

# 2020

**Annual report on EU agencies  
for the financial year 2020**



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OF AUDITORS

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## List of EU agencies and other Union bodies covered by this report

Acronym	Full name	Acronym	Full name
<b>ACER</b>	European Union Agency for the Cooperation of Energy Regulators	<b>EMCDDA</b>	European Monitoring Centre for Drugs and Drug Addiction
<b>The BEREC Office</b>	Agency for Support for Body of European Regulators for Electronic Communications	<b>EMSA</b>	European Maritime Safety Agency
<b>CdT</b>	Translation Centre for the Bodies of the European Union	<b>ENISA</b>	The European Union Agency for Cybersecurity
<b>Cedefop</b>	European Centre for the Development of Vocational Training	<b>EPPO</b>	European Public Prosecutor's Office
<b>CEPOL</b>	European Union Agency for Law Enforcement Training	<b>ERA</b>	European Union Agency for Railways
<b>Chafea</b>	Consumers, Health, Agriculture and Food Executive Agency	<b>ERCEA</b>	European Research Council Executive Agency
<b>CPVO</b>	Community Plant Variety Office	<b>ESA</b>	EURATOM Supply Agency
<b>EACEA</b>	Education, Audiovisual and Culture Executive Agency	<b>ESMA</b>	European Securities and Markets Authority
<b>EASA</b>	European Union Aviation Safety Agency	<b>ETF</b>	European Training Foundation
<b>EASME</b>	Executive Agency for Small and Medium-sized Enterprises	<b>EUIPO</b>	European Union Intellectual Property Office

Acronym	Full name	Acronym	Full name
<b>EASO</b>	European Asylum Support Office	<b>eu-LISA</b>	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
<b>EBA</b>	European Banking Authority	<b>EU-OSHA</b>	European Agency for Safety and Health at Work
<b>ECDC</b>	European Centre for Disease Prevention and Control	<b>Eurofound</b>	European Foundation for the Improvement of Living and Working Conditions
<b>ECHA</b>	European Chemicals Agency	<b>Eurojust</b>	European Union Agency for Criminal Justice Cooperation
<b>EEA</b>	European Environment Agency	<b>Europol</b>	European Union Agency for Law Enforcement Cooperation
<b>EFCA</b>	European Fisheries Control Agency	<b>FRA</b>	European Union Agency for Fundamental Rights
<b>EFSA</b>	European Food Safety Authority	<b>Frontex</b>	European Border and Coast Guard Agency
<b>EIGE</b>	European Institute for Gender Equality	<b>GSA</b>	European Global Navigation Satellite System Agency
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority	<b>HaDEA</b>	European Health and Digital Executive Agency
<b>EIT</b>	European Institute of Innovation and Technology	<b>INEA</b>	Innovation & Networks Executive Agency
<b>ELA</b>	European Labour Authority	<b>REA</b>	Research Executive Agency
<b>EMA</b>	European Medicines Agency	<b>SRB</b>	Single Resolution Board





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## Chapter 1

### The EU agencies and the ECA's audit

# Introduction

**1.1.** The European Court of Auditors (ECA) is the external auditor of the EU's finances<sup>1</sup>. In this capacity, we act as the independent guardian of the financial interests of the citizens of the Union, helping to improve the EU's financial management. More information on our work can be found in our activity reports, our reviews and our opinions on new or updated EU laws or other decisions with financial management implications<sup>2</sup>.

**1.2.** Within this mandate we carry out an annual examination of the accounts, and the underlying revenue and payments, for EU institutions, agencies and other Union bodies<sup>3</sup>.

**1.3.** This report presents the results of our annual audit of the EU agencies and other Union bodies (collectively referred to as 'the agencies') for the financial year 2020, as well as additional agency related audit results from other tasks such as special audits or opinions. The report is structured as follows:

- **Chapter 1** describes the agencies and the nature of our audits;
- **Chapter 2** presents the overall results of our annual audit and makes reference to other agency related audit results and opinions;
- **Chapter 3** contains the *statement of assurance* for each of the 41 agencies, together with our opinions and observations on the reliability of the agencies' accounts and on the legality and regularity of the underlying revenue and payments, together with all matters and observations not calling into question these opinions.

**1.4.** Overall, our audit of the agencies for the financial year ended 31 December 2020 confirmed the positive results reported in previous years. Through the *statements of assurance* issued for each agency, we provided:

- unqualified (clean) audit opinions on the reliability of all agencies' accounts ;
- unqualified (clean) audit opinions on the legality and regularity of the revenue underlying the accounts for all agencies;

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<sup>1</sup> Articles 285 to 287 (OJ C 326, 26.10.2012, pp. 169-171).

<sup>2</sup> Available on our website: [www.eca.europa.eu](http://www.eca.europa.eu).

<sup>3</sup> Three agencies working in the field defence (the European Defence Agency, the European Institute for Securities Studies and the European Union Satellite Centre) financed through Member States' contributions are not audited by the ECA but by other independent external auditors.

- o unqualified (clean) audit opinions on the legality and regularity of the payments underlying the agencies' accounts for all agencies, except for ACER, eu-LISA and ENISA, for which we issued qualified opinions.

**1.5.** Nevertheless, for most agencies we addressed areas for improvement through our *emphasis of matter* and *other matter* paragraphs and through the *observations not calling the audit opinions into question*.

# The EU agencies

## Different types of agencies help the EU design and implement EU policies

**1.6.** The EU agencies are distinct legal entities set up by an act of secondary legislation to carry out specific technical, scientific or managerial tasks that help the EU institutions to design and implement policies. They are located in different Member States and can have significant influence in areas of vital importance to European citizens' daily lives, such as health, safety, security, freedom and justice. In this report, we refer to the agencies using abbreviations of their full names. A list of these is provided at the beginning of the report.

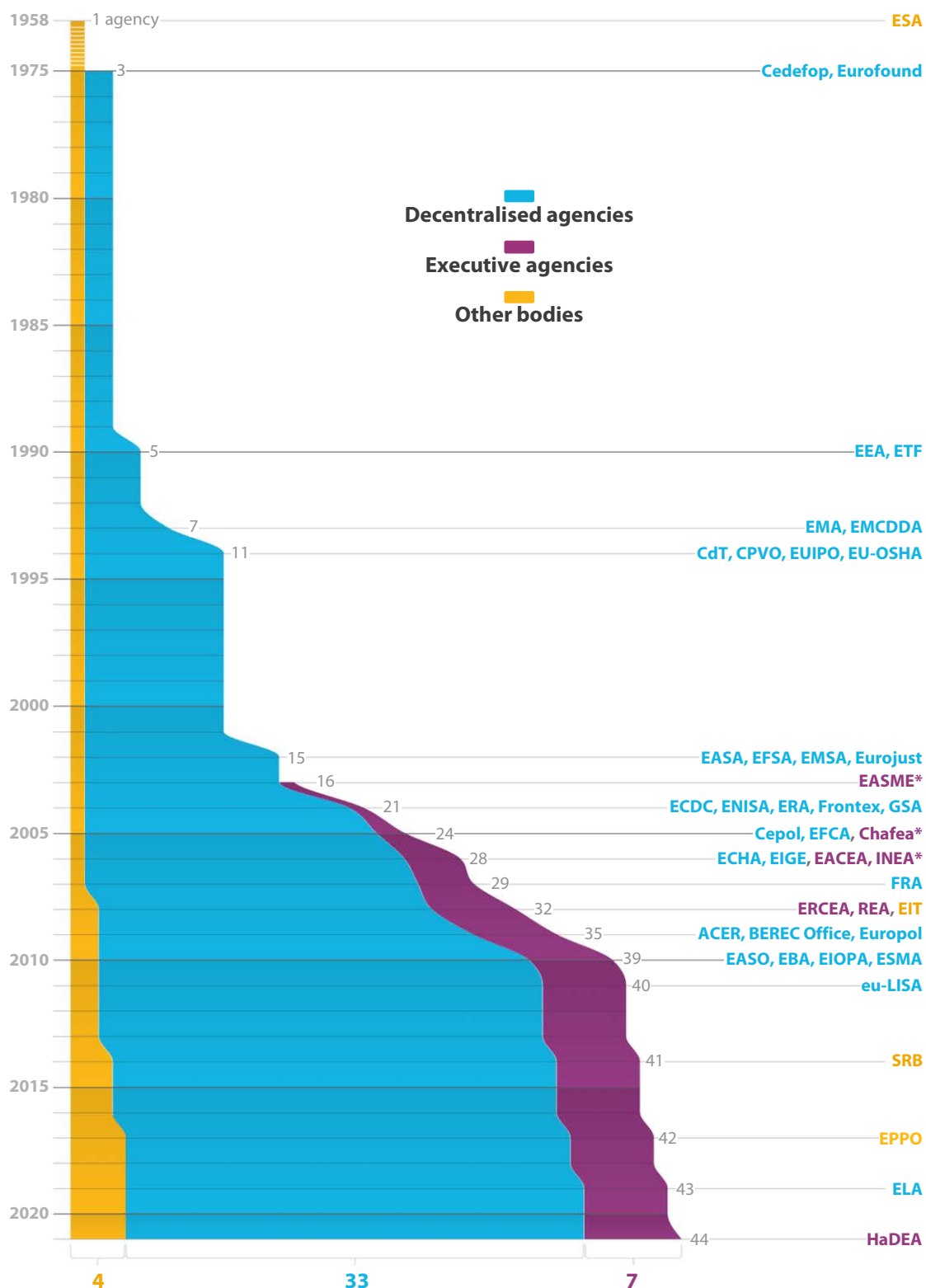
**1.7.** There are three types of EU agencies: decentralised agencies, European Commission executive agencies and other bodies. The differences between them are described below.

**1.8.** The number of agencies has increased over the years. By the end of 2020, their number had reached 43, as shown in [Figure 1.1](#). This figure includes also the newest agency HaDEA (European Health and Digital Executive Agency) that was established on 1 April 2021<sup>4</sup>. At the same time, the Chafea ceased to exist, and INEA and EASME were renamed to CINEA (European Climate, Infrastructure and Environment Executive Agency) and EISME (European Innovation Council and SME Executive Agency), respectively.

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<sup>4</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021(OJ L 50, 15.2.2021, p. 9).

**Figure 1.1 – Timeline and overview of the increasing number of agencies**



\* on the 1 April 2021, Chafea ceased to exist, INEA became CINEA and EASME became EISMEDIA

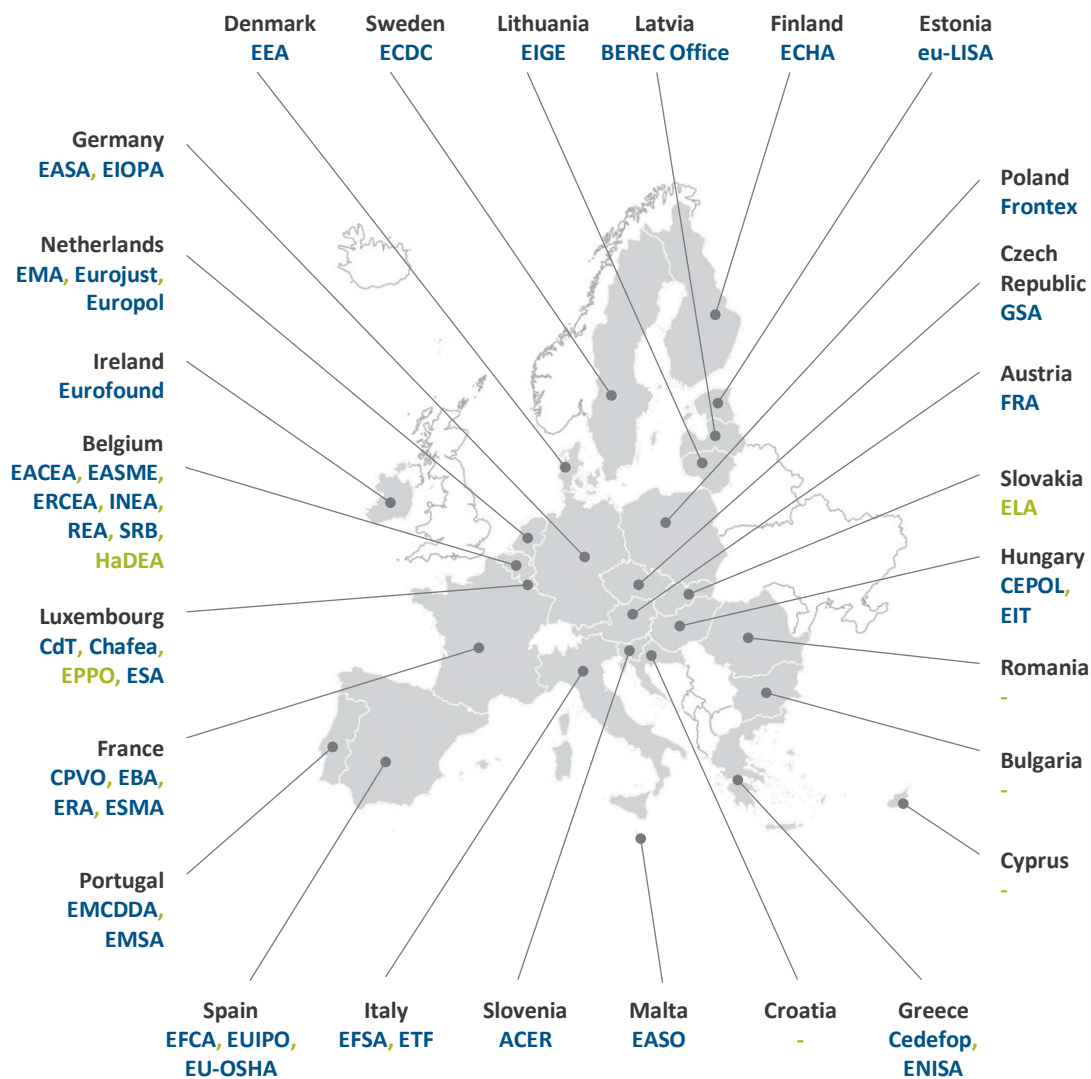
\* Some of the agencies operated before as intergovernmental organisations under a different status.

Note: The years mentioned in the figure refer to the year that the founding act of the agency came into force.

Source: ECA.

**1.9.** All European Commission executive agencies are located in Brussels. Decentralised agencies and other bodies are located across the EU in different Member States as shown in [Figure 1.2](#). Their locations are decided by the Council or jointly by the Council and the European Parliament. To go straight to our individual statement of assurance (audit opinion) on an agency, click on its name on the diagram below.

**Figure 1.2 – Agencies’ location across the Member States**



Source: ECA.

## Decentralised agencies address specific policy needs

**1.10.** The **33 decentralised agencies**<sup>5</sup> play an important role in preparing and implementing EU policies, especially for technical, scientific, operational or regulatory tasks. Their role is to address specific policy needs and to reinforce European cooperation by pooling technical and specialist expertise from the EU and national governments. They are set up to operate for an indefinite period by a Regulation of the Council or of the European Parliament and the Council.

## European Commission executive agencies implement EU programmes

**1.11.** The **six European Commission executive agencies**<sup>6</sup> carry out executive and operational tasks relating to EU programmes. They are set up to operate for a fixed period of time.

## Other bodies have specific mandates

**1.12.** The **four other bodies** are the Innovation and Technology (EIT), the European Public Prosecutor's Office (EPPO), the Euratom Supply Agency (ESA) and the Single Resolution Board (SRB). The EIT in Budapest is an independent, decentralised EU body, which pools scientific, business and education resources to boost the Union's innovation capacity by providing grant funding. It was set up for an indefinite period. The EPPO is an independent Union body competent to fight crimes against the Union budget. The EPPO launched its operations on 1 June 2021. The ESA in Luxembourg was created for an indefinite period to guarantee the regular and equitable supply of nuclear fuels to EU users in line with the Euratom Treaty. The SRB in Brussels is the key authority of the Single Resolution Mechanism in the European Banking Union. Its mission is to ensure the orderly resolution of failing or likely to fail (FOLF) banks, with as little impact as possible on the real economy and public finances of EU Member States and others.

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<sup>5</sup> ACER, BEREC Office, Cedefop, CdT, CEPOL, CPVO, EASA, EASO, EBA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EIOPA, ELA, EMA, EMCDDA, EMSA, ENISA, ERA, ESMA, ETF, EUIPO, eu-LISA, EU-OSHA, Eurofound, Eurojust, Europol, FRA, Frontex, GSA.

<sup>6</sup> Chafea ceased to exist on 1 April 2021, EACEA, EASME (EISMEA as of 1 April 2021), ERCEA, INEA (CINEA as of 1 April 2021), HaDEA (as of 1 April 2021) and REA.

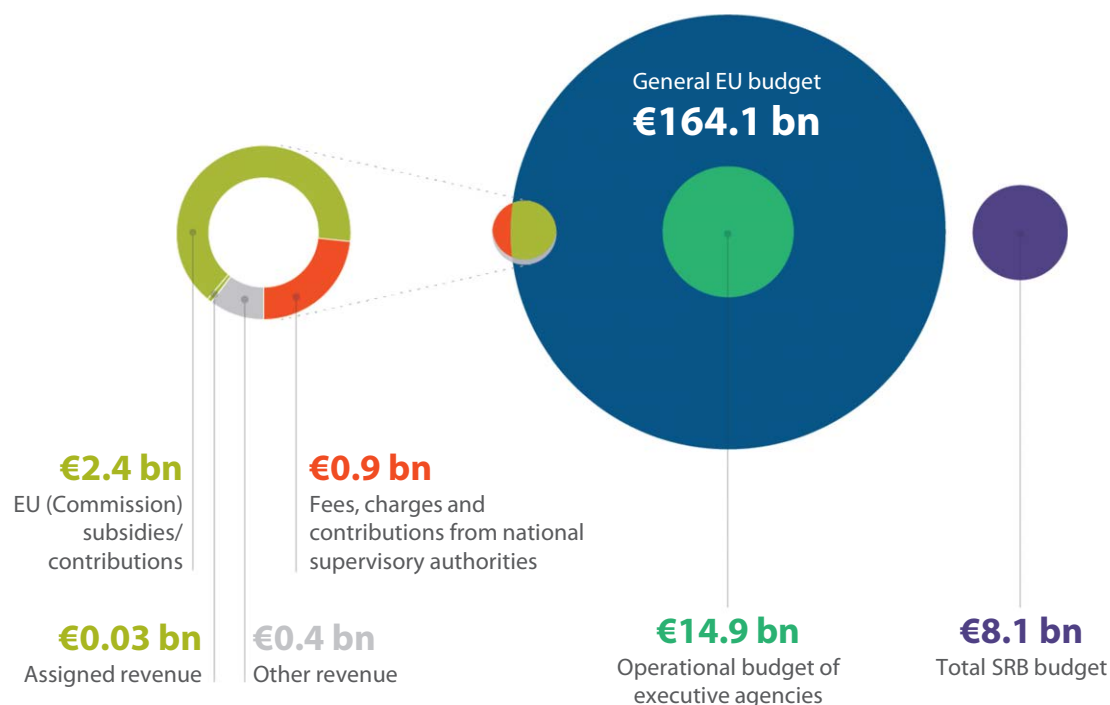
## Agencies are financed from various sources and under different MFF headings

**1.13.** In 2020, the total budget of all agencies (excluding the SRB) was €3.7 billion. This is equivalent to 2.2 % of the EU's general budget for 2020 (2019: 2.2 %), as shown in *Figure 1.3*.

**1.14.** The 2020 budget of the SRB was €8.1 billion (2019: €7.9 billion). This consists of contributions from credit institutions and certain investment firms to set up the Single Resolution Fund and to finance the SRB's administrative expenditure.

**1.15.** The budgets of the decentralised agencies and the other bodies cover their staff, administrative and operational expenditure. The executive agencies implement programmes financed from the European Commission's budget, and their own budgets (in 2020, around €273 million in total) only cover their own staff and administrative expenditure. The amount (commitment appropriations) implemented by the six executive agencies on behalf of the European Commission in 2020 amounted to around €14.9 billion (2019: €13.9 billion).

**Figure 1.3 – Agencies' financing sources for 2020**

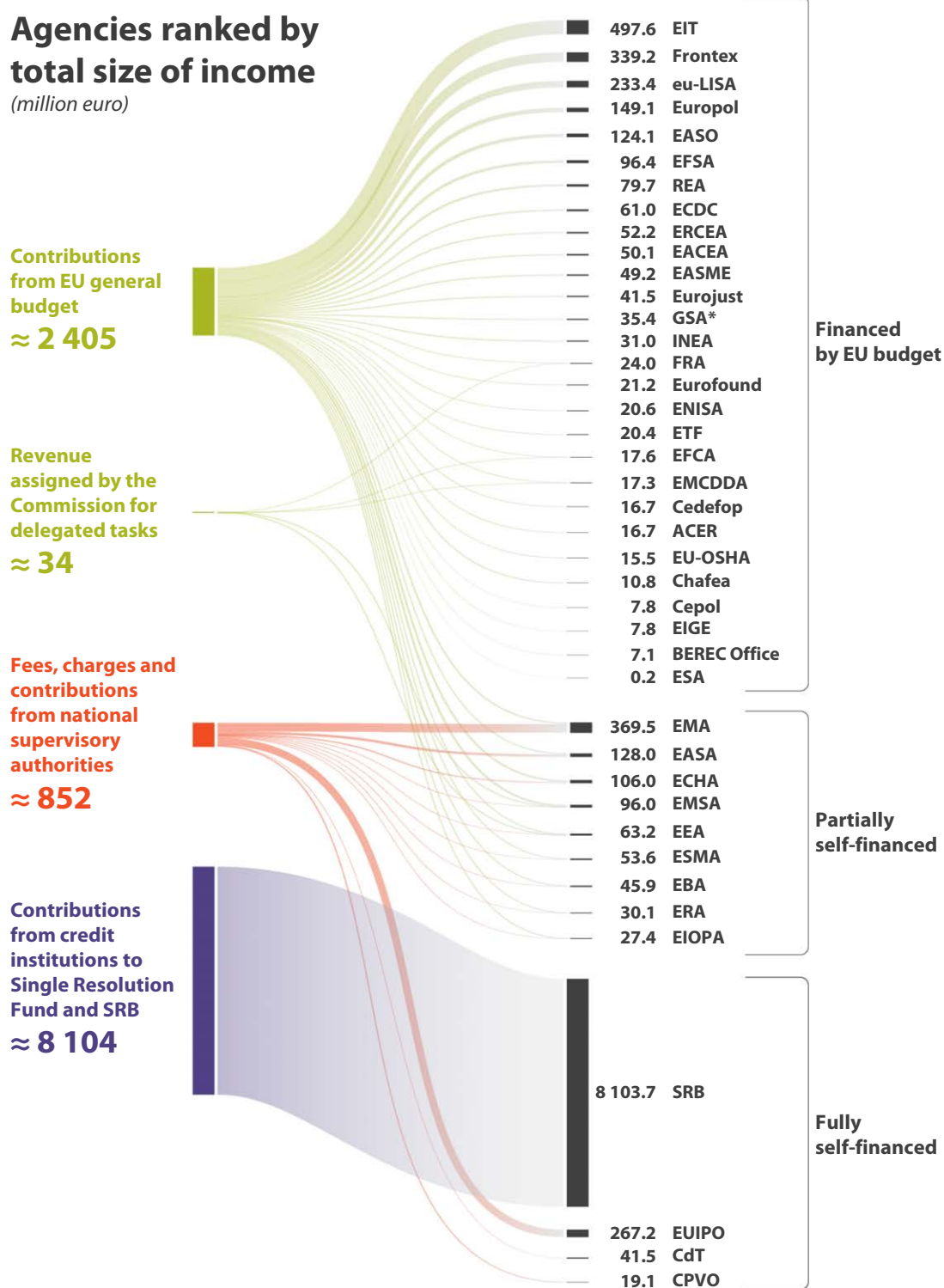


*Source:* Draft general budget of the European Union for the financial year 2020; Final annual accounts of the European Union 2020 and Annual Activity Reports of the executive agencies for 2020, compiled by ECA.

**1.16.** Most agencies, including all executive agencies, are financed almost entirely by the EU general budget. The others are fully or partially financed by fees and charges from industries and by direct contributions from countries participating in their activities. *Figure 1.4* shows a breakdown of the agencies' budgets by source of revenue.



Figure 1.4 – Agencies' 2020 budgets by source of revenue



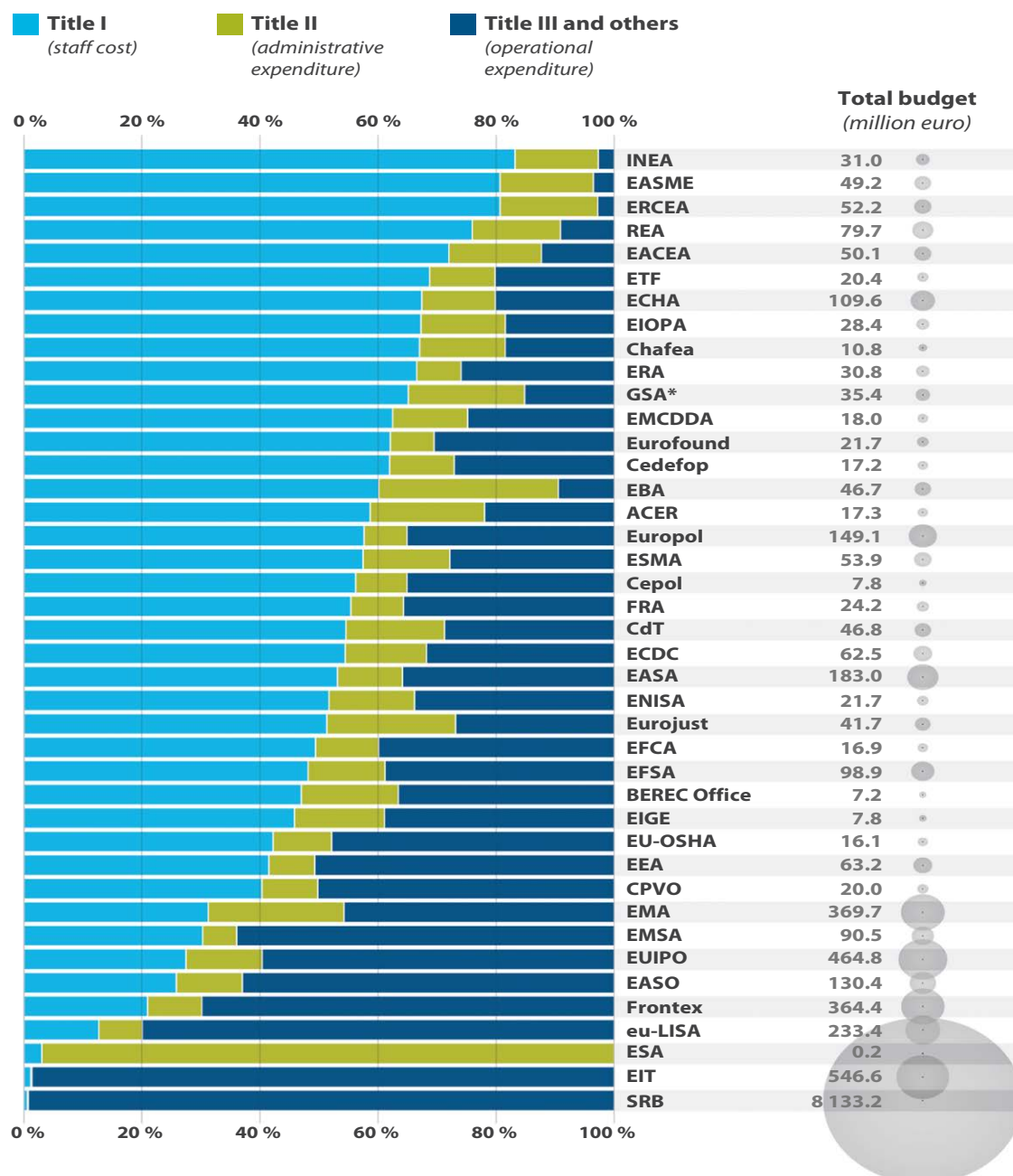
\* The amended budget of GSA for the year 2020 was adopted for an amount of €35.4 million. With regards to operational activities that are financed through assigned revenue, the amended budget of GSA included a token entry and an estimation for 2020 of €728.6 million in commitment appropriations and €1 328.7 million in payment appropriations. The actual implemented expenditure from assigned revenue in 2020 amounted to €402.1 million in commitments and €753 million in payments.

*Note:* Other miscellaneous revenue or budgetary reserves are not included.

*Source:* Agencies' final annual accounts 2020, compiled by ECA.

**1.17.** Figure 1.5 presents the agencies' 2020 budgets. They are broken down by type of expenditure (Title I – staff costs, Title II – administrative expenditure, and Title III – operational expenditure, together with any other titles used), not by activity.

**Figure 1.5 – Agencies' 2020 expenditure per budget Title**



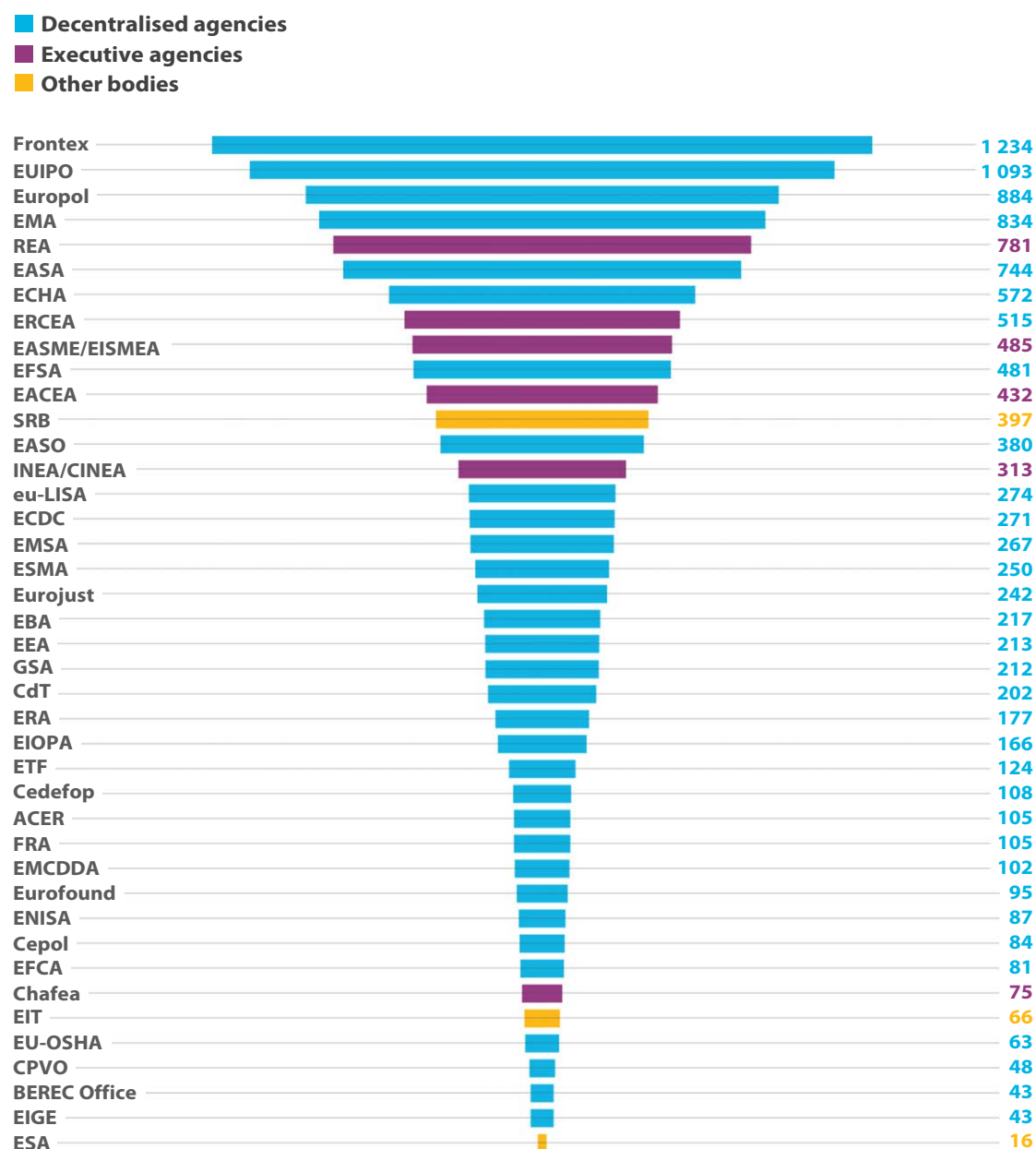
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*Note:* The figure for SRB comprises two parts: Part I with €118 million for the administration of the Board and Part II with €8 016 million for the Fund.

*Source:* Budget: Agencies' final annual accounts 2020, compiled by ECA.

**1.18.** *Figure 1.6* shows how many staff members the agencies employed at the end of 2020. In total, the agencies employed 12 881 staff<sup>7</sup> (2019: around 11 900), which is about 18 % of the total number of staff members<sup>8</sup> employed by the EU institutions and agencies.

**Figure 1.6 – Numbers of staff per agency at the end of 2020**



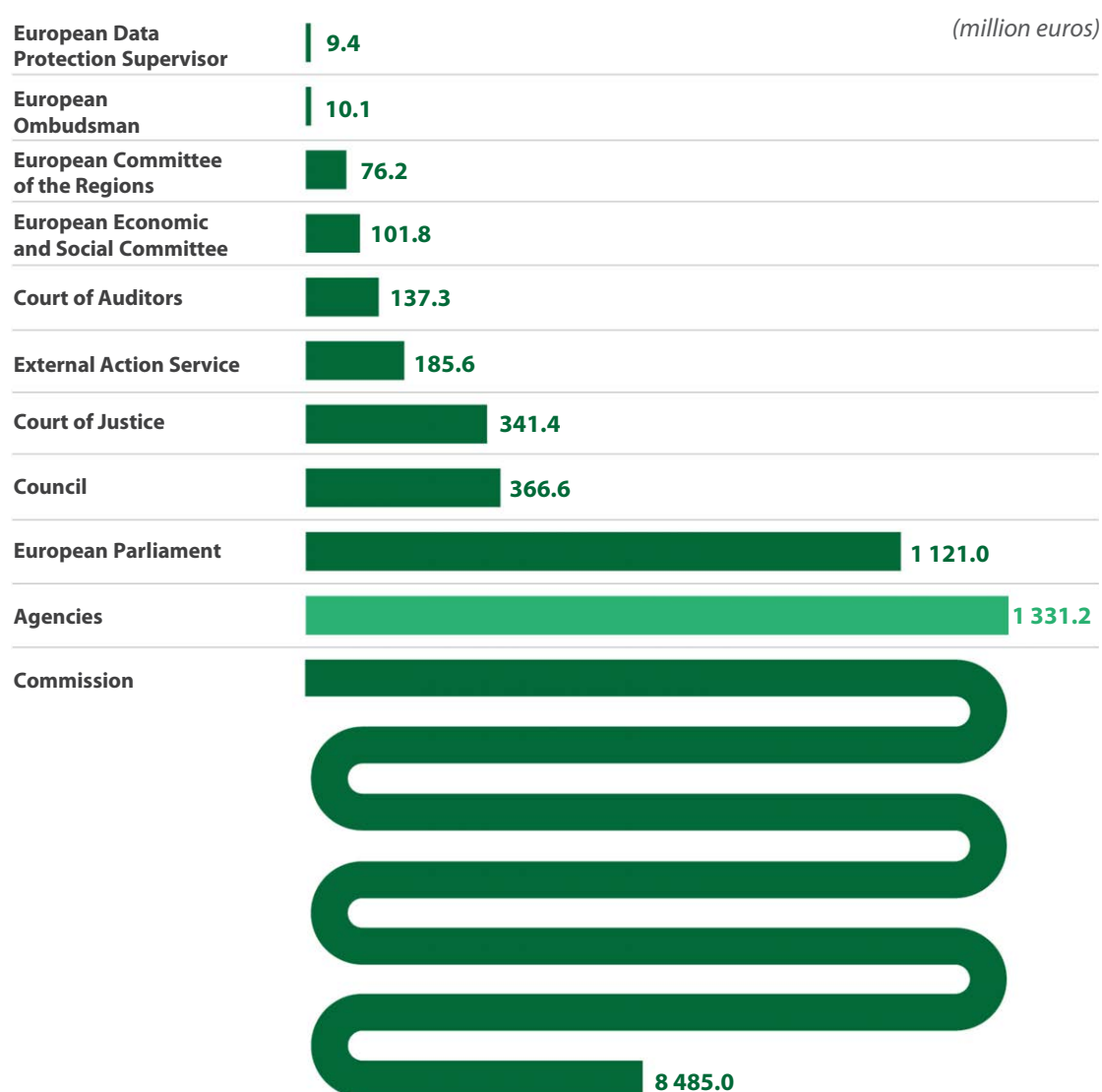
Source: Compiled by ECA.

<sup>7</sup> The “staff” figures include actual number of posts occupied by permanent officials, temporary and contract staff members and seconded national experts on 31 December 2020.

<sup>8</sup> The figures used are based on the full-time equivalent (FTE) of permanent officials, temporary and contract staff members, and seconded national experts.

**1.19.** Most agencies do not implement big operational spending programmes, but rather deal with technical, scientific or regulatory tasks. As a result, most agencies' budgets consist mainly of staff and administrative expenditure (see [Figure 1.5](#)). Overall, agencies' staff and administrative expenditure represent around 10.9 % of total EU staff and administrative expenditure (see [Figure 1.7](#)).

**Figure 1.7 – Staff and administrative expenditure\* of EU institutions and bodies in 2020 (in million euros)**

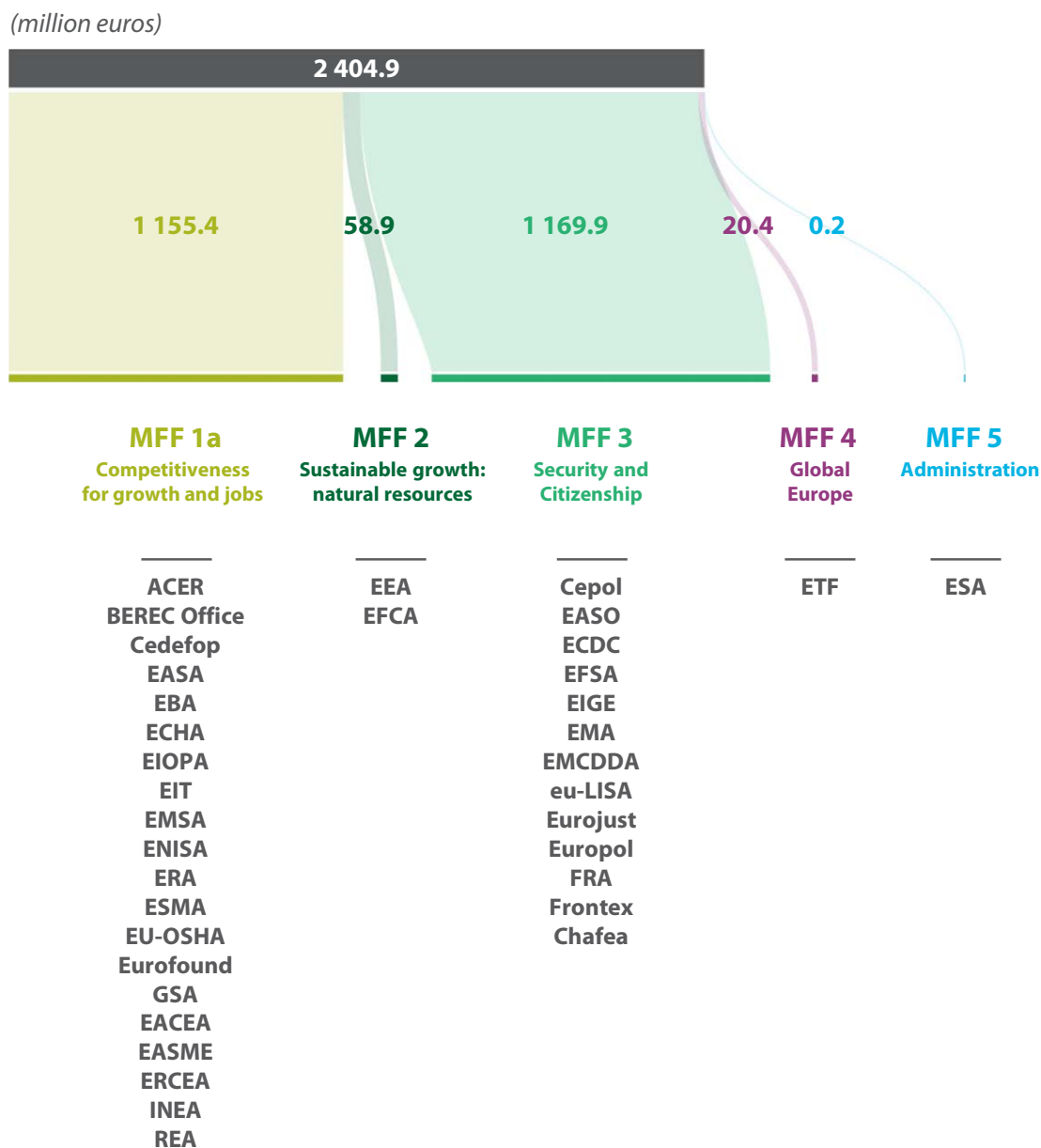


\* Staff expenditure includes staff working both on operational and administrative activities. The pension contributions are not included in the agencies figures (except for self and partially self-financed).

Source: European Union's general budget for financial year 2020; Final annual accounts of the European Commission for financial year 2020 and Final annual accounts of the agencies 2020, compiled by ECA.

**1.20.** The €2.4 billion in contributions from the EU general budget are financed under different MFF headings as illustrated in *Figure 1.8*.

**Figure 1.8 – Agencies’ financing from the EU general budgets’ MFF heading**

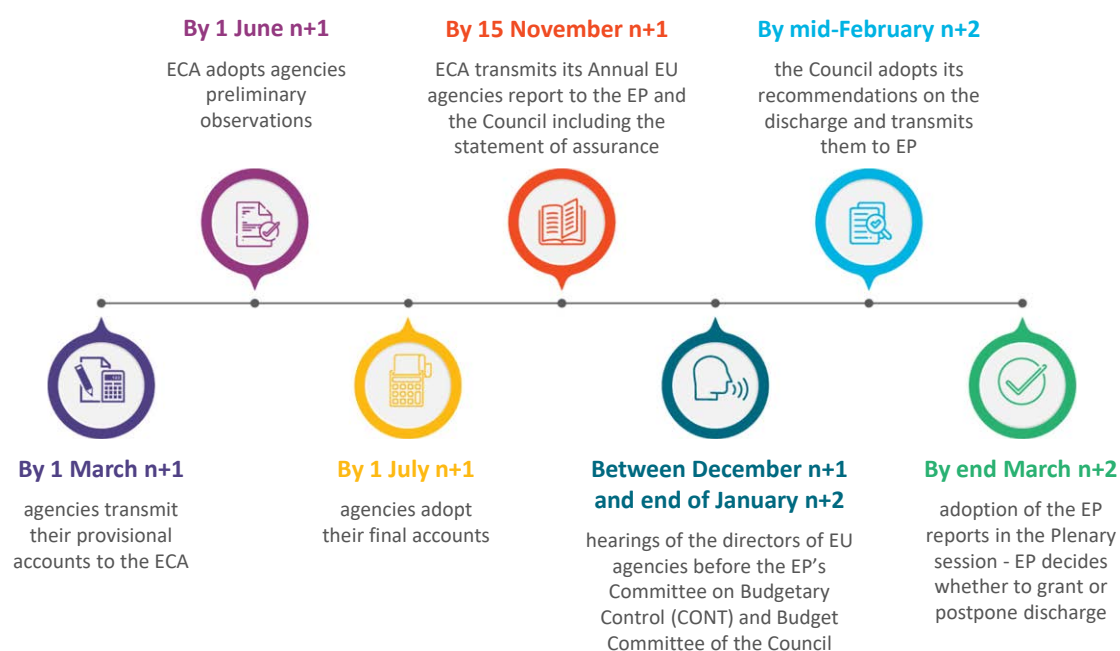


Source: Agencies’ final annual accounts 2020, compiled by ECA.

