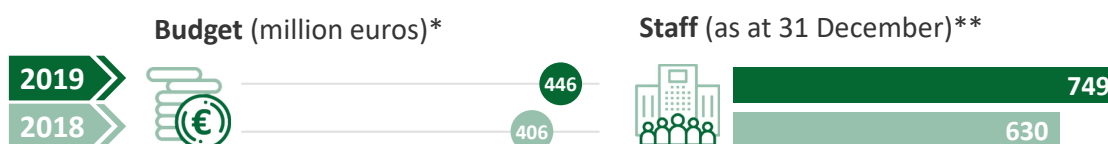
together with the Agency's reply

# Introduction

**01** The European Border and Coast Guard Agency (“the Agency”, or “Frontex”), is governed by Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019, repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624<sup>1</sup>. The national authorities of Member States responsible for border management and return operations and the Agency shall constitute the European Border and Coast Guard. The headquarters of the Agency is in Warsaw. The mandate is to ensure European integrated border management as a shared responsibility of the Agency and of the national authorities at the external borders with a view to managing entries across the external borders efficiently. This includes addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, ensuring a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it. The Agency shall include a standing corps with a capacity of up to 10 000 operational staff.

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

## 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.

<sup>1</sup> OJ L 295, 14.11.2019, p. 1.

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

## 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.

## 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 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 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

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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.

officer. These are based on internationally accepted accounting standards for the public sector.

## **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.

#### **Emphasis of matter regarding the legality and regularity of payments underlying the accounts**

**08** In 2019, the Agency managed grant agreements with cooperating countries for operational activities amounting to 183 million euros (171 million euros in 2018), representing 55 % of the Agency's budget. The Court has previously reported that the proof of actual costs claimed by cooperating countries was often not sufficiently reliable or complete, making such reimbursements prone to errors. In this context, the simplified financing scheme, in place since early 2018, covering the deployment of human resources, seems to be contributing to a reduced administrative workload, increased simplification and better monitoring of grants, thereby also reducing the risk of errors. However, the Court draws the attention to the fact that reimbursements of equipment-related expenditure (some 35 % of total expenditure for operational activities, or 64 million euros), are still based on actual cost and as such, more prone to errors. The intention to move to a unit cost-based scheme for reimbursements for this type of cost, has so far, been unsuccessful in its current form. Against this background, the Court acknowledges that the Agency has taken steps to improve the ex-ante verifications and notes that the Agency re-introduced ex post verifications on reimbursements in 2019, in line with recommendations made in previous years.

## 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 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.

**11** 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.

**12** 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

**13** 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.

**14** 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.

**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 Agency 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 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.

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

## Observations on the legality and regularity of transactions

**18** As in previous years, we found that cooperating countries had not always presented cost claims supported by invoices, or by other evidence, duly substantiating the actual costs incurred in operations. As an example, the Agency reimbursed 115 000 euros to the Latvian Border agency to cover expenses for fuel and lubricants used in a joint operation. The Agency accepted pro-forma invoices as evidence for the costs claimed. However, these are preliminary bills of sale, not evidence of the actual costs incurred. In this case, we concluded that the Agency's ex-ante verifications were ineffective and that this reimbursement was non-compliant with the provisions of the grant agreement.

**19** In another case, the Polish border Agency failed to submit its request for the reimbursement of 413 000 euros for the deployment of human resources in joint operations within the 75 days period stipulated in the grant agreement. The fact that the claim for reimbursement claim also contained errors, further delayed the processing of the payment.

**20** At the same time, the Court stresses that the duty to submit accurate and timely supporting evidence together with the cost claims lies with the cooperating countries.

## Observations on internal controls

**21** In 2019, the Agency continued to recruit new staff in line with its enlarged mandate. The intake for the year was 218 newcomers. The Agency reached an occupancy rate of 82 % of the staff establishment plan at year-end (without counting the posts reserved for the standing corps). Our audit of recruitments over the year showed that the procedures had largely worked as intended, but that the Agency should improve the guidance given to selection committee members and verify more closely the candidates' financial entitlements for the salary payments.