## Budgetary and discharge arrangements are similar for all agencies, except for EUIPO, CPVO and SRB

**1.21.** For most decentralised agencies and other bodies and for all European Commission executive agencies, the European Parliament and the Council are responsible for the annual budgetary and discharge procedures. The timeline of the discharge procedure is shown in *Figure 1.9*.

**Figure 1.9 – Discharge procedure for most agencies**



Source: ECA.

**1.22.** However, the two fully self-financed decentralised agencies (CPVO and EUIPO) are subject to budgetary and discharge procedures respectively by their Administrative Council or Budget Committee, but not by the European Parliament and the Council. Similarly, the SRB's annual budgetary and discharge procedure is the sole responsibility of its Board.

## The EU Agencies Network facilitates inter-agency cooperation and communication with stakeholders

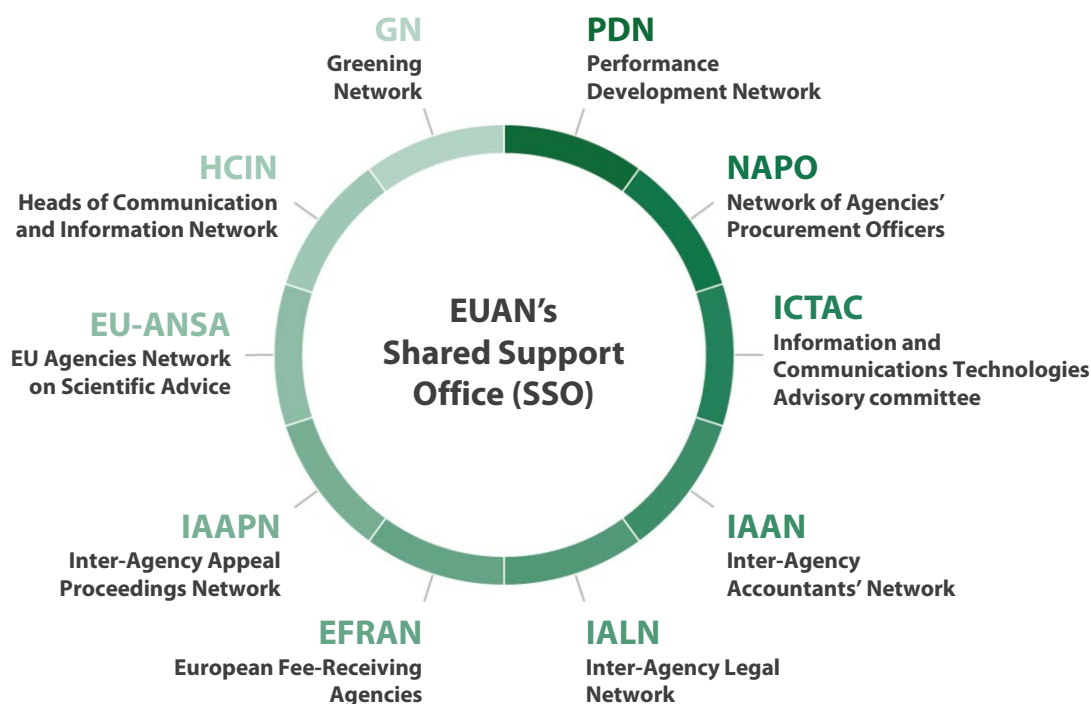
**1.23.** An EU Agencies Network (EUAN) was set up by the agencies as an inter-agency cooperation platform to enhance the agencies' visibility, to identify and promote possible efficiency gains, and to add value. It recognises the need of the agencies to communicate in a more coordinated way with their stakeholders and the general public on issues of shared concerns, and provides a first entry point for gathering and disseminating information among all agencies. EUAN operates on the basis of priorities agreed by the agencies in a five-year strategy agenda, as well as yearly work programmes specifying its activities and its objectives.

In 2020, EUAN endorsed its second multiannual strategy (2021-2027)<sup>9</sup> incorporating the political and strategic direction of the new European Commission around two strategic pillars:

- EUAN as a role model for administrative excellence;
- EUAN as a well-established institutional partner.

**1.24.** EUAN is chaired by a different agency every year on a rotational basis, with plenary meetings coordinated by the Shared Support Office taking place twice per year. There are ten thematic sub-networks (see [Figure 1.10](#)) within EUAN which have a thematic focus. They can also interact with other EU institutions, whom themselves can be members of the sub-networks. The ECA actively participates in some of these plenary and sub-network meetings by sharing *good practices* and providing information on audit processes and results.

**Figure 1.10 – EUAN’s Shared Support Office and Sub-networks**



Source: EUAN.

**1.25.** At the centre of EUAN's work and the core of both multi-annual strategies is the aspect of sharing services, knowledge, and expertise. Some examples of cooperation include the sharing of services in the areas of disaster recovery, accounting, joint procurements (see [Box 1.1](#)), COVID-19-related matters (see [Box 1.2](#)) and data protection.

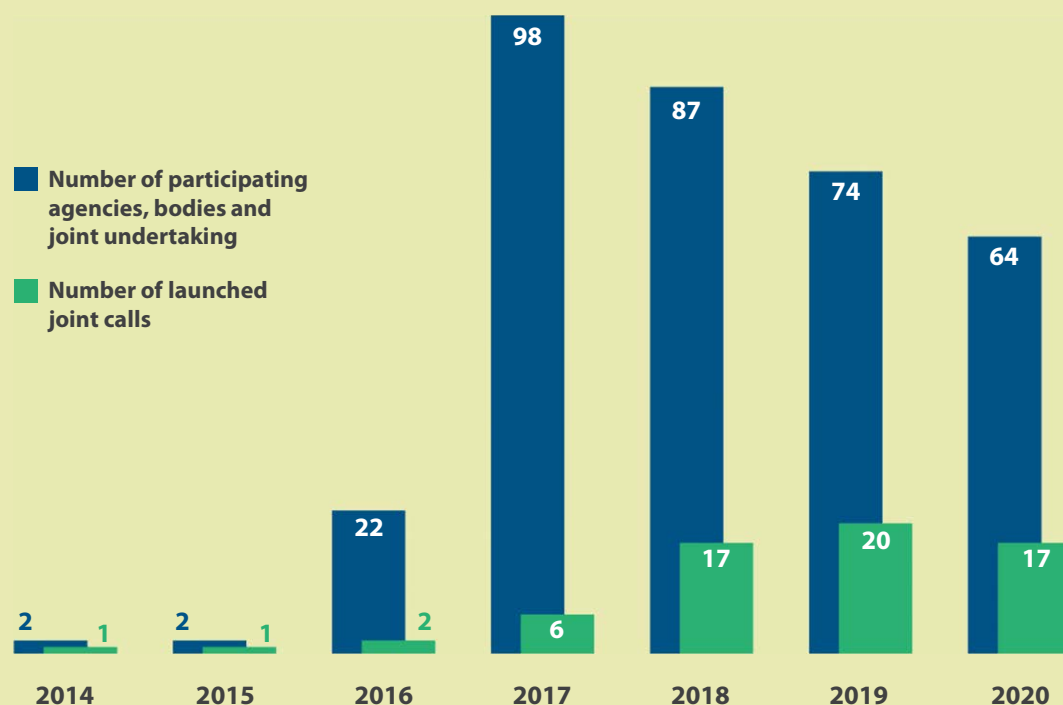
<sup>9</sup> 2021-2027 Strategy for the EU Agencies Network, Brussels, 9 November 2020.

## Box 1.1

### Example of cooperation in a way of joint procurement procedures

Joint procurements are one of the incentives for a cooperation promoted by the EUAN. As we reported already in our 2018 annual report, decentralised agencies and other bodies, together with the EU joint undertakings (EU bodies), have also explored the possibility of increased administrative efficiency and economies of scale through the use of joint procurement procedures. The number of joint calls for tenders launched by EU bodies increased from 1 to 17 between 2014 and 2020, and by the end of 2020, 64 EU bodies had participated in one or more joint procurements (see [Figure 1.11](#)). Joint procurement procedures may achieve efficiency gains and economies of scale.

**Figure 1.11 – Number of joint calls**



Source: EUAN.



## Box 1.2

### Sharing information on response measures during COVID-19

Following the COVID-19 outbreak, EUAN's Shared Support Office played an active role in coordinating response measures. In April 2020, EUAN set up an "advisory group on new ways of working" – an informal working group to serve as an information exchange platform between agencies' resource managers. The working group has held 27 meetings since it was set up. It has contributed to aligning agencies' procedures on policies concerning generalised teleworking measures, joint procurement for personal protective equipment, and policies on returning to the office. It has also served as a channel for coordinating COVID-19 related topics the agencies wanted to bring to the attention of the European Commission.

EUAN's actions were recognised by the EU Ombudsman who nominated it, amongst others, for its award for Good Administration 2021 in Coordinating the response of EU agencies to the COVID-19 crisis<sup>10</sup>.

*Source:* EUAN and EU Ombudsman.

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<sup>10</sup> <https://www.ombudsman.europa.eu/en/event-document/en/141316>.

# Our audit

## Our mandate covers annual audits, special audits and opinions

**1.26.** As required by Article 287 of the Treaty on the Functioning of the European Union (TFEU), we have audited<sup>11</sup>:

- o the accounts of all 41 agencies, which comprise the financial statements<sup>12</sup> and the reports on the implementation of the budget<sup>13</sup> for the financial year ended 31 December 2020, and
- o the legality and regularity of the transactions underlying those accounts.

**1.27.** On the basis of the results of our audit, we provide the European Parliament and the Council, or the other discharge authorities (see paragraph 1.22) with one statement of assurance per agency as to the reliability of the agencies' accounts and the legality and regularity of the underlying transactions. We complement the statements of assurance with significant audit observations, where this is appropriate.

**1.28.** The ECA also carries out audits, publishes special reports and issues opinions on specific topics. Some of these concern the EU agencies. See [Figure 2.8](#) for a list of ECA special reports referring to agencies and issued in 2020.

## Our audit is designed to assess key risks

**1.29.** The annual audit of EU agencies' accounts and underlying revenue and payments is designed in such a way that it addresses the identified key risks based on the audit results from previous years. For the financial year 2020, the audit was carried out in response to our risk assessment, which is briefly presented in [Figure 1.12](#) below.

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<sup>11</sup> ELA and the EPPO were not audited in 2020 because they did not reach their financial autonomy.

<sup>12</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>13</sup> The reports on implementation of the budget are reports which aggregate all budgetary operations and explanatory notes.

**Figure 1.12 – Assessment of key risks**

 Overall <b>HIGH</b> risk  <b>MEDIUM</b> risk  Generally <b>LOW</b> risk	
 <b>Reliability of agencies' accounts</b>	<p>The agencies' accounts are established by applying the accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector. In the past, we have identified only few material errors in the agencies' accounts.</p>
 <b>Legality and regularity of revenue</b>	<p>The overall risk for legality and regularity of revenue is low. However, for some agencies that are partially or fully self-financing, specific regulations govern the charging and collection of service fees and other revenue contributions. The level of risk affecting the regularity of the revenue of these agencies is medium.</p>
 <b>Legality and regularity of payments (expenditure)</b> <i>Risk is medium overall, but varies</i>	<p><b>Title I - Staff expenditure</b>   Salaries are mainly administered by the Commission's PMO service, which the Court audits regularly.</p> <p><b>Title II - Administrative expenditure</b>   Agencies are not always successful in achieving the satisfactory levels of transparency and value for money in tenders with complex procurement rules and procedures.</p> <p><b>Title III - Operational expenditure</b>   Level of risk of operational expenditure varies by agency, running the entire range of risk levels from low to high. It depends on the specific type of operational expenditure that each agency incurs. In general the risks are similar to those in Title II, but with amounts far higher.</p>
 <b>Risk to sound financial management</b>	<p>Most of the problems we identified concerned public procurement procedures which did not ensure that the best possible value for money was achieved.</p>
 <b>Budget management</b>	<p>Previous audit showed high carry overs of committed appropriations which however were usually justified by the multiannual nature of operations or for reasons beyond agencies' control.</p>

Source: ECA.

## Other risks

**1.30.** The current COVID-19 pandemic has affected our work as travel restrictions prevented us from carrying out on-the-spot checks, obtaining original documents and interviewing auditees' staff face to face. We therefore carried out our work through desk reviews and by interviewing auditees remotely. While not carrying out on-the-spot checks may increase the detection risk, the evidence that we obtained from our auditees enabled us to complete our work and conclude on it. Likewise, organisation of the work in the agencies had to overcome some challenges, which had implications on procurement procedures management and on implementation of the contracts, recruitment procedures, budget implementation and on internal controls. See [Chapter 2](#) on the audit results in this area.

## We report suspected fraud to the relevant EU bodies OLAF and EPPO

**1.31.** We cooperate with the European Anti-Fraud Office (OLAF) in matters related to fraud and other illegal activity affecting the EU's financial interests. At the request of OLAF, we share audit information about EU agencies that could be useful for OLAF's investigations. We also consult OLAF about any suspicion that we identify in the course of our audit work, even though our audits are not designed to specifically search for fraud. For the financial year 2020, such cooperation was also extended to the newly operational European Public Prosecutor's Office (EPPO), responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU. We reported to EPPO suspicion concerning one EU agency and informed OLAF about it. Overall, since the financial year 2001, we have referred other eight agencies to OLAF before the establishment of EPPO because we suspected one or more cases of fraud in our sampled transactions. By the time of this report, OLAF subsequently opened six investigations related to these agencies. Four of them were closed without recommendations for actions to be taken. One investigation was closed with the financial recommendation to recover EU funds from an entity providing services to the agency and one is still ongoing.

## Digitalisation of audit procedures at the ECA

**1.32.** Digitalisation has the potential to replace or enhance audits based on statistical sampling with audits based on entire populations. Artificial intelligence, machine-learning and big-data analytics provide substantial opportunities to enhance the precision and comprehensiveness of financial and compliance audits. Process automation is another new development: it has the potential to remove the need for humans to perform repetitive tasks. The characteristics of millions of entries can be checked in a few minutes, immediately flagging any exceptions so that auditors can concentrate on potential errors. The digitalisation of audit can also enhance reporting and internal quality-control processes, allowing reports and visualisations to be generated automatically.

**1.33.** Digitalisation of the ECA's audit work is about using the potential of technology to deliver better and more information for the accountability process. With such technologies, auditors can make better use of available data, perform more analytical work and provide better assurance to European taxpayers by identifying risks earlier and more comprehensively. Digitalisation is also likely to lead to efficiency gains in the long run.

**1.34.** The ECA identified the annual audit of the EU agencies as an opportunity to test the potential of automated audit procedures. The audit of the agencies consists of around 200 audit procedures covering areas such as payments, salaries, procurements, budget, recruitments and the annual accounts. In 2019, we launched a pilot project on how to automate procedures for the audit of the legality and regularity of commitments, payments and salaries, as well as the audit of the accounts. The project concerned the EU's six executive agencies. Unlike most decentralised agencies<sup>14</sup>, executive agencies share similar administrative procedures and similar IT systems (i.e. the budgetary system, the accounting system and the human resources management system).

**1.35.** The pilot has successfully delivered the following results:

- Digitalised audit tests on the legality and regularity of commitments, payments and salaries, and on the reliability of the accounts, allowed for full population testing within a very short time. This would not otherwise have been possible. Automation has thus improved assurance, quality and the efficiency of our audits.
- Automated analytical procedures provided the auditors with an interactive tool to identify patterns and trends and to investigate unusual transactions.
- Robot process automation was introduced to harvest large volumes of source documentation and automatically organise it in a convenient way for the auditors, saving a significant amount of time and effort.

**1.36.** In 2020, we continued our pilot project and refined the audit procedures we had developed previously on the executive agencies, making them more precise in order to reduce the number of exceptions to be verified by the auditors. The results of the automated procedures (see [Box 1.3](#)) showed that some of the exceptions identified were “false positives” (e.g. because of inadequate data).

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<sup>14</sup> See paragraphs 2.26 and 2.27 of the Annual report on EU agencies for the financial year 2017.

## Box 1.3

### Results of the pilot project automated tests

#### Scope of the tests

The pilot project included automated tests in support of certain audit procedures regarding payments, commitments, invoices, contracts and workflows covering the whole population of six executive agencies. This testing took place in parallel with the standard audit procedures that were carried out manually.

#### Results

The results of the automated tests confirmed our positive assessment drawn in the past from sample-testing these areas.

The tests flagged a limited number of transactions (i.e. exceptions) for further examination by the auditors. Compared to 2019, we reduced these exceptions by refining our algorithm.

- In a test of 1 165 budgetary commitments to check if their amount was equal to that of the corresponding legal commitment, the system flagged 15 transactions (51 in 2019).
- In a test of 4 238 payment requests to check if their amount was equal to that of the corresponding invoice, the system flagged 74 transactions (113 in 2019).
- In a test of 4 238 payment requests to check if payments have been made within legal time limits, the system flagged 298 transactions (410 in 2019).

To increase the efficiency of this follow-up while reducing the burden on the auditees, we used robotic process automation to automatically retrieve all underlying documentation present in the system for the flagged transactions.

The analysis of flagged transactions allowed the audit teams to conclude that the exceptions could be explained and justified, and that no findings had to be reported.

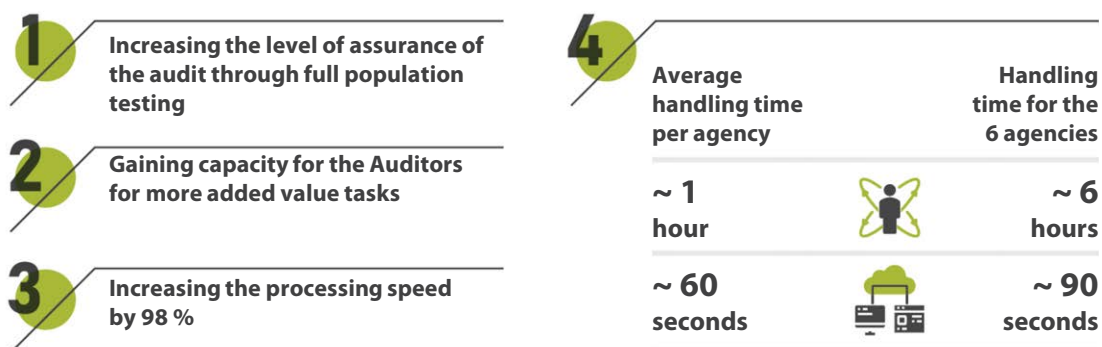
**1.37.** We continued to use the automated analytical procedures developed in 2019 to identify unusual patterns or transactions in the agencies' payroll. The system automatically creates graphical reports, which allow the auditors to see such patterns and to consider whether further examination of underlying details is required.

**1.38.** We also implemented five new automated procedures in the area of the audit of the accounts. For instance, we automated the checks and reconciliation of the information in the adopted financial statements with the underlying data in the general ledger and the trial balance downloaded from the accounting systems. This is a typical example of a low-risk audit task, which nevertheless needs to be performed in order to ensure that the subsequent tests are performed using the correct audit population. As expected, this test did not reveal any

material errors. However, we identified some time savings as shown in [Figure 1.13](#). These results confirm that there is a potential for substantial savings once more procedures are automated and used for more audit tasks. This is going to be continued and observed in the years to come.

### Figure 1.13 – Automation of tests for the audit of the accounts

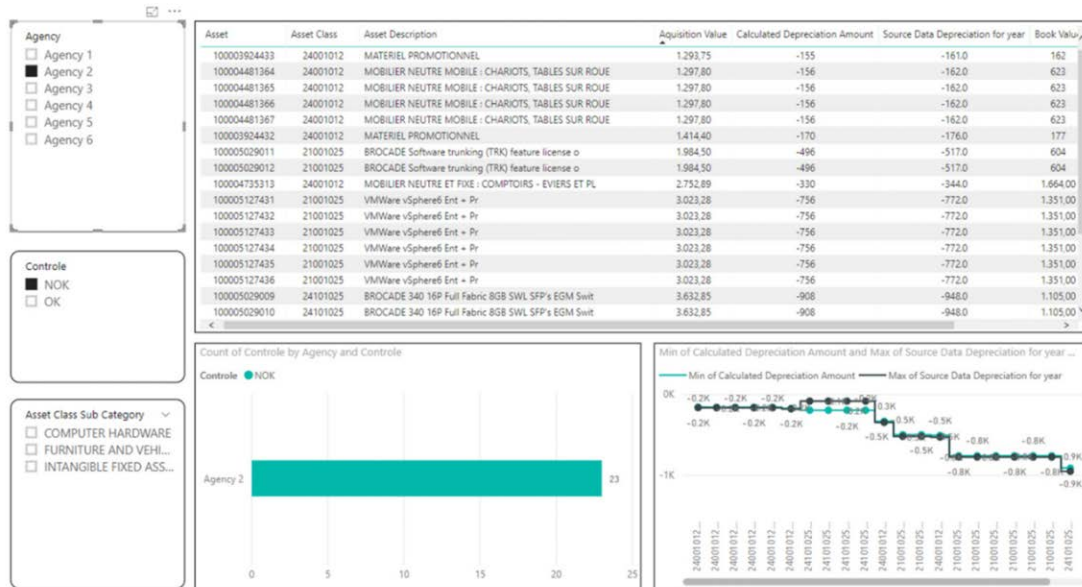
Key benefits for the solutions designed or developed are:



Source: ECA.

**1.39.** For the annual accounts, we also automated some tests on the fixed assets. For instance, we automatically recalculated the depreciation of all fixed assets based on each agency's accounting policy, and compared the result with the depreciation recorded in the accounts. The system produces a report which allows the auditors to list the assets where differences occur and to investigate them further, if they are material. [Figure 1.14](#) shows this report.

Figure 1.14 – Automated test of fixed asset depreciation



Source: ECA.





EUROPEAN  
COURT  
OF AUDITORS

## Chapter 2

### Overview of audit results

# Introduction

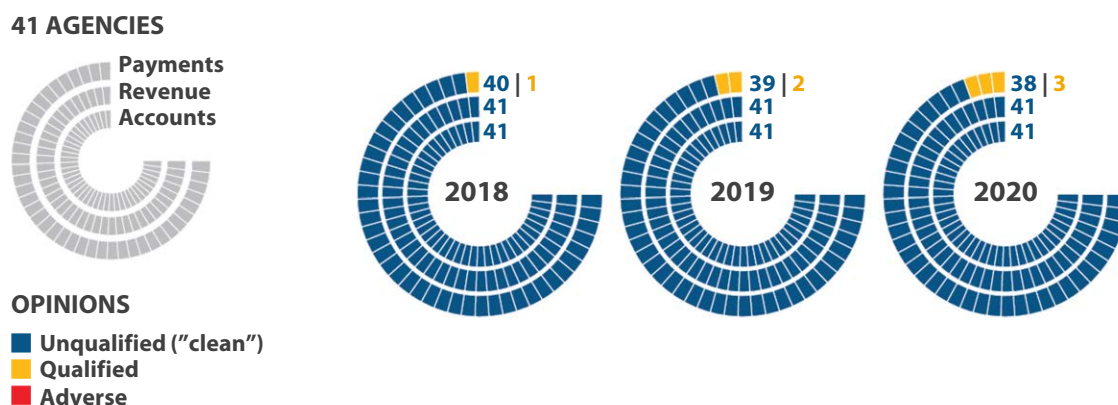
**2.1.** This Chapter presents an overview of the results from the ECA's annual audits of the agencies for the financial year 2020 as well as other agency-related audit work carried out by the ECA during the same year.

The statements of assurance (audit opinions) on the reliability of the agencies' accounts and the legality and regularity of the revenue and payments underlying these accounts, as well as all matters and observations not calling into question these opinions, are provided in [Chapter 3](#) of this report.

## Results from the annual agency audits for the financial year 2020 are positive overall

**2.2.** Overall, our audit of the annual accounts of the agencies for the financial year ended 31 December 2020 and of the revenue underlying them confirmed the positive results reported in previous years; however, some improvements are needed in the area of payments underlying the accounts.

**Figure 2.1 – 2018 – 2020 annual audit opinions on agencies’ accounts, revenue and payments**



Source: ECA.

### 'Clean' opinions on the reliability of all agencies' accounts

**2.3.** For the financial year 2020, the ECA issues unqualified ("clean") audit opinions on the accounts of all agencies. (see [Figure 2.1](#)).

### 'Emphasis of matter' paragraphs are important for understanding the accounts of EMA and SRB

**2.4.** 'Emphasis of matter' paragraphs draw readers' attention to a matter of such importance that it is fundamental to users' understanding of the accounts. In the financial year 2020, we have used 'emphasis of matter' paragraphs in our reports on two agencies: the **EMA** and the **SRB**.

**2.5.** For the **EMA**, the previously London-based agency which moved to Amsterdam, we draw attention to an issue with the lease agreement for its previous premises in London. The

agreement lasts until 2039, with no provision for early termination. In July 2019, the EMA reached an agreement with its landlord and has managed to sublease its former office premises with effect from July 2019, under conditions that are consistent with the terms of the head lease. The sublease term lasts until the expiry of the EMA's lease. Since the EMA remains a party to the rental contract, it could be held liable for the entire amount remaining payable under that contract if the subtenant fails to meet its obligations. As of 31 December 2020, the total estimated outstanding rent, associated service charges and landlord insurance to be paid by EMA up to the end of the lease term is €377 million.

**2.6.** Concerning the accounts of the **SRB**, we point out that administrative appeals or judicial proceedings related to contributions between some credit institutions and national resolution authorities and the Board, as well as other legal actions brought against the SRB before the General Court and the Court of Justice of the European Union, were not subject to our audit. Their possible impact on the Board's financial statements for the financial year ended 31 December 2020 (in particular on contingent liabilities, provisions and liabilities) is subject to a separate specific annual audit carried out by the ECA, as stipulated under Article 92(4) of the SRM Regulation.

**2.7.** Furthermore, we draw attention to notes of the financial statements of the **SRB** final accounts, which describe the possible impact on the portfolio of investments in light of the current COVID-19 crisis.

### **'Other matter' paragraph addresses an issue of specific importance for Chafea**

**2.8.** **Chafea** was closed on 1 April 2021, and its tasks have been redistributed to other agencies. However, given that these agencies are other EU consolidated entities, this has no impact on the amounts of assets and liabilities in Chafea's 2020 annual accounts.

### **'Clean' opinions on the legality and regularity of the revenue underlying all agencies' accounts**

**2.9.** The ECA issues unqualified ("clean") audit opinions on the legality and regularity of the revenue underlying all agencies' accounts.

### **'Emphasis of matter' paragraph helps to better understand the revenue of SRB**

**2.10.** We also used an 'emphasis of matter' paragraph in our report on the **SRB**, in connection with the issue described in paragraph **2.6** above.

## ‘Other matter’ paragraphs address an issue of specific importance for ESMA and SRB

**2.11.** Concerning **ESMA**, fees charged to credit rating agencies are based on their revenue as legal entities, but not as a group or group of related entities. This creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU. The likely financial effect of this loophole in the regulations is unknown. ESMA is aware of this risk and on 29 January 2021 published a consultation paper<sup>15</sup>. Following this paper, it submitted on 21 June 2021 a technical advice to the European Commission on amending the Regulation to mitigate the risk.

**2.12.** Furthermore, for the **ESMA**, fees to trade repositories (TRs) are calculated based on each individual trade repository’s applicable turnover. Although, the Regulation on fees does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, all of the TRs were able to produce independent auditors’ opinions stating that their 2019 financial statements (used for the fee calculations) gave a true and fair view. However, the information they submitted on the number of trades reported to the TRs during 2019 and the number of recorded outstanding trades on 31 December 2019 were only subject to limited review by independent auditors. In March 2021, ESMA published a consultation paper<sup>16</sup>, which proposes a simplification of the method used to determine the turnover of TRs for the purposes of calculating annual supervisory fees by including only revenues and excluding activity figures.

**2.13.** Without prejudice to our formal audit opinion, we emphasised that the SRB’s fund contributions are calculated on the basis of information provided by credit institutions to the **SRB**. Our audit of the SRB’s revenue was based on this information, but we did not verify its reliability. The SRM Regulation does not establish a comprehensive and consistent control framework to ensure the reliability of the information. However, the SRB performs consistency and analytical checks of the information as well as some ex post checks at the level of the credit institutions. Furthermore, the SRB cannot release details on the risk-adjusted contribution calculations for each credit institution as they are interlinked and include confidential information about other credit institutions. This affects the transparency of these calculations.

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<sup>15</sup> Consultation paper ESMA 80-196-5019. See <https://www.esma.europa.eu/press-news/consultations/public-consultation-fees-charged-credit-rating-agencies-esma>.

<sup>16</sup> Consultation paper ESMA74-362-1864. See <https://www.esma.europa.eu/document/cp-technical-advice-simplification-tr-fees-under-sftr-and-emir>.

## **‘Clean’ opinions on the legality and regularity of the payments underlying the agencies’ accounts, except for ACER, eu-LISA and ENISA**

**2.14.** For 38 agencies, we issued unqualified (“clean”) audit opinions on the legality and regularity of the payments underlying the annual accounts for the financial year ended 31 December 2020. In our opinion, payments were legal and regular in all material respects for these agencies (see [Figure 2.1](#)).

**2.15.** For the **ACER**, we issued a qualified opinion in relation to our findings reported in the financial year 2019. The ECA concluded that several specific contracts under a framework contract for IT services were irregular, because no competitive procurement procedure had been carried out. Payments made irregularly in the financial year 2020 amounted to €752 654 (3.7 % of the total payment appropriations available in 2020).

**2.16.** For the **eu-LISA**, we issue a qualified opinion based on two irregular procurement procedures. In one case, eu-LISA signed a specific contract for software different from the software offered by the contractor in its tender for the associated framework contract and no modification of the framework contract has taken place. Acquiring a different product which is not included in the price offer, at a different price than the product originally offered is a deviation from the framework contract. In another one, eu-LISA signed an order form for maintenance services covering the period of four years. This contravened the provisions of the framework contract, which allowed services to be invoiced in advance for one year. The total amount of payments considered not to be compliant with the provisions of the framework contract was €10 405 075 and represents 4.1 % of all payment appropriations available in the financial year 2020.

**2.17.** For the **ENISA**, the qualified opinion concerns lack of delegation for a staff member. There was a time gap between the end of a temporary delegation granted by the previous Executive Director to a staff member and the start of a new delegation granted by the new Executive Director taking office. During this period, that staff member authorised budgetary commitments amounting to €529 120 and payments amounting to €914 100 without a valid delegation (3.5 % of the total payment appropriations available in 2020).

## **‘Other matter’ paragraphs on issues of specific importance for ACER, ENISA, EIGE and EASO**

**2.18.** The ECA draws attention to the fact that the **ACER and ENISA** did not adopt internal rules to address the continuity of delegations in cases where delegating or delegated authorising officers leave their posts. This constitutes an important internal control weakness (see paragraphs [2.24](#) onwards for further information).

**2.19.** For the **EASO**, we note that a case pending before the General Court<sup>17</sup> has a bearing on aspects of our audit opinion. In 2020, EASO launched an open procedure for the provision of temporary agency workers to support its headquarters and its operations in Malta. The total estimated amount was €27.7 million over 48 months. In October 2020, judicial proceedings against EASO were brought before the General Court by the unsuccessful tenderer challenging the outcome of the procurement procedure.

**2.20.** Similarly to the ECA's 2019 report on the **EIGE** accounts, we note that a case pending before the Court of Justice of the European Union<sup>18</sup> has a bearing on aspects of our audit opinion. The case concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council<sup>19</sup> on temporary agency work to EU agencies. Since the Court of Justice's ruling with regard to these questions may have an impact on the ECA's position concerning the EIGE's use of interim workers, the ECA has refrained from making any observations, including follow-ups of observations from previous years, until the Court of Justice has issued a final ruling in this case.

## Our observations address areas for improvement in 23 agencies

**2.21.** In addition to the opinions and accompanying 'emphasis of matter' and 'other matter' paragraphs, we also made 54 observations (for the financial year 2019 we made 82 observations) concerning 23 agencies to address areas where further improvements are needed. Most of these observations concern shortcomings in internal controls, public procurement procedures and in budgetary management. Public procurement procedures weaknesses remain the main source of irregular payments.

**2.22.** *Figure 2.2* and *Figure 2.3* show the number of different types of observations raised across 41 agencies throughout the report including the opinions and accompanying 'emphasis of matter' and 'other matter' paragraphs.

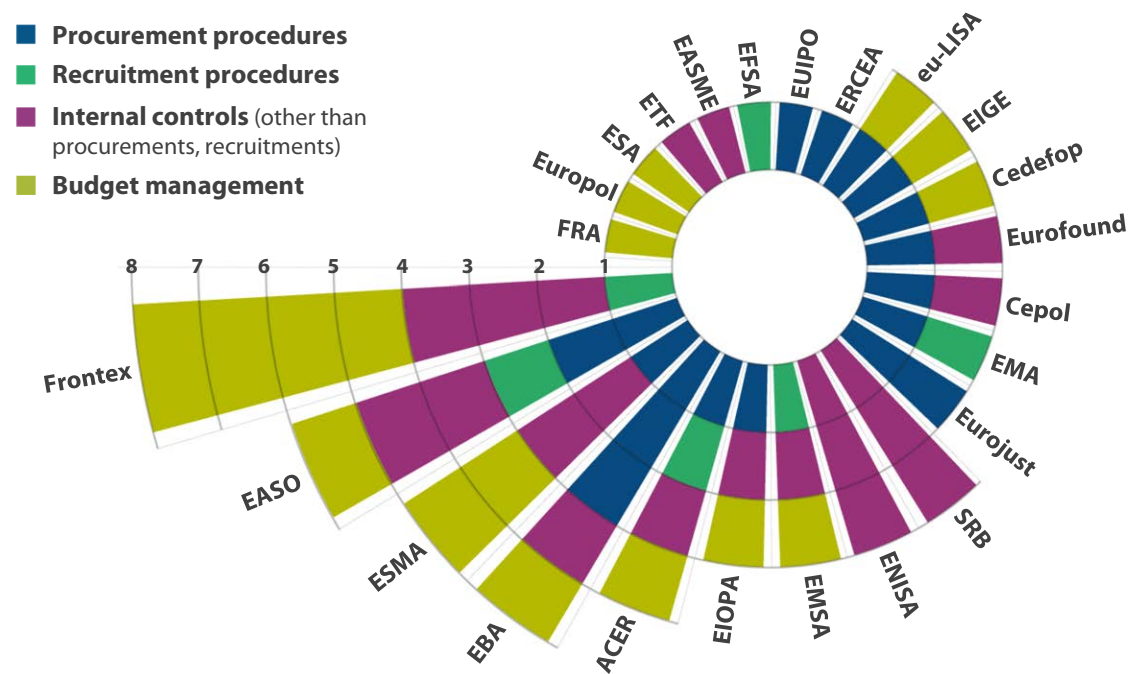
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<sup>17</sup> Case No T-621/20 (EMCS v EASO).

<sup>18</sup> Case No C-948/19 (Manpower Lit).

<sup>19</sup> OJ L 327, 5.12.2008, p. 9.

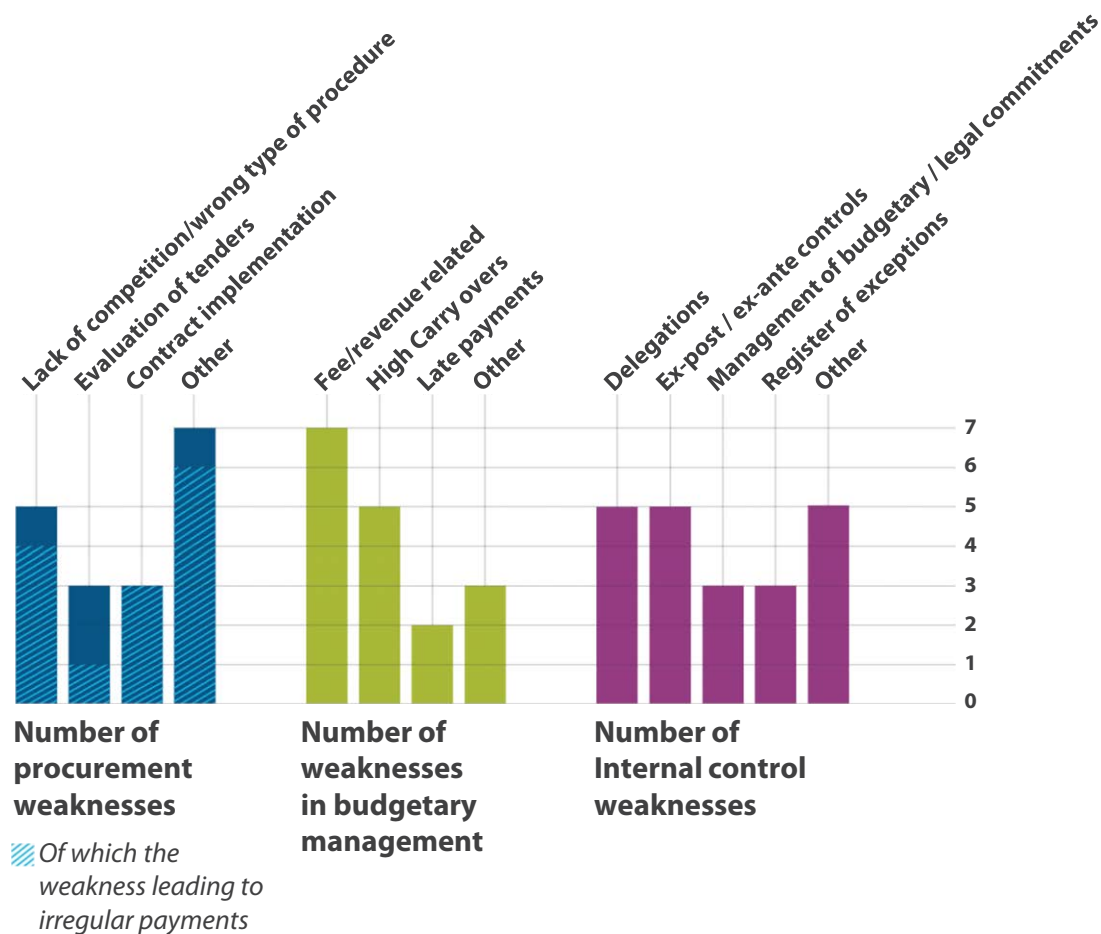
**Figure 2.2 – Number of observations per agency**



Source: ECA.



**Figure 2.3 – Number of observations per type of frequent weaknesses**



Source: ECA.

### Internal controls are the most error prone area

**2.23.** For thirteen agencies (ACER, CEPOL, EASME, EASO, EBA, EIOPA, EMSA, ESMA, ENISA, ETF, Eurofound, Frontex and the SRB) we report internal controls weaknesses related to the lack of ex-ante/ex-post controls (see [Box 2.1](#)), the inadequate management of budgetary/legal commitments, or the lack of reporting in the register of exceptions. [Figure 2.3](#) shows the most common types of internal control weaknesses identified.

## Box 2.1

### Example of lack of ex-ante internal controls

During our audit, we noted lack of internal controls in the implementation of the framework contract signed by the European Commission in 2018 on behalf of more than 60 EU bodies. Its purpose was the acquisition of software licences and IT services. The contractor, acting as an intermediary, is entitled to add a percentage mark-up to its suppliers' prices. In relation to purchases under this framework contract, we observed that for example EASME did not perform any internal controls to ascertain whether the contractor had used the correct prices and charged the correct mark-ups.

### Actions to be taken 1

The agencies' implementation of the budget should be subject to effective and efficient internal controls. These should include robust ex-ante controls aimed at preventing errors and irregularities before operations are authorised.

Furthermore, to achieve the best possible value for money under the European Commission's framework contracts without pricelist for acquiring software licences and IT services, the agencies should systematically carry out market research before signing any order forms. This market research should include a detailed assessment of the products and services needed, an analysis of the solutions available on the market, and a price estimate for the items in question.

## Observations on delegation of budget implementation powers

**2.24.** In the course of our audit, we also found weaknesses regarding the continuity of delegations in cases where delegating or delegated authorising officers leave their posts and, in particular, when a new Executive Director (i.e. the agency's authorising officer) takes office.

**2.25.** The role of authorising officer is different in agencies and institutions. Institutions themselves perform the role of authorising officer; they delegate the associated responsibilities to members of their staff. Directors-General and Secretaries-General of institutions are all authorising officers by delegation. In agencies, though, the role of authorising officer is attributed to the Executive Director, who implements the budget under their own responsibility. The responsibility for implementing the budget lying with the Executive Director is a key differentiating characteristic of agencies.

**2.26.** The question of the continuity of delegations after the replacement or departure of the authorising officer is not explicitly answered by the agencies' Financial Regulations nor by the general Financial Regulation. To address this, institutions usually adopt internal rules for

implementing their budgets, including provisions that cover the conditions for granting and receiving delegations or sub-delegations, the scope of the powers delegated, and the continuity of delegations when an authorising officer is replaced or leaves the institution.

**2.27.** For two agencies (**ACER** and **ENISA**) we have raised “other matters” paragraphs in our audit opinions due to the absence of internal rules or decisions addressing the continuity of delegations in cases where new Executive Directors take office. This has resulted in a number of budgetary commitments, legal commitments and payment operations having been approved, based on delegations issued by the previous Executive Director that were not confirmed by the new Executive Director in office. In our opinion, this constituted an important internal control weakness.

**2.28.** In the case of **ENISA** we have issued a qualified opinion on the legality and regularity of the payments underlying the accounts, because a member of the staff authorised budgetary commitments and payment operations over a period of six weeks without having any delegation at all (see paragraph [2.17](#)).

**2.29.** In previous years, we have seen other agencies manage the transition of their Executive Directors adequately. In 2019, new Executive Directors were installed at EASO and EMSA. They immediately issued decisions confirming the delegations issued by their predecessors. In another example, one that can be considered to be a *good practice*, the management board of EMA adopted in 2019 a charter of tasks and responsibilities of the Executive Director as authorising officer (see [Box 2.2](#)), containing provisions addressing the termination of duties of the Executive Director as authorising officer. This is akin to the practice of European institutions complementing the general provisions of the EU Financial Regulation. For example, the European Commission has adopted internal rules for the implementation of its section of the general budget addressing the continuity of delegations<sup>20</sup>.

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<sup>20</sup> Article 13.3 of European Commission Decision of 3.8.2018 - C(2018)5120 - on the Internal Rules on the implementation of the general budget of the European Union (European Commission section).- “Unless specifically amended or revoked by a new delegating authorising officer, the subdelegation of powers granted by his predecessor shall remain valid.”

## Box 2.2

### Extract of the charter of tasks and responsibilities of the Executive Director as authorising officer adopted by the management board of the European Medicines Agency<sup>21</sup>

[...]

#### 3. Termination of duties of the Executive Director as authorising officer

3.1 In the event of a change of Executive Director, the outgoing Executive Director shall draw up for the successor or replacement a declaration setting out the state of ongoing cases. This declaration shall take the format of an interim annual activity report. The incoming Executive Director may include observations on the cases transferred from the previous Executive Director, in the qualifications contained in the declaration relating to the annual activity report.

3.2 Unless specifically amended or revoked by the newly appointed Executive Director, the delegation of powers granted by his/her predecessor shall remain valid.

[...]

## Actions to be taken 2

The replacement of an Executive Director is liable to entail changes in the management of delegations of the agency. Therefore, the agencies should adopt internal rules (see example in [Box 2.2](#)) that provide a sound contribution to the management control systems, to transparency and accountability. Setting up clear rules for the transition of Executive Directors will help to avoid the issues referred to in paragraph [2.27](#).

## Public procurement weaknesses remain the main source of irregular payments

**2.30.** The objective of public procurement rules is to ensure fair competition between tenderers and to procure goods and services at the best price, respecting the principles of transparency, proportionality, equal treatment and non-discrimination. Our audit included framework, specific and direct contracts from all agencies. In ten agencies (**Cedefop, CEPOL, EASO, EBA, EIOPA, EMA, ERCEA, ESMA, eu-LISA** and the **Eurojust**), the contracts audited were affected by public procurement shortcomings of different kinds, mostly concerning lack of competition (see [Box 2.3](#)), weaknesses in the evaluation process of the tenderers and contract

<sup>21</sup> Available at <https://www.ema.europa.eu>.

implementation issues. *Figure 2.3* shows also some further statistics per type of the most common observations identified for procurement procedures.

### Box 2.3

#### Example of non-compliance with the provisions of the framework contract

Eu-LISA signed a specific contract for software different from the software offered by the contractor in its tender for the associated framework contract. Acquiring a different product, which is not included in the price offer to the tender procedure is indeed an option in Article 172(3)(a) of EU Financial Regulation, but under the condition to also change the framework contract accordingly. This condition had not been respected by eu-LISA. Therefore, the purchase of the software not included in the initial price offer is a deviation from the framework contract. Both the specific contract and the payment of €10 399 834 are non-compliant with the provisions of the framework contract .

**2.31.** Moreover, for **ACER, EASO, EUIPO, EIGE** and the **Eurofound** we also reported irregular payments made in the financial year 2020 stemming from irregular procurement procedures reported in previous years.

### Actions to be taken 3

Nearly all of the observations on procurement procedures concerned irregular payments (see *Figure 2.3*). The agencies concerned should further improve their public procurement procedures, ensuring full compliance with the applicable rules.

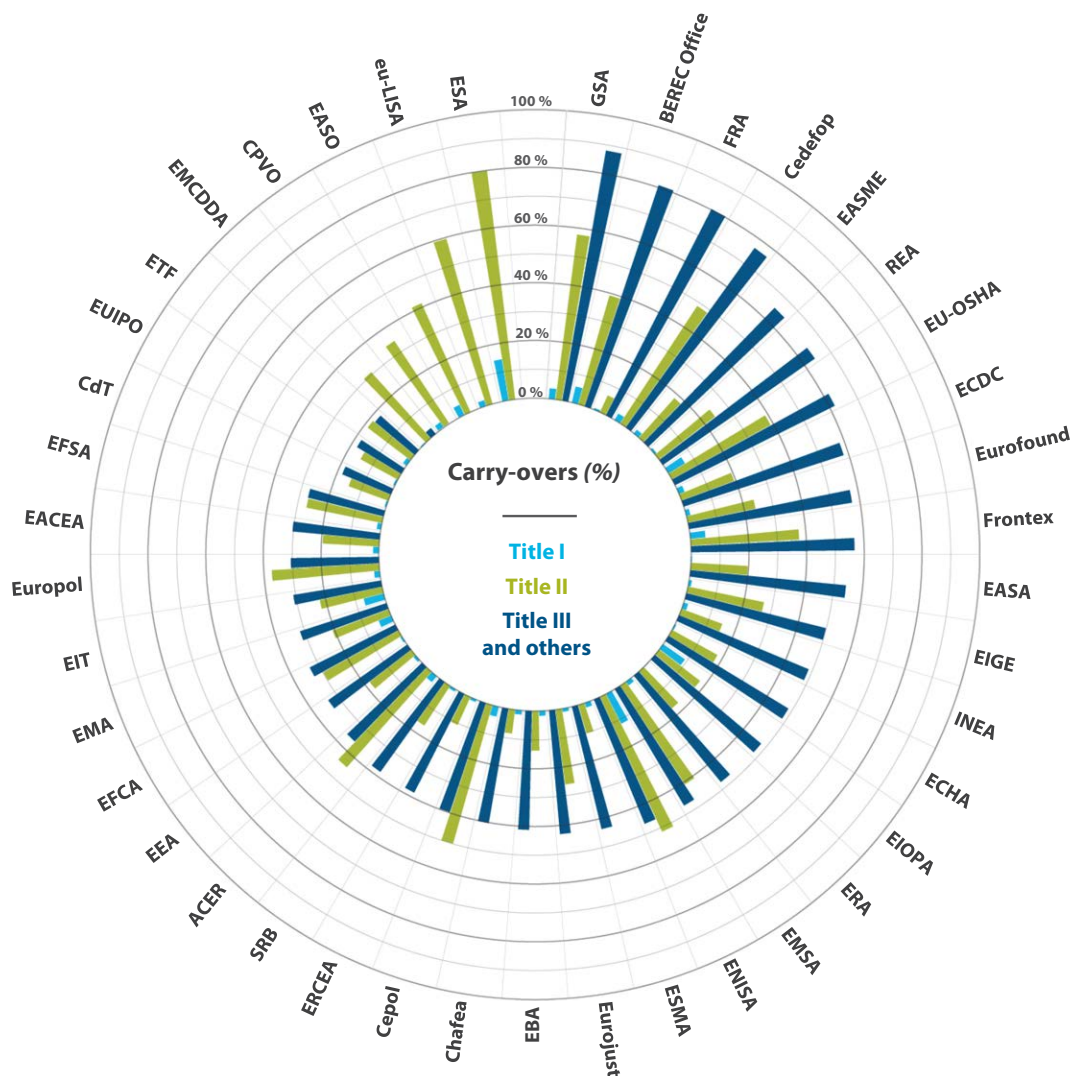
## Budgetary management weaknesses on the increase

**2.32.** Under the EU Financial Regulation, budget appropriations granted for a given financial year can be carried over to the next financial year under certain conditions<sup>22</sup>. While the EU Financial Regulation does not set ceilings for such carry-overs and the multi-annual nature of operations can explain them to a considerable extent, excessive levels can indicate delays in the implementation of work programmes or procurement plans. The levels of carry-overs were partially affected by COVID-19 pandemic. Alternatively, they could indicate a structural issue, weak budgetary planning and possibly a contravention of the budgetary principle of annuality. For five agencies (**ACER, ESA, eu-LISA, FRA** and the **Frontex**) we report such weaknesses.

<sup>22</sup> Conditions for carry-overs are explained in Articles 12 and 13 of the EU Financial Regulation.

**2.33.** Figure 2.4 gives an overview of the level of carry-overs of committed appropriations per agency and per budget Title. It is shown as a percentage of committed appropriations<sup>23</sup> carried over compared to the total appropriations<sup>24</sup> of a budget Title.

**Figure 2.4 – Level of carry-overs per budget Title**



Source: Budget: Agencies' final annual accounts 2020, compiled by ECA.

<sup>23</sup> Committed appropriations cover the total cost of legal obligations entered into in the current financial year, for implementing operations over one or more financial years.

<sup>24</sup> Total appropriations entered into the agency's budget for a given financial year.

#### Actions to be taken 4

To resolve excessive levels of carry-overs, the agencies concerned should further improve its budget planning and its implementation cycles.

**2.34.** For eight agencies (**Cedefop, EBA, EIGE, EIOPA, EMSA, ESMA, Europol**, and the **Frontex**), we also observed various other weaknesses. These weaknesses concerned issues ranging from the management of fees to late payments, the disclosure of contributions received, and the calculation of contributions by non-EU Member States to the agencies' budgets (see **Box 2.4**). **Figure 2.3** shows the most common types of weaknesses in budgetary management.

#### Box 2.4

##### Example of a weakness in contributions from the EFTA countries that are not EU members

The method for calculating contributions set out in the Statement on Cedefop-EFTA cooperation was not applied correctly in the financial year 2020. The auditors identified three calculation errors and as an overall impact, Norway's and Iceland's contributions to the Cedefop 2020 budget were €20 272 higher than they should have been, and the EU's contribution was €20 272 lower than it should have been.

#### Actions to be taken 5

The existence of different methods in the agreements for calculating contributions from associated countries entail a risk of erroneous implementation of those contribution agreements. The agencies concerned are invited to consult the European Commission to assess whether they need to align with the Commission contributions agreements and methods of calculation for the contributions of associated countries.

### Variety of observations raised concerning human resources management

**2.35.** During our annual audit of the agencies for the financial year 2020, we noted an increase in weaknesses concerning human resources management. We audited recruitment procedures in 22 agencies. For six of them (**ACER, EASO, EFSA, EMA, EMSA** and **Frontex**) we identified different types of shortcomings: insufficient steps to verify entitlements to allowances for staff taking up duties as a temporary agent (**EMSA**), vacant managerial post for excessive period (**EASO, EFSA**), a failure to apply effective internal controls during the recruitment procedures (**ACER**), weaknesses in appointment of selection panels for

recruitment procedures (EMA), weaknesses in management of grades of new staff members (Frontex).

## Agencies adapted well to the COVID-19 unprecedented situation

**2.36.** We complemented our financial audit work with a review of how EU agencies have managed and organised their response to the COVID-19 crisis. This review included the areas set out in [Figure 2.5](#). We also present some examples of the impact COVID-19 has had on the agencies' budget implementation and work programmes for the financial year 2020.

**Figure 2.5 – Areas we focused on**



Source: ECA.

**2.37.** The review covers the period from the onset of the pandemic in mid-March 2020 to 31 December of the same year; when relevant, further developments of measures undertaken by the agencies have also been considered. It is based on a survey, analyses of documental evidence collected in the agencies, and interviews with agency staff members<sup>25</sup>. We also consulted the EU Agencies Network (EUAN) supported by the Shared Support Office (SSO) in Brussels. The review covered all 41 agencies within the scope of our annual report<sup>26</sup>.

### Agencies activated business continuity plans in good time to ensure the continuation of key governance processes and the well-being of staff

**2.38.** An organisation's main guidance document in a crisis situation is its business continuity and disaster recovery plan (BCP). This document guides work procedures and

<sup>25</sup> We interviewed representatives working in the following departments: resources and administration, legal and procurement, human resources, ICT and communication, and operations.

<sup>26</sup> ELA and EPPO were not covered as these were not financially autonomous, i.e. still functioning within the European Commission, at the time of this review.



organisation during the crisis. It may cover the entire organisation, or be specific to individual business units (see [Box 2.5](#)). The plan is based on risk assessments and scenario planning, and forms a critical part of the organisation's internal control framework.

### Box 2.5

#### Example of the content of a business continuity and disaster recovery plan

- |   |  |
|---|--|
| <p><b>1</b> <b>Basic key business continuity information:</b></p> <ul style="list-style-type: none"> <li>• emergency contacts,</li> <li>• emergency evacuation procedures,</li> <li>• communication channels (list of e-mail recipients, telephone cascade, websites),</li> <li>• assembly points etc.</li> </ul> | <p><b>2</b> <b>Business continuity principles:</b></p> <ul style="list-style-type: none"> <li>• definitions,</li> <li>• summary of critical and essential functions and procedures,</li> <li>• legal basis,</li> <li>• scope and scenarios,</li> <li>• training and awareness-raising,</li> <li>• testing and drills.</li> </ul> |
| <p><b>3</b> <b>Reaction and response:</b></p> <ul style="list-style-type: none"> <li>• definition of roles and responsibilities of crisis management teams,</li> <li>• business continuity teams and recovery teams.</li> </ul>   | <p><b>4</b> <b>Recovery and de-escalation:</b></p> <ul style="list-style-type: none"> <li>• definitions,</li> <li>• recovery checklists,</li> <li>• de-escalation procedures and actors.</li> </ul>  |

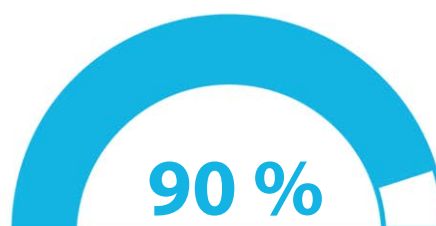
Source: EIOPA BCP.

**2.39.** The BCP is not a static document. For example, ISO standard no 27001<sup>27</sup>, requires organisations to verify the established and implemented information security continuity controls at regular intervals in order to ensure that they are valid and effective during adverse situations. Our review showed that at the outbreak of the COVID-19 pandemic, 37 out of 41 agencies (90 %) had a formally approved and up to date BCP in place (see [Figure 2.6](#)).

<sup>27</sup> ISO/IEC 27001 is an international standard on how to manage information security. It details requirements for establishing, implementing, maintaining and continually improving information security management systems.

## Figure 2.6 – BCP formally approved and up to date in most of the agencies

At the outbreak of the COVID-19 pandemic, **37 of the 41** agencies had a formally approved and up to date business continuity and disaster recovery plan in place. Four agencies, EASO, EBA, EIGE and GSA, did not.



Source: ECA 2020 financial audit.

**2.40.** Following the first indications of the spread of the virus in late 2019 and early 2020, agencies began activating BCPs and crisis mitigation measures to protect staff, information and physical assets (see [Box 2.6](#)). Some agencies also redirected resources to deal with the impact of the pandemic (see [Box 2.7](#)). Our review showed that 34 out of 37 (92 %) agencies that had formally approved and up-to-date BCP had activated their BCP as a direct consequence of the pandemic. The three agencies that did not activate their plans, BEREC, CDT and EFCA, stated it was not necessary to do so, because their initial response measures (for example, extending teleworking to all staff) did not require it.

## Box 2.6

### Timeline of EUIPO's activation of the BCP

**25.2.2020**

Due to the **increased concern of the coronavirus pandemic**, the HR department **informed staff** about the situation, and the **preventive measures** that should be taken.

**12.3.2020**

**First communication** by the Executive Director to the staff, outlining the **possible scenarios**, including the possibility of **activating the BCP**.

**14.3.2020**

Spanish national authorities declared a state of emergency, effectively **preventing staff from entering EUIPO's premises** from Monday 16 March.

Information is **published on the EUIPO intranet** with information about how to organise meetings using videoconferencing tools etc.

**15.3.2020**

**EUIPO activates its BCP, and orders staff to work from home.** Staff members are notified of the situation by e-mail and SMS. The BCP coordination service contacts BCP members and the critical staff required to ensure the continuity of EUIPO's services.

**16.3.2020**

**BCP scenario 6 (unavailability of access to EUIPO premises) is put into action.** EUIPO ICT staff monitor business activities to ensure the availability of VPN sessions. Daily meetings organised by EUIPO management begin.

*Source:* ECA survey replies and supporting information on the activation provided by EUIPO.

## Box 2.7

### Special case – ECDC’s reaction to the COVID-19 pandemic

The European Centre for Disease Prevention and Control (ECDC), established by Regulation (EC) No 851/2004 of the European Parliament and of the Council<sup>28</sup>, has a budget of € 82 million and 271 staff members. Its main task is to collect and disseminate data on the prevention and control of human diseases and to provide scientific opinions on this subject. The Centre is also required to coordinate the European network of bodies operating in this field. The COVID-19 pandemic outbreak in 2020 is the most serious public health event that ECDC has had to respond to since it became operational in 2005.

In response to the COVID-19 outbreak, the **ECDC** activated its public health event operations plan on 9 January 2020. This document guided the organisation through the emergency situation, and allowed it to redirect the resources needed to tackle the pandemic. Teams responsible for public health emergencies within the ECDC produced the following main outputs on COVID-19 in this period: data and surveillance updates, including rapid risk assessments; scientific guidance to support public-health decision-making; information on disease and response measures to health care practitioners and the general public; and responses to ad hoc requests from European institutions and agencies. In parallel with the activation of the public health emergency plan, the ECDC implemented actions under its BCP covering its regular day-to-day operations from 16 March 2020.

*Source:* ECA’s review of survey replies, external evaluation of ECDC’s response to COVID-19, supplemented by interviews with ECDC staff members and verification of information obtained.

**2.41.** The response activities from February to mid-March 2020 included the designation of specific teams tasked with leading the organisation and management of the COVID-19 response (see [Box 2.8](#)). Typically, these comprised senior representatives from departments across the organisation<sup>29</sup>. Coordination meetings were initially held daily, even on weekends, and later, two to three times a week or as necessary. The response teams have remained active throughout the period covered by this review.

<sup>28</sup> OJ L 142, 30.4.2004, p. 1.

<sup>29</sup> Directors, heads of administration/resources, ICT, infrastructure and logistics, communications, security officers.

**Box 2.8****Example of an internal task force set up to monitor and tackle COVID-19 impact**

The Executive Director of **EMA** decided on 16 March 2020 to implement further precautionary measures to reduce the risk of spreading COVID-19. This decision empowered a task force to outline the procedures for monitoring and tackling COVID-19, keeping staff informed, and enacting pandemic mitigation strategies. The mandate of the task force was to ensure that EMA was prepared for any possible scenario. The decision also defined the organisation of the task force in four separate work streams: (1) therapeutic response, (2) supply chain, (3) business continuity and impact, (4) human resources.

*Source:* ECA review survey replies and related supporting evidence.

**2.42.** By 16 March 2020, all agencies had moved to extended teleworking arrangements, and instructed all staff whose presence at the office was not indispensable to work from home. The fact that some remote working possibilities were already in place before the outbreak was helpful in this respect. This meant that the task at hand was more a question of scaling up existing ICT systems than of conducting a massive rollout in March 2020 (see [Box 2.9](#)). Our analysis also showed that none of the agencies reported serious problems with respect to capacity (bandwidth), connectivity or data security. Eight agencies (ACER, BEREC, CPVO, ECDC, ECHA, EFSA, EIOPA, and SRB) performed stress tests of their ICT systems before launch, which gave further assurance on the functioning of ICT systems before the move to comprehensive teleworking.

## Box 2.9

### Examples of the scaling-up of ICT and teleworking arrangements

**ENISA:** a teleworking scheme had been in place since August 2018. On 11 March 2020, ENISA's management issued an administrative notice authorising teleworking for all staff, including interims. It only took one day for ENISA to ensure that operational teleworking for all staff was in place.

**EMSA:** teleworking for all staff started on 16 March 2020 and was immediately operational. According to the agency, by 3 June 2020, EMSA staff had carried out 68 000 one-to-one Skype meetings, organised 3 444 Skype conferences, 2 203 one-to-one Teams meetings and 287 group Teams meetings.

**EUIPO:** from the moment the decision was taken, implementation was immediate (see also [Box 2.6](#)). The full move of staff to a remote working environment was implemented over a weekend.

**ECHA:** the agency closed its premises on 17 March 2020 and moved to teleworking as a rule, with exceptions granted for staff working in essential functions. No phase-in time was required to ensure remote access to the systems for all staff.

**EUROPOL:** Over a weekend, around 400 laptops were distributed to staff to ensure business continuity.

**CEDEFOP:** Teleworking arrangements had already been in place since October 2017. Staff had been equipped with laptops, and had online collaborative working tools and paperless procedures at their disposal. This allowed staff to continue working after 17 March 2020, when all operations began to be carried out remotely.

*Source:* ECA survey results, interviews with agency staff members and verification of information obtained.

**2.43.** As the pandemic progressed, agencies progressively amended and updated their plans, or developed specific contingency plans in order to better address the particular impacts that the pandemic had had on their individual organisations and operations. By 31 December 2020, 16 agencies had reviewed, or were planning to review, their existing BCPs based on the experiences they had gained so far<sup>30</sup>. For example, CEPOL added a pandemic scenario to its plan. EASA, as an aviation sector regulator, was particularly affected by the pandemic situation. It decided to refocus its BCP and response on the specific COVID-19 health and safety aspects, not only those concerning EASA staff members, but also those relating to aviation personnel, passengers and other stakeholders in the aviation sector in general. Five

<sup>30</sup> ACER, BEREC, CDT, CEPOL, CPVO, EACEA, EASA, EASME, EBA, ECDC, EFCA, EIOPA, EMSA, ETF, EUROPOL, SRB.

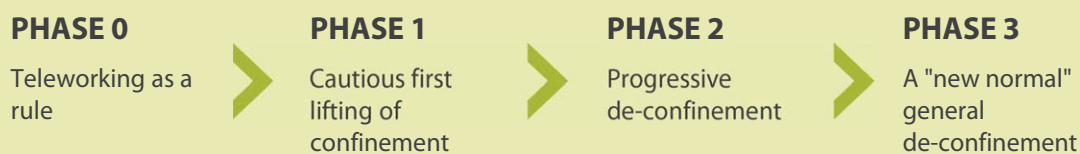
agencies, EBA, ECDC, EIOPA, EUROPOL and EUIPO, have commissioned external evaluations of the management and organisation of their responses.

**2.44.** All agencies had included de-escalation measures in their business continuity measures: for example, the gradual return of staff to the office. Most agencies used a gradual approach, typically in the form of a plan consisting of four phases (see [Box 2.10](#) for an example), allowing for a controlled escalation or de-escalation depending on the development of the pandemic. The implementation of the escalation/de-escalation measures aimed to follow recommendations and instructions from national and regional health authorities, and risk assessments and guidance from the European Commission, the ECDC and the WHO. In practice, implementation varied from agency to agency, however, depending mostly on the different national/regional measures taken by the relevant authorities.

### Box 2.10

#### Example of the stages in a return to office plan

On 13 May 2020, **EASA** adopted a strategy for a gradual return to the office, and set out an action plan which was communicated to staff. The return was **organised in four phases**:



*Source:* ECA survey replies, information supplied by the agency.

**2.45.** The main objective behind the decision to move to comprehensive teleworking was to protect staff. The priority given to staff well-being was visible in numerous internal documents we consulted, which were confirmed in the interviews with agencies' management. The impact of the pandemic on work and staff, including the organisation of the return to the office, was also widely discussed in the EUAN advisory group on new ways of working (see [Box 1.2](#)). The information EUAN shared with us showed that most agency staff members had generally coped well with the difficult situation caused by the pandemic. Time-management statistics produced by the agencies showed that staff worked more hours<sup>31</sup> than before to cope with the new tasks expected of them. Feedback from agencies indicated that staff were engaged and performing at least at the same level as before. According to observations made by agencies specialised in working conditions, such as Eurofound and EU-OSHA, peaks of productivity (and staff engagement) are normal in times of crisis, but are not sustainable over time. EUAN network members estimated that the percentage of staff that had indicated some sort of difficulties ranged from 10 % to 20 %. Below in [Box 2.11](#) we present

<sup>31</sup> 36 network members participated but consolidated data is currently not available. The conclusion is based on the minutes from the EUAN meetings.

some examples of common measures observed in agencies with respect to supporting staff during this period.

### Box 2.11

#### Support measures for staff well-being

- 1 **COVID-19 landing page** on internet and intranet sites, including practical guidance
- 2 **Regular communication and messages** of empathy and compassion from senior management
- 3 **Monitoring the health and well-being** situation, including surveys on staff well-being
- 4 **Guidelines and best practices** for extended teleworking
- 5 **Voluntary medical and psychological support** offered online
- 6 **Financial contributions for office equipment** to help set up a proper home office
- 7 **Social network platform created among staff** to facilitate contacts outside the working environment
- 8 **Mindfulness support programmes** organised for individuals or for small groups with a psychologist
- 9 **Social online gatherings, virtual coffee breaks, regular bilateral checks** by managers with team members, and **online sports programme**

Source: Replies to ECA survey, information from the EUAN.

#### Key governance processes and day-to-day operations continued without serious disruptions, with some exceptions

**2.46.** Each agency has a management board, which constitutes the highest level of the agency's governance. The board's main role is to provide strategic orientation to the agency and to oversee its activities<sup>32</sup>. Following the cancellation of physical board meetings in the second half of March 2020, meetings were replaced by written procedures, or moved to a virtual mode. In this new environment, the boards were able to meet as required in agencies' founding regulations, and adopt legally required decisions on time. Voting procedures continued by means of specific electronic voting tools, such as EU Survey, also for restricted or confidential decisions. Examples of statutory decisions taken by agencies during the pandemic include the adoption of budgets, amendments, transfers, programming documents, annual

<sup>32</sup> The name of the board varies between agencies: for example, some agencies have a board of supervisors, some have an administrative board, and some a governing board. Executive agencies, on the other hand, are led by steering committees.



activity reports, and opinions on final accounts. During the pandemic, boards have appointed high-ranking new members of staff, such as Executive Directors, in EMA, EBA, EASME and GSA. The boards have thus been able to exercise their governance role effectively during the pandemic.

**2.47.** Our review showed that agencies were able to ensure the continued operation of their key corporate functions (administration, ICT, HR, etc.) during the pandemic, thanks to the switch to virtual decision-making and teleworking arrangements (see [Box 2.12](#)).

### Box 2.12

#### Example of maintaining and adapting critical IT services during the COVID-19 pandemic

As access to agencies' premises was restricted for staff and external service providers, business continuity of critical IT services was ensured by switching on-site service delivery to off-site following consultations with partner DGs and DG BUDG. This arrangement is supposed to last for a certain timeframe, in most cases for the remaining duration of running contracts. The design of new IT contracts will more comprehensively address both options, on- and off-site modes, allowing for this flexibility in future.

*Source:* ECA survey results, interviews with agency staff members and verification of information obtained.

**2.48.** Despite the pandemic, agencies were able to acquire goods and services on time and to the required quantity and quality. We found very few cases where calls for tender had been unsuccessful, where not enough offers had been received from tenderers, or where certain services had been suspended or cancelled. Requests by tenderers for extensions to deadlines were accommodated without substantial delays. Agencies had established electronic submission procedures in place (e-Submission) for open tenders, which allowed them to continue in a virtual environment<sup>33</sup>. The work of evaluation committees was carried out online; the evaluation boards signed decisions electronically or, in exceptional cases, confirmed outcomes by e-mail. Another example was the application of a temporary rule, following guidance from the European Commission, which allowed electronic signatures on contracts instead of blue ink signatures, until more normal working conditions resume (see [Box 2.13](#)).

<sup>33</sup> Agencies still using a paper-based system for the submission of lower-value tenders exceptionally accepted offers by e-mail instead of on paper until normal procedures are resumed.

### Box 2.13

#### Example of measures undertaken by an agency in the management of procurement procedures as response to the COVID-19 pandemic

**EUROPOL** implemented a series of measures to maintain efficiency in managing procurement procedures and related activities:

- assessing essential activities to be maintained by the organisation when the pandemic broke out;
- producing letters notifying selected contractors of the force majeure nature of the pandemic, and the impact on on-going specific contracts and purchase orders;
- placing urgent orders to cover exceptional needs required by the pandemic (e.g. hardware, software, and facilities products);
- providing strategic and legal advice on procurement and contracts at short notice (particularly related to concerns such as protection of medical data during the crisis, refusal to accept force majeure declarations, e-signature design, procurement and roll-out);
- amending various contracts in order to adjust the risks linked to the pandemic (e.g. changes in contract scope, delivery methods, offsite remote working for consultants).

**2.49.** In our financial audits for the financial year 2020, we assessed compliance with procurement rules, including procedures that could potentially have been affected by the pandemic<sup>34</sup>. Details of our work are presented in Chapter 3 of this report.

**2.50.** With respect to procurements and contracts during the pandemic, we found that agencies had sought guidance from their partner DG and/or DG BUDG, on a case-by-case basis, before proceeding. We did not detect an excessive use of direct awards without competition due to the pandemic as compared to the previous years. In one case, we noted that EASO had used the derogation for reasons of extreme urgency under 11.1(c) of Annex 1 of the Financial Regulation to cover a significant disruption to the supply of personal protection equipment under an existing contract. This did not affect the legality and regularity of the procurement. Overall, we concluded that procurement rules were on the whole respected, with a few specific exceptions (see [Box 2.14](#)).

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<sup>34</sup> We tested 3-5 procedures per agency.

## Box 2.14

### Examples of non-compliance with procurement rules directly linked to the COVID-19 pandemic

**EIOPA:** in May 2020, EIOPA signed a contract for the provision of in-person training courses. At that time, the pandemic was unfolding, and the limitations on events requiring presence in person were already known. EIOPA signed an amendment to the contract in August 2020 including new contract items: the provision of virtual training courses. These virtual courses were set at fixed prices which were higher than the price of on-site training courses agreed in the initial contract. These changes constitute new contract conditions. If they had been part of the initial procurement procedure, they could potentially have attracted additional bidders without any geographical limitation imposed by the training in person and at a more competitive cost. The contract amendment does not comply with the Directive 2014/24/EU<sup>35</sup> and is therefore irregular.

**CEPOL:** the agency paid a cancellation fee for a hotel booking for a training event in Budapest scheduled in September 2020. The training event was cancelled due to COVID-19 restrictions. If it had invoked the "*force majeure*" clause in the framework contract instead, CEPOL could have cancelled the reservation without cost. In this instance, CEPOL did not effectively protect the EU's financial interests.

*Source:* ECA 2020 financial audit.

**2.51.** We noted a number of disruptions to recruitment and selection procedures due to the lockdown measures and travel restrictions introduced in March 2020 (see [Box 2.15](#) for examples). From mid-April 2020, most agencies were able to restart and continue recruiting when online procedures had been deployed to ensure that selection and induction procedures could proceed remotely. While remote solutions have allowed critical recruitment procedures to continue, there have been some issues. Several agencies described the process as cumbersome and time-consuming, stating that these procedures had initially been affected by technical problems, such as connection issues, or the sudden unavailability of candidates, and the challenge of holding induction procedures in a virtual environment. Another challenge with remote tests was the difficulty for candidates to demonstrate certain proficiencies online.

**2.52.** The fact that recruitment slowed down in early 2020 created a risk of HR bottlenecks in the future, as a growing number of future staff members will need adequate (virtual) induction procedures, creation of personal files, training courses, and appraisals. The pressure will be particularly high on the agencies that are recruiting in large numbers, such as Frontex (see [Box 2.15](#)); it will be less of an issue for smaller agencies.

<sup>35</sup> Directive 2014/24/EU of the European Parliament and of the Council (OJ L 94, 28.3.2014, p. 65).

## Box 2.15

### Impact of the pandemic on recruitment

**Frontex:** the general slowdown in recruitment caused by the pandemic delayed the recruitment of the 40 fundamental rights monitors required by Regulation (EU) 2019/1896<sup>36</sup> to be appointed by 31 December 2020. At the time of our audit, no monitors had been appointed. This situation poses a serious risk to the operations and reputation of the agency.

**EASO:** on 28 February 2020, the Executive Director cancelled all planned recruitment interviews. All of the 161 candidates invited for interviews and tests in Malta were informed of this. The cancellation created a delay of one month to all recruitments, and a challenging inflow of newcomers at a later stage.

*Source:* Replies to ECA survey.

**2.53.** Risks relating to selection procedures have been mitigated. Applications have been submitted electronically to functional mailboxes created for that purpose, and interviews have been organised remotely (online using Teams, Outlook or Skype). Written tests have been done online, either one-to-one between the candidate and an HR representative from the agency, or supervised by an external service provider. Evaluation board members were able to meet virtually and to authorise documents and decisions using electronic signatures, or by e-mail.

**2.54.** The experience of agencies on recruitment and selection procedures so far has been mixed. This depends, for example, on whether agencies have a small or large intake of newcomers, on local lockdown measures, on internal HR resources, and on their dependency on external service providers.

**2.55.** An additional challenge linked to the pandemic related to the requirement for candidates to undergo pre-recruitment medical examinations. In some countries, access to medical services was interrupted due to strict lock-downs. In other cases, agencies relied on the European Commission's medical service in Brussels, which closed for a period, thus affecting those agencies relying on it for pre-recruitment medical checks. Following instructions from the European Commission, agencies agreed to postpone these tests by offering conditional contracts, giving recruits additional time to undergo the tests. Our review shows that 15 agencies (37 %) used this option in order to continue recruiting staff.<sup>37</sup> Failure to

<sup>36</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council (OJ L 295, 14.11.2019, p. 1).

<sup>37</sup> ACER, BEREC, CPVO, EBA, ECHA, EASO, EIOPA, ERCEA, ESMA, EUIPO, EUROJUST, FRONTEX, GSA, INEA, SRB.

undergo the tests within the stipulated deadline, usually before the end of the probationary period, would render contracts void.

**Agencies have continued delivering on their mandates despite the COVID-19 pandemic, albeit at a slower pace**

**2.56.** Although it is difficult to completely isolate the effect of the pandemic, we can conclude that the pandemic has affected all of the agencies' core business areas to a varying degree.

**2.57.** As a general remark, the pandemic has accelerated the shift in working methods; this has led to budget savings in several areas. All agencies' budgets for missions and travel-related costs have not been fully used. The reduction was close to 90 % in some agencies. Savings also came from delays or cancellations to recruitment procedures, pre-recruitment medical check-ups, in-person meetings, and training courses being held online. Similarly, there was also a much-reduced need for canteen, cleaning, on-site utilities such as water and electricity, and security services.

**2.58.** Agencies reviewed their budgets and targets, made reprioritisations, and reassigned funds to other areas in order to avoid excessive cancellations at year-end, although some weaknesses were found (see paragraphs [2.32](#) and [2.33](#)). However, the slowdown, and shift in working methods away from missions and physical meetings etc., can still be noted in a number of reductions to agencies' agreed budgets for 2020, and subsequent returns of appropriations to the European Commission. Another indicator is the general increase we have seen in the amounts of appropriations carried forward from the 2020 to the 2021 financial year compared to the previous year.

**2.59.** We noted that some fee-receiving agencies (ECHA, EASA and ERA) have seen increased volatility in the fees invoiced and collected, affecting their budgetary planning and financial stability in general. For example, significant drops in fee income in 2020 were reported by ECHA (€7.0 million less fee income under the REACH Regulation than initially budgeted) and EASA (€3.2 million less fee income compared to 2019).

**2.60.** With respect to work programmes and activities, the pandemic has triggered significant reprioritisations of resources and planned activities towards COVID-19-related activities. The most notable examples can be found in the policy area Health (ECDC, EMA). For the ECDC, according to an external evaluation<sup>38</sup> (see also [Box 2.7](#)), the pandemic is the most serious public health emergency the agency has had to respond to since it was established in 2004. In 2020, the EU's COVID-19 response has become the ECDC's predominant activity,

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<sup>38</sup> Strategic and performance analysis of ECDC response to COVID-19, McKinsey, November 2020.

consuming a majority of the agency's time and resources<sup>39</sup>. EMA experienced a major transformation of the entire landscape in which it operates. Specifically, the pandemic has affected the whole European Medicines Regulatory Network (ERMN)<sup>40</sup> requiring EMA to enhance coordination of the EU regulatory network and to speed up Committees procedures for COVID-19 related products. In November 2020, the European Commission also put forward a proposal for a new regulation that will complement and strengthen the current core tasks of the agency, and broaden the agency's mandate to further facilitate a coordinated EU-level response to health crises<sup>41</sup>.

**2.61.** Agencies implementing EU policies in other areas were also affected. For example, Frontex was unable to implement planned return activities due to worldwide travel restrictions and saw a 52.5 % reduction to the initially voted budget for returns in 2020. Eurofound's planned fieldwork for the 7<sup>th</sup> European Working Conditions survey was significantly changed, disrupting the potential for a trend analysis of working conditions over more than 20 years. And EASA, EMSA and ERA saw sudden reprioritisations, since they were required to provide new guidelines to ensure that the transport and mobility sectors adhere to European safety and health measures and protocols as a direct consequence of the pandemic.

**2.62.** We therefore saw that agencies took relevant actions and rapidly adapted their work to the pandemic. This was achieved through accelerated digitalisation measures, collaborated better, and improved the way they exchanged information to remain operational (see [Box 2.16](#)).

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<sup>39</sup> According to its 2020 Annual Activity Report, the Centre had to cancel or postpone 35 % of the outputs initially planned for 2020 and redirect resources towards COVID-19 related actions.

<sup>40</sup> The EMRN is a network of national competent authorities in the EU Member States and European Economic Area (EEA) working together with the EMA and the European Commission.

<sup>41</sup> EMA Final programming document 2021-2023 (EMA/53919/2021).

## Box 2.16

### Good practice examples to be continued

We wish to highlight a number of good practices that EU agencies should continue as the situation progressively returns to normal.

- Continue incorporating lessons learned from the pandemic so far into business continuity reviews and procedures.
- Continue the digitalisation process that has been accelerated by the pandemic; for example, by introducing fully digital workflows and technical solutions for working spaces.
- Continue developing online staff well-being measures and professional development tools introduced during the pandemic.
- Continue adapting staff appraisal procedures and staff performance indicators to a virtual/hybrid working environment.
- Continue adapting programming and targets to reflect EU agencies' operations and service delivery under (post-) COVID-19 conditions.

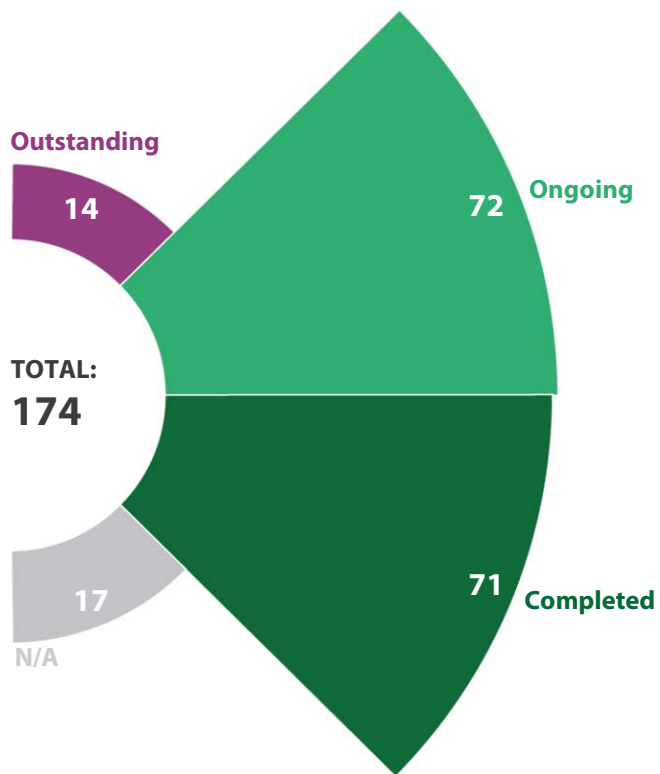
## Agencies are following up on previous years' audit observations

**2.63.** We provide information on the status of follow-up actions taken by the agencies in response to observations from previous years. *Figure 2.7* shows that for the 174 observations that had not been addressed at the end of 2019, corrective action was completed or ongoing in most cases in 2020. For 31 agencies<sup>42</sup> we report on 86 outstanding and ongoing observations. Out of 14 outstanding observations, the necessary corrective action to address four observations was not under the agency's (sole) control.

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<sup>42</sup> ACER, BEREC, Cedefop, CEPOL, Chafea, CPVO, EASA, EASME, EASO, EBA, ECHA, EIGE, EIOPA, EIT, EFSA, EMA, EMCDDA, EMSA, ENISA, ESMA, ETF, EUIPO, eu-LISA, EU-OSHA, Eurofound, Eurojust, Europol, FRA, Frontex, GSA and REA.

**Figure 2.7 – Agencies' efforts to follow up on previous years' observations**



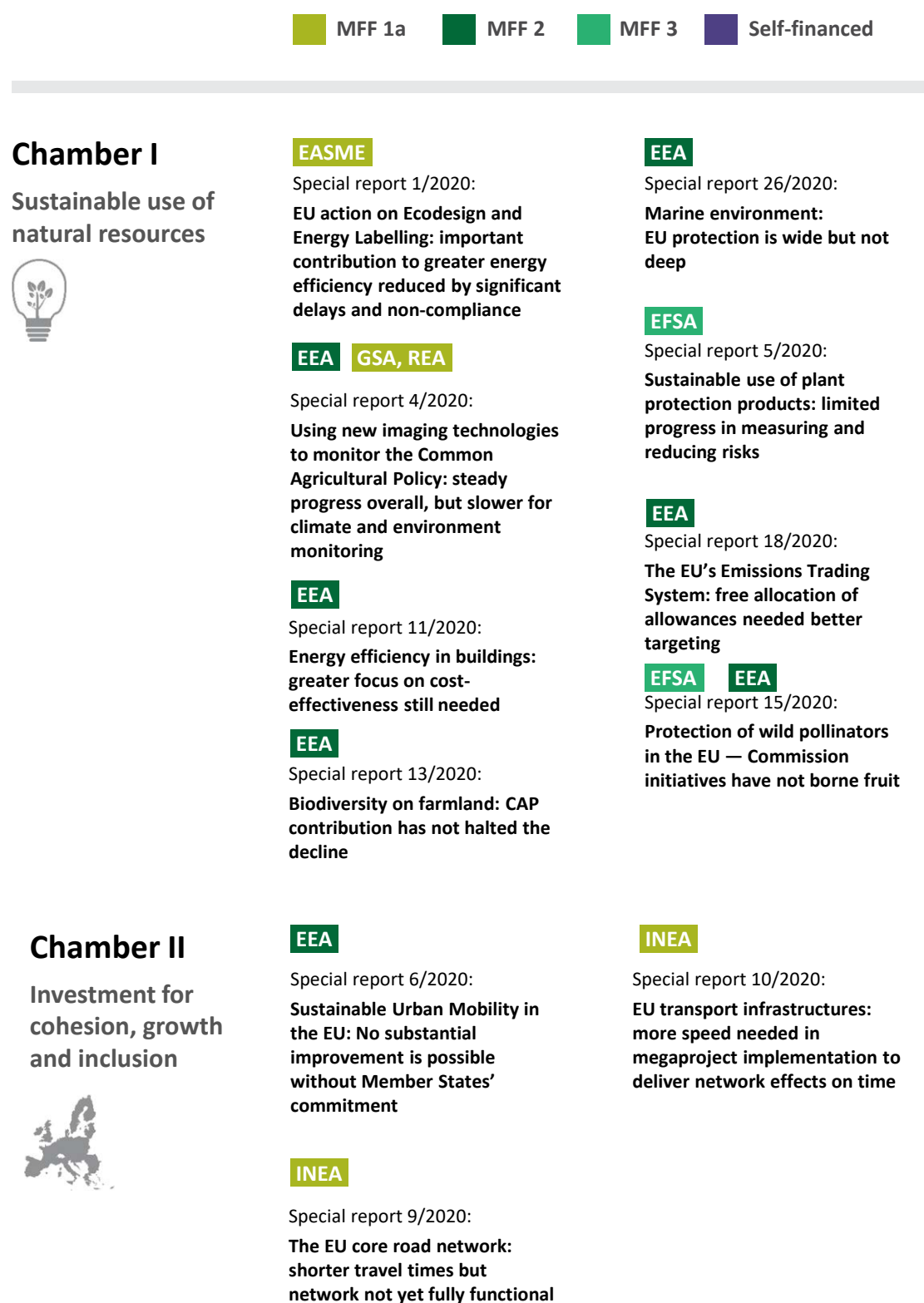
Source: ECA.



## Other agency-related products issued by the ECA

**2.64.** Apart from audit reports specifically dedicated to the agencies, in the course of 2020 the ECA also issued a number of special reports on EU policy implementation which referred to a number of agencies (*Figure 2.8*).

**Figure 2.8 – Other ECA special reports referring to agencies and issued in 2020<sup>43</sup>**



<sup>43</sup> In 2021, Chamber III (External action, security and justice) issued a special report 8/2021: Frontex's support to external border management: not sufficiently effective to date.