## Observations on sound financial management

**22** We audited a payment of 2 million euros issued to cover reconstruction works carried out on the Agency's premises. We found that the Agency had modified the contractual arrangements at a very late stage of the project. It had introduced the possibility of making a pre-financing (a float) for works still to be completed. Under the initial contractual arrangements, payments were to be made only when works were accepted. This decision was made to avoid otherwise having to de-commit and cancel



the related appropriations. But by making this change, the Agency forfeited a key element of control. Also, the consumption of funds does not reflect the economic reality of the operation. Nor does it reflect the real progress of the works. It also affects the budget authorities' ability to properly monitor the implementation of the Agency's budget and activities.

## Follow-up of previous years' observations

**23** 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*

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)
2014	Documentation from cooperating countries supporting the expenditure claimed is not always sufficient. Moreover, no audit certificates were requested.	<b>Completed</b>
2015	There is an unaddressed risk of double funding from the Internal Security Fund managed by the Commission and Frontex funding.	<b>Ongoing</b>
2015	States participating in border operations declare the costs incurred on the basis of cost claim sheets. The Court in its special report 12/2016 recommended that agencies should use simplified cost options whenever appropriate to avoid such inefficiencies.	<b>Completed for the deployment of human resources</b> <b>Ongoing for technical equipment</b>
2016	The level of carry-overs was high. There is a need to obtain more precise cost estimates and more timely cost reporting from cooperating countries. The Agency may also consider introducing differentiated budget appropriations.	<b>Ongoing</b>
2016	Only 71 % of the posts authorised in the Agency's establishment plan were filled.	<b>N/A</b>

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2017	In 2017, the Agency fully reimbursed expenditure claimed by Iceland's Coast Guards although the invoices justifying one type of expenditure claimed were never provided.	N/A
2017	The Agency also co-financed expenditure claimed by the Spanish Guardia Civil although not all expenditure was supported by evidence.	N/A
2017	Although the Agency already moved to its current premises in 2014, the Agency still has no comprehensive Business Continuity Plan approved by the Management Board.	Ongoing
2017	The Agency again cancelled a high level of committed appropriations carried over from the previous year for reimbursements of expenditure to countries cooperating in joint operations, showing again that cooperating countries considerably over-estimated the expenditure to be reimbursed by the Agency.	Completed
2017	In 2017, the appropriations available for return operations amounted to 66,5 million euros. However, operations did not keep pace with available appropriations and the Agency therefore returned 13,5 million euros to the Commission. In addition, the Agency returned 4 million euros from budget Title I as the planned number of new employees could not be recruited in 2017.	Completed

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2017	The budgeting and use of non-statutory reserves does not comply with the principle of budget specification and impairs budget transparency.	N/A
2017	The Agency publishes vacancy notices on its own website and through other channels, but not on the website of the European Personnel Selection Office (EPSO).	Completed
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing and e-tendering for certain procedures, but not e-submission.	Completed
2018	The Agency made reimbursements to cooperating countries without the necessary supporting documentation.	Ongoing
2018	The Agency financed the deployment of one airplane and one vessel without the necessary evidence for one category of the declared expenditure.	N/A
2018	The ex-ante verifications were ineffective. The Agency should work on the development of a simplified and transparent financing scheme that also covers equipment-related costs.	Ongoing
2018	FRONTEX signed a framework contract for the initially estimated amount although it was almost 30 % higher than the financial offer of the tenderer. The Agency should	Completed

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
	make more realistic estimates of contract values and apply rigorous financial management to IT contracts.	
<b>2018</b>	The Agency should adopt and implement a sensitive post policy.	<b>Ongoing</b>
<b>2018</b>	The budget carry-overs to 2019 and the cancelled carry-overs in 2018 were high. The Agency should strive for more precise cost estimates and budget forecasts.	<b>Ongoing</b>
<b>2018</b>	The Agency managed to complete only 83 % of its establishment plan.	<b>Ongoing</b>

# The European Border and Coast Guard

## Agency's reply

### **Emphasis of matter regarding the legality and regularity of payments underlying the accounts**

**08.** The Agency welcomes the fact the Court acknowledges that the Agency has taken steps to improve the ex-ante verifications and that the Court notes that the Agency re-introduced ex-post verifications on reimbursements in 2019, in line with recommendations made in previous years.