MFF 1a MFF 2 MFF 3 Self-financed

## Chamber II

### Investment for cohesion, growth and inclusion



#### EUROPOL, EUROJUST

Opinion 4/2020:

**Opinion concerning the proposal 2020/0101 (COD) for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 as regards exceptional additional resources and implementing arrangements under the Investment for growth and jobs goal to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy (REACT-EU); and on the amended proposal 2018/0196 (COD) for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument**

## Chamber IV

### Regulation of markets and competitive economy



#### EASME

Special report 2/2020:

**The SME Instrument in action: an effective and innovative programme facing challenges**

#### SRB EBA

Special report 21/2020:

**Control of State aid to financial institutions in the EU: in need of a fitness check**

#### ALL ALL ALL ALL

Special report 22/2020:

**Future of EU agencies – Potential for more flexibility and cooperation**

#### EASME, EIOPA, EBA

Special report 25/2020:

**Capital Markets Union – Slow start towards an ambitious goal**

## Chamber V

### Financing and administering the Union



Source: ECA.

#### EASME

Special report 12/2020:

**The European Investment Advisory Hub – Launched to boost investment in the EU, the Hub's impact remains limited**

## The EU agencies network's reply

**1.22.** EUIPO would like to highlight the decision of the legislators which was confirmed during the last legislative reform. According to Article 176(2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR), 'the Budget Committee shall give a discharge to the Executive Director in respect of the implementation of the budget'. Such discharge is strongly based on the reports issued by the ECA.

The CPVO would like to point out that the Administrative Council of the CPVO is the budgetary authority of the Agency. The applicable provision is cited in Article 109 of Council Regulation (EC) NO 2100/94 of 27 July 1994 on Community plant variety rights.

The SRB would like to point out that it is also a fully-self financed agency. The budget and the establishment plan of the SRB are approved by its Plenary Session on a proposal by its Chair in accordance with Article 61 of Regulation (EU) No 806/2014.

**2.23.** The EU Agencies Network (EUAN) welcomes the annual report on EU Agencies for the financial year 2020 of the European Court of Auditors (ECA). The Network has agreed that a stronger focus should be put on the internal control themes under the umbrella of the integrated management systems. A Working Group (WG) on internal control matters was created in April 2021. The objectives of the WG include knowledge sharing to facilitate better integration and coordination of internal control matters into the overall management system of the Agencies, increase the effectiveness and efficiency of the internal control matters, by sharing best practices, frameworks, methodologies, and approaches within the EUAN.

**2.21., 2.35.** The EUAN acknowledges the Court's preliminary observations, particularly in the areas of public procurement management, recruitment procedures, and budgetary management. The EUAN members are committed to continuously improve their policies and procedures. The Network wishes to highlight that the preliminary observations of the individual cases differ from Agency to Agency and therefore the Network would like to make reference to the Agencies' individual response to the statement of assurance.

**Box 2.8** EMA workstream 1 on therapeutic response also involved the launch of the [COVID-19 EMA pandemic Task Force](#) which is at the centre of the efforts to enable EMA, the [European medicines regulatory network](#) and the European Commission to take quick and coordinated regulatory action during the pandemic across all EU Member States. The workstream 2 on supply chain included the launch of the "EU Executive Steering Group on Shortages of Medicines Caused by Major Events" together with the European medicines regulatory network and chaired by the European Commission, to provide strategic leadership for urgent and coordinated action, and to prevent and mitigate supply disruption during the pandemic

**2.39.** Following the audit, the Office approved its business continuity plan on 31 May 2021.

**Box 2.15.** The recruitment process was only temporarily suspended for a period of one month. EASO continued to recruit staff at a high speed through a remote selection process. Despite the pandemic-related complications, EASO managed to recruit 86 statutory staff during 2020, making it our most successful year in terms of recruitment.



EUROPEAN  
COURT  
OF AUDITORS

## Chapter 3

### **Statements of Assurance and other agency-specific audit results**

## 3.1. Information in support of the statements of assurance

### Basis for opinions

**3.1.1.** 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

**3.1.2.** In accordance with Articles 310 to 325 of the TFEU and the agencies' Financial Regulation, the agencies's managements are responsible for preparing and presenting the Agencies' 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. 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 agencies managements bear the ultimate responsibility for the legality and regularity of the transactions underlying the accounts of the agencies.

**3.1.3.** In preparing the accounts, 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.

**3.1.4.** Those charged with governance are responsible for overseeing the Agencies financial reporting process.

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

**3.1.5.** Our objectives are to obtain reasonable assurance about whether the accounts of the agencies 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 agencies 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.

**3.1.6.** For revenue, we verify subsidies received from the European Commission or cooperating countries and assess the agencies procedures for collecting fees and other income, if any.

**3.1.7.** 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 an agency accepts the justification by clearing the advance payment, whether in the same year or later.

**3.1.8.** In accordance with the ISAs and ISSAIs, we exercise our professional judgement and maintain professional scepticism throughout the audit. We also:

- o 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.
- o 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.
- o 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 an 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 agencies 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 agencies 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 agencies, 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.





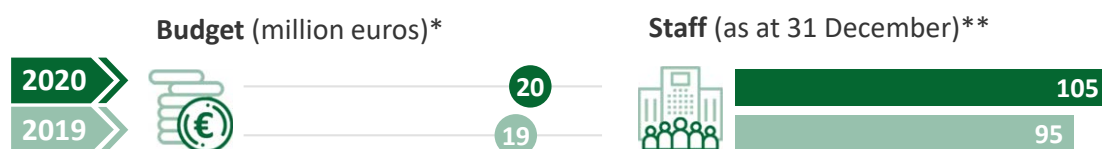
**Agencies funded under  
MFF heading 1a  
– Competitiveness for growth and jobs**

## 3.2. The European Union Agency for the Cooperation of Energy Regulators (ACER)

### Introduction

**3.2.1.** The European Union Agency for the Cooperation of Energy Regulators (“the Agency”, or “ACER”), which is located in Ljubljana, was created by Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>44</sup>. The Agency's main task is to assist National Regulatory Authorities in exercising, at Union level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action. Under the REMIT regulation<sup>45</sup>, the Agency was given additional responsibilities, together with national regulatory authorities, regarding the monitoring of the European wholesale energy market. *Figure 3.2.1* presents key figures for the Agency<sup>46</sup>.

**Figure 3.2.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

<sup>44</sup> OJ L 211, 14.8.2009, p. 1.

<sup>45</sup> Regulation No 1227/2011 of the European Parliament and of the Council (OJ L 326, 8.12.2011, p. 1), which assigns an important role to the Agency in supervising trading in wholesale energy markets across Europe.

<sup>46</sup> More information on the Agency’s competences and activities is available on its website: [www.acer.europa.eu](http://www.acer.europa.eu).

## Information in support of the statement of assurance

**3.2.2.** The audit approach taken by the ECA 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.

**3.2.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.2.4.** We have audited:

- (a) the accounts of the European Union Agency for the Cooperation of Energy Regulators which comprise the financial statements<sup>47</sup> and the reports on the implementation of the budget<sup>48</sup> for the financial year ended 31 December 2020 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

**3.2.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the

<sup>47</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>48</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Agency at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.2.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Basis for a qualified opinion on the legality and regularity of the payments underlying the accounts

**3.2.7.** In its audit report for the 2019 financial year, the ECA concluded that several specific contracts under a framework contract for IT services were irregular, because no competitive procurement procedure had been carried out. Specifically, certain ordered items and services were not covered by the price lists of the bids submitted for the contract. Payments made in 2020 for out-of-price list items under this framework contract amounted to €752 654 (3,71 % of the total payment appropriations available in 2020). We acknowledge that the Agency, following our 2019 observations, has prepared an action plan and its implementation is regularly monitored by the Management.

#### Qualified opinion on the legality and regularity of payments underlying the accounts

**3.2.8.** In our opinion, except for the issues explained in the "Basis for a qualified opinion on the legality and regularity of payments" paragraph, payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

### Other matter

**3.2.9.** The ECA draws attention to the fact that, unlike other institutions (such as the European Commission), the Agency did not adopt internal rules to address the continuity of delegations in cases where delegating or delegated authorising officers leave their posts.

## European Union Agency for the Cooperation of Energy Regulators (ACER)

The role of authorising officer is different in agencies and institutions. Institutions themselves perform the role of authorising officer; they delegate the associated responsibilities to members of their staff. Directors-General and Secretaries-General of institutions are authorising officers by delegation only. In agencies, though, the role of authorising officer is attributed to the Executive Director, who implements the budget under their own responsibility.

The new Executive Director took office on 1.1.2020. However, he issued retroactively on 18.12.2020 a confirmation of the delegations of two staff members. This meant that for almost one year, the members of the staff in question authorised operations based on the delegations issued by the previous Executive Director. This constitutes an important internal control weakness. Following our audit, the Agency has committed to adopt implementing rules addressing the issues identified by the Court.

**3.2.10.** The observations which follow do not call the ECA's opinion into question.

### Observations on budgetary management

**3.2.11.** The Agency has had high levels of carry-overs for several years. In 2020, carry-overs of committed appropriations were high for two budget titles: Title II (building and associated costs) and Title III (operating expenditure). For Title II, carry-overs were €1.5 million, or 44 % of the total amount of the Title (€0.8 million, or 31 %, in 2019). For Title III, carry-overs were €1.4 million, or 36 % of the total amount of the Title (€1.9 million, or 46 %, in 2019). The carry-overs are mainly accounted for by IT hardware and consultancy services. They are only partially explained by the nature of the Agency's core activities: these include the maintenance, operation, support and development of the REMIT IT systems, tasks which span several months and can extend beyond the end of the year. However, a significant part (19 %) of Title II carry-overs to 2021 were committed in December 2020; this was only partially justified (e.g. for the purchase of IT development services ordered in December 2020, the Agency consumed €67 895 from the budget for financial year 2020 while it should have used the budget for 2021). This indicates a structural issue. To resolve it, the Agency should further improve its budget planning and its implementation cycles.

### Observations on internal controls

**3.2.12.** In the 2019 financial year, observations were raised about an irregular recruitment procedure at ACER. In 2020, we audited recruitment procedures again, and found some weaknesses in the internal controls. These weaknesses affected the candidate evaluation process, but did not call into question the audited procedures' legality or regularity. Five candidates were erroneously deemed to be eligible, and were consequently admitted to the selection procedure. However, this did not affect the outcome of the procedure, because

## European Union Agency for the Cooperation of Energy Regulators (ACER)

these candidates did not reach the necessary threshold to be invited to interview. In another case, a candidate was invited to interview even though their application did not specify their knowledge of languages, as required in the vacancy notice. In the two audited selection procedures, no detailed scoring method was set out; this led to an inconsistent attribution of scores by individual selection committee members for some candidates. In a further procedure, two of the selection committee members did not complete the declarations of potential conflict of interest properly. This did not ensure a complete and reliable audit trail, indicating weaknesses in the internal controls of the Agency. Such weaknesses may expose the Agency to high reputational and financial risks, especially in cases of appeals and litigation by unsuccessful candidates.

ACER should significantly improve its selection and recruitment procedures, and rigorously apply the controls in place to ensure full compliance with the principles of equal treatment and with the applicable rules and regulations.

### Follow-up of previous years' observations

**3.2.13.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2016	The Agency may consider introducing differentiated budget appropriations to better reflect the multiannual nature of operations.	<b>Ongoing</b>
2017	The Agency's disaster data recovery site is located at the same place as the original data.	<b>Completed</b>
2017	E-procurement: by the end of 2017, the Agency had not yet introduced any of the IT tools developed by the European Commission.	<b>Completed</b>
2019	<p>The Agency signed a framework contract in cascade, in two lots, for a maximum amount of €25 million in the field of IT systems and consultancy. However, 61.3 % of the payments made in 2019 under lot 1 of the contract were not covered by the contract price list. The Agency concluded direct contracts for the items concerned, without a competitive procedure.</p> <p>Under the provisions of the Financial Regulation, the Agency should not have signed a contract in cascade in such circumstances. It should have reopened the competition instead. The associated specific contracts are therefore irregular. Irregular payments in 2019 for items not covered by the price lists under lot 1 of the framework contract amounted to €975 708.</p>	<b>Ongoing</b>

## European Union Agency for the Cooperation of Energy Regulators (ACER)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	The Agency signed a direct contract without carrying out a competitive procurement procedure, and without carrying out a market analysis. This is not compliant with the Financial Regulation, and the associated payment is therefore irregular.	<b>Completed</b>
2019	ACER carried out a recruitment procedure to fill a post. But it calculated the evaluation scores incorrectly, which led to a candidate being selected unduly. This contravenes the principle of equal treatment, and shows a failure to apply effective internal controls.	<b>Ongoing</b>
2019	We found evidence suggesting that the Agency had been using interim workers to make up for a lack of directly employed staff members. All but one of the interim workers working at ACER were performing long-term tasks. ACER should assign permanent and ongoing tasks to directly employed members of staff, not interim workers.	<b>Ongoing</b>
2019	The Agency had high rate of carry-overs which were only partially justified. This is indicative of a structural issue. To resolve it, the Agency should further improve its budget planning and its implementation cycles.	<b>Ongoing</b>
2019	ACER did not comply with internal control principle 12 of its own internal control framework, under which the Agency must record deviations from the rules and procedures in its register of exceptions. This undermines the transparency and the effectiveness of the Agency's internal control systems.	<b>Ongoing</b>



## The Agency's reply

**3.2.7.** The Agency acknowledged the Court's findings for the higher usage of goods and services from the 'out of price list' under the 20 million euros contract. It notes at the outset that the nature of the services under this contract does not enable an all-inclusive list of services and contracts. Following the ECA preliminary observations on 2019 ACER accounts, received in May 2020, the Agency analysed in detail the out of price list purchases in all ongoing specific contracts, and prepared an action plan to monitor the status of the orders. The implementation of the action plan is regularly monitored by the management of the Agency. The Agency is committed to minimise the use of the out of price list to the extent possible (with the aim to bring it below 10% of the value of each specific contract), taking into account the continuity of its operational activities. The Agency also reported the irregularity recorded in the 2020 Consolidated Annual Activity report.

**3.2.9.** The Agency considered that the power of acting as authorising officer and the duty to implement the budget are intrinsically tied to the function of the Director. Consequently, the Agency was acting in good faith, in line with the general administrative law principle. Thus, during the period January –December 2020, no action was deemed required to maintain the validity of the delegation acts, issued by his predecessor.

The Agency welcomes the recommendations of the Court to adopt implementing rules similar to those of the Commission and has taken action in that direction.

**3.2.11.** The Agency acknowledges the level of carry-overs as being a total of 18.93% of its total appropriations and would like to bring to the Court attention the fact that a significant shortage of financial resources has been covered via a budget amendment only in the last month of the year. During the audited period the Agency faced an unprecedented high level of appeals against its decisions that required a high level of legal counselling and translations. In accordance with Articles 12 and 13 of the Financial Regulation applicable to the general budget of the Union and the Commission's Guidance on Commitments and Payments, the Agency carried over, as an exception to the principle of annuality, administrative payment appropriations that were duly contracted in the year 2020, in order to cover the open obligations identified at the end of the year. Over the years the Agency kept reducing its rate of funds carried over from 40.05% in 2016, to 24.19% in 2017, to 20.27% in 2018 and 18.65% in 2019, aiming to keep it below 25% in the future years as well.

**3.2.12.** Even though the errors identified in the audited recruitment procedures did not affect their final results, the Agency has thoroughly revised its checks and controls and has adopted several measures of improvement, such as: preliminary eligibility checks; eligibility of all applicants evaluated and confirmed by the selection committee (SC); double checks by Human Resources Management (HRM) of the final pre-scoring table; each applicant is required to declare under his/her own responsibility to meet the eligibility criteria; applicants' eligibility

European Union Agency for the Cooperation of Energy Regulators (ACER)

against the language requirements will be assessed at the time of the written examination and oral interview; SC members agree on the scoring methodology and definition of points per selection criterion before given access to applications. The methodology and scoring matrix may be shared with the applicants; a note on the agreed methodology will be kept in the selection file; the performance summary of each candidate will be recorded in the evaluation grid to justify the overall scoring. The feedback may be shared with the candidates; interviews will be recorded in line with the recommendations of ECA; SC members should continue to deliberate jointly on each candidate; the Conflict of Interest declaration has been revised. HRM is actively looking for an IT solution to avoid further errors during the process.

Agency for Support for Body of European Regulators for Electronic Communications (the BEREC Office)

## 3.3. The Agency for Support for Body of European Regulators for Electronic Communications (the BEREC Office)

### Introduction

**3.3.1.** The Agency for Support for Body of European Regulators for Electronic Communications (“the BEREC Office”), which is located in Riga, was established by Regulation (EU) No 2018/1971 of the European Parliament and of the Council of 11 December 2018, replacing the previous Regulation (EC) No 1211/2009 of the European Parliament and of the Council<sup>49</sup>. The BEREC Office’s main task is to provide professional and administrative support services to the Body of European Regulators for Electronic Communications (BEREC) and, under the guidance of the Board of Regulators, to collect and analyse information on electronic communications and to disseminate among National Regulatory Authorities regulatory best practices such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework. *Figure 3.3.1* presents key figures for the BEREC Office<sup>50</sup>.

**Figure 3.3.1 – Key figures for the BEREC Office**



\* 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 2019 and Final annual accounts of the BEREC Office for the financial year 2020; Staff figures provided by the BEREC Office.

<sup>49</sup> OJ L 337, 18.12.2009, p. 1.

<sup>50</sup> More information on the BEREC Office’s competences and activities is available on its website: [www.berec.europa.eu](http://www.berec.europa.eu).

Agency for Support for Body of European Regulators for Electronic Communications (the BEREC Office)

## Information in support of the statement of assurance

**3.3.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the BEREC Office'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 BEREC Office's management.

**3.3.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.3.4.** We have audited:

- (a) the accounts of the Agency for Support for Body of European Regulators for Electronic Communications which comprise the financial statements<sup>51</sup> and the reports on the implementation of the budget<sup>52</sup> for the financial year ended 31 December 2020 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).

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<sup>51</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>52</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Reliability of the accounts

### Opinion on the reliability of the accounts

**3.3.5.** In our opinion, the accounts of the BEREC Office for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the BEREC Office at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.3.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.3.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observation

**3.3.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

Agency for Support for Body of European Regulators for Electronic Communications (the BEREC Office)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	By the end of 2017, the BEREC Office had introduced e-tendering for certain procurement procedures, but not e-invoicing and e-submission.	<b>Completed</b>
2018	The BEREC Office signed a framework contract with one company for the provision of secretarial support services. The staff (interim workers) were employed through contracts with authorised temporary-work agencies. However, the use of contracts of this kind for the provision of labour is not in compliance with EU social and employment rules, and exposes the BEREC Office to legal and reputational risks.	We note that a case pending before the Court of Justice of the EU (CJEU) case No C-948/19 (Manpower Lit), concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008, on temporary agency work, to EU Agencies. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning the BEREC Office's use of interim workers, the ECA will refrain from making any observations on the regularity of the Agency's approach, including follow-ups of observations from previous years, concerning this matter until the CJEU has issued a final ruling in this case.
2018	The BEREC Office spent 37 % of its non-salary-related budget with a single company, which created a risk to business continuity by making the BEREC Office dependent on external resources provided by that single company.	<b>Completed</b>

## Agency for Support for Body of European Regulators for Electronic Communications (the BEREC Office)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	The BEREC Office finished a procurement procedure and signed a contract before evaluating all of the offers it had received. It misplaced one offer, and did not evaluate it. The evaluation report for this procedure did not explain how the BEREC Office had concluded whether or not the offers it received were compliant with the eligibility criteria. Finally, the procurement procedure was carried out by only one person. That person had declared a potential conflict of interest, but they performed the whole procedure singlehandedly anyway. For these reasons, we consider the contract to be irregular.	Ongoing
2019	The BEREC Office signed a contract without recording the estimation of the value of the contract, and all the declarations of absence of conflict of interest of the evaluation committee members, in the procurement file.	Completed

Agency for Support for Body of European Regulators for Electronic Communications (the  
BEREC Office)

## The Office's reply

The Agency has taken note of the Court's report.

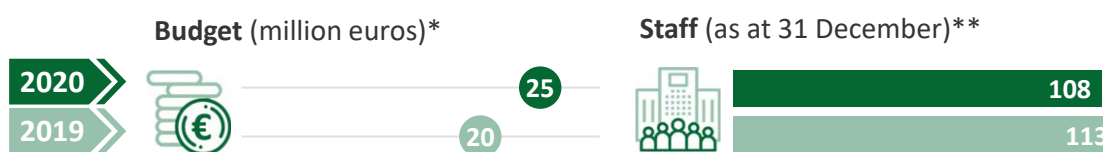


## 3.4. European Centre for the Development of Vocational Training (Cedefop)

### Introduction

**3.4.1.** The European Centre for the Development of Vocational Training (“the Centre”, or “Cedefop”), which is located in Thessaloniki, was established by Council Regulation (EEC) No 337/75<sup>53</sup>, which was repealed by Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019<sup>54</sup>. Its core mandate is to serve the development of vocational training at Union level. In order to achieve this objective, it has the task of compiling and disseminating documentation on vocational training systems. *Figure 3.4.1* presents key figures for the Centre<sup>55</sup>.

**Figure 3.4.1 – Key figures for the Centre**



\* 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 2019 and Final annual accounts of the Centre for the financial year 2020; Staff figures provided by the Centre.

### Information in support of the statement of assurance

**3.4.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Centre’s supervisory and

<sup>53</sup> OJ L 39, 13.2.1975, p. 1.

<sup>54</sup> OJ L 30, 31.1.2019, p. 90.

<sup>55</sup> More information on the Centre’s competences and activities is available on its website: [www.cedefop.europa.eu](http://www.cedefop.europa.eu).

European Centre for the Development of Vocational Training (Cedefop)

control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of information provided by the Centre's management.

**3.4.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.4.4.** We have audited:

- (a) the accounts of the European Centre for the Development of Vocational Training which comprise the financial statements<sup>56</sup> and the reports on the implementation of the budget<sup>57</sup> for the financial year ended 31 December 2020 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

**3.4.5.** In our opinion, the accounts of the Centre for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Centre at 31 December 2020, 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

<sup>56</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>57</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

accounting rules adopted by the Commission's accounting 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

**3.4.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.4.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.4.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on the legality and regularity of transactions

**3.4.9.** In June 2020, Cedefop launched a procurement procedure, with an estimated budget of €10 000, for the provision of web services for the Europass scheme. It envisaged that the contract would be implemented over two years. CEDEFOP signed a contract based on a negotiated procedure with one tenderer, the prior contractor, and it stated that this was because of the low estimated value of the contract. However, this assessment was not supported by any cost estimates based on current market values, or on any documented market research.

The price offered by the contractor and accepted by Cedefop, exceeded the estimated budget by 98 % (€19 800). It also brought the value of the contract above the threshold (€15 000) above which a negotiated procedure with a single tenderer is not permitted under the Financial Regulation. Cedefop was unable to justify why it had treated this case as an exception to this requirement. According to the EU Financial Regulation, Cedefop should have sought offers from at least three tenderers.

## European Centre for the Development of Vocational Training (Cedefop)

The procurement procedure is therefore irregular. There were no related payments in 2020. After our audit, Cedefop cancelled the contract with effect from 26 February 2021.

### Observations on budgetary management

**3.4.10.** Similarly to 2019, the method for calculating contributions set out in the Statement on Cedefop-EFTA cooperation was not applied correctly in the 2020 financial year.

The Cedefop-EFTA cooperation agreement states that EFTA cooperation partners contribute at a level determined by the proportion of their GNP to the total GNP of the EEA. However, Norway's and Iceland's contributions in the initial budget were calculated according to the proportion of their GDP (2.27 % for Norway and 0.14 % for Iceland) to the GDP of the EU Members of the EEA, not to the total GNP of the EEA. As a result, Norway and Iceland contributed €8 601 less to the 2020 Cedefop budget than they should have done. The EU contributed €8 601 more.

In addition, although payment appropriations and revenues were reduced by €1 100 000 in the first 2020 budget amendment (27 November 2020), no part of the budget reduction was returned to Norway and Iceland. Consequently, Norway and Iceland contributed €25 886 more to the 2020 Cedefop budget than they should have done, and the EU contributed €25 886 less.

Moreover, no part of the budget surplus for 2020 was returned to Norway and Iceland. In addition, there were no plans to reduce Norway's and Iceland's future contributions by the amount of the budget surplus. Consequently, Norway and Iceland contributed €2 987 more to the 2020 Cedefop budget than they should have done.

Overall, taking into account the three items mentioned in the paragraphs above, Norway's and Iceland's contributions to the 2020 Cedefop budget were €20 272 higher than they should have been, and the EU's contribution was €20 272 lower than it should have been.

### Follow-up of previous years' observations

**3.4.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The price and quality award criteria in the procurement procedure for the Centre's travel agency services was not detailed enough and does not ensure the best value for money contract. The Centre's methodology and documentation of potentially abnormally low offers was insufficient.	<b>Completed</b>
2019	The Centre accepted changes to a contract for cleaning services without properly documenting how the changed contract remained equivalent to the original. The framework contract was not amended accordingly.	<b>Completed</b>
2019	In future contracts, before agreeing to changes to technical offers, the Centre should properly verify and document that the new solution is at least equivalent to the one proposed in the initial offer.	<b>Completed</b>
2019	The method for calculating contributions set out in the Statement on Cedefop-EFTA cooperation was not applied correctly. Norway's and Iceland's contributions to the 2019 Cedefop budget were €38 924 lower than they should have been, and the EU's contribution was €38 924 higher than it should have been.	<b>Ongoing</b>

## The Centre's reply

**3.4.9.** Cedefop acknowledges the Court's observation and took prompt action to address it.

In particular, on 24 February 2021, as per Article 18.1 'Grounds for termination by the Contracting Authority' of the General conditions of the contract and Article 18.3 'Procedure for termination', Cedefop terminated the contract with effect as of 26 February 2021.

**3.4.10.** Cedefop has been using the proportionality factor provided by the Commission to calculate EFTA contributions to the general budget. Cedefop acknowledges the audit finding and took prompt action to address it. The Agency has sought the advice of DG BUDG through DG EMPL. They recommended that the agreement be transferred under the umbrella of the 'Agreement on the European Economic Area - Protocol 31'. The Agency is keen to establish a transparent and easy-to-apply methodology. It is anticipated that the Agency will move to requesting its contribution as part of the 'Agreement on the European Economic Area - Protocol 31'. This will obviate any questions on how to deal with amending budgets and surpluses.

## 3.5. European Union Aviation Safety Agency (EASA)

### Introduction

**3.5.1.** The European Union Aviation Safety Agency (“the Agency”, or “EASA”), which is located in Cologne, is governed by Regulation (EU) 2018/1139<sup>58</sup> of the European Parliament and of the Council of 4 July 2018, repealing Regulation (EC) No 216/2008<sup>59</sup>. The Agency has been given specific regulatory and executive tasks in the field of aviation safety. *Figure 3.5.1* presents key figures for the Agency<sup>60</sup>.

**Figure 3.5.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.5.2.** The audit approach taken by the ECA 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.

**3.5.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's

<sup>58</sup> OJ L 212, 22.8.2018, p. 1.

<sup>59</sup> OJ L 79, 19.3.2008, p. 1.

<sup>60</sup> More information on the Agency’s competences and activities is available on its website: [www.easa.europa.eu](http://www.easa.europa.eu).

## European Union Aviation Safety Agency (EASA)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

### The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

## Opinion

### 3.5.4. We have audited:

- (a) the accounts of the European Union Aviation Safety Agency which comprise the financial statements<sup>61</sup> and the reports on the implementation of the budget<sup>62</sup> for the financial year ended 31 December 2020 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

**3.5.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

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<sup>61</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>62</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

**3.5.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.5.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.5.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2016	The Agency has accumulated a €52 million surplus from industry-financed activities over the years, for which there is no provision in the Agency's Founding Regulation.	<b>Ongoing</b> <b>(Not under the Agency's control)</b>
2018	The terms used in the framework contract with a single operator were not specific enough to allow fair competition. The Agency should design framework contracts, which allow fair competition and ensure value for money.	<b>Completed</b>
2018	The Agency committed the funds for an agreement with the European Commission on archiving services after the renewal of the agreement. The commitment of funds should be recorded before entering a legal obligation in order to ensure that funds are available.	<b>Ongoing</b>
2019	We found instances of non-compliance in the management of procurement procedures. In particular, the issue of re-opening of competition had been identified in our audits in previous years without being satisfactorily resolved.	<b>Completed</b>

## European Union Aviation Safety Agency (EASA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	The Agency signed a framework contract with a single operator for the procurement of facility-management consulting services. However, the terms used in the contract were not specific enough to allow fair competition. This was because the specific requirements concerning the services to be provided were not yet known at the time of the procurement procedure, as the services in the scope of the contract were only generically defined. According to the Financial Regulation, in such circumstances the contracting authority must award a framework contract to multiple operators, and a competitive procedure between the selected contractors must be used for specific purchases.	<b>Completed</b>
2019	For a procedure concerning the procurement of IT services, the Agency required potential tenderers to submit evidence that their minimum annual turnover was at a level which exceeded the maximum allowed by the Financial Regulation.	<b>Completed</b>
2019	For three out of four audited procurement procedures, the Agency did not publish the estimated volume of the contract as required by the Financial Regulation.	<b>Completed</b>

European Union Aviation Safety Agency (EASA)

## The Agency's reply

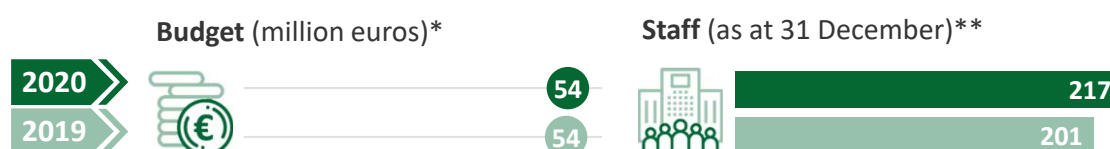
The Agency has taken note of the Court's report.

## 3.6. European Banking Authority (EBA)

### Introduction

**3.6.1.** The European Banking Authority (“the Authority”, or “the EBA”), which is located in Paris,<sup>63</sup> was established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>64</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. *Figure 3.6.1* presents key figures for the Authority<sup>65</sup>.

**Figure 3.6.1 – 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 2019 and Final annual accounts of the Authority for the financial year 2020; Staff figures provided by the Authority.

### Information in support of the statement of assurance

**3.6.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Authority’s supervisory and

<sup>63</sup> Regulation (EU) 2018/1717 of the European Parliament and of the Council (OJ L 291, 16.11.2018, p. 2) amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council (OJ L 331, 15.12.2010, p. 12).

<sup>64</sup> OJ L 331, 15.12.2010, p. 12. On 27 December 2019 Regulation (EU) 2019/2175 (OJ L 334, 27.12.2019, p. 1) the revised version of EBA’s founding regulation was published amending Regulation (EU) No 1093/2010.

<sup>65</sup> More information on the Authority’s competences and activities is available on its website: [www.eba.europa.eu](http://www.eba.europa.eu).

## European Banking Authority (EBA)

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.

**3.6.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.6.4.** We have audited:

- (a) the accounts of the European Banking Authority which comprise the financial statements<sup>66</sup> and the reports on the implementation of the budget<sup>67</sup> for the financial year ended 31 December 2020 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

**3.6.5.** In our opinion, the accounts of the Authority for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Authority at 31 December 2020, 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.

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<sup>66</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>67</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

**3.6.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.6.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.6.9.** We observed a number of instances in which the EBA's audited public procurement procedures contravened the EU Financial Regulation.

On one occasion, the EBA signed a short-term banking agreement with a bank. The EBA significantly underestimated the contract's value. As a result, it used the wrong type of procurement procedure.

The EBA started the procedure for signing a new contract for banking services only one week before the expiry of the previous one. Exceptionally, it launched a negotiated procedure without prior publication with only one potential contractor. It provided no justification for doing so.

When the potential contractor's offer was received, it did not meet the EBA's expectations. The EBA therefore requested other offers from other tenderers. However, it did not set out any criteria for selecting the best offer. Nor did it carry out any proper evaluation of the offers it received. Instead, the EBA accepted the original offer it had received from the first potential contractor from the original negotiated procedure without prior publication.

## European Banking Authority (EBA)

The contract included the charge of a negative interest rate on the EBA's deposited funds. The EBA estimated that the negative interest to be paid over the eight-month period from January to August 2020 would be €11 808. The actual amount it paid in negative interest was €38 430.

Under Annex I, Article 14 of the Financial Regulation, and based on the actual amount of negative interest paid, the tender procedure to apply should have been the one for low-value contracts. Under that procedure, a minimum of three offers should have been sought from the outset. It was not appropriate to use a negotiated procedure without prior publication of a contract notice, with only one potential candidate.

If the EBA had followed this approach and properly assessed all the offers it received, another and less expensive offer among those received might have been accepted.

The procurement procedure and the associated payments are therefore irregular.

**3.6.10.** In another procurement procedure for legal services, with a value of €31 000, the documentation justifying the reasons for which the EBA chose to use a negotiated procedure without prior publication of a contract notice was inadequate and lacked an adequate audit trail. The EBA did not properly substantiate the use of this exceptional procedure, either in advance or in the award notice itself as required by point 30.3 of Annex I of the Financial Regulation.

**3.6.11.** Finally, the opening phase of one procurement procedure audited was flawed as a staff member replacing another one in the opening committee was not formally appointed by the Authorising Officer. In addition to this, the non-appointed member signed the declaration of absence of conflict of interests and of confidentiality only after the opening of the tenders.

**3.6.12.** In addition to the observations above, our audit also found that EBA did not apply the interest rate specified in the EU Financial Regulation to payments of 2020 contributions received late from a number of Member States' and EFTA countries' national competent authorities (NCAs). The amount of accrued interest for 2020 is €25 103. As a result of our audit and after consulting the European Commission, the Authority decided to apply the late payment interest as of 2021. It informed the NCAs about this in the letters it sent to them about their 2021 contributions.

## Observations on internal controls

**3.6.13.** EBA has not formally updated its business continuity plan since 2017, when its headquarters were in London. Before the EBA moved to Paris in June 2019, a draft plan had been drawn up; it was used as a basis for addressing the COVID-19 pandemic. However, it was not formally approved nor updated by the EBA's senior management in order to address the



## European Banking Authority (EBA)

move to the new headquarters, or the recent experience of the COVID-19 pandemic. This delay constitutes an internal weakness in the EBA's procedures.

### Follow-up of previous years' observations

**3.6.14.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The EBA engaged in the use of interim workers with two temporary-work agencies, which caused a critical dependency on the interim-work agencies. The Authority should address the budgetary authorities on this considerable risk to business continuity when discussing the number of directly employed statutory staff.	<p style="text-align: center;"><b>N/A</b></p> <p style="text-align: center;"><b>(No interim workers in 2020)</b></p>
2019	Framework contracts with an IT company to provide the services of IT consultants suggest that consultants will be used as interim workers, potentially contravening EU social and employment rules and exposing 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.	<p style="text-align: center;"><b>Completed</b></p>
2019	Contributions to the EBA budget were calculated incorrectly. EU and EFTA Members' National Competent Authorities (NCAs) paid less to the EBA budget in 2019 than they should have done. Altogether, the NCAs' contributions should have been €711 247 more.	<p style="text-align: center;"><b>Completed</b></p>
2019	The EBA has never adjusted estimation-based pension contributions to actual figures, or made plans to do so. The NCAs' contributions were never adjusted to match the actual figures.	<p style="text-align: center;"><b>Ongoing</b></p>

## European Banking Authority (EBA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>The EBA's budget is financed by NCAs and by the EU itself. The Founding Regulation of EBA establishes a ratio of contributions of 60 % for the NCAs and of 40 % for the EU each year. However, the actual ratio used is slightly different each year because of the contributions of the EFTA NCAs. When there is a budget surplus in year N-2, EBA redistributes according to the ratio 60-40 in year N and not based on the actual ratio of the year N-2 as it should be.</p>	Ongoing
2019	<p>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.</p>	Completed
2019	<p>The Authority was unable to confirm to the auditors whether the IT consultants providing services on its premises under a framework contract qualified for posted worker status under the provisions of French law. The EBA should have asked its contractor for a list of these workers including evidence that it complied with the national legislation in the host Member State. The absence of such checks exposes the EBA to legal and reputational risks.</p>	Completed
2019	<p>EBA's Board of Supervisors approved (subject to some conditions) the former Executive Director's request to take on the role of Chief Executive Officer of the Association for Financial Markets, which represents the finance industry in Europe. A recommendation by the European Ombudsman required the EBA to send a detailed reply. In its reply, EBA stated that it had adopted a new policy to address the Ombudsman's recommendations.</p>	Completed

## The Authority's reply

**3.6.9.** In November 2020, the EBA estimated the value of the banking contract to be less than 15 KEUR. The EBA requested offers from seven banks. It received and evaluated four offers. The rates in the offer that was accepted resulted in a cost estimation that fell below the 15 KEUR threshold, indicating that the EBA utilised the appropriate procedure at the time.

The eventual negative interest charge was significantly impacted by reductions in and changes in timing of 2021 spending. The reductions in spending were driven mainly by the COVID-19 pandemic. The most significant impact of the timing changes was that the process of paying the final costs to the London landlord took four months longer than had been expected. This led to higher cash reserves for a longer period than EBA had anticipated at the time of its initial estimation of the contract value.

The EBA acknowledges that when it became clear that the interest cost was going to exceed 15 KEUR, it could have taken action to formalise the situation.

As the EBA moved to using DG BUDG treasury services in September 2021, this specific issue can no longer arise.

**3.6.10.** For future negotiated procedures without prior publication of a contract notice, the EBA has put in place a template Note to the file to be completed and signed that will address this finding. The EBA first used this template on 24 February 2021.

**3.6.11.** The EBA acknowledges this administrative error, which arose due to the late unavailability of the originally appointed staff.

**3.6.12.** The EBA is applying late payment interest from 2021 onwards and has already charged this interest in one case in 2021.

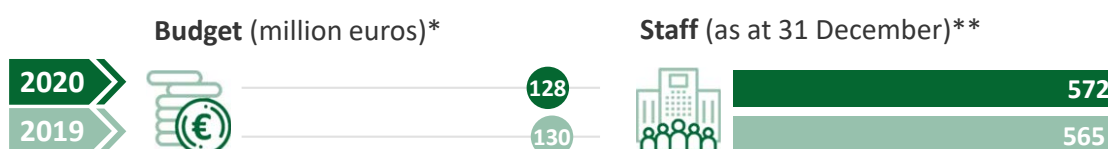
**3.6.13.** The EBA acknowledges that the update to its business continuity plan (BCP), carried out at the time of the EBA's move to Paris, was not formally adopted by senior management. The BCP included a pandemic scenario, which the EBA used in its response to the COVID-19 pandemic.

## 3.7. The European Chemicals Agency (ECHA)

### Introduction

**3.7.1.** The European Chemicals Agency (“the Agency”, or “ECHA”), which is located in Helsinki, was set up by Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>68</sup>. Its main tasks are to ensure a high level of protection of human health and the environment as well as the free movement of substances on the internal market while enhancing competitiveness and innovation. The Agency also promotes the development of alternative methods for the assessment of hazards relating to substances. *Figure 3.7.1* presents key figures for the Agency<sup>69</sup>.

**Figure 3.7.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.7.2.** The audit approach taken by the ECA 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.

<sup>68</sup> OJ L 396, 30.12.2006, p. 1.

<sup>69</sup> More information on the Agency’s competences and activities is available on its website: [www.echa.europa.eu](http://www.echa.europa.eu).

## The European Chemicals Agency (ECHA)

**3.7.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.7.4.** We have audited:

- (a) the accounts of the European Chemicals Agency which comprise the financial statements<sup>70</sup> and the reports on the implementation of the budget<sup>71</sup> for the financial year ended 31 December 2020 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

**3.7.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

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<sup>70</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>71</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

**3.7.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.7.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.7.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2014	The expenditure for the implementation of the Regulation concerning biocidal products was partly financed by EU contributions to the Agency's budget and not by fees.	N/A <b>(Not under the Agency's control)</b>
2016	Unlike most other agencies, ECHA's founding regulation does not explicitly require periodical external evaluations.	N/A <sup>72</sup> <b>(Not under the Agency's control)</b>
2017	The Agency's ex post verifications have demonstrated that more than half of the companies incorrectly declared their size, affecting fee calculations and the Agency's revenue significantly. There is an urgent need to speed up and finalise ex post verifications.	<b>Completed</b>

<sup>72</sup> Despite the lacking provision, the European Commission has carried out two separate evaluations of the REACH Regulation and the Agency, in 2013 and in 2018.



## The European Chemicals Agency (ECHA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	Whenever errors are found, the Agency issues correcting invoices. However, the Agency seems to encounter difficulties in recovering the corrected fees. The Agency recorded a bad debt provision of €2.8 million in its 2017 accounts (i.e. €600 000 higher than at year-end 2016).	<b>Completed</b>
2017	The verification of volumes declared by the companies is under the responsibility of Member States' national enforcement authorities and the Agency has no enforcement powers. The Agency's ability to fulfil its mandate depends on the national authorities. However, about two thirds of companies did not update the registered information on the volumes of chemicals they are dealing with. This undermines the effective implementation of the REACH Regulation and also affects the accuracy of fee calculation.	<b>Ongoing (Not under the Agency's control)</b>
2017	The Agency publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO).	<b>Completed</b>
2018	The Agency expects fees and charges to drop significantly from 2019 onwards. There is a risk that relatively stable levels of expenditure and much less predictable levels of revenue may have a negative effect on the Agency's operations and budget implementation. The Agency, together with the European Commission and the budgetary authorities, should launch a discussion about a viable new financing model.	<b>Ongoing (Not under the Agency's control)</b>

## The European Chemicals Agency (ECHA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	In one case, the tender specifications did not allow tenderers to arrive at an unambiguous understanding of how to price a certain item in their financial offers. The Agency decided to cancel and relaunch the procedure, adding extra time to the procedure and causing potential reputational risk to the Agency.	N/A
2019	In two recruitment procedures, the decision-making process was not structured and exhaustive enough to provide a clear, chronological trail showing when documents had been approved and by whom.	Completed

The European Chemicals Agency (ECHA)

## The Agency's reply

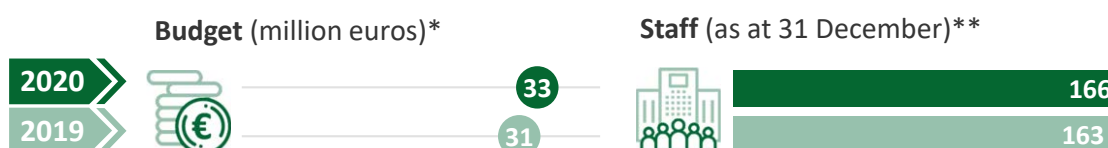
The Agency has taken note of the Court's report.

## 3.8. European Insurance and Occupational Pensions Authority (EIOPA)

### Introduction

**3.8.1.** The European Insurance and Occupational Pensions Authority (“the Authority”, or “EIOPA”), which is located in Frankfurt, was established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>73</sup>. The Authority’s task is to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, to contribute to the consistent application of legally binding Union acts, to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities, to monitor and assess market developments in the area of its competence and to foster the protection of policyholders, pension scheme members and beneficiaries. *Figure 3.8.1* presents key figures for the Authority<sup>74</sup>.

**Figure 3.8.1 – 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 2019 and Final annual accounts of the Authority for the financial year 2020; Staff figures provided by the Authority.

<sup>73</sup> OJ L 331, 15.12.2010, p. 48. On 27 December 2019 Regulation (EU) 2019/2175 (OJ L 334, 27.12.2019, p. 9), the revised version of EIOPA’s founding regulation was published amending Regulation (EU) n° 1094/2010.

<sup>74</sup> More information on the Authority’s competences and activities is available on its website: [www.eiopa.europa.eu](http://www.eiopa.europa.eu).

## Information in support of the statement of assurance

**3.8.2.** The audit approach taken by the ECA 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.

**3.8.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.8.4.** We have audited:

- (a) The accounts of the European Insurance and Occupational Pensions Authority which comprise the financial statements<sup>75</sup> and the reports on the implementation of the budget<sup>76</sup> for the financial year ended 31 December 2020 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

**3.8.5.** In our opinion, the accounts of the Authority for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the

<sup>75</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>76</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Authority at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.8.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.8.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.8.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on legality and regularity

**3.8.9.** On 19 May 2020, EIOPA signed a contract for the provision of in-person training courses. The maximum contract value was €1 050 000. At that time, the COVID-19 pandemic crisis was unfolding, and the limitations on events requiring presence in person were already known. But EIOPA signed the contract anyway. In August 2020, EIOPA signed an amendment to the contract. The amendment included new contract items: the provision of virtual training courses. These virtual courses were set at fixed prices which were higher than the price of on-site training courses agreed in the initial contract<sup>77</sup>.

<sup>77</sup> The new rate for a one-day virtual training course was €1 650 fixed price. The previous rate for a one-day in-person training course was €1 150, plus any additional actual costs – travel, accommodation etc.). The amendment also included a new type of service: a half-day virtual training course, at a cost of €850.

## European Insurance and Occupational Pensions Authority (EIOPA)

These changes constitute new contract conditions. If they had been part of the initial procurement procedure, they could have potentially attracted additional bidders without any geographical limitation imposed by the need for training to take place in person, at a more competitive cost. As a result, the scope of the tender has been extended considerably, and the amendment to the contract is substantial. This contravenes Article 72(4)(a) and (c) of Directive No 2014/24/EU<sup>78</sup>. The contract amendment and all related payments before VAT of €3 850 in 2020 are therefore irregular. Moreover, payments for €11 700 before VAT made in 2021 under amendment No. 1 and until its termination are also considered irregular.

Following our audit, on 10 April 2021 the Authority signed the amendment No 2, which terminates the amendment No 1 as of 30 June 2021, and launched a new procedure for online training in May 2021.

**3.8.10.** EIOPA did not apply the late interest specified in the EU Financial Regulation to payments of 2020 contributions received late from a number of Member States' and EFTA countries' national competent authorities (NCAs). The amount of outstanding interest is €9 952. After consulting the European Commission, EIOPA decided to apply the late payment interest. It informed the NCAs about this in the letters sent to them about their 2021 contributions.

### Observations on internal controls

**3.8.11.** EIOPA does not have either an ex ante or an ex post control system in place to verify whether the amount of costs reimbursed to and requested by the national authorities for seconded national experts (SNE) is as agreed. In 2020, EIOPA reimbursed the gross salary of two audited SNEs from two different national authorities for the full period of their secondment. In both cases, the amounts of €71 875 and €74 880 were paid in advance to the respective national authorities without appropriate verification of the correctness of the amount reimbursed. This exposes EIOPA to the risk that the reimbursement for the staff cost of SNEs may be calculated on the basis of inaccurate costs, or that subsequent staff cost changes may not be captured and addressed on time.

### Follow-up of previous years' observations

**3.8.12.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

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<sup>78</sup> OJ L 94, 28.3.2014, p. 65.

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	Interim workers should work under the same working conditions as workers employed directly by the user undertaking. The Authority should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.	We note that a case pending before the Court of Justice of the EU (CJEU) case No C-948/19 (Manpower Lit), concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008, on temporary agency work, to EU Agencies. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning the EIOPA's use of interim workers, the ECA will refrain from making any observations on the regularity of the Agency's approach, including follow-ups of observations from previous years, concerning this matter until the CJEU has issued a final ruling in this case.
2019	The 2019 budget documents do not describe fully how the contributions from EU and EFTA Members' NCAs were calculated. The Authority has never adjusted, or had made plans to adjust, NCAs' estimation-based pension contributions to actual figures.	Ongoing
2019	EIOPA's budget is financed by NCAs and by the EU itself. The Founding Regulation of EIOPA establishes a ratio of contributions of 60 % for the NCAs and of 40 % for the EU each year. However, the actual ratio used is slightly different each year because of the contributions of the EFTA NCAs. When there is a budget surplus in year N-2, EIOPA redistributes according to the ratio 60-40 in year N and not based on the actual ratio of the year N-2 as it should be.	Ongoing



## The Authority's Reply

**3.8.9.** The amendment has been done taking into account the COVID-19 situation during spring 2020. In this particular context, it was impossible to expect that the changes in the working conditions (long-term teleworking) would have lasted so long. A first phase of return to the office (voluntary) was envisaged for July 2020 and the second phase (obligatory) for October 2020. The amendment of the contract has been done for a temporary unexpected situation that was considered as force majeure, to provide support and necessary trainings to staff during this challenging period. Moreover, the contractor requested this change invoking the exceptional pandemic circumstance which weren't allowing the company to perform the work and deliver the trainings on site.

Nevertheless, corrective actions have been initiated in a swift manner. Given the prolonged and persistent COVID-19 situation, EIOPA has launched a dedicated procedure for covering the provision of online training services in May 2021. EIOPA has taken the remarks of ECA very seriously and has signed an amendment stopping all the on-line trainings as of 30 June 2021 until the new contract will be in place.

**3.8.10.** A few NCAs of the Member States and EFTA paid their 2020 budgetary contribution past the due date. 2020 was an extraordinary year due to the COVID-19 pandemic. The pandemic caused difficulties to market participants across the whole world. EIOPA applied a certain level of flexibility and understanding towards the Members States/EFTA. Due to constant monitoring, EIOPA could maintain the amount of default interest from these late payments at an immaterial level, and EIOPA's Executive Director decided to waive the interest. In 2021, EIOPA implemented an even more consequential monitoring of outstanding payments. The Executive Director has officially informed the NCAs about this measure with the first recovery operation of the year 2021.

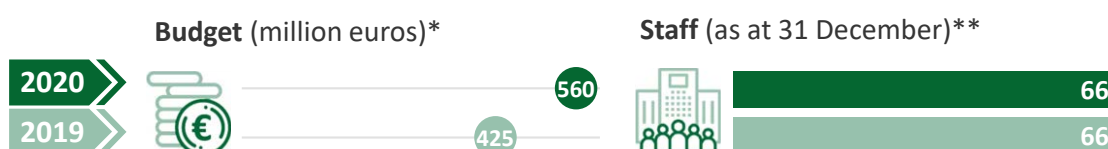
**3.8.11.** Authorities sending SNEs are national supervisory authorities which are directly linked to EIOPA via the Board of Supervisors. Due to the proximity of the activities and contacts between the organisations, EIOPA assumed *bona fidae* operations and did not request detailed financial proofs regarding the lump-sum payments. EIOPA took note of ECA's recommendation and enhanced in the meantime the controls for future SNE's agreements, i.e. the sending authority provides EIOPA a self-declaration including a cost breakdown for the secondment period. At the end of the assignment, any difference in the total cost will be regularised.

## 3.9. European Institute of Innovation and Technology (EIT)

### Introduction

**3.9.1.** The European Institute of Innovation and Technology (“the Institute”, or “EIT”), is located in Budapest. It was created by Regulation (EC) No 294/2008 of the European Parliament and of the Council of 11 March 2008<sup>79</sup> (the founding regulation) as amended by Regulation (EU) No 1292/2013 of the European Parliament and of the Council of 11 December 2013<sup>80</sup>. Its objective is to contribute to sustainable European economic growth and competitiveness by reinforcing the innovation capacity of the Member States and the European Union. The Institute awards grants to an increasing number of “Knowledge and Innovation Communities” (KICs), linking the higher education, research and business sectors with one another with the aim of boosting innovation and entrepreneurship. KICs coordinate the activities of hundreds of partners. The grants provided by the Institute reimburse partners’ costs and costs stemming from the KICs’ coordination activities. In 2020, operating expenses in relation to the KIC grants amounted to €568 million, representing 99 % of the total expenses. *Figure 3.9.1* presents key figures for the Institute<sup>81</sup>.

**Figure 3.9.1 – Key figures for the Institute**



\* 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 2019 and Final annual accounts of the Institute for the financial year 2020; Staff figures provided by the Institute.

<sup>79</sup> OJ L 97, 9.4.2008, p. 1.

<sup>80</sup> OJ L 347, 20.12.2013, p. 174.

<sup>81</sup> More information on the Institute’s competences and activities is available on its website: <https://eit.europa.eu/>.

## Information in support of the statement of assurance

**3.9.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Institute'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 Institute's management.

**3.9.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.9.4.** We have audited:

- (a) the accounts of the European Institute of Innovation and Technology which comprise the financial statements<sup>82</sup> and the reports on the implementation of the budget<sup>83</sup> for the financial year ended 31 December 2020 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).

<sup>82</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>83</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Reliability of the accounts

### Opinion on the reliability of the accounts

**3.9.5.** In our opinion, the accounts of the Institute for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Institute at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.9.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.9.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.9.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	As in previous years, the KICs did not fully use the grant amounts awarded by the EIT.	<b>Ongoing</b>  <b>(Not under Institute's control)</b>
2017	The EIT monitored KIC's performance and calculated some performance corrections. These corrections, however, have had no financial impact for any of the KICs, because EIT applies only the higher of the financial and performance corrections.	<b>Completed</b>
2017	The EIT publishes vacancy notices on its own website and on the DG HR website, but usually not on the website of the European Personnel Selection Office (EPSO).	<b>Ongoing</b>
2017	According to its statutes, the EIT can only offer its temporary staff fixed-term contracts with a maximum duration of five years, extendable once for another five years. This could potentially hamper the continuity of operations.	<b>Completed</b>

## European Institute of Innovation and Technology (EIT)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
<b>2014/2017/ 2018</b>	Progress towards sustainability remains limited despite adopted plans in line with the EIT guidance for all KICs. The EIT should concentrate on lean management structures, review the portfolio of activities pursued and promote alternative revenue sources to increase the KICs' financial independence from the EIT.	<b>Completed</b>
<b>2019</b>	In one case, the Institute reimbursed travel and subsistence expenses, even though this was not required in the applicable service contract.	<b>N/A</b>
<b>2016/2019</b>	The increase in the EIT's budget and the growing number of KICs to oversee have not been accompanied by a respective increase in the number of posts.	<b>Outstanding (Not under the Institute's control)</b>

European Institute of Innovation and Technology (EIT)

## **The Institute's Reply**

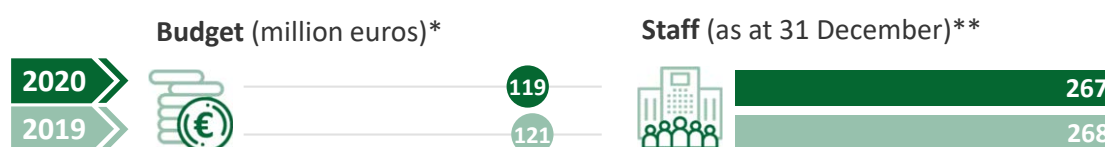
The Institute has taken account of the Court's report.

## 3.10. European Maritime Safety Agency (EMSA)

### Introduction

**3.10.1.** 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 Council<sup>84</sup>. The Agency's tasks are to ensure a high level of maritime safety, to prevent pollution by ships, to provide the European Commission and the Member States with technical assistance, and to monitor the implementation of Union legislation, as well as to evaluate its effectiveness. *Figure 3.10.1* presents key figures for the Agency<sup>85</sup>.

**Figure 3.10.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.10.2.** The audit approach taken by the ECA 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.

**3.10.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's

<sup>84</sup> OJ L 208, 5.8.2002, p. 1.

<sup>85</sup> More information on the Agency’s competences and activities is available on its website: [www.emsa.europa.eu](http://www.emsa.europa.eu).



## European Maritime Safety Agency (EMSA)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

#### 3.10.4. We have audited:

- (a) the accounts of the European Maritime Safety Agency which comprise the financial statements<sup>86</sup> and the reports on the implementation of the budget<sup>87</sup> for the financial year ended 31 December 2020, 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

**3.10.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

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<sup>86</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>87</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

**3.10.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.10.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.10.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on budgetary management

**3.10.9.** The EU Financial Regulation states that payments shall be made within a prescribed timeframe of 30 days. In 2020, EMSA frequently failed to do so, paying late in 11 % of cases. We observed similar or higher levels of delays in 2019, 2018, 2017 and 2016. For all the years mentioned, most late payments concerned the reimbursement of travel costs for participants in workshops. Some effort has been made to reduce the delays, but this recurrent weakness exposes EMSA to financial and reputational risk.

## Observations on internal controls

**3.10.10.** In 2020, EMSA paid installation and daily subsistence allowances to all staff members who were recruited as temporary agents immediately after their secondment to the Agency. Allowances of this kind are intended to cover the expenses and inconvenience caused by the requirement for staff members to change their residence in order to reside permanently at their place of employment.

## European Maritime Safety Agency (EMSA)

**3.10.11.** EMSA did not take sufficient steps to verify entitlements to these allowances. For example, it did not analyse its staff members' prior living arrangements in order to determine whether they had actually changed their residence. This represents an internal control weakness. Five staff members with management positions at EMSA possess delegations which give them the exact same powers as those of the Executive Director for all budget items. This in itself constitutes a risk, and is not conducive to a clear hierarchy of authority, responsibility and accountability at EMSA.

EMSA's Executive Director also signed a decision appointing acting Executive Directors and acting appointing authorities by delegation during the Executive Director's annual leave, delegating those two roles completely during that period. This decision exceeded the powers assigned to the Executive Director in Article 15 of EMSA's founding regulation.

These observations do not affect the legality and regularity of the budgetary transactions in the 2020 financial year.

### Follow-up of previous years' observations

**3.10.12.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>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.</p>	Completed
2019	<p>The selection board signed the declarations of potential conflicts of interest in the beginning of the selection procedure, before even the names of the candidates were known. During the process, if a conflict of interest arose, they were required to declare it immediately and resign from the panel. 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.</p>	Completed
2019	<p>EMSA has a framework contract with a temporary-work agency to provide interim workers. Directive 2008/104/EC of the European Parliament and of the Council 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. In fact, the remuneration of</p>	Completed

## European Maritime Safety Agency (EMSA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
	interim workers at EMSA is not in line with this Directive. 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 ECA'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.	
<b>2019</b>	The Agency had high rate of late payments in the last 4 years, and in 18 % of the cases in 2019. This recurrent weakness exposes the Agency to financial and reputational risk.	<b>Ongoing</b>

## The Agency's Reply

**3.10.9.** The final figure for 2020 on late payments shows a decrease of the number of payments out of the prescribed timeframes compared to the previous year : 11 % compared to 18 % in 2019. The figure of 11% includes the backlog of late payments carried over from 2019. Without this backlog the total number of late payments for 2020 would have been 3%.

**3.10.10.** EMSA takes note of the comment of the Court and has reinforced the procedure to verify entitlements for Temporary Agents/Contract Agents that were formerly Seconded National Experts at the Agency. Following this updated procedure checks to determine that a change in habitual residence has taken place at the time of becoming a statutory agent are now formally performed and documented.

**3.10.11.** The delegations given by the Executive Director (ED) fully comply with the EMSA Financial Regulation (FR) and Founding Regulation (FoR). The way delegations have been defined by the EMSA ED was to ensure business continuity. The assignment of delegations is combined with several mitigating measures that are put in place to prevent and avoid any potential risk which might affect the legality and regularity of EMSA's operations. As from June 2021, a new procedure has been put in place whereby all controls (e.g. pre-approval by the ED of all decisions taken by the delegated Head of Department (HoD), report of the HoD on what they have signed) are kept in a central register and properly documented.

## 3.11. European Union Agency for Cybersecurity (ENISA)

### Introduction

**3.11.1.** The European Union Agency for Cybersecurity (“the Agency”, or “ENISA”), which is located in Athens<sup>88</sup>, was created by Regulation (EC) No 460/2004 of the European Parliament and of the Council<sup>89</sup> which, following various amendments was superseded by Regulation (EU) 2019/881<sup>90</sup>. The Agency's main mission is to achieve a high common level of cybersecurity across the Union, including actively supporting Member States, Union institutions, bodies, offices and agencies in improving cybersecurity and by serving as a reference point for advice and expertise for all relevant Union stakeholders. *Figure 3.11.1* presents key figures for the Agency<sup>91</sup>.

**Figure 3.11.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

<sup>88</sup> The Agency’s headquarter was relocated from Heraklion to Athens in September 2019.

<sup>89</sup> OJ L 77, 13.3.2004, p. 1.

<sup>90</sup> OJ L 151, 7.6.2019, p. 15.

<sup>91</sup> More information on the Agency’s competences and activities is available on its website: [www.enisa.europa.eu](http://www.enisa.europa.eu).

## Information in support of the statement of assurance

**3.11.2.** The audit approach taken by the ECA 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.

**3.11.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.11.4.** We have audited:

- (a) the accounts of the European Union Agency for Cybersecurity which comprise the financial statements<sup>92</sup> and the reports on the implementation of the budget<sup>93</sup> for the financial year ended 31 December 2020 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).

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<sup>92</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>93</sup> The reports on implementation of the budget comprise the reports, which aggregate all budgetary operations and the explanatory notes.



## Reliability of the accounts

### Opinion on the reliability of the accounts

**3.11.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.11.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Basis for a qualified opinion on the legality and regularity of the payments underlying the accounts

**3.11.7.** A temporary delegation granted by the previous Executive Director to a staff member expired on 31 December 2019. That staff member was granted a new delegation by the new Executive Director on 12 February 2020. In the intervening time, that member of staff authorised, in the pursuance of the Agency's objectives, budgetary commitments amounting to €529 120 and payments amounting to €914 100 without a valid delegation (3.5 % of the total payment appropriations available in 2020). Following our audit, we note that the Agency has taken steps to mitigate the identified risks in the future.

#### Qualified opinion on the legality and regularity of payments underlying the accounts

**3.11.8.** In our opinion, except for the issue explained in the "Basis for a qualified opinion on the legality and regularity of payments" paragraph, payments underlying the

## European Union Agency for Cybersecurity (ENISA)

accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**Other matter**

**3.11.9.** The ECA draws attention to the fact that, unlike other institutions (such as the European Commission), the Agency did not adopt internal rules to address the continuity of delegations in cases where delegating or delegated authorising officers leave their posts.

The role of authorising officer is different in agencies and institutions. Institutions themselves perform the role of authorising officer; they delegate the associated responsibilities to members of their staff. Directors-General and Secretaries-General of institutions are authorising officers by delegation only. In agencies, though, the role of authorising officer is attributed to the Executive Director, who implements the budget under their own responsibility.

The new Executive Director took office on 16 October 2019. On 12 February 2020, he issued new delegations to seven staff members. In the intervening time, the members of the staff in question authorised operations based on the delegations issued by the previous Executive Director. This constitutes an important internal control weakness.

Following our audit, the Agency has adopted a new internal decision addressing the issues identified by the Court.

**3.11.10.** In addition, we found the following serious system weaknesses.

In one case the delegation's validity date of a staff with delegated powers, was conditional to his employment contract, which was scheduled to expire on 31 August 2019. Although the staff member's contract was extended in February 2019 by the previous Executive Director, the delegation was not. The staff member was granted a new delegation only on 12 February 2020. In the intervening time, the staff member authorised budgetary commitments amounting to €1 197 960 and payments amounting to €718 650.

The delegation granted by the ENISA's new Executive Director in February 2020 established a maximum amount for each budget title, but not for each budget line. Authorising officers were required to acknowledge the delegations granted to them with their signature. However, this step was completed after a long time – in most cases, more than ten months later. In one case, an authorising officer signed off the acceptance of his individual delegation three weeks after his authority to act had expired.

Finally, we found a discrepancy in the approved level of authority at the delegation granted to an authorising officer by ENISA's Executive Director. The authorisation ceiling at the delegation which was also recorded in the financial management system was

## European Union Agency for Cybersecurity (ENISA)

€500 000, but the acknowledgement document signed by the authorising officer was for €100 000. ENISA rectified this discrepancy retroactively on 11 February 2021.

### Follow-up of previous years' observations

**3.11.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
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.	<b>Outstanding</b>
2019	We found a number of weaknesses detracting from the transparency of the Agency's public procurement procedures audited. These included an overlap between selection criteria and award criteria, and non-compliance with the deadlines for the publication of the award notice.	<b>Completed</b>
2019	In two framework services contracts, the price criterion had been based exclusively on the daily rates but no other criteria had been included in the tender specifications based on different case-scenarios. This introduces the risk that the contract(s) will not lead to the most economical implementation of the related projects.	<b>Completed</b>
2019	In three audited procurements, the Agency set the minimum value of the "annual turnover" selection criterion irrespectively of the value and the scope of the contract, and without assessing the associated risk.	<b>Completed</b>

## European Union Agency for Cybersecurity (ENISA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	In 2019, ENISA significantly increased the use of interim staff (29 % of the total actual workforce) compared with the previous year. It indicates that the Agency increased its dependency on interim workers across many different areas of its operations.	Ongoing
2019	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.	We note that a case pending before the Court of Justice of the EU (CJEU) case No C-948/19 (Manpower Lit), concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008, on temporary agency work, to EU Agencies. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning ENISA's use of interim workers, the ECA will refrain from making any observations on the regularity of the Agency's approach, including follow-ups of observations from previous years, concerning this matter until the CJEU has issued a final ruling in this case.

## The Agency's reply

**3.11.7.** The Agency welcomes this audit observation and acknowledges the identified weakness. The Agency would like to emphasize that the transactions were free of conflict of interest and did not jeopardise the Agency's financial interests. As per internal analysis, which the Agency is further validating with external auditor, these transactions were done in the pursuance of the Agency's objectives and for its official use.

To address this observation, the Agency has created a separate independent oversight body to monitor the exercise of financial delegation, and has structurally and functionally firmly and rigidly segregated the tasks of budgetary execution and internal controls. ENISA is confident that these measures are effective to address any future risks.

**3.11.8.** ENISA would like to stress that the qualification of the opinion on the legality and regularity was triggered by one isolated and non-systematic event. The Agency has taken the necessary steps to address this matter by implementing an effective corrective plan (as described above in our reply to paragraph 3.11.7.) mitigating risks related to financial delegation management.

**3.11.9.** The Agency has acted in good faith and has adopted a corrective plan in order to mitigate the legal uncertainties and observations addressed by the ECA related to the management of the delegation.

In 2021 ENISA has introduced internal rules that require newly appointed Executive Director to confirm the financial delegation rights as the previous delegation rights granted by the former director shall automatically be revoked 90 days after the newly appointed Executive Director shall take up his/her duties.

Consequently, the termination of delegation is now either pre-determined by the original delegation granted by the Executive Director (i.e. time-limited by a "sunset" clause) or effective by a specific act of withdrawal, by which the delegation of powers is explicitly withdrawn from the person concerned by the delegating authority.

**3.11.10.** In relation to the first point, the Agency acknowledges that this delegation of financial rights should have been extended by the previous Executive Director following the extension of the staff's contract. Since November 2020, related internal processes have been reviewed accordingly to prevent such situation as financial delegations now follow overarching principles and are no longer granted on individual basis.

In relation to the second point, the Agency acknowledges that any new delegation of financial rights should be formally accepted by the staff member within a relevant time frame.

### European Union Agency for Cybersecurity (ENISA)

Since November 2020, related internal processes have been reviewed accordingly to prevent such situation by introducing a sine qua non condition of accepting financial delegation before granting the financial rights in the financial management system (ABAC).

In relation to the last point, ENISA acknowledges this error stemming from a clerical mistake.

Internal processes have been reviewed accordingly to prevent future occurrence, as financial delegations will be crosschecked to the acceptance of delegations before granting the financial rights in the financial system, ABAC.

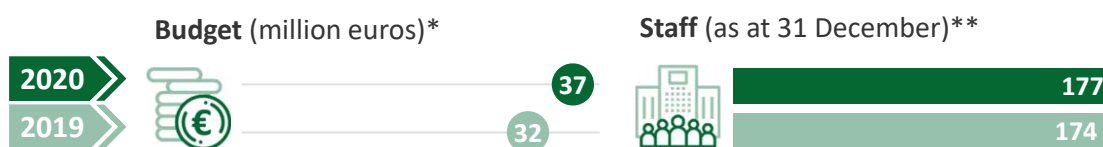
Furthermore, the Executive Director has established the Budget Management Committee that also, among other tasks, reviews the execution of delegated authority across the Agency in relation to rules, policies and guidelines put in place by the Executive Director and in line with the principles of sound financial management.

## 3.12. European Union Agency for Railways (ERA)

### Introduction

**3.12.1.** 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 Council<sup>94</sup>. The Agency's task is to enhance the level of interoperability of railway systems, 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 and to act as EU authority for issuing authorisations for placing railway vehicles on the market, single safety certificates for railway undertakings and ERTMS trackside approvals. *Figure 3.12.1* presents key figures for the Agency<sup>95</sup>.

**Figure 3.12.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.12.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>94</sup> 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.

<sup>95</sup> More information on the Agency’s competences and activities is available on its website: [www.era.europa.eu](http://www.era.europa.eu).



## European Union Agency for Railways (ERA)

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.

**3.12.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.12.4.** We have audited:

- (a) the accounts of the European Union Agency for Railways which comprise the financial statements<sup>96</sup> and the reports on the implementation of the budget<sup>97</sup> for the financial year ended 31 December 2020 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

**3.12.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>96</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>97</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

**3.12.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.12.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.12.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA'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.	<b>Outstanding</b> <b>(Not under the Agency's control)</b>
2018	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.	<b>Outstanding</b>
2018	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.	<b>Completed</b>

## European Union Agency for Railways (ERA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>In 2019, ERA signed framework contracts “in cascade” with three companies for assistance in the approval process for the European Rail Traffic Management System. The Financial Regulation stipulates that this can be done, 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.</p>	<b>Completed</b>
2019	<p>For one procurement procedure concerning the provision of catering services, 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.</p>	<b>Completed</b>
2019	<p>The European Commission, under a service-level agreement, invoiced ERA for the provision of different IT services. This included a fee for hosting an IT system charged for on the basis of the number of users. The European Commission overcharged the Agency because the number of users used as a basis for the invoice was incorrect. This indicates weaknesses in the Agency's internal controls: it demonstrated that no check was made as to whether the invoiced amount corresponded to the actual terms of the service level agreement.</p>	<b>Outstanding</b>

European Union Agency for Railways (ERA)

## The Agency's reply

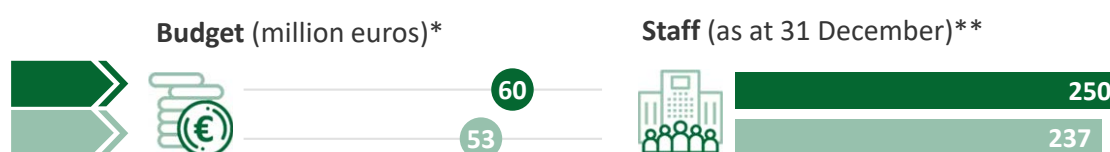
The Agency has taken note of the Court's report.

## 3.13. The European Securities and Markets Authority (ESMA)

### Introduction

**3.13.1.** The European Securities and Markets Authority (“the Authority”, or “ESMA”), which is located in Paris, was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>98</sup>. The Authority’s mission is to enhance investor protection and promote stable and orderly financial market. ESMA achieves its mission and objectives through four activities: by assessing risks to investors, markets and financial stability; by completing a single rulebook for EU financial markets; by promoting supervisory convergence; and by directly supervising specific financial entities. *Figure 3.13.1* presents key figures for the Authority<sup>99</sup>.

**Figure 3.13.1 – 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 2019 and Final annual accounts of the Authority for the financial year 2020; Staff figures provided by the Authority.

### Information in support of the statement of assurance

**3.13.2.** The audit approach taken by the ECA 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>98</sup> OJ L 331, 15.12.2010, p. 84. The founding regulation of ESMA was amended on 27 December 2019 by Regulation (EU) 2019/2175 (OJ L 334, 27.12.2019, p. 80).

<sup>99</sup> More information on the Authority’s competences and activities is available on its website: [www.esma.europa.eu](http://www.esma.europa.eu).

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**3.13.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.13.4.** We have audited:

- (a) the accounts of the European Securities and Markets Authority which comprise the financial statements<sup>100</sup> and the reports on the implementation of the budget<sup>101</sup> for the financial year ended 31 December 2020 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

**3.13.5.** In our opinion, the accounts of the Authority for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Authority at 31 December 2020, 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.

<sup>100</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>101</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

**3.13.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

#### Other matter

**3.13.7.** The fees charged to credit rating agencies (CRAs) are based on their revenue as legal entities. This creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenue from CRAs under EU jurisdiction to their related entities outside the EU. ESMA has assessed the risk occurring and deemed it to be low though it keeps it under monitoring. The CRAs Regulation<sup>102</sup> also provides scope for CRAs to circumvent the established fee-charging mechanism by carrying out activities relating to the distribution of credit ratings and ancillary services (such as the licensing of credit rating data feeds and the provision of research and related products and services to users of credit ratings) through group companies, which are not registered CRAs. The Regulation is subject to the European Commission's right to initiate the relevant legislative changes. ESMA is aware of this risk and on 29 January 2021 published a consultation paper<sup>103</sup>. Following this paper, it submitted on 21 June 2021 a technical advice to the European Commission on amending the Regulation to mitigate the risk.

**3.13.8.** Fees to trade repositories (TRs) are calculated based on each individual trade repository's applicable turnover. The amount is equal to the sum of one third of each of the following: the revenue generated from the trade repository's core functions; the number of trades reported to the trade repository during the previous year; and the number of recorded outstanding trades on 31 December of the previous year. Although the TRs delegated regulations<sup>104</sup> on fees do not establish for a comprehensive and consistent control framework to ensure the reliability of the information, all of the trade repositories were able to produce independent auditors' opinions stating that their 2019 financial statements (used for the fee calculations) gave a true and fair view. However, the information they submitted on the number of trades reported to the trade repository during 2019 and the number of recorded outstanding trades on 31 December 2019 were only subject to limited review by independent auditors. On 24 March 2021, ESMA published a consultation paper<sup>105</sup>, which proposes a simplification of the method used to determine the turnover of TRs for the purposes of calculating annual supervisory fees by including only revenues and excluding activity figures. According to the consultation paper, ESMA plans to submit the technical advice to the European Commission on amending the TRs delegated regulations in mid-2021.



## Payments

### Opinion on the legality and regularity of payments underlying the accounts

**3.13.9.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.13.10.** The observations which follow do not call the ECA's opinion into question.

## Observations on the legality and regularity of transactions

**3.13.11.** In March 2020, ESMA signed a “data services master agreement” (corresponding to a framework contract) with a Canadian company, for a maximum period of seven years. The maximum amount of the contract was not clearly stated. This reduces the transparency of the agreement. However, ESMA had earmarked €270 000 for the contract over its maximum duration, based on the agreed annual fee in the contract of (USD) \$35 000.

<sup>102</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 and by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013. The CRAs fees are included in the European Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies Text with EEA relevance.

<sup>103</sup> Consultation paper ESMA 80-196-5019. See <https://www.esma.europa.eu/press-news/consultations/public-consultation-fees-charged-credit-rating-agencies-esma>.

<sup>104</sup> Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). The fees applicable to TRs under EMIR are included in the European Commission Delegated Regulation (EU) No 1003/2013 (CDR 1003/2013) supplementing the Regulation No 648/2012. Following the entry into force of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse (SFTR) ESMA became also responsible for the registration, supervision and recognition of TRs under SFTR. The fees applicable to TRs under SFTR are included in the European Commission Delegated Regulation (EU) 2019/360 (CDR 2019/360).

<sup>105</sup> Consultation paper ESMA74-362-1864. See <https://www.esma.europa.eu/document/cp-technical-advice-simplification-tr-fees-under-sftr-and-emir>.

## The European Securities and Markets Authority (ESMA)

Furthermore, the contract was signed by an authorising officer who was authorised to sign legal commitments for the relevant budget line only up to the value of €135 000, which is below the maximum value of the contract. This is a serious internal control weakness. Subsequently to the audit, ESMA took corrective action to address it (i.e. the Executive Director countersigned the framework contract).

**3.13.12.** ESMA did not apply the interest rate set out in the European Commission's Delegated Regulations<sup>106</sup> on the late payments made by a number of credit rating agencies (CRAs) and trade repositories (TRs) in connection with their 2020 contributions. The authorising officer also did not establish the amounts receivable and did not take a formal decision to waive the recovery of the late payment interest (penalty) as required by Article 101 of the EU Financial Regulation. The amount of the accrued interest for 2020 is €13 601.

## Observations on internal controls

**3.13.13.** We found weak internal controls in monitoring the time charged to ESMA in a "time and means" contract under a framework contract for IT consultancy services.

In June 2019, ESMA issued an order form to a contractor for 106 working days, at a total cost of €61 086. The subject of the order form was the number of working days (mostly off-site) divided into assigned tasks (multiple working packages). We found that the checks performed by ESMA to verify the actual number of days worked off-site were inadequate. Furthermore, the choice of a time and means contract is not ideal in cases where work is done off site, unless the appropriate tools are in place to monitor the time charged.

In this case, to approve the contractor's invoices, ESMA mainly focused on the expected outputs, monitoring the overall charged time against the maximum budget. However, it did not regularly (i.e. every monthly) keep track of the time charged by the contractor, even though the framework contract specified that it should.

ESMA had therefore weak controls in place to confirm that the payments made to the contractor were based on valid timesheets submitted at the proper time. This constitutes a significant internal control deficiency.

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<sup>106</sup> Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 on CRAs (OJ L 90, 28.3.2012, p. 6), Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 on TRs (OJ L 279, 19.10.2013, p. 4) and Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 on TRs (OJ L 81, 22.3.2019, p. 58).

The European Securities and Markets Authority (ESMA)

## Follow-up of previous years' observations

**3.13.14.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's Court's observations (Completed / Ongoing / Outstanding / N/A)
2018	The use of IT service contracts for the provision of labour circumvented the application of EU social and employment rules and exposes 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.	<b>Completed</b>
2018	The surpluses and deficits from the fees charged to credit rating agencies and trade repositories can lead to an annual cross-financing of activities. The Authority should find means of avoiding such cross-financing.	<b>Ongoing</b>
2019	The Authority has never adjusted, or had made plans to adjust, National Competent Authorities' estimation-based pension contributions for year N to actual figures.	<b>Ongoing</b>

## The Authority's reply

**3.13.7.** ESMA welcomes the Court of Auditors' acknowledgment of ESMA's efforts to reduce the risk of any circumvention of the CRA regulation by CRAs in relation to fees. ESMA confirms that the technical advice on the revision of the Regulation with regard to the fees charged by ESMA to CRAs (ref. ESMA80-196-5324) was submitted to the European Commission on 21 June 2021. It is now up to the Commission to determine if and how it will propose to revise the legislative framework.

**3.13.8.** ESMA will submit to the European Commission its technical advice on the amendment of TRs' fee management legislation in the second half of 2021. Subsequently, the adoption of a proposal to revise the legislative framework will need to be determined by the Commission.

**3.13.11.** Exceptionally for this contract ESMA had to use the provider's template instead of ESMA's Framework Contract template. The template used was misleading and included only the amount for the first-year service (\$35 000) and not the maximum amount for the full duration of the agreement, hence the signature of the authorising officer with sub-delegation up to €135 000. ESMA is developing work instructions to ensure the appropriate level of internal control in case, in the future, ESMA will be again in the situation to use the contractor's Framework Contract template instead of ESMA's usual template.

**3.13.12.** ESMA considers that the authorising officer's waiving decision via email exchange was efficient given the immateriality of the amount (0.1% of CRAs and TRs' total fees in 2020). Following the Court's comments, ESMA reinforced further the late payment management. ESMA put in place the following actions: a) regular internal automated reporting on accumulated late payments; b) internal work instructions on the establishment of the receivable amounts and on the criteria for the assessment of the potential waivers per all revenue sources; c) a specific electronic workflow facilitating timely, substantiated, and formal decision-making with regards to the accrued interests.

**3.13.13.** ESMA recently adopted a number of preventative actions in order to strengthen the internal control under framework contracts for consultancy services. ESMA developed internal guidance on ICT contract management containing a clear description of the different types of contracts and relevant monitoring requirements. Furthermore, ESMA is currently preparing a contract management training for project managers and other relevant staff. The training will be delivered in 2021.

## 3.14. European Agency for Safety and Health at Work (EU-OSHA)

### Introduction

**3.14.1.** The European Agency for Safety and Health at Work (“the Agency”, or “EU-OSHA”), which is located in Bilbao, was created by Council Regulation (EC) No 2062/94<sup>107</sup>, which was repealed by Regulation (EU) 2019/126 of the European Parliament and of the Council on 16 January 2019<sup>108</sup>. The Agency's task is to collect and disseminate information on national and Union priorities in the field of health and safety at work, to support national and Union organisations involved in policymaking and implementation, and to provide information on preventive measures. *Figure 3.14.1* presents key figures for the Agency<sup>109</sup>.

**Figure 3.14.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.14.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>107</sup> OJ L 216, 20.8.1994, p. 1. The Regulation was last amended by Council Regulation (EC) No 1112/2005 (OJ L 184, 15.7.2005, p. 5).

<sup>108</sup> OJ L 30, 31.1.2019, p. 58.

<sup>109</sup> More information on the Agency’s competences and activities is available on its website: [www.osha.europa.eu](http://www.osha.europa.eu).

## European Agency for Safety and Health at Work (EU-OSHA)

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.

**3.14.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.14.4.** We have audited:

- (a) the accounts of the European Agency for Safety and Health at Work which comprise the financial statements<sup>110</sup> and the reports on the implementation of the budget<sup>111</sup> for the financial year ended 31 December 2020 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

**3.14.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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

<sup>110</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>111</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

accounting rules adopted by the Commission's accounting 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

**3.14.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.14.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.14.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).



## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The level of committed appropriations carried over to 2019 was high for Title II and for Title III. The Agency should analyse the reasons for excessive carry-overs and improve budget planning accordingly.	Ongoing
2019	In one case, the Agency purchased services in excess of the contractual ceiling without any amendment to the contract.	N/A
2019	In one case, the Agency reimbursed accommodation costs on a flat-rate basis, whereas the contract stated that such reimbursements should be based on supporting documents showing actual costs incurred.	N/A
2019	The amounts of carry-overs indicates an overestimation of budgetary needs, and is in contradiction with the budgetary principle of annuality.	Ongoing

European Agency for Safety and Health at Work (EU-OSHA)

## The Agency's reply

The Agency has taken note of the Court's report.

## 3.15. European Foundation for the Improvement of Living and Working Conditions (Eurofound)

### Introduction

**3.15.1.** The European Foundation for the Improvement of Living and Working Conditions (“the Foundation”, or “Eurofound”), which is located in Dublin, was established by Council Regulation (EEC) No 1365/75<sup>112</sup>, repealed by Regulation (EU) 2019/127 of the European Parliament and of the Council<sup>113</sup>. The Foundation’s task is to contribute to the planning and establishment of better living and working conditions in the Union by increasing and disseminating knowledge which is relevant to this subject. *Figure 3.15.1* presents key figures for the Foundation<sup>114</sup>.

**Figure 3.15.1 – Key figures for the Foundation**



\* 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 2019 and Final annual accounts of the Foundation for the financial year 2020; Staff figures provided by the Foundation.

### Information in support of the statement of assurance

**3.15.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Foundation’s

<sup>112</sup> OJ L 139, 30.5.1975, p. 1.

<sup>113</sup> OL L 30, 31.1.2019, p. 74.

<sup>114</sup> More information on the Foundation’s competences and activities is available on its website: [www.eurofound.europa.eu](http://www.eurofound.europa.eu).

European Foundation for the Improvement of Living and Working Conditions (Eurofound) supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of information provided by the Foundation's management.

**3.15.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.15.4.** We have audited:

- (a) the accounts of the European Foundation for the Improvement of Living and Working Conditions which comprise the financial statements<sup>115</sup> and the reports on the implementation of the budget<sup>116</sup> for the financial year ended 31 December 2020 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

**3.15.5.** In our opinion, the accounts of the Foundation for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Foundation at 31 December 2020, 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

<sup>115</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>116</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

European Foundation for the Improvement of Living and Working Conditions (Eurofound)

and with accounting rules adopted by the Commission's accounting 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

**3.15.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.15.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.15.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on the legality and regularity of transactions

**3.15.9.** In our audit report for the 2019 financial year, we concluded that a number of procurement procedures for the supply of electricity and the refurbishment of toilet facilities were irregular. As a result, all subsequent payments made in connection with these contracts are irregular. In 2020, the related payments amounted to €62 470 for the electricity contract and €174 730 for the refurbishment contract.

## Observations on internal controls

**3.15.10.** "Sensitive functions" refers to cases where a member of staff has a degree of decision-making power which could potentially be misused for personal gain. Managing sensitive functions is a standard element of internal control aimed at reducing the risk to an acceptable level. In an effective internal control framework, the risks associated with sensitive functions are managed through mitigating controls and through staff mobility. Eurofound has a policy in place defining its sensitive functions and related mitigating controls, but the inventory

European Foundation for the Improvement of Living and Working Conditions (Eurofound) of sensitive posts has not been updated since 2012, and no longer reflects Eurofound's current internal organisation. Following our audit, Eurofound implemented a new policy on sensitive posts on 23 June 2021.

## Follow-up of previous years' observations

**3.15.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	In its audit report for the 2019 financial year, the ECA concluded that the procurement for the supply of electricity was irregular. As a result, all subsequent payments on this contract are irregular.	<b>Ongoing</b>
2019	In its audit report for the 2019 financial year, the ECA concluded that the procurement for the refurbishment of Eurofound's toilet facilities was irregular. As a result, all subsequent payments on this contract are irregular.	<b>Ongoing</b>

European Foundation for the Improvement of Living and Working Conditions (Eurofound)

## The Foundation's reply

**3.15.9.** Eurofound already accepted the findings of the Court from the previous year and has implemented the action by having launched a new tender for the electricity contract in early 2021. The related payments were a direct consequence of the original tender procedures. The final payment for the refurbishment of the toilet facilities was executed in 2020.

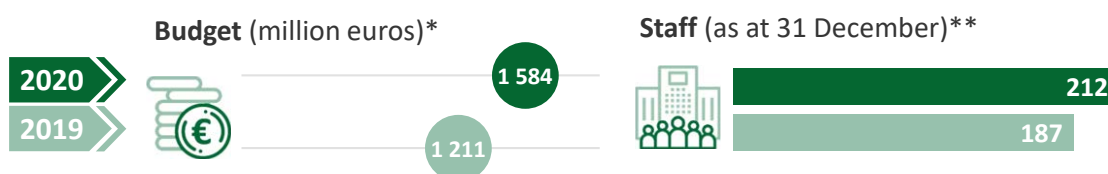


## 3.16. European GNSS (Global Navigation Satellite System) Agency (GSA)

### Introduction

**3.16.1.** The European GNSS (Global Navigation Satellite System) Agency (“the Agency”, or “the GSA”), whose headquarters are in Prague, took over all tasks previously assigned to the GALILEO Joint Undertaking on 1 January 2007. These activities are now managed by the GSA within the scope of Regulation (EU) No 912/2010 of the European Parliament and of the Council<sup>117</sup>, as amended by Regulation (EU) No 512/2014 of the European Parliament and of the Council of 16 April 2014. The European Commission has also entrusted the management of the European Geostationary Navigation Overlay Service (EGNOS) to the GSA through a delegation agreement. *Figure 3.16.1* presents key figures for the Agency<sup>118</sup>.

**Figure 3.16.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.16.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>117</sup> OJ L 276, 20.10.2010, p. 11.

<sup>118</sup> More information on the Agency’s competences and activities is available on its website: [www.gsa.europa.eu](http://www.gsa.europa.eu).