The Agency undertook serious steps to integrate and operationalise a simplified financing scheme (unit costs), also including the financing of the use of heavy equipment. Unfortunately the related project with a rather limited number of Member States willing to participate, showed significant shortcomings which were received as misbalancing and unfavourable from the perspective of the Member States.

The establishment of the Standing Corps and the Agency owned equipment pool will be used to relaunch further steps to redesign and simplify the modalities for reimbursements to Member States and Schengen Associated Countries.

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

**18.** The State Border Guard of Latvia informed that the document provided to support their claim is respecting Latvia's regulatory framework. The Latvian authorities were probed about the instance pointed out by the Court and reported the claim was presented as fulfilling the above-mentioned conditions. In the light of the above, Frontex considered the process gives sufficient assurance of the reality of the costs reimbursed as relying on the Latvian control environment assurance. During ex-post control the Agency ascertained the questioned expenditures with bank statements. Nevertheless, following the Court observation the beneficiary was notified that pro-forma invoices will not be accepted as supporting documents anymore.

**19.** The Polish Authority submitted the request for final payment one day after the official deadline. The Agency would like to remind that in 2018, a simplified grant scheme for the deployment of officers had been introduced. The final payments for 2018 grants were the first ones under the new financing scheme and the final payment procedure was therefore much extended in order to ensure sound financial management. In line with Art. 20 of the grant agreement, Frontex initiated the checking

of the documentation submitted. Then a second sample was selected in line with the ex-ante control policy in place, the sample was verified and the final monitoring report was completed on 17 June 2019. On 18 June 2019 Poland submitted a corrected request for final payment based on the final monitoring report.

### **Observations on internal controls**

**21.** Assessment of levels of fulfilment of any criterion (other than yes/no type) by individual members of Selection Committees is an act of individual judgement partly made against each member's specific expertise and experience against the common scale established by the committee. The complementarity of the individual acts of judgement create together the balance in the conclusions of the panel and is not indicator of lack of collegiality and alignment in the conclusions reached. Frontex organises training for Selection Committee members as to ensure they have the proper knowledge to fulfil their role while respecting the margin of discretion and independence every selection committee holds. Only the 'consolidated' scoring agreed and approved by all members of the Selection Committee is the sole official outcome of collective deliberations of Selection Committees.

The rights and entitlements established by PMO for the staff member were communicated to Frontex on 6 February 2020, after the payroll was published and executed. The newcomers' salaries are checked against the decisions on rights and entitlements and in case of discovered discrepancies, PMO must be informed by the 12th day of the month. Such information was sent to PMO within the given deadline and the correction, with retroactive effect, was done with March payroll.

### **Observations on sound financial management**

**22.** The reconstruction works could not have been completed as planned due to serious difficulties on the Polish construction market which remained beyond control of both, Frontex and the landlord. Those adverse developments affected the project earlier, but only towards the end of the year it was possible to assume with a sufficient degree of assurance which works will be completed in 2019 and which will need to be finalised in 2020.

The pre-financing was a solution that enabled to continue and to complete the reconstruction of the building. The Agency did not forfeit a key control, rather on the contrary remained in full control: the pre-financing was paid to the landlord and not to the contractor; the landlord would not make any payment to the contractor until a portion of completed works had been accepted both by Frontex and by the landlord. The landlord will return to Frontex any unused funds, all which is guaranteed by contractual safeguards.

From the point of view of proportionality, the pre-financing corresponds to approximately 3.5 monthly rental charges paid by Frontex under the lease contract therefore any potential misuse of the funds by the landlord could be offset against the current invoices for rent. Considering the above the Agency has retained proper monitoring of its budget and activities, also towards the budgetary authorities.



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