## European GNSS (Global Navigation Satellite System) Agency (GSA)

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.

**3.16.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.16.4.** We have audited:

- (a) the accounts of the European GNSS (Global Navigation Satellite System) Agency which comprise the financial statements<sup>119</sup> and the reports on the implementation of the budget<sup>120</sup> for the financial year ended 31 December 2020 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

**3.16.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>119</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>120</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

**3.16.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.16.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.16.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## European GNSS (Global Navigation Satellite System) Agency (GSA)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2014	There is no insurance coverage for fixed tangible assets.	<b>Completed</b>
2017	E-procurement: By the end of 2019, the Agency was not yet using any of the e-procurement IT tools developed by the European Commission.	<b>Ongoing</b>
2019	There is no comprehensive ex-ante or ex-post strategy in place to confirm the accuracy of the stated incurred costs by the ESA in relation to the implementation of the EGNOS and GALILEO programmes. This poses a risk that the GSA's payments to the ESA may be calculated on the basis of inaccurate costs, with an impact on the GSA's accounts.	<b>Ongoing</b>
2019	Delays in the implementation of GSA's new internal control framework and in the approval of its business continuity plan constitute major internal weaknesses of the GSA. The business continuity plan needs to be formalised and updated.	<b>Completed</b>

European GNSS (Global Navigation Satellite System) Agency (GSA)

## The Agency's reply

The Agency has taken note of the Court's report.



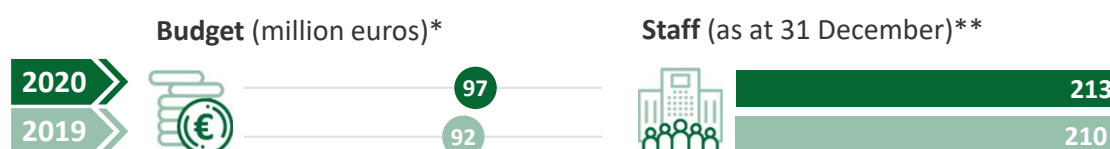
**Agencies funded under MFF heading 2  
– Sustainable growth: natural  
resources**

## 3.17. European Environment Agency (EEA)

### Introduction

**3.17.1.** The European Environment Agency (“the Agency”, or “EEA”), which is located in Copenhagen, was established by Council Regulation (EEC) No 1210/90<sup>121</sup>. The Agency is responsible for setting up an observation network to provide the Commission, the Parliament, the Member States and, more generally, the public with reliable information on the state of the environment. This information should, in particular, enable the European Union and the Member States to take action to safeguard the environment and assess the effectiveness of such action. *Figure 3.17.1* presents key figures for the Agency<sup>122</sup>.

**Figure 3.17.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.17.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>121</sup> OJ L 120, 11.5.1990, p. 1, repealed by Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (OJ L 126, 21.5.2009, p. 13).

<sup>122</sup> More information on the Agency’s competences and activities is available on its website: [www.eea.europa.eu](http://www.eea.europa.eu).

## European Environment Agency (EEA)

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.

**3.17.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.17.4.** We have audited:

- (a) the accounts of the European Environment Agency which comprise the financial statements<sup>123</sup> and the reports on the implementation of the budget<sup>124</sup> for the financial year ended 31 December 2020 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

**3.17.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>123</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>124</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

**3.17.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.17.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.17.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The Agency increased the ceiling of a framework contract without formalising it through a contract amendment. EEA should improve its monitoring of framework contract ceilings and formalise any contract modifications in line with public procurement provisions.	<b>Completed</b>
2018	The Agency should adopt and implement a sensitive posts policy.	<b>Completed</b>
2019	The Agency did not correctly monitor the accumulative consumption of a contract before placing new orders. This resulted in the Agency purchasing services exceeding the contractual ceiling by €38 456 (19.2 %).	<b>Completed</b>

European Environment Agency (EEA)

## The Agency's reply

The Agency has taken note of the Court's report.

## 3.18. European Fisheries Control Agency (EFCA)

### Introduction

**3.18.1.** The European Fisheries Control Agency (“the Agency”, or “EFCA”), which is located in Vigo, was established by Council Regulation (EC) No 768/2005<sup>125</sup>, later amended by Regulation (EU) 2019/473 of the European Parliament and of the Council<sup>126</sup>. The Agency’s main task is to organise the operational coordination of fisheries control and inspection activities by the Member States in order to ensure an effective and uniform application of the rules of the common fisheries policy. *Figure 3.18.1* presents key figures for the Agency<sup>127</sup>.

**Figure 3.18.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.18.2.** The audit approach taken by the ECA 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.

<sup>125</sup> OJ L 128, 21.5.2005, p. 1.

<sup>126</sup> OJ L 83, 25.3.2019, p. 18.

<sup>127</sup> More information on the Agency’s competences and activities is available on its website: [www.efca.europa.eu](http://www.efca.europa.eu).

**3.18.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.18.4.** We have audited:

- (a) the accounts of the European Fisheries Control Agency which comprise the financial statements<sup>128</sup> and the reports on the implementation of the budget<sup>129</sup> for the financial year ended 31 December 2020 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

**3.18.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>128</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>129</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**

**3.18.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### **Payments**

#### **Opinion on the legality and regularity of payments underlying the accounts**

**3.18.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

European Fisheries Control Agency (EFCA)

## The Agency's reply

The Agency has taken note of the Court's report.



**Agencies funded under MFF heading 3  
– Security and citizenship**



## 3.19. European Union Agency for Law Enforcement Training (CEPOL)

### Introduction

**3.19.1.** The European Union Agency for Law Enforcement Training (“the Agency”, or CEPOL), located in Budapest, was established by Regulation (EU) 2015/2219<sup>130</sup> of the European Parliament and of the Council replacing and repealing Council Decision 2005/681/JHA. The Agency’s task is to function as a network and to bring together the national police training institutes in the Member States to provide training sessions, based on common standards, for senior police agents. *Figure 3.19.1* presents key figures for the Agency<sup>131</sup>.

**Figure 3.19.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.19.2.** The audit approach taken by the ECA 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.

<sup>130</sup> OJ L 319, 4.12.2015, p. 1.

<sup>131</sup> More information on the Agency’s competences and activities is available on its website: [www.cepol.europa.eu](http://www.cepol.europa.eu).

**3.19.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.19.4.** We have audited:

- (a) the accounts of the European Union Agency for Law Enforcement Training which comprise the financial statements<sup>132</sup> and the reports on the implementation of the budget<sup>133</sup> for the financial year ended 31 December 2020 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

**3.19.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>132</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>133</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

**3.19.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.19.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.19.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on legality and regularity of transactions

**3.19.9.** CEPOL paid a cancellation fee for a hotel booking for a training event in Budapest scheduled for 8-11 September 2020. The training event was cancelled due to COVID-19 restrictions imposed by the Hungarian government on 1 September 2020. If it had invoked the "force majeure" clause in the framework contract instead, CEPOL could have cancelled the reservation without cost. CEPOL should have anticipated that the planned event might need to be cancelled because of the COVID pandemic. The planned event was booked on 29 June 2020. By then, the situation in Hungary and the rest of Europe was already uncertain, and CEPOL's operational activities had been almost entirely suspended. CEPOL did not effectively protect the EU's financial interests and should have rejected the hotel's invoice for €5 335 in cancellation costs, as allowed by the contract. The related payment is therefore irregular.

## Observations on internal control

**3.19.10.** We observed the following weaknesses in CEPOL's internal control environment, in relation to the management of budgetary commitments. In one occasion, the

## European Union Agency for Law Enforcement Training (CEPOL)

Agency signed three legal commitments before the respective budgetary commitments had been approved. This represents an infringement of Article 73 of the Framework Financial Regulation laying down the rules applicable to expenditure operations, which raises the risk that CEPOL may sign a contract without having the necessary budget available.

In another occasion, two different specific contracts (legal commitments) were linked with the same individual budgetary commitment. This is not in line with Article 112 point 1(a) of the EU Financial Regulation<sup>134</sup>. It reduces the transparency of the monitoring of the respective contracts in ABAC (financial management system).

### Follow-up of previous years' observations

**3.19.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

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<sup>134</sup> In accordance with Article 112 point 1(a) of the EU Financial Regulation when the recipient and the amount are known it is required to establish an individual budgetary commitment (for each legal commitment).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2016	There is a high staff turnover which may impact business continuity and the Agency's ability to implement the activities provided for in its work programme. There was only a limited number of applications from other Member States.	<b>Ongoing</b>
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).	<b>Completed</b>
2019	An authorising officer signed a budgetary commitment with a value exceeding their authorisation limit. The Agency should ensure consistency between ABAC authorisation rights and written Decisions signed by the Executive Director.	<b>Completed</b>
2019	An authorising officer signed a framework contract with a value exceeding their authorisation limit. The Executive Director should ensure that a proper chain of sub-delegations is in place to cover absences.	<b>Completed</b>

## The Agency's reply

**3.19.9.** The Agency has taken note of the Court's findings; however we do not agree that the payment is irregular. The payment was done in line with the contract provisions, after CEPOL applied the regular cancellation clause and successfully negotiated the suppression of half-board, resulting in paying only 65% of the originally contracted service.

As the total amount is not high, it would be economically unjustified to risk entering into a legal dispute with an uncertain result. In this case, we considered a negotiated solution was more appropriate than a dispute on force majeure.

**3.19.10.** The Agency has taken note and accepts the Court's findings, which were caused due to administrative error.

## 3.20. European Asylum Support Office (EASO)

### Introduction

**3.20.1.** The European Asylum Support Office (“EASO” or “the Office”) is located in Valletta. It was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council<sup>135</sup> with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need. Since 2015, EASO has provided support to Greece, Italy, Cyprus and Malta in the context of the migration crisis.

**3.20.2.** EASO manages operations related to the refugee crisis. It has regional offices in Italy and Greece and, since 2018, in Cyprus. This decentralised set-up poses a further challenge to the implementation of operations in compliance with the applicable legal framework.

**3.20.3.** In carrying out its operations, EASO is relatively dependent on Member States’ cooperation, e.g. in terms of the number of national experts being made available as part of the Asylum Intervention Pool (as referred to in Article 15 of EASO’s founding regulation). Due to the limited number of such national experts made available, EASO further relies on contracted temporary agency workers to perform operational support tasks on the ground.

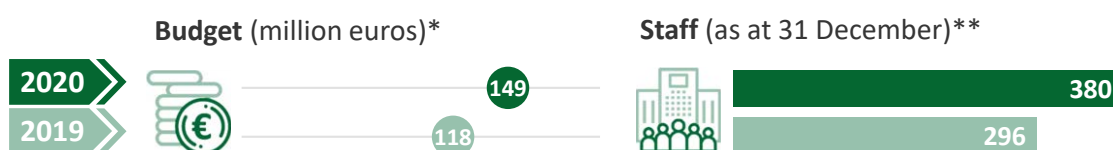
*Figure 3.20.1* presents key figures for the Office<sup>136</sup>.

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<sup>135</sup> OJ L 132, 29.5.2010, p. 11.

<sup>136</sup> More information on EASO’s competences and activities is available on its website: [www.easo.europa.eu](http://www.easo.europa.eu).

## European Asylum Support Office (EASO)

**Figure 3.20.1 – Key figures for the Office**

\* 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 2019 and Final annual accounts of the Office for the financial year 2020; Staff figures provided by the Office.

## Information in support of the statement of assurance

**3.20.4.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office'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 Office's management.

**3.20.5.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.20.6.** We have audited:



## European Asylum Support Office (EASO)

- (a) the accounts of the European Asylum Support Office which comprise the financial statements<sup>137</sup> and the reports on the implementation of the budget<sup>138</sup> for the financial year ended 31 December 2020 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

**3.20.7.** In our opinion, the accounts of the Office for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Office at 31 December 2020, 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.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

##### Opinion on the legality and regularity of revenue underlying the accounts

**3.20.8.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

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<sup>137</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>138</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Payments

### Opinion on the legality and regularity of payments underlying the accounts

**3.20.9.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

### Other matter

**3.20.10.** Without calling into question the opinion expressed above, the ECA draws attention to the fact that a case pending before the General Court, case No T-621/20 (EMCS v EASO), has a bearing on aspects of our audit opinion. In 2020, EASO launched an open procedure for the provision of temporary agency workers to support its headquarters and its operations in Malta. The total estimated amount was €27.7 million over 48 months. In October 2020, the unsuccessful tenderer filed an official complaint against EASO at the General Court challenging the outcome of the procurement procedure.

**3.20.11.** The observations which follow do not call the ECA's opinion into question.

## Observations on legality and regularity of transactions

**3.20.12.** We found that the procurement procedures for EASO's rented premises in Rome, carried out in 2016 and 2017, were irregular. Under the EU's Financial Regulation, EASO was required to carry out market prospects before renting premises; it did not do so. As a result, all subsequent payments made in connection with this contract are irregular. In 2020, the associated payments amounted to €266 523.

**3.20.13.** In 2020, payments amounting to €911 325 were made in connection with procurement procedures declared irregular by the ECA in previous years (i.e. procurement for rented premises in Lesbos, for interim workers in Italy and for external experts). These payments are irregular. Details of the procurement procedures in question are included in the follow-up table.

**3.20.14.** In 2020, EASO had 16 vacant management posts. Ten of those had been occupied on an acting basis for more than one year. This is at odds with the Staff Regulations, which limits the duration of temporary management appointments to one year. This precarity at the level of managerial positions may impair EASO's leadership and its strategic continuity.

## Observations on budgetary management

**3.20.15.** In 2020, the implementation rate of payment appropriations was low, at 81 %. Carry-overs of committed appropriations were high for Title III (operating expenditure), at 33.8 % of the appropriations for this Title (€25.6 million). The cancellation rate of budget appropriations carried over from 2019 to 2020 was also high, at 19 %. This contradicts the budgetary principle of annuality. To resolve it, EASO should improve its budget planning and its implementation cycles.

## Observations on internal controls

**3.20.16.** In 2018, EASO's Executive Director *ad interim* proposed a Governance Action Plan aimed at restoring trust both internally and externally, reinforcing EASO's governance structures, and rebuilding internal capacity. Since then, EASO has been putting continuous efforts into strengthening its governance and its internal control system, and most of the actions set out in the plan have been completed.

In January 2020, EASO discontinued the Governance Action Plan<sup>139</sup>. At that time, it reported that 51 actions had been completed, and that 10 were ongoing. The actions still ongoing at the date of the last update have been included in new monitoring tools adopted by EASO: the Quarterly Monitoring Report to the Management Board<sup>140</sup> and the annual Internal Control Self-Assessment<sup>141</sup>.

Our audit revealed that some of these ongoing actions are still relevant, and need to be addressed thoroughly. These include the number of interim workers replacing staff members, the level of vacant management posts and the update of the conflict of interest policy.

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<sup>139</sup> Management Board Decision No.53 of 17 June 2019, as modified by Management Board Decision No.60 of 18 February 2020 and updated by Management Board Decision No.71 of 18 March 2021.

<sup>140</sup> The Quarterly Monitoring Reports to the Management Board assesses EASO's progress towards the achievement of predefined objectives in the following key areas of governance: work programme, human resources, staff engagement, internal control, procurement, budget and finance.

<sup>141</sup> The annual Internal Control Self-Assessment in accordance with the new internal control framework is carried out using the European Commission's methodology to identify corporate governance and internal control deficiencies.

## European Asylum Support Office (EASO)

**3.20.17.** In 2020, EASO had not finalised and adopted a business continuity plan. The size and complexity of EASO's operations, and recent events such as the COVID-19 pandemic, underline the importance of having a formalised, up-to-date business continuity plan in place. The issue constitutes an internal weakness in EASO's procedures. Following our audit, the Office approved its business continuity plan on 31 May 2021.

**Follow-up of previous years' observations**

**3.20.18.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## European Asylum Support Office (EASO)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	EASO did not achieve the target for staff recruitment set out in its establishment plan.	Ongoing <sup>142</sup>
2017	There was no internal audit capability.	N/A <sup>143</sup>
2017	Contract monitoring for compliance with national rules on interim workers was poor.	We note that a case pending before the Court of Justice of the EU (CJEU) case No C-948/19 (Manpower Lit), concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008, on temporary agency work, to EU Agencies. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning the Office's use of interim workers, the ECA will refrain from making any observations on the regularity of the EASO's approach, including follow-ups of observations from previous years, concerning this matter until the CJEU has issued a final ruling in this case.

<sup>142</sup> 2017, 2018 and 2019 establishment plan targets are achieved. Notwithstanding the progress made in attracting new staff, the 2020 establishment plan target was not achieved.

<sup>143</sup> On 18 March 2021, the Management Board of EASO concluded negatively on the cost-effectiveness and the added value of establishing an internal audit capability in addition to the internal audit function already provided by the Internal Audit Service (IAS) of the European Commission.

## European Asylum Support Office (EASO)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	In 2017, we found that EASO's procedures for monitoring travel-related expenditure were weak. In particular, supporting documents were often not required. EASO is carrying out an internal inquiry into this matter.	Ongoing
2017	There were significant weaknesses in the following areas: needs assessment; amendments to contracts.	Ongoing
2017	In its audit reports for the 2017 financial year, the ECA concluded that the procurement procedures for EASO's rented premises in Lesbos were irregular. As a result, all subsequent payments on this contracts are irregular.	Ongoing
2018	Contracts with IT companies were formulated in a way that could imply the assignment ("mise à disposition") of temporary agency workers instead of clearly defined IT services or products. This would contravene the EU Staff Regulations and EU social and employment rules. EASO should ensure that contracts are drafted in a way which prevents any confusion between the procurement of IT services and of interim workers.	Ongoing
2018	The EASO Governance Action Plan provided an assessment of the implementation of EASO's internal control standards. The assessment brought to light significant weaknesses and inefficiencies in most of the internal control standards and assessment criteria.	N/A (See paragraph 3.20.16)

## European Asylum Support Office (EASO)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
<b>2018</b>	EASO should establish effective financial ex-post controls.	<b>Ongoing</b>
<b>2018</b>	EASO should establish an effective policy for managing rented premises and related services.	<b>Completed</b>
<b>2018</b>	In its audit report for the 2018 financial year, the ECA concluded that the procurement for interim workers in Italy was irregular. As a result, all subsequent payments on this contract are irregular.	<b>Ongoing</b>
<b>2019</b>	In 2019, the ECA concluded that the procedures used for selecting and contracting external experts systematically lacked a solid audit trail (as set out in Article 36(3) of the Financial Regulation). As a result, all subsequent payments on these contracts are irregular.	<b>Ongoing</b>

## The Office's reply

**3.20.12.** EASO takes note of the observation. EASO has established an action plan to address the observation and is assessing optimal solutions for leasing premises in Rome. The action plan will be reported to EASO Management Board and closely followed by the Agency's management.

**3.20.13.** EASO takes note of the observation. EASO would like to reiterate that the corrective actions related to the irregular procurement procedures for interim workers in Italy and the Call for the expression of interest were implemented and the corrective actions for the rent in Lesbos are on-going.

**3.20.14.** EASO takes note of the observation. EASO would like to re-assure the Court that the 2021 recruitment plan includes several management posts. A comprehensive recruitment plan was additionally developed and prioritised by the Management.

**3.20.15.** EASO takes note of the observation and acknowledges the importance of the principle of the annuality. Nevertheless, the Agency would like to underline the impact of COVID-19 related restrictions on the implementation of the Agency's activities and consequently budget planning and implementation cycle.

**3.20.16.** EASO takes note of the observation.

Interim workers replacing staff members. Since 2018 there is a significant trend reduction in the number of interims compared to the total number of staff. In 2018 – 23.9% of EASO workforce were interims, whereas this represented 11.8% at the end of 2020. EASO is committed to further reduce number of interims.

Level of vacant management posts. 2021 EASO recruitment plan foresees several recruitment procedures for managers in 2021, and some vacancies have already been published.

Conflict of interest policy. EASO is fully aware of the need to update this policy to reflect the recent requirements of the legal framework as already reported in the Consolidated Annual Activity Report. Therefore, the revised policy is in the final stage of inter-service consultation before the submission to the Management Board.

**3.20.17.** n/a



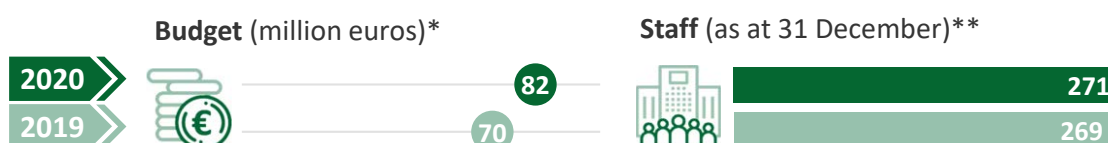
## 3.21. European Centre for Disease Prevention and Control (ECDC)

### Introduction

**3.21.1.** The European Centre for Disease Prevention and Control (ECDC, or “the Centre”), which is located in Stockholm, was established by Regulation (EC) No 851/2004 of the European Parliament and of the Council<sup>144</sup>. The Centre’s main tasks are to collect and disseminate data on the prevention and control of human diseases and to provide scientific opinions on this subject. The Centre is also required to coordinate the European network of bodies operating in this field. The COVID-19 pandemic outbreak in 2020 is the most serious public health event that ECDC has had to respond to since it was established in 2004.

*Figure 3.21.1* presents key figures for the Centre<sup>145</sup>.

**Figure 3.21.1 – Key figures for the Centre**



\* 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 2019 and Final annual accounts of the Centre for the financial year 2020; Staff figures provided by the Centre.

### Information in support of the statement of assurance

**3.21.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Centre’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 Centre’s management.

<sup>144</sup> OJ L 142, 30.4.2004, p. 1.

<sup>145</sup> More information on the Centre’s competences and activities is available on its website: [www.ecdc.europa.eu](http://www.ecdc.europa.eu).

**3.21.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.21.4.** We have audited:

- (a) the accounts of the European Centre for Disease Prevention and Control which comprise the financial statements<sup>146</sup> and the reports on the implementation of the budget<sup>147</sup> for the financial year ended 31 December 2020 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

**3.21.5.** In our opinion, the accounts of the Centre for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Centre at 31 December 2020, 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.

<sup>146</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>147</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

**3.21.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.21.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects

## Follow-up of previous years' observations

**3.21.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

European Centre for Disease Prevention and Control (ECDC)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The structure and documentation of checks and reconciliations on order forms, deliverables and invoices were weak. The Centre should strengthen these aspects of its control system.	Completed

European Centre for Disease Prevention and Control (ECDC)

## The Centre's reply

The Centre has taken note of the Court's report.

## 3.22. European Food Safety Authority (EFSA)

### Introduction

**3.22.1.** The European Food Safety Authority (“the Authority”, or “EFSA”), which is located in Parma, was established by Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>148</sup>. The Authority’s main tasks are to supply the scientific information needed for Union legislation to be drawn up concerning food and food safety, to collect and analyse data that allow risks to be identified and monitored, and to provide independent information on these risks. *Figure 3.22.1* presents key figures for the Authority<sup>149</sup>.

**Figure 3.22.1 – 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 2019 and Final annual accounts of the Authority for the financial year 2020; Staff figures provided by the Authority.

### Information in support of the statement of assurance

**3.22.2.** The audit approach taken by the ECA 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.

**3.22.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor’s

<sup>148</sup> OJ L 31, 1.2.2002, p. 1.

<sup>149</sup> More information on the Authority’s competences and activities is available on its website: [www.efsa.europa.eu](http://www.efsa.europa.eu).

## European Food Safety Authority (EFSA)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

#### 3.22.4. We have audited:

- (a) the accounts of the European Food Safety Authority which comprise the financial statements<sup>150</sup> and the reports on the implementation of the budget<sup>151</sup> for the financial year ended 31 December 2020 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

**3.22.5.** In our opinion, the accounts of the Authority for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Authority at 31 December 2020, 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.

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<sup>150</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>151</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

**3.22.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.22.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.22.8.** The observations which follow do not call the ECA's opinion into question.

## Observation on the legality and regularity of transactions

**3.22.9.** In 2020, seven of EFSA's management posts were occupied by an acting manager. Six of these posts had been vacant for more than one year. Three of them had remained unoccupied for a disproportionate period of time (9 years, 3 years and 2.6 years). EFSA had tried once to fulfil one of the posts through a new recruitment procedure, but this was unsuccessful.

The occupation of the posts on an acting basis for such long periods is at odds with the Staff Regulations, where the duration of temporary management appointments is capped at one year. Furthermore, this precarity at the level of managerial positions may impair EFSA's leadership and its strategic continuity.

## Follow-up of previous years' observations

**3.22.10.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).



## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to the Authority's Director (administrative) and Management Board (functional).	<p><b>Responsibility to the Authority's Director: Outstanding</b></p> <p><b>Responsibility to the Management Board: Completed</b></p>
2019	EFSA launched a procurement procedure for the services of a medical doctor. The technical specifications were published only in Italian. This created an unjustified obstacle to open competition. In addition, the English-language requirements for the doctor were at a lower level than the Italian-language requirements. The same applied in a recruitment procedure for a nurse. Considering that the working language of the Authority is English, the requirement for the level of English for the doctor and the nurse should have been set at least as high as the Italian-language requirements to ensure that the procured services could be used as intended. This weakness does not affect the legality and regularity of the underlying payments.	<b>Completed</b>

## The Authority's reply

**3.22.4.** The Authority acknowledges receipt of the clean audit report of the Court of Auditors and EFSA welcomes the unqualified audit opinions on the reliability of the accounts and the legality and regularity of the transactions underlying the accounts.

**3.22.9.** EFSA's operations are heavily influenced by the Transparency Regulation (Regulation (EU) 2019/1381), and the priorities of the European Commission, the most relevant in EFSA's field being the European Green Deal and Sustainable Development Goals. The overall aim is to further foster stakeholders' and citizens' trust in EFSA and to make our risk assessments more robust. The Transparency Regulation requires shifting EFSA's operating model and in order to implement all new measures foreseen in the regulation, EFSA launched the ART programme including an Organisational Design project that was initiated at the end of 2018. Together with the drafting of EFSA's post 2020 Strategy, managerial calls were put on hold as the ambition was to have the new organizational structure in place together with the kick-off date of EFSA's new Strategy i.e. 1 January 2021.

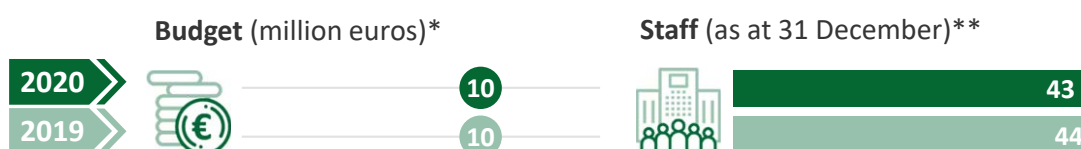
SARS-COVID-2 hit Italy as of February 2020 and as a consequence the EFSA's Strategy design and Organisational Design Project deliverables had to be postponed by one year. The full organisational redesign is now being performed throughout 2021 to be rolled-out in 2022. The current duration of the managerial temporary postings was generated by a combination of events that were not all under EFSA's control. EFSA accepts the ECA finding knowing that the roll-out of EFSA's Organisational Design project will fully address the concerns of the ECA.

## 3.23. European Institute for Gender Equality (EIGE)

### Introduction

**3.23.1.** The European Institute for Gender Equality (“the Institute”, or “EIGE”), which is located in Vilnius, was established by Regulation (EC) No 1922/2006 of the European Parliament and of the Council<sup>152</sup>. The Institute’s task is to collect, analyse and disseminate information as regards gender equality and to develop, analyse, evaluate and disseminate methodological tools in order to support the integration of gender equality into all Union policies and the resulting national policies. *Figure 3.23.1* presents key figures for the Institute<sup>153</sup>.

**Figure 3.23.1 – Key figures for the Institute**



\* 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 2019 and Final annual accounts of the Institute for the financial year 2020; Staff figures provided by the Institute.

### Information in support of the statement of assurance

**3.23.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Institute’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 Institute’s management.

<sup>152</sup> OJ L 403, 30.12.2006, p. 9.

<sup>153</sup> More information on the Institute’s competences and activities is available on its website: [www.eige.europa.eu](http://www.eige.europa.eu).

**3.23.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.23.4.** We have audited:

- (a) the accounts of the European Institute for Gender Equality which comprise the financial statements<sup>154</sup> and the reports on the implementation of the budget<sup>155</sup> for the financial year ended 31 December 2020 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

**3.23.5.** In our opinion, the accounts of the Institute for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Institute at 31 December 2020, 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.

<sup>154</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>155</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

**3.23.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.23.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

### Other matter

**3.23.8.** We note that a case pending before the Court of Justice of the EU (CJEU), case No C-948/19 (Manpower Lit), has a bearing on aspects of our audit opinion. The case concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council<sup>156</sup> on temporary agency work to EU Agencies. In particular, the Lithuanian court asked whether the Directive applies to EU Agencies in their capacity as public bodies engaged in economic activities. It also asked whether EU Agencies must apply in full the provisions of Article 5(1) of that Directive concerning the rights of temporary agency workers to basic working and employment conditions, in particular as regards pay. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning the Institute's use of interim workers, the Court will refrain from making any observations on the regularity of the Institute's approach, ECA follow-ups of observations from previous years concerning this matter, until the CJEU has issued a final ruling in this case.

**3.23.9.** The observations which follow do not call the ECA's opinion into question.

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<sup>156</sup> OJ L 327, 5.12.2008, p. 9.

## Observations on the legality and regularity of transactions

**3.23.10.** In its audit reports for the 2019 financial year, the ECA concluded that the procedures used for selecting and contracting the external experts systematically lacked a solid audit trail (as set out in Article 36(3) of the Financial Regulation). As a result, all subsequent payments associated with these contracts are irregular. In 2020, the related payments amounted to €4 400.

## Observations on budgetary management

**3.23.11.** On 17 December 2019, EIGE signed an Amendment to the Agreement with DG NEAR for the provision of €378 950 under the Instrument for Pre-Accession Assistance (IPA II) for the implementation of the action “Increased capacity of EU candidate countries and potential candidates to measure and monitor the impact of gender equality policies (2018 to 2021)”. This amount was received on 27 December 2019, and the corresponding credit note was issued on 21 February 2020. Under the Financial Regulation<sup>157</sup>, the Institute should have included this information in its budget. However, EIGE did not publish an Amendment to the Budget 2020 to include the amount cashed nor included it in the Amendment 1 to the Budget 2020 published on 31 March 2021. We reported on a similar issue already in the financial year 2019. This is indicative of a systematic issue.

## Follow-up of previous years’ observations

**3.23.12.** An overview of the action taken in response to the ECA’s observations from previous years is provided in the [Annex](#).

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<sup>157</sup> As required by Articles 21 and 22 of the Financial Regulation.

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	EIGE engaged in the use of temporary agency workers (interim workers) through a framework contract with one temporary work agency. The contract did not require the temporary work agency to comply with certain legal requirements (interim workers should work under the same working conditions as workers employed directly by the user undertaking) and there is no evidence that the Institute itself carried out any comparison between the working conditions of its own staff and interim workers. The Institute should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.	<p style="text-align: center;"><b>Ongoing</b></p> <p style="text-align: center;"><b>(See paragraph 3.23.8)</b></p>
2019	In 2019, the ECA concluded that the procedures used for selecting and contracting the external experts systematically lacked a solid audit trail (as set out in Article 36(3) of the Financial Regulation). As a result, all subsequent payments associated with these contracts are irregular.	<p style="text-align: center;"><b>Ongoing</b></p>
2019	The 2019 budget published in March 2019 did not include €550 000 as revenue assigned under the Instrument for Pre-Accession Assistance (IPA II) for the implementation of the action "Increased capacity of EU candidate countries and potential candidates to measure and monitor the impact of gender-equality policies (2018-2021).	<p style="text-align: center;"><b>Outstanding</b></p>

## European Institute for Gender Equality (EIGE)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
<b>2019</b>	EIGE has not carried out ex-post controls of operations and budgetary implementation since September 2016. A dedicated ex-post controls programme based on specific risks would contribute to improving the Institute's internal control environment.	<b>Ongoing</b>



European Institute for Gender Equality (EIGE)

## The Institute's reply

**3.23.10.** A new call of expression of interest was organised in 2020. The new tool and application forms were established to ensure the principle of transparency and monitoring of selection of experts. Clear eligibility, selection and award criteria were defined in full compliance with the principles of non-discrimination and equal treatment. The selection of experts is duly documented in note to the file for each new procedure.

**3.23.11.** EIGE takes note of the observation and will publish the IPA II contribution received from DG NEAR with the budget.

## 3.24. European Medicines Agency (EMA)

### Introduction

**3.24.1.** The European Medicines Agency (“the Agency”, or “EMA”), which has relocated to Amsterdam in March 2019, was established by Council Regulation (EEC) No 2309/93, and later replaced by Regulation (EC) No 726/2004 of the European Parliament and of the Council<sup>158</sup>. The Agency operates through a pan-EU network and coordinates the scientific resources made available by the national authorities in order to ensure the evaluation and supervision of medicinal products for human or veterinary use. *Figure 3.24.1* presents key figures for the Agency<sup>159</sup>.

**Figure 3.24.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.24.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>158</sup> OJ L 214, 24.8.1993, p. 1, and OJ L 136, 30.4.2004, p. 1. In accordance with the latter Regulation, the Agency’s original name, the European Agency for the Evaluation of Medicinal Products, was changed to the European Medicines Agency.

<sup>159</sup> More information on the Agency’s competences and activities is available on its website: [www.ema.europa.eu](http://www.ema.europa.eu).

## European Medicines Agency (EMA)

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.

**3.24.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.24.4.** We have audited:

- (a) the accounts of the European Medicines Agency which comprise the financial statements<sup>160</sup> and the reports on the implementation of the budget<sup>161</sup> for the financial year ended 31 December 2020 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

**3.24.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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

<sup>160</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>161</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## European Medicines Agency (EMA)

accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector.

### Emphasis of matter

**3.24.6.** We draw attention to note 3.1.3, note 4.8.1 and note 4.8.2 of EMA's final accounts, which provides significant disclosures in relation to property-related obligations. The lease on EMA's former office premises in London runs until 2039 and does not contain a break clause, but the premises can be sublet or assigned subject to the landlord's consent. In July 2019, EMA reached an agreement with its landlord and has sublet its former office premises to a subtenant from July 2019, under conditions that are consistent with the terms of the head lease. The sublease term lasts until the expiry of EMA's lease in June 2039. Since EMA remains a party to the head lease, the Agency could be held liable for the entire amount remaining payable under the contractual obligations of the head lease if the subtenant fails to meet its obligations. As of 31 December 2020, the total estimated outstanding rent, associated service charges and landlord insurance to be paid by EMA up to the end of the lease term is €377 million. We note that EMA and its Management Board had emphasised the need to resolve this matter at the political level with the European Commission and the European Parliament. Our opinion is not qualified in respect of this matter.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

##### Opinion on the legality and regularity of revenue underlying the accounts

**3.24.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

#### Payments

##### Opinion on the legality and regularity of payments underlying the accounts

**3.24.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.24.9.** The observations which follow do not call the ECA's opinion into question.

## Observations on legality and regularity of transactions

**3.24.10.** We audited recruitment procedures at EMA and found a weakness in the process for appointing selection panels. The rules applicable to EMA stipulate that its Executive Director (ED) must take the final decision on the appointment of selection panels. In the audited cases, proposed selection panels were approved by means of an e-mail sent by the Head of the Executive Director's Office on behalf of the Executive Director himself without a formal authorisation by the ED. However, the Head of Office did not have the authority to perform that task. This approach is a recurrent practice at EMA and may expose EMA to legal and reputational risks.

**3.24.11.** In 2020, EMA amended some prices related to a catering and restaurant services framework contract. However, this contract only permits such a change to be made in 2021. The 2020 price revision was therefore irregular. Consequently, the difference of €78 913 between the tender prices and the amount paid by EMA in 2020, based on the revised prices, is also irregular. The revision was implemented without any signed amendment to the framework contract. This contravenes the provisions of the framework contract and those of the EU Financial Regulation.

Furthermore, for an audited payment of €125 954 made in March 2020, EMA did not verify that the amount invoiced by the contractor was correct. EMA was unable to reconcile the charged costs with the provisions and rates set out in the framework contract. This contravenes the EU Financial Regulation.

## Follow-up of previous years' observations

**3.24.12.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
<b>2016-2017-2018</b>	The Agency has been tasked by Parliament and Council with the implementation of the Regulations on Pharmacovigilance (1027/2012) and Clinical Trials (536/2014), requiring the development and implementation of two major pan-EU IT systems. In the absence of the necessary own internal resources, the Agency used consultants to an extent that it became critically dependent on external expertise. There was no adequate control over project development and implementation and project delays and costs escalated. The Agency should speed up the implementation of the mitigating action not only for the completion of the ongoing IT projects but also to get ready for significant new projects.	<b>Ongoing</b>
<b>2016</b>	The Founding Regulation requires an external evaluation of the Agency and its operations by the European Commission only every ten years.	<b>Outstanding</b> <b>(Not under the Agency's control)</b>
<b>2017</b>	E-procurement: by the end of 2017, the Agency had introduced e-tendering for certain procedures, but not e-invoicing and e-submission.	E-submission: <b>Completed</b>  E-invoicing: <b>Completed</b>

## European Medicines Agency (EMA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>The Agency has consultants employed by providers in their Member States. In such cases, EMA is responsible for verifying contractors' declarations of compliance with EU and national social and labour law (including legislation concerning the posting of workers), as required by the Financial Regulation applicable to the general budget of the Union. The EMA did not do so. The EMA needs to be aware of its host Member State's national legislation concerning posted workers, and to comply with any obligation that this legislation imposes on the receiver of services (i.e. the EMA) provided by posted workers.</p>	Completed
2019	<p>When running a public procurement procedure, contracting authorities must divide contracts into lots, if appropriate, paying attention to the need to facilitate broad competition. Technical specifications must allow bidders equal access to procurement procedures, and may not have the effect of creating unjustified obstacles to open competition.</p>	Outstanding
2019	<p>EMA launched a procurement procedure combining two completely unrelated services in the same lot. This may have limited the number of potentially interested tenderers from submitting an offer for either set of services, thus impairing fair competition. In addition, the Agency extended the duration of contract from four to six years. Extending contracts in this way is only allowed by the Financial Regulations in exceptional and substantiated cases. In this case, there were insufficient grounds for such an extension.</p>	Outstanding

## European Medicines Agency (EMA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>EMA signed a framework contract with three companies for the supply of temporary workers. The price element of the tender specifications had to include an all-inclusive hourly rate conversion factor applied to the gross hourly remuneration of the temporary workers in specific staff categories. However, the Agency did not provide us with any breakdown of the estimated gross staff cost for the interim workers in each requested staff category. As a result, the EMA was not in a position to evaluate whether the service provider's mark-up or gross profit was reasonable in relation to similar contracts.</p>	<p><b>Outstanding</b></p>
2019	<p>EMA granted an additional travel allowance to its staff for their move from London to Amsterdam premises. The amount was calculated based on the cost of a business-class ticket instead of the economy-class fare. We conclude that the EMA gave little consideration to the principle of economy in calculating the amount of the additional travel allowance.</p>	<p><b>Ongoing</b></p>



## The Agency's reply

The European Medicines Agency (“the Agency” or “EMA”) welcomes the Court’s positive opinion on the reliability of the 2020 accounts and on the legality and regularity of the transactions underlying the accounts.

**3.24.6.** The issue of London premises arose due to United Kingdom (UK) unilateral decision to leave the European Union. The topic was initially included in the EU negotiation position but was subsequently dropped. As a result, following the EU institutional approach, the Agency has sought for an alternative solution and has sublet the premises in line with the limits set by the EU budgetary authority. The Agency and its Management Board are concerned that the Agency, instead of focusing its full effort on its mission of protecting and promoting public health, now must also manage commercial property in a third country, diverting its human and financial resources from its public health responsibilities for the EU citizens. This focus of the Agency on this matter and consequently that of the EU institutions will have to be maintained for another 18 years, till 2039. Despite negotiated guarantee measures, the subletting solution is not without risks, magnified by the current COVID 19 crisis. It is therefore necessary to manage this topic at the right political level and find a long-term resolution for the Agency.

**3.24.10.** The Agency notes the observation of the Court. In order to address this procedural issue, the appointment decisions, the approvals of job profiles and the responses to the Staff Committee’s opinions are now sent personally by the Executive Director, by email.

**3.24.11.** The Agency notes the observation of the Court. It also notes that the financial impact is very limited.

The Agency considers having performed checks and approved invoices in accordance with the principle of costs effectiveness and performance as foreseen in article 45.8 of the EMA Financial Regulation.

## 3.25. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

### Introduction

**3.25.1.** The European Monitoring Centre for Drugs and Drug Addiction (“the Centre”, or “EMCDDA”), which is located in Lisbon, was created by Council Regulation (EEC) No 302/93<sup>162</sup>. The Centre’s main task is to collect, analyse and disseminate information in regard to drugs and drug addiction, in order to prepare and publish information at European level that is objective, reliable and comparable. The information is intended to provide a basis for analysing the demand for drugs and ways of reducing it, as well as, in general, phenomena associated with the drug market. *Figure 3.25.1* presents key figures for the Centre<sup>163</sup>.

**Figure 3.25.1 – Key figures for the Centre**



\* 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 2019 and Final annual accounts of the Centre for the financial year 2020; Staff figures provided by the Centre.

### Information in support of the statement of assurance

**3.25.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Centre’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 Centre’s management.

<sup>162</sup> OJ L 36, 12.2.1993, p. 1. This Regulation and its amendments were repealed by Regulation (EC) No 1920/2006 of the European Parliament and of the Council (OJ L 376, 27.12.2006, p. 1).

<sup>163</sup> More information on the Centre’s competences and activities is available on its website: [www.emcdda.europa.eu](http://www.emcdda.europa.eu).

**3.25.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.25.4.** We have audited:

- (a) the accounts of the European Monitoring Centre for Drugs and Drug Addiction which comprise the financial statements<sup>164</sup> and the reports on the implementation of the budget<sup>165</sup> for the financial year ended 31 December 2020 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

**3.25.5.** In our opinion, the accounts of the Centre for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Centre at 31 December 2020, 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.

<sup>164</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>165</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

**3.25.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.25.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.25.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	<p>The EMCDDA engaged in the use of interim workers through a framework contract without respecting the requirements of Directive 2008/104/EC and of the Portuguese labour law. The Centre should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.</p>	<p>We note that a case pending before the Court of Justice of the EU (CJEU) case No C-948/19 (Manpower Lit), concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008, on temporary agency work, to EU Agencies. Since the CJEU's ruling with regard to these questions may have an impact on the Court's position concerning the Centre's use of interim workers, the ECA will refrain from making any observations on the regularity of the Centre's approach, including follow-ups of observations from previous years, concerning this matter until the CJEU has issued a final ruling in this case.</p>

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

## The Centre's reply

The EMCDDA has no comments/remarks.

## 3.26. European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

### Introduction

**3.26.1.** The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (“eu-LISA”, or “the Agency”), which is located in Tallinn, Strasbourg and St. Johann im Pongau, was established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council<sup>166</sup>. Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 repeals Regulation (EU) No 1077/2011 and strengthens the mandate of eu-LISA<sup>167</sup>. The core mission of this Agency is to fulfil the operational management tasks for the Second Generation Schengen Information System (SIS II), the Visa Information System (VIS) and the European System for the comparison of fingerprints (Eurodac). The new mandate of the Agency has been extended to the development and operational management of two new IT-systems. The Entry/Exit System (EES) is a system to register entry and exit data of non-EU nationals, and the European Travel Information and Authorisation System (ETIAS) keeps track of visitors from countries who do not need a visa to enter the Schengen Zone. *Figure 3.26.1* presents key figures for the Agency<sup>168</sup>.

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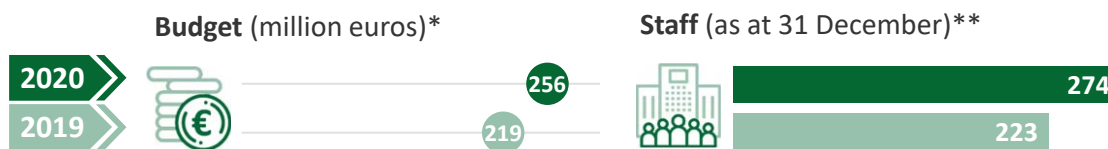
<sup>166</sup> OJ L 286, 1.11.2011, p. 1.

<sup>167</sup> OJ L 295, 21.11.2018, p. 99.

<sup>168</sup> More information on the Agency’s competences and activities is available on its website: <https://www.eulisa.europa.eu/>.

European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

**Figure 3.26.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

## Information in support of the statement of assurance

**3.26.2.** The audit approach taken by the ECA 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.

**3.26.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court’s statement of assurance provided to the European Parliament and the Council – Independent auditor’s report

### Opinion

**3.26.4.** We have audited:

- (a) the accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice which comprise



the financial statements<sup>169</sup> and the reports on the implementation of the budget<sup>170</sup> for the financial year ended 31 December 2020 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

**3.26.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.26.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

<sup>169</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>170</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Payments

### Basis for a qualified opinion on the legality and regularity of the payments underlying the accounts

**3.26.7.** In 2020, eu-LISA signed a specific contract for software different from the software offered by the contractor in its tender for the associated framework contract, the total value of the framework contract is €302 550 000 and no modification of the framework contract has taken place. Acquiring a different product which is not included in the price offer, at a different price than the product originally offered, is a deviation from the framework contract. Even though the specific contract in question refers to the framework contract, it is not governed by it. The specific contract is therefore non-compliant with the framework contract, as is the associated payment of €10 399 833.60.

**3.26.8.** Eu-LISA signed an order form for maintenance services covering the period from 7 November 2020 to December 2024 (four years). This contravened the provisions of the framework contract, which allowed services to be invoiced in advance for one year. Therefore, the amount of €5 241.09 paid to the contractor for services to be provided after 7 November 2021 is irregular.

**3.26.9.** The total amount of payments considered not to be compliant in 2020 was €10 405 074.69. This represents 4.1 % of the total payment appropriations available in 2020. This exceeds the materiality threshold set for this audit.

### Qualified opinion on the legality and regularity of payments underlying the accounts

**3.26.10.** In our opinion, except for the issues explained in the “Basis for a qualified opinion on the legality and regularity of payments” paragraph, payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.26.11.** The observations which follow do not call the ECA’s opinion into question.

## Observations on budgetary management

**3.26.12.** Eu-LISA had a high amount of automatic carry-overs of non-differentiated appropriations for Title II: €10.2 million (59.4 %) of a total of €17.2 million.

Eu-LISA also decided to use non-automatic carry-overs of commitment appropriations for Title III. In February 2021, the management board decided to carry over €56.3 million of 2020

## European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

commitment appropriations to the 2021 financial year. These were mainly commitment appropriations for the ECRIS, ETIAS and Interoperability systems (23 % of the appropriations in the final adopted budget). This is significantly less than the €159 million of carry-overs in 2019 (55 % of appropriations in the final adopted budget), but still a substantial amount compared to the total budget.

Although the nature of eu-LISA's operations may span over to the following year, the excessive amount of carry-overs for Title II and Title III is indicative of various structural issues affecting compliance with Articles 9, 12 and 28 of eu-LISA's Financial Regulation.

### Follow-up of previous years' observations

**3.26.13.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	Eu-LISA currently manages three separate, non-integrated large-scale IT systems (SIS II, VIS and Eurodac), all dealing with data in the Union's policy area of freedom, security and justice. Such an approach may prevent the Agency from achieving economies of scale and synergies between the different systems.	<b>Ongoing</b> <b>(Not under the control of the Agency)</b>
2018	The agency increased the prices of a framework contracts without amending it and extended one specific contract after the expiry of the framework contract.	<b>Ongoing</b>
2018	The evaluation formula stipulated in the tender specifications for the MWS contract was different from the one communicated in the questions and answers document for bidders. The Agency should strengthen procurement-related internal controls.	<b>Completed</b>
2018/2019	Budget implementation was less than planned. The Agency, together with the European Commission, should improve alignment of budgetary planning with the timing of the related legal acts.	<b>Ongoing</b>
2019	The Agency made a payment of €284 000 for services provided in a time period not covered by the underlying framework contract.	<b>Ongoing</b>

## European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	The Agency did not always assess applications rigorously enough, leading to the unequal treatment of candidates in one recruitment procedure.	Completed

European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

## The Agency's reply

**3.26.7.** The Agency acknowledges the observation and would like to inform the Court that measures have already been taken to strengthen the alignment of the evolutions of the Agency IT architecture with its contractual framework.

The Agency would like to emphasise that the non-compliance did not result in any prejudice to the financial interests of the Agency or the Union, as the expenditure was justified.

**3.26.8.** The Agency acknowledges the observation. The Agency has already undertaken a process review to strengthen the related internal controls to prevent such shortcoming from re-occurring.

**3.26.12.** The Agency acknowledges the observation for the part related to non-differentiated appropriations for Title II. The Agency would like to note that the carry overs in question for Title II were mainly related to External Support, Physical Security, Corporate IT, Facility management. Such expenditure is by nature nondiscretionary and essential for the functioning of the Agency.

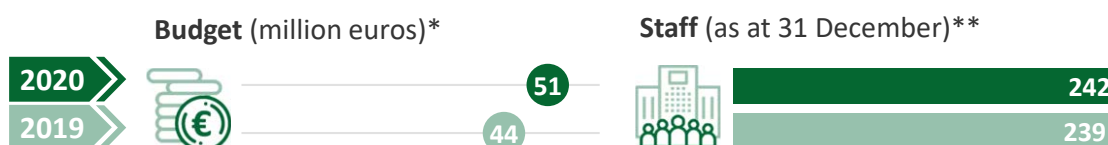
The inscription of resources in the Agency's budget for legislation not yet adopted by the co-legislators introduces significant risks to sound financial management. Such risks have been systematically reported to the Management Board. The process of adopting legislation is completely out of Agency's control.

## 3.27. European Union Agency for Criminal Justice Cooperation (Eurojust)

### Introduction

**3.27.1.** The European Union Agency for Criminal Justice Cooperation (“the Agency”, or “Eurojust”), which is located in The Hague, was set up by Council Decision 2002/187/JHA<sup>171</sup> with a view to reinforcing the fight against serious organised crime. Its objective is to improve the coordination of cross-border investigations and prosecutions between the Member States of the European Union, and between Member States and non-Member States. *Figure 3.27.1* presents key figures for Eurojust<sup>172</sup>.

**Figure 3.27.1 – Key figures for Eurojust**



\* 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.27.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Eurojust’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 Eurojust’s management.

<sup>171</sup> OJ L 63, 6.3.2002, p. 1.

<sup>172</sup> More information on the Eurojust’s competences and activities is available on its website: [www.eurojust.europa.eu](http://www.eurojust.europa.eu).

**3.27.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.27.4.** We have audited:

- (a) the accounts of European Union Agency for Criminal Justice Cooperation which comprise the financial statements<sup>173</sup> and the reports on the implementation of the budget<sup>174</sup> for the financial year ended 31 December 2020 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

**3.27.5.** In our opinion, the accounts of Eurojust for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Eurojust at 31 December 2020, 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.

<sup>173</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>174</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

**3.27.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.27.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.27.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on legality and regularity of transactions

**3.27.9.** We observed a number of weaknesses in Eurojust's audited public procurement procedures. In one case, Eurojust signed a framework contract with a single economic operator. But the use of this sort of framework contract was not appropriate for the nature of the services required: the leasing of vehicles. As the vehicle-leasing market is subject to frequent fluctuations in price, Eurojust should have used a framework contract with reopening of competition in order to ensure that the required services were acquired as economically as possible.

**3.27.10.** In another case, Eurojust signed a specific contract whose pricing deviated from the price lists attached to the original framework contract for digital forensics and incident response. Eurojust approved the invoice and made the payment to the contractor without noticing the discrepancy in the hourly pricing rate. This indicates weaknesses in Eurojust's internal controls: it demonstrated that no checks were made as to whether the specific contract and the invoiced amount corresponded to the actual terms of the service-level agreement. The excess amount paid (€3 600) is therefore irregular.

European Union Agency for Criminal Justice Cooperation (Eurojust)

## Follow-up of previous years' observations

**3.27.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The use of a negotiated procurement procedure was not justified. The framework contract, all related specific contracts and all payments made under these contracts are irregular.	<b>Completed</b>

European Union Agency for Criminal Justice Cooperation (Eurojust)

## The Agency's reply

**3.27.9.** Eurojust acknowledges the Court's Observation. For future public procurement procedures Eurojust will follow the Court's guidance and will ensure that a more robust ex-ante documentation shall be prepared, including the documented reasoning for choosing a particular procurement procedure and/or a particular type of framework contract.

**3.27.10.** Eurojust acknowledges the Court's Observation. For future similar specific contracts, Eurojust shall seek more clarity at the time of requesting an offer, to ensure consistency between the specific contract and the actual terms of the agreements or the service-level agreement.

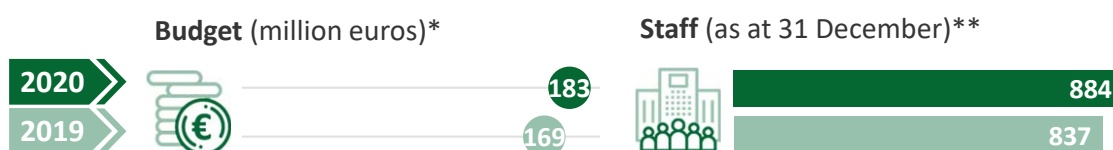
## 3.28. European Union Agency for Law Enforcement Cooperation (Europol)

### Introduction

**3.28.1.** The European Union Agency for Law Enforcement Cooperation (“the Agency”, or “Europol”), which is located in The Hague, was established by Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016<sup>175</sup> replacing and repealing Council Decision (2009/371/JHA)<sup>176</sup>. The objective of the Agency is to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism, and forms of crime which affect a common interest covered by Union policy.

*Figure 3.28.1* presents key figures for the Agency<sup>177</sup>.

**Figure 3.28.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.28.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>175</sup> OJ L 135, 24.5.2016, p. 53.

<sup>176</sup> OJ L 121, 15.5.2009, p. 37.

<sup>177</sup> More information on the Agency’s competences and activities is available on its website: [www.europol.europa.eu](http://www.europol.europa.eu).

## European Union Agency for Law Enforcement Cooperation (Europol)

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.

**3.28.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.28.4.** We have audited:

- (a) the accounts of the European Union Agency for Law Enforcement Cooperation which comprise the financial statements<sup>178</sup> and the reports on the implementation of the budget<sup>179</sup> for the financial year ended 31 December 2020 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

**3.28.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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

<sup>178</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>179</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

accounting rules adopted by the Commission's accounting 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

**3.28.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.28.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.28.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on budgetary management

**3.28.9.** The Financial Regulation states that EU bodies must make payments within prescribed terms. In 2020, the Agency frequently failed to do so. We found that it had paid late in 33 % of cases and as a consequence it paid also €12 000 of interest on these late payments. We observed similar levels of delays in 2019, 2018 and 2017. This recurrent weakness exposes the Agency to reputational risk.

## Follow-up of previous years' observations

**3.28.10.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The Agency irregularly prolonged the duration of a framework contract for the provision of business travel services after its expiry and introduced new price aspects. The contract management and ex-ante controls should be strengthened.	Ongoing
2019	The Agency prolonged the duration of one framework contract, for the provision of business travel services, by signing an amendment to it after it had expired in 2018. This was irregular. The Agency also signed a further amendment to that same contract on 29 March 2019. This demonstrates weaknesses in contract management and ex-ante controls.	Ongoing
2019	The Agency had paid late in 20 % of cases. We observed similar or even higher levels of delays in 2018 and 2017. This recurrent weakness exposes the Agency to reputational risk.	Outstanding
2019	Following an open tendering procedure, the Agency concluded a framework contract for furniture, accessories and related services. The terms used in the documents to the call for tender were not specific enough; this undermined the competitive nature of the tendering procedure. The Agency should ensure that tender specifications are sufficiently well thought out to allow fair and effective competition, so that procurement procedures deliver the best possible value for money.	Ongoing



## European Union Agency for Law Enforcement Cooperation (Europol)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	No minimum threshold had been set for the technical award criterion which was most relevant to quality (i.e.: the quality of the proposed new standard furniture).	Completed
2019	The Agency did not sufficiently check the accuracy of underlying prices and the calculation of discounts applied for the non-standard items before submitting the order form to the contractor. The Agency should integrate such checks into its ex-ante controls, and perform them before signing order forms.	Completed

## The Agency's reply

**3.28.9.** In 2020, Europol continued to face understaffing, which in particular affected so-called infrastructure areas, including financial administration. This was compounded by the challenges brought about by the COVID pandemic.

In addition, at the beginning of 2020, Europol settled a backlog of 2019 end-of-year invoices (primarily related to travel services). € 5,205.45 of the overall amount paid in 2020 of € 12,000 (rounded) of interest on late payments related to the handling of the backlog of travel services at the beginning of 2020.

In 2020, the overall value of the invoices paid late accounted for € 4.4 million (€ 6.6 million in 2019), representing a total of 3% of all payments made across all fund sources in 2020 (4.6% in 2019).

Europol carefully monitors the payment amounts on a monthly basis, taking mitigation actions to prioritise high-value payments.

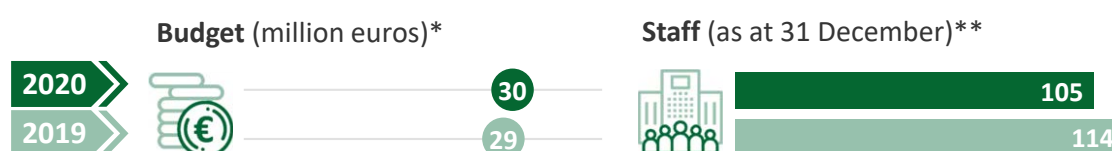
From Europol's perspective, therefore, no material financial or reputational risk profile materialised with respect to payment delays in 2020, also given that the related travel services contract expired in March 2020 (which required the handling of invoices itemised per travel instance).

## 3.29. European Union Agency for Fundamental Rights (FRA)

### Introduction

**3.29.1.** The European Union Agency for Fundamental Rights (“the Agency”, or “FRA”), which is located in Vienna, was established by Council Regulation (EC) No 168/2007<sup>180</sup>. The objective of the Agency is to provide the relevant authorities of the Union and its Member States with assistance and expertise when implementing Union law relating to fundamental rights. *Figure 3.29.1* presents key figures for the Agency<sup>181</sup>.

**Figure 3.29.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.29.2.** The audit approach taken by the ECA 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.

**3.29.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor’s

<sup>180</sup> OJ L 53, 22.2.2007, p. 1.

<sup>181</sup> More information on the Agency’s competences and activities is available on its website: [www.fra.europa.eu](http://www.fra.europa.eu).

## European Union Agency for Fundamental Rights (FRA)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

#### 3.29.4. We have audited:

- (a) the accounts of the European Union Fundamental Rights Agency which comprise the financial statements<sup>182</sup> and the reports on the implementation of the budget<sup>183</sup> for the financial year ended 31 December 2020 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

**3.29.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

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<sup>182</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>183</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

**3.29.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.29.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.29.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on budgetary management

**3.29.9.** Carry-overs of committed appropriations were high for Title III (operating expenditure) at €6.7 million, i.e. 83 % of the appropriations for this Title (2019: €3.8 million, i.e. 60 %). They mainly reflect the nature of the agency's core activities that include the financing of studies and other awareness-raising activities that span several months, possibly extending beyond the end of a year. A significant part (25 %) of Title III carry-overs to 2021 were committed in December 2020 (2019: 28 %). This is indicative of a structural issue. To resolve it, the Agency should improve its budget planning and its implementation cycles.

## Follow-up of previous years' observations

**3.29.10.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing for certain procedures, but not e-tendering and e-submission.	<b>Completed</b>
2018	Carry-overs of committed appropriations were high for Title III (operating expenditure) and only partially justified. The Agency should improve its budget planning and its implementation cycles.	<b>Ongoing</b>

## The Agency's reply

**3.29.9.** The Agency agrees with the Court that the level of carry-overs mainly reflects the nature of the Agency's core activities that include the financing of studies and other awareness-raising activities that span several months, possibly extending beyond the end of a year. To improve its budget planning and its implementation cycles, the Agency has established a monitoring tool on planned carry overs from one year to the next.

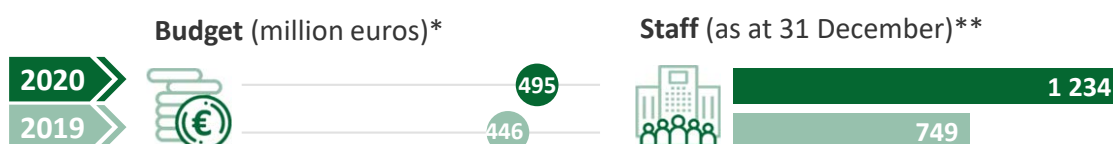
The Agency believes that a good budget implementation is also measured by the level of cancelled carried-over appropriations. The Agency has a very high level of outturn (above 99.5%), that is an important indicator of sound financial management and respect of the budgetary principles.

## 3.30. European Border and Coast Guard Agency (Frontex)

### Introduction

**3.30.1.** 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>184</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. *Figure 3.30.1* presents key figures for the Agency<sup>185</sup>.

**Figure 3.30.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

<sup>184</sup> OJ L 295, 14.11.2019, p. 1.

<sup>185</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

**3.30.2.** The audit approach taken by the ECA 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.

**3.30.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.30.4.** We have audited:

- (a) the accounts of the European Border and Coast Guard Agency which comprise the financial statements<sup>186</sup> and the reports on the implementation of the budget<sup>187</sup> for the financial year ended 31 December 2020 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).

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<sup>186</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>187</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Reliability of the accounts

### Opinion on the reliability of the accounts

**3.30.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.30.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.30.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.30.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on the legality and regularity of transactions

**3.30.9.** Frontex relies on estimations provided by the cooperating countries for the financial planning of its return operations. The completeness and timeliness of this information is crucial. In one case, a national authority included two previously unannounced return operations totalling €355 000 in a grant agreement at the financial closure of the action. To

## European Border and Coast Guard Agency (Frontex)

cover the resulting sudden budgetary deficit, Frontex made an ex-post budgetary commitment. This contravened the agency's financial regulation<sup>188</sup>.

**3.30.10.** Frontex's Management Board launched an internal inquiry following reports about 13 cases of alleged fundamental rights violations in October 2020. In eight cases, the inquiry concluded that no breaches had occurred. For the remaining five cases the inquiry concluded that there was no evidence of breaches of fundamental rights but because of a lack of comprehensive data it could not conclude beyond a reasonable doubt.

The European Ombudsman also opened two own-initiative inquiries. The first was opened on 10 November 2020, to assess the effectiveness and transparency of Frontex's Complaints Mechanism<sup>189</sup> for those who believe their rights have been violated in the context of Frontex border operations, as well as the role and independence of Frontex's 'Fundamental Rights Officer'. On 15 June 2021, the Ombudsman concluded that there had been delay by Frontex in implementing the important changes introduced by the EBCG Regulation 2019/1896, but that the situation was in the process of being resolved and did not find it justified to pursue this matter further. However, based on the inquiry, the Ombudsman issued nine suggestions for improvement to Frontex. These include suggestions on how to make it easier for potential victims of fundamental rights violations to be aware of redress possibilities and to report incidents, as well as suggestions to improve how complaints are handled and followed up on<sup>190</sup>. The second inquiry was opened on 4 March 2021 to look into how the Agency complies with its fundamental rights obligations and ensure accountability in relation to its new enhanced responsibilities<sup>191</sup>.

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<sup>188</sup> Article 10(3) of the Frontex Financial Regulation on the principle of annuality.

<sup>189</sup> The Complaints Mechanism was established by Regulation (EU) 2016/1624 on the European Border and Coast Guard. It is an administrative mechanism whereby the fundamental rights officer is responsible for handling complaints received by the Agency in accordance with the right to good administration. The Agency reports on the complaints mechanism in its annual report, covering the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States.

<sup>190</sup> Decision in case OI/5/2020/MHZ on the functioning of the European Border and CoastGuard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer.

<sup>191</sup> Case OI/4/2021/MHZ opened on 4 March 2021.

## European Border and Coast Guard Agency (Frontex)

We also note two other ongoing investigations; on 11 January, OLAF opened an investigation over allegations of harassment, misconduct and migrant pushbacks concerning the Agency<sup>192</sup>, and, on 29 January 2021, the European Parliament decided to set up a working group<sup>193</sup> to look into possible allegations of violations of fundamental rights in Frontex. These investigations are of different nature and go much further than our financial audit. On 14 July 2021, the European Parliament working group announced that it did not find conclusive evidence on the direct performance of pushbacks or collective expulsions by Frontex in the serious incident cases under its investigation, but has identified deficiencies – among others – in Frontex’s mechanisms to monitor, report and assess fundamental rights situations, and has made recommendations for improvement<sup>194</sup>.

**3.30.11.** Moreover, Article 110 of Regulation (EU) 2019/1896 of 13 November 2019, requires Frontex to recruit 40 fundamental rights monitors by 5 December 2020. By 31 December 2020, none of the monitors had been appointed. The main reasons given by Frontex for the delay incurred were the following:

- The job description of the head of the Fundamental Rights Office (FRO) needed to be revised to reflect the new characteristics of the post (a middle-management role). Regulation (EU) 2019/1896 significantly increases the power and the remit of the FRO. Regarding the fundamental rights monitors, it entrusts the head of the FRO the powers of appointing authority, which in this role is independent from management, only accountable to the Management Board. This required an internal reorganisation. In addition, extensive consultations with the European Commission were undertaken.
- There was a general slowdown in recruitment caused by the Covid-19 crisis, especially during the period from mid-March to June 2020. This added time to the process.
- On 25 November 2020, the composition of the pre-selection board for the selection procedure of the new Fundamental Rights Officer was established.

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<sup>192</sup> Source: Motion for a European Parliament resolution with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2019, (2020/2167(DEC)).

<sup>193</sup> Source: LIBE Committee written procedure dated 29 January 2021. EP Frontex Scrutiny Working Group consists of 14 MEPs, two per political group.

<sup>194</sup> WORKING DOCUMENT: Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations LIBE Committee on Civil Liberties, Justice and Home Affairs, dated 14/07/2021.

## European Border and Coast Guard Agency (Frontex)

The delay in the recruitment of the fundamental rights monitors poses a serious risk to the operations and reputation of the Agency as shown in the previous paragraphs.

### Observations on internal controls

**3.30.12.** Under the EBCG Regulation (EU) 2019/1896, a European border and coastguard standing corps will be created. This has resulted in the swap of 100 AD-level posts to 100 AST post within Frontex' headquarters with effect from 2019. On 1 September 2020, Frontex asked the European Commission (DG HOME) for permission to upgrade 100 AST posts into advanced-level posts (grade AD 7 or higher), for the standing corps and new tasks under the new mandate. In anticipation of the Commission's reply, on 9 September 2020, Frontex sent out 47 offers to advanced-level candidates. The following day, the Commission informed that Frontex had no legal authority to upgrade the posts. Frontex immediately had to withdraw the 47 job offers. This exposed Frontex to an unnecessary risk of reputational damage and litigation.

**3.30.13.** To guarantee the transparency and effectiveness of Frontex's internal control system, staff members playing a role in financial workflows must log any exceptions in a central register. In one case, Frontex had changed the provisions governing the payment schedule for a contract for aerial surveillance services. The change was authorised in an exception note, but it had not been recorded in the central register at the time of our audit.

### Observations on budgetary management

**3.30.14.** Frontex's initial budget amounted to €460 million. This amount comprised an EU contribution and the contributions<sup>195</sup> by four Schengen Associated Countries (SACs); Iceland, Liechtenstein, Norway and Switzerland. In the course of the year, Frontex may receive

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<sup>195</sup> The SAC contributions are governed by the two arrangements between the European Community and the SAC. Respectively the Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 243, 16.9.2010, p. 4) and the Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 188, 20.7.2007, p. 19).

## European Border and Coast Guard Agency (Frontex)

additional financing for specific programmes and/or actions, as well as other revenues from administrative operations.

The EU's contribution was initially set at €428 million. Budget line 18 02 03 of the EU's general budget funded this amount in the following way: €412 million was to come from the appropriations of the 2020 general EU budget, and €16 million was to come from Frontex's budgetary outturn from 2018.

The SACs' contribution was initially set at €32 million. The agreements with the SACs state that contributions are calculated as a percentage of the GDP (for Switzerland and Liechtenstein) or GNI (for Iceland and Norway) of each SAC country in relation to the GDP/GNI of all participating countries. When the initial budget was drawn up in 2020, Frontex determined that the overall percentage of the SACs' contributions as a proportion of its budget would be 7.43 %.

Frontex's initial budget was €460 million. We observed that the SACs' contributions only made up 6.91 % of that. This suggests that the SACs' contributions are understated<sup>196</sup>. The EU's contribution, on the other hand, is not overstated, as that amount would have been budgeted irrespectively of the SACs' participation.

This provides an additional indication of the need for horizontal guidance from the European Commission to EU bodies on how to calculate contributions from non-EU countries consistently<sup>197</sup>.

**3.30.15.** The COVID-19 pandemic has affected Frontex's operations and budget implementation in 2020. Frontex reduced its initial budget by €95 million, through two amending budgets. The rate of payment implementation in the final budget was 55.9 %, which is lower than in 2019 (69.2 %). The rate of appropriations carried forward to the 2021 financial year was 44.1 %, compared to 30.8 % carried forward to 2020 in 2019. This reflects a general slowdown in activities (such as return operations) in 2020. In this context, a provisional budgetary commitment of €18.1 million for the preparation of field deployments in 2021 was carried forward without the Agency having entered into legal commitments within the time limit laid down in Article 75 of the Agency's Financial Regulation.

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<sup>196</sup> See note 4.0.3 on page 28 and Annex 5.0.1 on page 32 of Frontex' final accounts for the 2020 financial year.

<sup>197</sup> The issue of different interpretation of the legal framework regarding contributions by non-EU countries, is also highlighted in ECA review 3/2021. This review concludes that there is no single automatic formula for setting the contributions to the EU and agencies budgets or standardised methods for adjusting them.

## European Border and Coast Guard Agency (Frontex)

**3.30.16.** Frontex has also changed its presentation of the budget implementation in the 2020 final annual accounts compared to those of the previous year. When calculating its performance indicators, Frontex now treats the two reductions to the budget described above, not as amending budgets, but as acts of budget implementation. Frontex has made this change even though it contradicts two decisions by the Management Board. Moreover the amending budgets in question are aligned with three budgetary transfers which reduced the EU budget line 18 02 03 accordingly. One of the transfers, in November 2020, was approved by the budgetary authority and the other two transfers were approved by the Commission in November and December 2020 respectively.

**3.30.17.** EU amending budget No 1 of the 2020 financial year increased the EU funding to Frontex by €10 million. It was approved by the budgetary authority in April 2020. However, this increase in EU funding is not visible in the Frontex's budgetary accounts. This reduces transparency: it makes it harder to see how much EU funding was made available to Frontex in 2020, and how that amount changed over time.

### Follow-up of previous years' observations

**3.30.18.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2015	There is an unaddressed risk of double funding from the Internal Security Fund managed by the European 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 ECA 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 the deployment of heavy 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>
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.	<b>Ongoing</b>



## European Border and Coast Guard Agency (Frontex)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018/2019	The Agency made reimbursements to cooperating countries without the necessary supporting documentation.	Completed
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.	Completed for ex-ante verifications Ongoing for the simplification of costs related to heavy technical equipment
2018	The Agency should adopt and implement a sensitive post policy.	Ongoing
2018	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.	Ongoing
2019	In one grant, the claim for reimbursement was presented outside the period stipulated in the grant agreement.	N/A
2018/2019	The Agency did not reach the required occupancy laid down in the staff establishment plan. The Agency should improve the guidance given to selection committee members and verify more closely the candidates' financial entitlements for salary payments.	Ongoing

## European Border and Coast Guard Agency (Frontex)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	For one payment for reconstruction works, the Agency modified the contractual arrangements at a very late stage of the project to avoid having to decommit and cancel budget appropriations. By making this change, the consumption of funds does not match the reality of the operation, and may affect the possibility of monitoring the implementation of the Agency's budget and activities.	N/A

## The Agency's reply

### Observations on legality and regularity of transactions

**3.30.9.** Member States' estimations cannot be precise due to the largely unpredictable character of return operations/activities. To mitigate the high risk of losing possible unspent budget e.g. in case of C8 cancelations, the following system is in place:

- The budget is initially low estimated by the Agency to the minimum required based on information provided by Member States
- Member States send on a monthly basis monitoring tables, indicating up to date real costs borne
- Based on monitoring tables, the Agency amends the originally allocated budget by increasing/decreasing it.

This system implies a certain degree of risk of non-compliance, in case of not precise or late submitted monitoring tables, but it has proved to ensure by far a better management of resources and much less critical cancelation of funds.

The fulfilling of monitoring obligation deriving from grant provisions is a crucial element in the estimation of costs by Member States. Frontex keeps working on improving monitoring mechanisms and getting more accurate estimations to remain compliant with the budgetary rules.

**3.30.10.** The Agency is fully committed and cooperates closely with the European Ombudsman in fundamental rights matters, as well as with OLAF and the European Parliament by providing the requested information and documentation related to the mentioned alleged breaches of fundamental rights.

**3.30.11.** Frontex fully agrees with the findings and the risk assessment provided by the Court. The task to recruit the 40 fundamental rights monitors by December 2020 became unreachable in view of the COVID-19 pandemics and the external factors stated by the Court. The mentioned delays in the recruitments could not be in any way mitigated by Frontex management due to an explicit lack of appointing powers (the EBCG Regulation entrusts all the powers of the appointing authority to the Fundamental Rights Officer which a role totally independent from Frontex management).

However, the Executive Director concluded two consecutive agreements with the Fundamental Rights Agency on 25 November 2019 and on 10 June 2020, in order to:

- firstly support the Frontex Fundamental Rights Officer ad interim in preparing the recruitment of the 40 fundamental rights monitors and preparing the legal and operational framework for their deployment to the field;

## European Border and Coast Guard Agency (Frontex)

- and secondly make a bridging solution available to the Frontex Fundamental Rights Officer in the form of monitors provided by the Fundamental Rights Agency, paid by Frontex budget and activated independently by the Frontex Fundamental Rights Officer.

Frontex administration provided significant support to the Management Board by regular reporting on this topic throughout 2020 and the Executive Director ensured that recruitment of fundamental rights monitors (after the vacancies were published) is getting maximum support from human resources to complete the procedures in the shortest possible time.

### **Observations on internal controls**

**3.30.12.** Frontex was not involved in the negotiations related to staffing needs during the preparation of the new EBCG Regulation. Since November of 2019, Frontex was claiming in writing and trying to clarify with the Commission the discrepancy / decrease of number of AD posts in its headquarters (many of which were effectively occupied or in the recruitment procedure) in the 2020 establishment plan following the adoption of the new EBCG Regulation. Commission, in its reply in May 2020 offered certain margin of flexibility which Frontex considered as a sign of understanding of the need. The AD7 job offers were extended by Frontex at the latest moment possible for the new appointees to accept the job and to be able to join the obligatory training session scheduled to start in mid-October 2020. Frontex fully recognized the risk of reputational damage which was considered against the highest political priority to swiftly build solid foundation for the newly created standing corps. The risks of litigations were mitigated by swift follow-up communication to the candidates and backed by keeping sufficient margin of vacant AD posts at the end of the year 2020.

**3.30.13.** Due to a human error, the quantity of flying hours was miscalculated (at the time of registration of the invoice, the contractor proposed to change the quantity of hours from 100 to 50 flown hours for processing the payment). Nevertheless, the omission was spotted, and the pre-paid flying hours were regularized with the final payment, thus Frontex did not overpay any single flying hour. The event was properly captured in the Pooled Resources Unit issue/lessons learnt log and an exception note was prepared and signed immediately by the Authorising Officer and his superior, in line with the applicable framework. However, the signed note was not forwarded to Inspection and Control Office for registration in the central record due to an omission at the beginning of introduction of teleworking mode triggered by the pandemic. The lack of proper registration was regularised with the signature of a non-compliance note. Since April 2020, the registration of exceptions is automated and recorded in Document Management System to avoid similar events in the future.

### **Observations on budgetary management**

**3.30.14.** The Agency welcomes the Court's observation that there is a need for horizontal guidance from the Commission to EU bodies on how to calculate contributions from non-EU countries consistently. The Agency remains open to adjust the calculation method following guidance received.

### European Border and Coast Guard Agency (Frontex)

The method the Agency has been using for SAC contributions has remained consistent since 2016.

The current method was approved by the Management Board and according to the Commission's opinion.

The current method, as per the agreements in place with SAC countries, calculates their contributions according to the GNI/GDP of the individual country in relation to the total GNI/GNP of the contributing states. Once the ratio is defined it is then applied to the contribution received from the EU (EU Subsidy) provided to the Agency's at any the given year.

Regarding the percentage of SAC contribution in 2020 it has remained the same from the draft budget to the initial budget – 7,43% or 31.795.000EUR. The contribution percentage only changes to 6,49% if we calculate the SAC contribution to the total budget (which already contains their contribution) as opposed to the EC subsidy as the table below demonstrate:

	EC Subsidy	Total Budget
Funds	428,160,029.00	459,955,029.00
SAC %	7.43%	6.9%
SAC EUR	31,795,000.00	31,795,000.00

**3.30.15.** The budget implementation and rate of payments was heavily impacted by COVID 19 and its effects. Border management activities and return of irregular migrants were heavily impacted by the closure of the EU external borders and worldwide travel restrictions and suspensions of flight connections. However, it is relevant to note that the Agency was still able to commit 99% of the funds available. Given that the pandemic not only slowed down activities but also delayed several, the commitments that would have been done earlier in the year had to be done at the later stage affecting thus the payment rate.

European Border and coast Guard Standing Corps were to be deployed as of 1 January 2021 in line with the Founding Regulation.

Due to technical limitations of a new deployment support system (OPERA Evo), that does not allow for deployment decisions issued (legal document to deploy Standing Corps) in December 2020 for the operational year 2021; hence the approval of up to 500 individual missions lasting end December 2020-August 2021 was not possible. The provisional commitment was created at the end of 2020 to cover deployments of Standing Corps until the 3rd quarter 2021. Each month, an estimated amount of approx. EUR 3 M is used to finance deployments of SC cat 1 and 2, hence the carry forward of EUR 18 M.

The Agency is working to remedy that this situation will not repeat again.

## European Border and Coast Guard Agency (Frontex)

**3.30.16.** The presentation of the accounts does not contradict the Management Board decisions regarding the amending budgets. They are treated as budget implementation transactions since their adoption did not follow “the same procedure” as explained by the legal framework (Art. 34 of Management Board Decision 19/2019 and Art. 115 (9)(11)(12) of the Regulation (EU) 2019/1896). Budget reduction means cancelled appropriations and the Management Board does not need any other endorsement for taking such decisions.

Moreover, in the annex 5.0 of the annual accounts, “Current year budget”, the tables present the voted budget, the cancelled budget by Management Board decisions and the credits available or the credits available after those two Management Board decisions.

**3.30.17.** On 17 April 2020 the European Parliament adopted a resolution on the Council position on draft amending budget No 1/2020 of the European Union for the financial year 2020, on the basis of which the Agency should have received an additional EUR 10 million to support return operations from Greece. Indeed, the amount was never entered into the Agency’s accounts.

Due to Covid-19 outbreak many return operations had been suspended and by mid-year 2020 the Agency concluded that it will not be in need of additional support to finance those operations. Therefore, the granted amount of EUR 10 million was decided via the Management Board decision (the same as for the other budget amendments) to be released to the EU general budget.



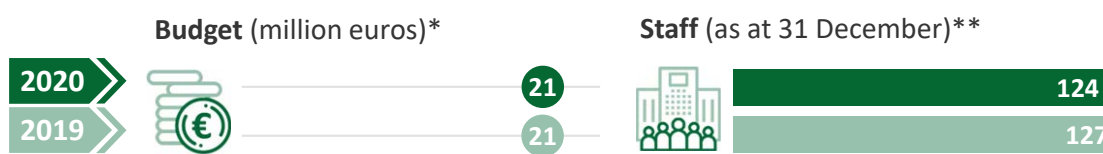
## **Agencies funded under MFF heading 4 – Global Europe**

## 3.31. European Training Foundation (ETF)

### Introduction

**3.31.1.** The European Training Foundation (“the Foundation”, or “ETF”), which is located in Turin, was established by Council Regulation (EEC) No 1360/90<sup>198</sup> (recast Regulation (EC) No 1339/2008 of the European Parliament and of the Council<sup>199</sup>). The Foundation’s task is to support the reform of vocational training in the European Union’s partner countries. To do this, it assists the European Commission in the implementation of various vocational training programmes. *Figure 3.31.1* presents key figures for the Foundation<sup>200</sup>.

**Figure 3.31.1 – Key figures for the Foundation**



\* 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 2019 and Final annual accounts of the Foundation for the financial year 2020; Staff figures provided by the Foundation.

### Information in support of the statement of assurance

**3.31.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Foundation’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 Foundation’s management.

<sup>198</sup> OJ L 131, 23.5.1990, p. 1.

<sup>199</sup> OJ L 354, 31.12.2008, p. 82.

<sup>200</sup> More information on the Foundation’s competences and activities is available on its website: [www.etf.europa.eu](http://www.etf.europa.eu).



**3.31.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.31.4.** We have audited:

- (a) the accounts of the European Training Foundation which comprise the financial statements<sup>201</sup> and the reports on the implementation of the budget<sup>202</sup> for the financial year ended 31 December 2020 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

**3.31.5.** In our opinion, the accounts of the Foundation for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Foundation at 31 December 2020, 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.

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<sup>201</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>202</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

**3.31.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.31.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.31.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on internal controls

**3.31.9.** The ETF did not comply with internal control principle 12 of its own internal control framework, under which the ETF must record deviations from the rules and procedures in its register of exceptions. In our audit, we identified some deviations from established procedures that should have been recorded (e.g. the use of electronic signatures for some documents which required traditional signatures). However, the register of exceptions had not been filled in. This undermines the transparency and the effectiveness of the ETF's internal control systems.

## Follow-up of previous years' observations

**3.31.10.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
<b>2018</b>	In a public procurement procedure for a temporary-agency services, the ETF applied award criteria that consisted of mostly non-competitive price elements. The Foundation should use award criteria that focus on competitive price elements.	<b>Outstanding</b>

European Training Foundation (ETF)

## The Foundation's reply

**3.31.9.** The European Training Foundation has taken note of the Court's report



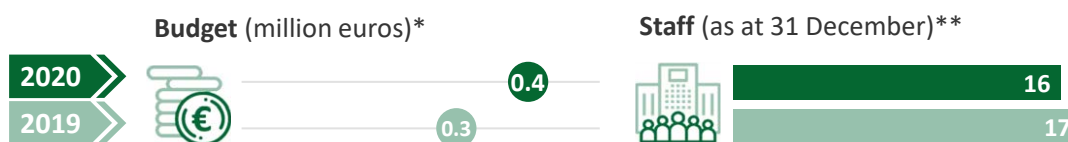
## **Agencies funded under MFF heading 5 – Administration**

## 3.32. Euratom Supply Agency (ESA)

### Introduction

**3.32.1.** The Euratom Supply Agency (“the Agency”, or “ESA”), located in Luxembourg, was created in 1958<sup>203</sup>. Council Decision 2008/114/EC, Euratom<sup>204</sup>, replaced the preceding Statutes of the Agency. The Agency’s main task is to ensure there is a regular supply of nuclear materials, in particular nuclear fuels, to EU users, by means of a common supply policy based on the principle of equal access to sources of supply. *Figure 3.32.1* presents key figures for the Agency<sup>205</sup>.

**Figure 3.32.1 – 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:* Annual accounts of the Agency for the financial year 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.32.2.** The audit approach taken by the ECA 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.

**3.32.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor’s

<sup>203</sup> OJ 27, 6.12.1958, p. 534/58.

<sup>204</sup> OJ L 41, 15.2.2008, p. 15.

<sup>205</sup> More information on the Agency’s competences and activities is available on its website: <http://ec.europa.eu/euratom/index.html>.

## Euratom Supply Agency (ESA)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

#### 3.32.4. We have audited:

- (a) the accounts of the Euratom Supply Agency which comprise the financial statements<sup>206</sup> and the reports on the implementation of the budget<sup>207</sup> for the financial year ended 31 December 2020 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

**3.32.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

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<sup>206</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>207</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Euratom Supply Agency (ESA)

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.32.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.32.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.32.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on budgetary management

**3.32.9.** Carry-overs of committed appropriations were high for Title II (administrative expenditure): they amounted to €177 445, or 80 % of the ESA's appropriations for the entire Title. The carry overs were partially due to the effects of the Covid-19 pandemic. Nearly half (46 %) of the amount carried over from 2020 to 2021 was intended to be used for IT services provided in 2021. This creates risks on the implementation of the payment appropriations of 2021 considering that in the previous years there was high cancellation rate.

The ESA should have used its 2021 budget for those services. In order to respect the principle of annuality, the ESA should further improve its budget planning and its implementation cycles.

## Follow-up of previous years' observations

**3.32.10.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).



Euratom Supply Agency (ESA)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The cancellation rate of budget appropriations carried over from 2017 to 2018 is high, at 21 %, demonstrating unjustified commitments in the previous year.	Completed

Euratom Supply Agency (ESA)

## The Agency's reply

**3.32.9.** The Noemi project constitutes an investment (EUR 355 000 over 2019-2021) into IT application that will allow the Agency to securely hold and process sensitive data on nuclear contracts. The project replies to the repeated Discharge Authority requests to continue the digitalisation in order to cut down on bureaucracy.

The commitment in December 2020 ensured the continuity of the team to implement the approved project plan.

The Agency recognises the risks connected with the implementation and will proactively ensure monitoring of the project to its delivery.



## **Self-financed Agencies**

## 3.33. Community Plant Variety Office (CPVO)

### Introduction

**3.33.1.** The Community Plant Variety Office (“the Office”, or “CPVO”), which is located in Angers, was created by Council Regulation (EC) No 2100/94<sup>208</sup>. Its main task is to register and examine applications for the grant of Union industrial property rights for plant varieties and to ensure that the necessary technical examinations are carried out by the competent offices in the Member States. *Figure 3.33.1* presents key figures for the Office<sup>209</sup>.

**Figure 3.33.1 – Key figures for the Office**



\* 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 2019 and Final annual accounts of the Office for the financial year 2020; Staff figures provided by the Office.

### Information in support of the statement of assurance

**3.33.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office’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 Office’s management.

**3.33.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's

<sup>208</sup> OJ L 227, 1.9.1994, p. 1.

<sup>209</sup> More information on the Office’s competences and activities is available on its website: [www.cpvo.europa.eu](http://www.cpvo.europa.eu).

## Community Plant Variety Office (CPVO)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

#### 3.33.4. We have audited:

- (a) the accounts of the Community Plant Variety Office which comprise the financial statements<sup>210</sup> and the reports on the implementation of the budget<sup>211</sup> for the financial year ended 31 December 2020 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

**3.33.5.** In our opinion, the accounts of the Office for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Office at 31 December 2020, 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.

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<sup>210</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>211</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Community Plant Variety Office (CPVO)

**Legality and regularity of the transactions underlying the accounts****Revenue****Opinion on the legality and regularity of revenue underlying the accounts**

**3.33.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

**Payments****Opinion on the legality and regularity of payments underlying the accounts**

**3.33.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**Follow-up of previous years' observations**

**3.33.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Community Plant Variety Office (CPVO)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2014	Although the Office became operational in 1995, no headquarters agreement has yet been signed with the host Member State.	Ongoing <b>(Not under the Office's control)</b>
2015	The level of unpaid fees was too high.	Completed
2016	The Office's founding regulation does not require periodic external performance evaluations.	Outstanding <b>(Not under the Office's control)</b>
2017	In 2017, the documentation of procurement and grant award procedures was inadequate.	Completed

Community Plant Variety Office (CPVO)

## The Office's reply

The Office has taken note of the Court's report.

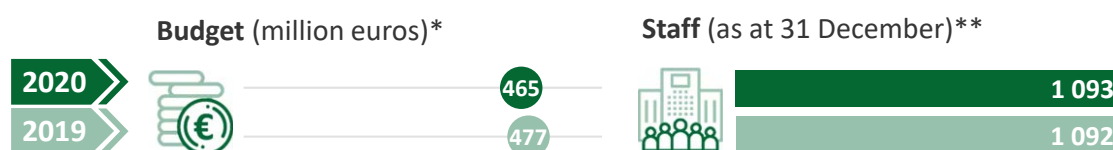


## 3.34. European Union Intellectual Property Office (EUIPO)

### Introduction

**3.34.1.** The European Union Intellectual Property Office (“the Office”, or “EUIPO”), known as the Office for Harmonization in the Internal Market (“OHIM”) until 23 March 2016, was established in 1993. Its initial founding Regulation was last revised by Regulation (EU) 2017/1001 of the European Parliament and of the Council<sup>212</sup>. The agency is responsible for managing the EU trade mark and the registered Community design, European and international cooperation in the field of intellectual property, as well as the European Observatory on Infringements of Intellectual Property Rights. *Figure 3.34.1* presents key figures for the Office<sup>213</sup>.

**Figure 3.34.1 – Key figures for the Office**



\* 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 2019 and Final annual accounts of the Office for the financial year 2020; Staff figures provided by the Office.

### Information in support of the statement of assurance

**3.34.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office’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 Office’s management.

<sup>212</sup> OJ L 154, 16.6.2017, p. 1.

<sup>213</sup> More information on the Office’s competences and activities is available on its website: [www.euiipo.europa.eu](http://www.euiipo.europa.eu).

**3.34.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.34.4.** We have audited:

- (a) the accounts of the European Union Intellectual Property Office which comprise the financial statements<sup>214</sup> and the reports on the implementation of the budget<sup>215</sup> for the financial year ended 31 December 2020 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

**3.34.5.** In our opinion, the accounts of the Office for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Office at 31 December 2020, 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.

<sup>214</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>215</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

**3.34.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.34.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.34.8.** The observations which follow do not call the ECA's opinion into question.

## Observations on the legality and regularity of transactions

**3.34.9.** In our audit report for the 2018 financial year, we concluded that the procurement procedure for cleaning services was irregular. As a result, all subsequent payments done based on this framework contract are irregular. In 2020, the related payments amounted to €1 411 329.42.

## Follow-up of previous years' observations

**3.34.10.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	The Office signed a contract for cleaning services with a tenderer who submitted an abnormally low offer. The procurement procedure and the underlying payments are irregular. The Office should analyse situations of potentially abnormal offers in a rigorous manner to ensure compliance with the Financial Regulation and fair competition.	<b>Ongoing</b>  (See paragraph 3.34.9)
2018	The office used a consultancy services contract, which in practice resulted in the loan of staff instead of the provision of services. This, however, is not a service which can be offered by a consultancy company.	<b>Completed</b>
2018	The annual work programme and the annual activity report do not contain information on the full-time equivalent staff members provided by service providers executing tasks of a non-core business nature but embedded in the core business of the Office. Such information would further increase transparency.	<b>N/A</b>

## European Union Intellectual Property Office (EUIPO)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>The Office published a vacancy notice to constitute a reserve list of Project Specialists in its Customer Department. The vacancy notice established two different candidate profiles which were to be evaluated separately. However, during the selection process, all candidates were assessed against all selection criteria, thus giving an advantage to candidates with both profiles.</p> <p>Furthermore, in the same procedure, the selection committee replaced a candidate who had declined an invitation for an interview with a candidate who had not reached the pre-established pass-mark. While 17 other candidates had been awarded at least the same number of points as the invited candidate, the selection committee did not provide any documentary justification as to why this candidate, who was already employed by the Office, had been invited.</p> <p>The selection procedure was therefore irregular, as these weaknesses undermined the principles of transparency and equal treatment of candidates.</p>	Ongoing
2019	<p>For the three audited selection procedures, selection committee members signed a general confidentiality note for participation in a selection procedure, which included a declaration on conflicts of interest. This note was signed before the list of candidates was known.</p> <p>Provisions in the Staff Regulations require every board member to sign a declaration once the candidates are known, in which they declare any professional or personal links with candidates. In the audited recruitment procedures, selection committee members did not declare their professional links to candidates. These weaknesses undermine the principles of transparency and equal treatment.</p>	Completed

## European Union Intellectual Property Office (EUIPO)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	<p>The Office grants an allowance to staff performing stand-by duty to staff working from home in the areas of infrastructure.</p> <p>According to the Office's business continuity plan, staff may be entitled to the stand-by duty allowance "where there is a confirmed necessity for regular standby services".</p> <p>The audit established that in the previous four years, the business continuity plan had never been activated.</p> <p>Because the activation of the business continuity plan is highly exceptional, we consider that there is no confirmed need for a stand-by duty allowance to be paid to the senior management of the Office. This is in line with the practice in the EU institutions. The current size of the stand-by duty team in the Office is excessive, and does not respect the principle of sound financial management.</p> <p>Furthermore, the Office should improve the checks it carries out in connection with stand-by duty in order to prevent irregular payments.</p>	Ongoing
2019	<p>In March 2014, EUIPO informed the Budget Committee that it had begun negotiations to buy a plot of land to cover its future space needs. In November 2018, the Budget Committee authorised the purchase of the plot for €4 700 000. EUIPO did not provide any further evidence to demonstrate the need to secure a long-term extension of its premises. EUIPO estimates that staff numbers will increase by around 300 by 2025. EUIPO's current space capacity, and the expansion potential of land already owned by EUIPO before the acquisition of the new plot, would allow 439 additional staff members to be accommodated.</p> <p>We have seen no evidence of any real need for EUIPO to acquire the land. We therefore consider that buying the land was not a productive use of EUIPO's budget surplus, and contravened the principle of sound financial management.</p>	N/A

## European Union Intellectual Property Office (EUIPO)

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
<b>2019</b>	We recall that in the Court's opinion No 1/2019 on the Office's Financial Regulation, the ECA concluded that the Office's budget surpluses were not being put to any productive use, either at the level of the Office or at the level of the European Union, and that the Office, together with the European Commission, should explore for example the possibility of using the budget surpluses to back up financial instruments supporting European enterprises' research and innovation activities (R&I) and growth.	<b>Ongoing</b>

## The Office's reply

**3.34.9.** This paragraph concerns an observation made in the context of the 2018 annual audit. As stated in the Office's reply included in the 2018 audit report, the Office considered that the authorising officer correctly exercised the discretionary power conferred to him by the Financial Regulation in the context of the procurement procedure in question. Besides, the nature of the services concerned by the observation is extraordinary and therefore rarely solicited. The Office has followed all steps foreseen by the Financial Regulation when dealing with an offer which could appear as abnormally low. Consequently, the Office did not concur with the Court's statement that offering a service (which is exceptional and rarely used) for a reduced price represents unfair practice and offers unfair competitive advantage vis-à-vis competitors. Ultimately, it is worth noting that the concept of an abnormally low offer is aimed primarily at ensuring that the provider can carry out the necessary services throughout the duration of the contract, which is the case here. To conclude, the Office did not identify any reasons to terminate the contract early, which is why it is still running. A new call for tender is planned to be launched in 2021 as the current contract is coming to an end. The above reasoning by the Office was explained in detail to the discharge authority and discharge for 2018 was granted to the Executive Director.



## 3.35. Single Resolution Board (SRB)

### Introduction

**3.35.1.** The Single Resolution Board (“SRB” or “the Board”), which is located in Brussels, was established by Regulation (EU) No 806/2014 of the European Parliament and of the Council, on the Single Resolution Mechanism (“the SRM Regulation”)<sup>216</sup>. The SRB’s mission is to ensure that credit institutions and certain investment firms (“credit institutions”) which fail, or which are likely to fail are resolved in an orderly fashion with as little impact as possible on the real economy and the public finances of the participating Member States of the Banking Union.

**3.35.2.** The SRB is in charge of administrating the Single Resolution Fund, which was established by the SRM Regulation and which is intended to support the Single Resolution Mechanism. The Single Resolution Fund is being gradually built up during the period from 2016 to 2023 and should reach the target of at least 1 % of the amount of covered deposits of all credit institutions within the European Banking Union by 31 December 2023.

**3.35.3.** The SRB has its own budget, which is separate from the EU budget. Contributions are raised from credit institutions established in Member States participating in the Banking Union. *Figure 3.35.1* presents key figures for the SRB<sup>217</sup>.

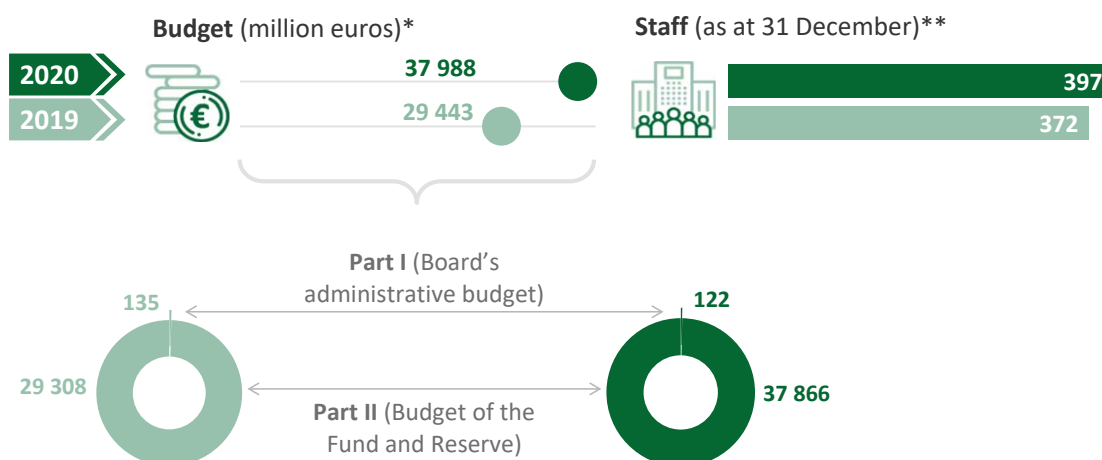
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<sup>216</sup> OJ L 225, 30.7.2014, p. 1.

<sup>217</sup> More information on the Board’s competences and activities is available on its website: [srb.europa.eu](http://srb.europa.eu).

## Single Resolution Board (SRB)

Figure 3.35.1 – Key figures for the SRB



eI\* 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: Annual accounts of the Single Resolution Board for the financial year 2019 and Final annual accounts of the Single Resolution Board for the financial year 2020; Staff figures provided by the Board.

## Information in support of the statement of assurance

**3.35.4.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Board'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 Board's management.

**3.35.5.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.35.6.** We have audited:

## Single Resolution Board (SRB)

- (a) the accounts of the Single Resolution Board which comprise the financial statements<sup>218</sup> and the reports on the implementation of the budget<sup>219</sup> for the financial year ended 31 December 2020 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

**3.35.7.** In our opinion, the accounts of the SRB for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the SRB at 31 December 2020, 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

**3.35.8.** We draw attention to note 8.L of the Board's final accounts, which describes the administrative appeals or judicial proceedings related to the ex-ante contributions between some credit institutions and national resolution authorities and the SRB as well as other legal proceeding brought against the SRB before the General Court and the Court of Justice of the European Union. These were not subject to our audit. Their possible impact on the SRB's financial statements for the financial year ended 31 December 2020 (in particular on contingent liabilities, provisions and liabilities) is subject to a specific annual audit, as stipulated under Article 92(4) of the SRM Regulation.

**3.35.9.** We draw attention to note 8.R of the financial statements of the SRB final accounts, which describes the impact of the current COVID-19 crisis on the portfolio of investments.

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<sup>218</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>219</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Single Resolution Board (SRB)

**Legality and regularity of the transactions underlying the accounts****Revenue****Opinion on the legality and regularity of revenue underlying the accounts**

**3.35.10.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

**Emphasis of matter**

**3.35.11.** We draw attention to note 8.L of the Board's final accounts, which describes the administrative appeals or judicial proceedings related to ex-ante contributions between some credit institutions and national resolution authorities and the SRB as well as other legal proceedings brought against the SRB before the General Court and the Court of Justice of the European Union. These were not subject to our audit. Their possible impact on the legality and regularity of revenue underlying the accounts is subject to a specific annual audit, as stipulated under Article 92(4) of the SRM Regulation.

**Other matter**

**3.35.12.** Without calling into question our opinions expressed above, we want to emphasise that ex-ante contributions are calculated on the basis of information provided by credit institutions to the SRB. Our audit of the SRB's revenue was based on this information, but we did not verify its reliability. The SRM Regulation does not establish a comprehensive and consistent control framework to ensure the reliability of the information. However, the SRB performs consistency and analytical checks of the information as well as some ex post checks at the level of the credit institutions. The SRB cannot release details on the risk-assessed contribution calculations for each credit institution as they are interlinked and include confidential information about other credit institutions. This affects the transparency of these calculations.

**Payments****Opinion on the legality and regularity of payments underlying the accounts**

**3.35.13.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Single Resolution Board (SRB)

**3.35.14.** The observations which follow do not call the ECA's opinion into question.

### Observations on internal controls

**3.35.15.** In 2018, the SRB signed an Investment Management Agreement (IMA) with a national central bank of the Eurosystem (NCB) for the outsourcing of the operational aspects of the investment process of the Single Resolution Fund (SRF). In the same year, the SRB also signed the custodian agreement with the NCB for the safeguarding of assets, cash management, and reconciliation and oversight duties on the assets under management. Both agreements give the SRB the right to access records and carry out on-site visits. The SRB, however, has not carried out an assessment of whether the service provider had adequate and effective organisational and administrative arrangements in place in order to mitigate a potential conflict of interest arising from assuming the roles of both Investment Manager and Custodian. This failure to carry out any such assessment contravenes the requirements of the SRB's internal control framework (ICF)<sup>220</sup>, and those of Article 16 of Commission Delegated Regulation (EU) 2016/451 of 16 December 2016<sup>221</sup>, on outsourcing.

**3.35.16.** The capacity of the SRB's risk management process to carry out an independent monitoring of the investment portfolio of SRF is limited. Its first limitation is that it is not automated. Its second limitation is that it relies on reports and analysis from the NCB and the SRB's front office. If it did have tool automation, and if it did use independent sources, it would better satisfy the requirements of Article 28(4) of the SRB's Financial Regulation on efficient internal controls elements and ICF principle 7 on risk assessment that requires SRB to identify risks to the achievement of its objectives across the organisation and to analyse risks as a basis for determining how the risks should be managed. The SRB is currently developing an IT tool<sup>222</sup> to enhance the capacity of the risk manager to compute additional risk metrics and to perform tasks in an automated fashion.

### Follow-up of previous years' observations

**3.35.17.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

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<sup>220</sup> Decision on adopting the SRB ICF on 17.03.2021: Relevant principles no 7, 13 and 16.

<sup>221</sup> OJ L 79, 30.3.2016, p. 2.

<sup>222</sup> SRB Investment Analysis and Database.

## Single Resolution Board (SRB)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	We found that, contrary to Article 8 of the Rules of Procedure of the SRB, the summaries of the proceedings of the meetings of the Board in its Plenary Session held in 2018 and 2019 were not signed.	Completed

## The Board's reply

**3.35.12.** The annual ex-ante contributions to the Fund are calculated on the basis of information provided by credit institutions and some investment firms to the Board. Even though, the SRM Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, the SRF addresses this issue to the extent possible. The data provided is verified against the data submitted in the previous year by the institutions as well as against the data in the ECB database. Validation rules have been implemented in the data collection portal and additional assurance, in the form of Agreed Upon Procedures report or Signed off form, is collected from the significant institutions. Discrepancies are flagged to the NRAs, asking for clarification, thus having been able to improve the quality of the data in the previous cycles. Moreover, the Board cannot release details on the risk-related part of the ex-ante contribution calculations per institution, as they are interlinked and would thus reveal confidential information about other institutions. However, the SRF presented to the NRAs the calculation methodology as well as detailed calibrations, hence ensuring transparency and cooperation. In addition to the ex-ante data verification steps already implemented by the SRB, ex-post checks are performed in a form of desk reviews in order to collect additional evidence on the reliability of the data.

**3.35.15.** The SRB acknowledges that sound oversight, including a potential on-site visit, is important. The SRB would like to stress that the specific nature of the service provider limits the risk of conflict of interest and supports the decision of the SRB to allocate those services to the same public entity. Protective measures are also embedded in the IM and Custody Agreements. Besides, daily reports providing independent valuation and compliance checks by the IM and the Custodian are provided. A second IM has been selected, which will provide the SRB with an external eye on the reconciliation process performed by the Custodian. Nevertheless, the SRB agrees that performing an on-site visit, as allowed by the contract signed, would be useful to assess the materiality of the residual risk of conflict of interest. An on-site visit will be planned as soon as sanitary conditions will allow. The SRB stresses that such an on-site visit was already planned in 2020 but has been postponed due to the COVID pandemic.

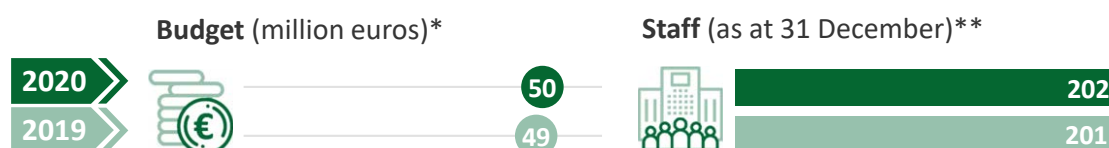
**3.35.16.** The first limitation is acknowledged and is being reduced with the development of an IT Tool (development of an in-house database and of related automated reports, in particular for Risk Management). Regarding the second limitation, the SRB would like to stress that in the current set-up, the fact that data are provided by the Investment Manager and the Custodian is a normal business practice and does not prevent an independent assessment of the risks, in particular as the SRB has also access to Bloomberg and Markit data. The risk assessment is performed by a full-time independent risk manager with the appropriate back-up arrangements in place. Besides, the on-boarding of the second Investment Manager will further enrich the data available to the Risk Manager (RM). In addition, a new organisational set-up of the RM function is currently being implemented, which will strengthen the role of RM in the SRF.

## 3.36. Translation Centre for the Bodies of the European Union (CdT)

### Introduction

**3.36.1.** The Translation Centre for the Bodies of the European Union (“the Centre”, or “CdT”), which is located in Luxembourg, was created by Council Regulation (EC) No 2965/94<sup>223</sup>. The Centre's task is to provide any European Union institutions and bodies with the translation services necessary for their activities. *Figure 3.36.1* presents key figures for the Centre<sup>224</sup>.

**Figure 3.36.1 – Key figures for the Centre**



\* 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 2019 and Final annual accounts of the Centre for the financial year 2020; Staff figures provided by the Centre.

### Information in support of the statement of assurance

**3.36.2.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Centre’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 Centre’s management.

**3.36.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor’s

<sup>223</sup> OJ L 314, 7.12.1994, p. 1.

<sup>224</sup> More information on the Centre’s competences and activities is available on its website: [www.cdt.europa.eu](http://www.cdt.europa.eu).



## Translation Centre for the Bodies of the European Union (CdT)

responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

#### 3.36.4. We have audited:

- (a) the accounts of the Translation Centre for the Bodies of the European Union which comprise the financial statements<sup>225</sup> and the reports on the implementation of the budget<sup>226</sup> for the financial year ended 31 December 2020 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

**3.36.5.** In our opinion, the accounts of the Centre for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Centre at 31 December 2020, 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.

<sup>225</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>226</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

**3.36.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.36.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.36.8.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2016	In 2016, cash and short term deposits held by the Centre decreased to €34.2 million (€38.3 million at the end of 2015) and reserves to €31.1 million (€34 million at the end of 2015).	<b>Completed</b>
2017	There is a need to clarify the future mandate and business model of the Centre.	<b>Completed</b>
2019	The Centre did not make appropriate disclosures in its final annual accounts on the impact of COVID-19 measures on its current and future operations.	<b>Completed</b>
2019	The Centre had signed contracts with IT companies for the provision of IT services. These contracts were formulated in such a way that could imply that temporary agency workers were simply being made available to the Centre to perform unspecified tasks, rather than to provide clearly defined IT services or products.	<b>N/A</b>

Translation Centre for the Bodies of the European Union (CdT)

## The Centre's reply

The Centre has taken note of the Court's report.

## **European Commission Executive Agencies**

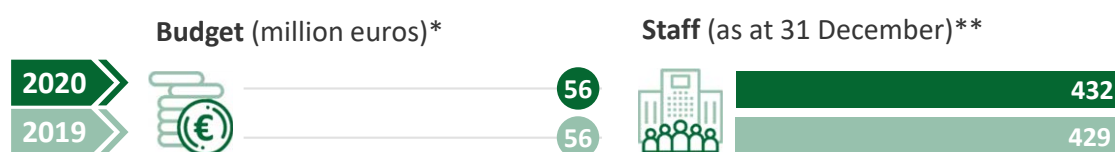
## 3.37. Education, Audiovisual and culture Executive Agency (EACEA)

### Introduction

**3.37.1.** The Education, Audiovisual and Culture Executive Agency (“the Agency”, or “EACEA”), which is located in Brussels, was established by Commission Implementing Decision 2013/776/EU repealing Decision 2009/336/EC<sup>227</sup>.

**3.37.2.** The new Commission Implementing Decision<sup>228</sup> (EU) 2021/173 on the executive agencies replaces EACEA’s Implementing Decision 2013/776/EU. It is applicable from 1 April 2021 until 31 December 2028. EACEA’s thematic focus will remain on educational and creative activities, and on projects close to EU citizens. *Figure 3.37.1* presents key figures for the Agency<sup>229</sup>.

**Figure 3.37.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.37.3.** The audit approach taken by the ECA comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory

<sup>227</sup> OJ L 343, 19.12.2013, p. 46.

<sup>228</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021 (OJ L 50, 15.2.2021, p. 9).

<sup>229</sup> More information on the Agency’s competences and activities is available on its website: [www.eacea.europa.eu](http://www.eacea.europa.eu).

## Education, Audiovisual and culture Executive Agency (EACEA)

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.

**3.37.4.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.37.5.** We have audited:

- (a) the accounts of the Education, Audiovisual and Culture Executive Agency which comprise the financial statements<sup>230</sup> and the reports on the implementation of the budget<sup>231</sup> for the financial year ended 31 December 2020 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

**3.37.6.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>230</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>231</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

**3.37.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.37.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.37.9.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).



Education, Audiovisual and culture Executive Agency (EACEA)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	In the final annual accounts for the 2019 financial year, the Agency did not make appropriate disclosures on the impact of COVID-19 measures on the Agency's operations.	N/A

Education, Audiovisual and culture Executive Agency (EACEA)

## The Agency's reply

The Agency has taken note of the Court's report.

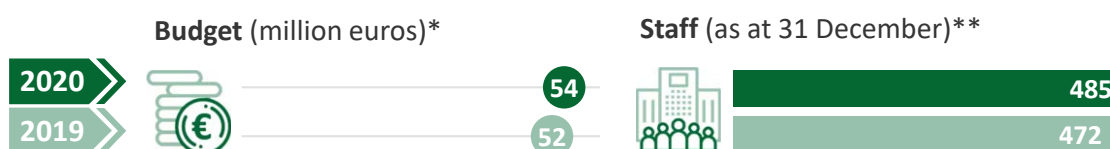
## 3.38. Executive Agency for Small and Medium-sized Enterprises (EASME)

### Introduction

**3.38.1.** The Executive Agency for Small and Medium-sized Enterprises (“the Agency”, or “EASME”) is located in Brussels. The Agency was established from the period 1 January 2014 to 31 December 2024 by Commission Implementing Decision 2013/771/EU<sup>232</sup>. It works closely with seven European Commission Directorates-General to coordinate EU action relating to SMEs in the fields of research and innovation, competitiveness, environment and climate action, and maritime affairs and fisheries.

**3.38.2.** Under the new Commission Implementing Decision (EU) 2021/173<sup>233</sup> applicable from 1 April 2021 to 31 December 2028, the European Innovation Council and SMEs Executive Agency (“EISMEA”) has been established as a successor to EASME. EISMEA’s portfolio will give it a clear focus on innovation and the single market. It will be responsible for creating strong synergies to support the recovery of the European economy, by grouping in one agency all the activities of the European Innovation Council (EIC) and the programmes related to small and medium-sized enterprises. *Figure 3.38.1* presents key figures for the Agency<sup>234</sup>.

**Figure 3.38.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

<sup>232</sup> OJ L 341, 18.12.2013, p. 73.

<sup>233</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021 (OJ L 50, 15.2.2021, p. 9).

<sup>234</sup> More information on the Agency’s competences and activities is available on its website: [www.ec.europa.eu/easme/](http://www.ec.europa.eu/easme/).

## Information in support of the statement of assurance

**3.38.3.** The audit approach taken by the ECA 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.

**3.38.4.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.38.5.** We have audited:

- (a) the accounts of the Executive Agency for Small and Medium-sized Enterprises which comprise the financial statements<sup>235</sup> and the reports on the implementation of the budget<sup>236</sup> for the financial year ended 31 December 2020 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

**3.38.6.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the

<sup>235</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>236</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Executive Agency for Small and Medium-sized Enterprises (EASME)

Agency at 31 December 2020, 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.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

##### Opinion on the legality and regularity of revenue underlying the accounts

**3.38.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

#### Payments

##### Opinion on the legality and regularity of payments underlying the accounts

**3.38.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.38.9.** The observations which follow do not call the ECA's opinion into question.

### Observations on internal controls

**3.38.10.** In 2018, the European Commission, on behalf of more than 60 EU bodies (including EASME), signed a framework contract for the acquisition of software licences and IT services. The contractor, acting as an intermediary, is entitled to add a percentage mark-up to its suppliers' prices. In 2020, EASME paid for a software licence and maintenance under this framework contract without performing any internal controls to ascertain whether the contractor had used the correct prices and charged the correct mark-ups. This indicates weak ex-ante internal controls.

### Follow-up of previous years' observations

**3.38.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of last years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2019	EASME signed a legal commitment without having a corresponding budgetary commitment in place. The payment made under this contract in 2019, to the value of €10 435, is therefore irregular. This instance of non-compliance was not recorded in the register of exceptions, and was not followed up by EASME. Four further such cases also occurred under similar circumstances. Descriptions of these further errors had indeed been recorded in the register of exceptions. This raises specific concerns about the risk of irregularities in the management of EASME's commitments.	Ongoing
2019	The Agency ran a recruitment procedure in which one of the members of the selection board was not formally appointed and did not sign any declaration of confidentiality or of absence of conflict of interest, even though this was a requirement under the Staff Regulations. This opened the Agency to the risk that potential conflicts of interest may have remained undetected.	Ongoing
2019	EASME had high rate of carry-overs. This suggests that the Agency is making an effort to report a budgetary implementation rate of as close as possible to 100 %. This could also be indicative of the Agency front-loading commitments which in fact relate to activities from the following year. The high cancellation rate of budgetary appropriations of previous years also implies that budgetary needs 2019 were overestimated. This contradicts the budgetary principle of annuality. The Agency should further improve its budget planning and its implementation cycles.	Completed

Executive Agency for Small and Medium-sized Enterprises (EASME)

## The Agency's reply

**3.38.10.** The Agency agrees with the finding. The quotation provided by the contractor did not include a split between the original ISV pricing and the contractor's uplift. An ex-ante verification of the correctness of the price charged and the uplift was not documented. As a corrective measure, the Agency will include in the procedure of the launching of the Order Form the following point: *Check on the correctness of price of the product (the original ISV price and the uplift).*

## 3.39. European Research Council Executive Agency (ERCEA)

### Introduction

**3.39.1.** The European Research Council Executive Agency (“the Agency”, or “ERCEA”), which is located in Brussels, was created by Commission Decision 2008/37/EC<sup>237</sup>. The Agency was established for a period beginning on 1 January 2008 and ending on 31 December 2017 with the aim of managing the “Ideas” specific programme under the 7<sup>th</sup> Framework Programme for Research. As per Council Decision 2013/743/EU<sup>238</sup> the Agency’s mandate was extended.

**3.39.2.** The new Commission Implementing Decision<sup>239</sup> (EU) 2021/173 on the executive agencies replaces ERCEA’s Implementing Decision 2013/779/EU. It is applicable from 1 April 2021 until 31 December 2028. ERCEA’s thematic focus will remain on the implementation of European Research Council actions under Horizon Europe. *Figure 3.39.1* presents key figures for the Agency<sup>240</sup>.

**Figure 3.39.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

<sup>237</sup> OJ L 9, 12.1.2008, p. 15.

<sup>238</sup> OJ L 347, 20.12.2013, p. 965.

<sup>239</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021 (OJ L 50, 15.2.2021, p. 9).

<sup>240</sup> More information on the Agency’s competences and activities is available on its website: [www.ercea.europa.eu](http://www.ercea.europa.eu).



## Information in support of the statement of assurance

**3.39.3.** The audit approach taken by the ECA 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.

**3.39.4.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.39.5.** We have audited:

- (a) the accounts of the European Research Council Executive Agency which comprise the financial statements<sup>241</sup> and the reports on the implementation of the budget<sup>242</sup> for the financial year ended 31 December 2020 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

**3.39.6.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the

<sup>241</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>242</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## European Research Council Executive Agency (ERCEA)

Agency at 31 December 2020, 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.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

##### Opinion on the legality and regularity of revenue underlying the accounts

**3.39.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

#### Payments

##### Opinion on the legality and regularity of payments underlying the accounts

**3.39.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

**3.39.9.** The observations which follow do not call the ECA's opinion into question.

### Observations on legality and regularity of transactions

**3.39.10.** In July 2019, the Agency launched a procurement procedure for the provision of audiovisual services. The evaluation committee did not properly assess the quality criterion for a case study since the requirement for the location shoots in three countries was not fulfilled by the winning tenderer and its offer should have not passed the minimum quality level. The principle of equal treatment of all tenders was not respected, and the procedure is therefore irregular. The related payments of €36 400 made in 2020 are also irregular.

Following a request for clarification from a contractor, ERCEA subsequently re-evaluated the tenders, terminated the framework contract with the winning tenderer, and ranked the tenders afresh.

## Follow-up of previous years' observations

**3.39.11.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2018	<p>The Agency uses contracts with IT companies for the provision of IT services by consultants on a 'time and means' basis at the premises of the Agency. Based on the specific and general criteria provided by Belgian law with regard to the implementation of such contracts, the Agency should not determine the tasks assigned to the service providers' employees. We found that instructions to the IT consultants could lead to confusion as to who determines the tasks assigned to the service providers' employees. The Agency should make sure that all EU and domestic legal provisions are respected when using IT consultants.</p>	Completed
2018	<p>In addition to the use of IT consultants described above, in 2018 the Agency also used 36 interim workers under framework contracts with one temporary work agency. However, the related order forms do not state the reason for using interim workers, as required under Belgian labour law. Depending on the reason, different approval and reporting requirements need to be met. The Agency should use order forms that include all information required by law.</p>	Completed

European Research Council Executive Agency (ERCEA)

## The Agency's reply

**3.39.10.** ERCEA agrees that the procedure was irregular in the sense that it did not comply with Art. 167§3 and 170§1 of the Financial Regulation by failing to properly apply the award criterion. ERCEA, however, upon detection of the error exercised all due diligence to restore the principle of equal treatment. Payments were made in line with the legal commitments, ERCEA having decided to continue with the execution of the specific contracts in order not to jeopardise the timely implementation of the ERC communication strategy.

## 3.40. Innovation and Networks Executive Agency (INEA)

### Introduction

**3.40.1.** The Innovation and Networks Executive Agency (“the Agency”, or “INEA”), which is located in Brussels, was set up by Commission Decision 2013/801/EU<sup>243</sup> to replace and succeed the Trans-European Transport Network Executive Agency. The Agency was established for a period beginning on 1 January 2014 and ending on 31 December 2024 for the management of EU actions in relation to the Connecting Europe Facility, the Horizon 2020 Research and Innovation Funding Programme, the Trans-European Transport Network and the Marco Polo Programme.

**3.40.2.** Under the new Commission Implementing Decision<sup>244</sup> (EU) 2021/173 applicable from 1 April 2021 to 31 December 2028, the European Climate, Infrastructure and Environment Executive Agency (“CINEA”) has been established as a successor to INEA. CINEA’s portfolio will give it a clear focus as a climate and environment agency. It will be responsible for the LIFE programme, the Innovation Fund, infrastructure activities under CEF Transport and CEF Energy, Horizon Europe cluster 5 related to climate, energy and mobility, the public-sector loan facility under the Just Transition Mechanism, and the European Maritime, Fisheries and Aquaculture Fund. *Figure 3.40.1* presents key figures for the Agency<sup>245</sup>.

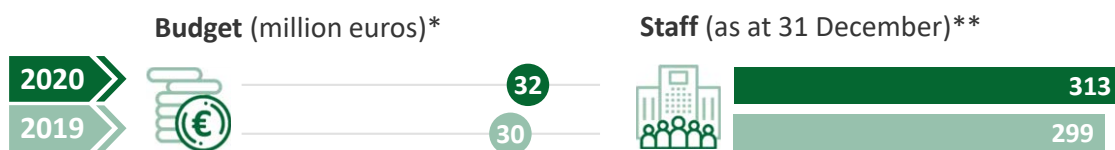
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<sup>243</sup> OJ L 352, 24.12.2013, p. 65.

<sup>244</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021 (OJ L 50, 15.2.2021, p. 9).

<sup>245</sup> More information on the Agency’s competences and activities is available on its website: [www.ec.europa.eu/inea](http://www.ec.europa.eu/inea).

## Innovation and Networks Executive Agency (INEA)

**Figure 3.40.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

## Information in support of the statement of assurance

**3.40.3.** The audit approach taken by the ECA 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.

**3.40.4.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court’s statement of assurance provided to the European Parliament and the Council – Independent auditor’s report

### Opinion

**3.40.5.** We have audited:

## Innovation and Networks Executive Agency (INEA)

- (a) the accounts of the Innovation and Networks Executive Agency which comprise the financial statements<sup>246</sup> and the reports on the implementation of the budget<sup>247</sup> for the financial year ended 31 December 2020
  - (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

**3.40.6.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

##### Opinion on the legality and regularity of revenue underlying the accounts

**3.40.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

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<sup>246</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>247</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.



## Innovation and Networks Executive Agency (INEA)

**Payments****Opinion on the legality and regularity of payments underlying the accounts**

**3.40.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

Innovation and Networks Executive Agency (INEA)

## The Agency's reply

The Agency has taken note of the Court's report.

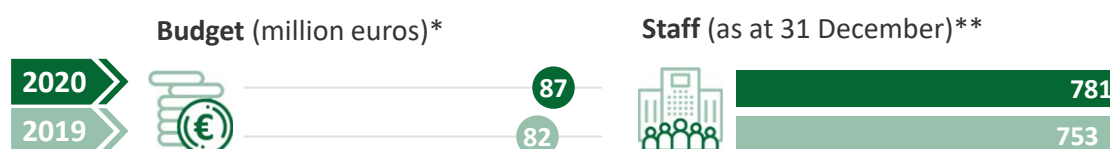
## 3.41. Research Executive Agency (REA)

### Introduction

**3.41.1.** The Research Executive Agency (“the Agency”, or “REA”), which is located in Brussels, was set up by Commission Decision 2008/46/EC<sup>248</sup>. The Agency was established for a limited period beginning on 1 January 2008 and ending on 31 December 2017 with the aim of managing specific Union activities in the field of research. On 15 June 2009 the Agency was officially granted its administrative and operational autonomy by the European Commission. On 13 December 2013, the European Commission, by its Implementing Decision 2013/778/EU<sup>249</sup>, extended the lifetime of the REA to 2024 and delegated to it also parts of Horizon 2020, the new Framework Programme for Research and Innovation.

**3.41.2.** The new Commission Implementing Decision<sup>250</sup> (EU) 2021/173 on the executive agencies replaces REA’s Implementing Decision 2013/778/EU. It is applicable from 1 April 2021 until 31 December 2028. REA’s thematic focus will remain on research activities, with the addition of the Agricultural Promotion Measures Programme. *Figure 3.41.1* presents key figures for the Agency<sup>251</sup>.

**Figure 3.41.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

<sup>248</sup> OJ L 11, 15.1.2008, p. 9.

<sup>249</sup> OJ L 346, 20.12.2013, p. 54.

<sup>250</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021 (OJ L 50, 15.2.2021, p. 9).

<sup>251</sup> More information on the Agency’s competences and activities is available on its website: [www.ec.europa.eu/rea](http://www.ec.europa.eu/rea).

## Information in support of the statement of assurance

**3.41.3.** The audit approach taken by the ECA 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.

**3.41.4.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.41.5.** We have audited:

- (a) the accounts of the Research Executive Agency which comprise the financial statements<sup>252</sup> and the reports on the implementation of the budget<sup>253</sup> for the financial year ended 31 December 2020 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

**3.41.6.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the

<sup>252</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>253</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Research Executive Agency (REA)

Agency at 31 December 2020, 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.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

##### Opinion on the legality and regularity of revenue underlying the accounts

**3.41.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

#### Payments

##### Opinion on the legality and regularity of payments underlying the accounts

**3.41.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

### Follow-up of previous years' observations

**3.41.9.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

Research Executive Agency (REA)

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	E-procurement: by the end of 2017 the Agency had introduced e-invoicing for certain procedures, but it did not yet have the occasion to implement e-tendering and e-submission.	<b>Ongoing</b>

Research Executive Agency (REA)

## The Agency's reply

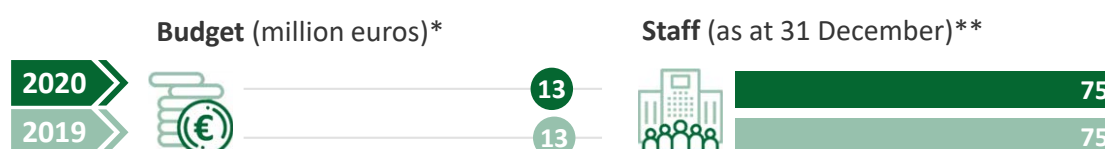
The Agency has taken note of the Court's report.

## 3.42. Consumers, Health, Agriculture and Food Executive Agency (Chafea)

### Introduction

**3.42.1.** Between its establishment on 1 January 2005 and its closure on 31 March 2021, the Consumers, Health, Agriculture and Food Executive Agency (“the Agency”, or “Chafea”) was located in Luxembourg. Under Commission Implementing Decision<sup>254</sup> (EU) 2021/173 on the executive agencies, Chafea’s tasks were taken over by Brussels-based executive agencies and by a newly created European Health and Digital Executive Agency (“HaDEA”) on 1 April 2021. *Figure 3.42.1* presents key figures for the Agency<sup>255</sup>.

**Figure 3.42.1 – 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 2019 and Final annual accounts of the Agency for the financial year 2020; Staff figures provided by the Agency.

### Information in support of the statement of assurance

**3.42.2.** The audit approach taken by the ECA 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.

<sup>254</sup> Commission Implementing Decision (EU) 2021/173 of 12 February 2021 (OJ L 50, 15.2.2021, p. 9).

<sup>255</sup> More information on the Agency’s competences and activities is available on its website: <http://ec.europa.eu/chafea/>



Consumers, Health, Agriculture and Food Executive Agency (Chafea)

**3.42.3.** Please refer to section 3.1 of the report for the description of the basis for the opinion, responsibilities of management and those charged with governance and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 341 forms an integral part of the opinion.

## The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

### Opinion

**3.42.4.** We have audited:

- (a) the accounts of the Consumers, Health, Agriculture and Food Executive Agency which comprise the financial statements<sup>256</sup> and the reports on the implementation of the budget<sup>257</sup> for the financial year ended 31 December 2020 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

**3.42.5.** In our opinion, the accounts of the Agency for the year ended 31 December 2020 present fairly, in all material respects, the financial position of the Agency at 31 December 2020, 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.

<sup>256</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>257</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Other matter

**3.42.6.** Chafea has now closed, and its tasks have been redistributed to other agencies. However, given that these agencies are other EU consolidated entities, the redistribution has no impact on the amounts of assets and liabilities in the 2020 annual accounts.

## Legality and regularity of the transactions underlying the accounts

### Revenue

#### Opinion on the legality and regularity of revenue underlying the accounts

**3.42.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2020 is legal and regular in all material respects.

### Payments

#### Opinion on the legality and regularity of payments underlying the accounts

**3.42.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2020 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.42.9.** An overview of the action taken in response to the ECA's observations from previous years is provided in the [Annex](#).

## Annex – Follow-up of previous years' observations

Year	ECA's observations	Action taken to respond to ECA's observations (Completed / Ongoing / Outstanding / N/A)
2017	The Agency publishes vacancy notices for temporary agents on its own website and on social media, but not on the website of the European Personnel Selection Office (EPSO).	N/A <sup>258</sup>
2019	Following the Communication to the Commission C(2020)2880/1 of 29 April 2020 on Delegation of implementation tasks to Executive Agencies for the 2021-2027 EU programmes, Chafea's tasks will be transferred to other EU consolidated agencies. At the time of the 2019 audit, contingent liabilities resulting from this transfer could not be reliably estimated.	Ongoing
2019	The cancellation rate of budget appropriations carried over from 2018 to 2019 was high, at 20 %, demonstrating unjustified commitments in the previous year. The Agency should carry over budget appropriations only when justified.	N/A

<sup>258</sup> The Agency ceased to exist as of 1 April 2021.

Consumers, Health, Agriculture and Food Executive Agency (Chafea)

## The Agency's reply

The Agency has taken note of the Court's report.

## ECA team



**Alex Brenninkmeijer (ECA member)**

Di Hai (Attaché in the Cabinet)

Ioanna Metaxopoulou (Director of Chamber IV); Valeria Rota (Principal Manager); Heads of Task: Andreja Pavlakovic Milosavljevic, Joao Pedro Bento, Marco Corradi, Peter Eklund, Svetoslava Tashkova, Leonidas Tsonakas;

Auditors: Bob De Blick, Christine Becker, Hans Christian Monz, Iveta Adovica, Janis Gaisonoks (Seconded National Expert), Julio Cesar Santin Santos, Nikolaos Alampanos, Paulo Oliveira, Roberto Sanz Moratal, Sevdalina Todorova, Svetoslava Tashkova; Tomas Mackevicius;

Secretarial assistance: Jana Humajova;

Alexandra Mazilu (graphical designer) and Richard Moore (linguistic support).

This Report was adopted by Chamber IV, headed by Mr Mihails KOZLOVS, Member of the Court of Auditors, in Luxembourg on 21 September 2021.

*For the Court of Auditors*

A handwritten signature in black ink, appearing to read 'k-h se', written in a cursive style.

Klaus-Heiner LEHNE

*President*

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