

# 2021

## Annual report on EU agencies for the financial year 2021



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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>EMA</b>	European Medicines Agency
<b>BEREC Office</b>	Agency for Support for Body of European Regulators for Electronic Communications	<b>EMCDDA</b>	European Monitoring Centre for Drugs and Drug Addiction
<b>CdT</b>	Translation Centre for the Bodies of the European Union	<b>EMSA</b>	European Maritime Safety Agency
<b>Cedefop</b>	European Centre for the Development of Vocational Training	<b>ENISA</b>	European Union Agency for Cybersecurity
<b>CEPOL</b>	European Union Agency for Law Enforcement Training	<b>EPPO</b>	European Public Prosecutor's Office
<b>Chafea</b>	The Consumers, Health, Agriculture and Food Executive Agency	<b>ERA</b>	European Union Agency for Railways
<b>CINEA</b>	European Climate Infrastructure & Environment 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>	European Education and Culture Executive Agency	<b>ESMA</b>	European Securities and Markets Authority



<b>Acronym</b>	<b>Full name</b>	<b>Acronym</b>	<b>Full name</b>
<b>EASA</b>	European Union Aviation Safety Agency	<b>ETF</b>	European Training Foundation
<b>EASO</b>	European Asylum Support Office	<b>EUIPO</b>	European Union Intellectual Property Office
<b>EBA</b>	European Banking Authority	<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>ECDC</b>	European Centre for Disease Prevention and Control	<b>EU-OSHA</b>	European Agency for Safety and Health at Work
<b>ECHA</b>	European Chemicals Agency	<b>Eurofound</b>	European Foundation for the Improvement of Living and Working Conditions
<b>EEA</b>	European Environment Agency	<b>Eurojust</b>	European Union Agency for Criminal Justice Cooperation
<b>EFCA</b>	European Fisheries Control Agency	<b>Europol</b>	European Union Agency for Law Enforcement Cooperation
<b>EFSA</b>	European Food Safety Authority	<b>EUSPA</b>	European Union Agency for the Space Programme
<b>EIGE</b>	European Institute for Gender Equality	<b>FRA</b>	European Union Agency for Fundamental Rights

<b>Acronym</b>	<b>Full name</b>	<b>Acronym</b>	<b>Full name</b>
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority	<b>Frontex</b>	European Border and Coast Guard Agency
<b>EISMEA</b>	European Innovation Council and SMEs Executive Agency	<b>HaDEA</b>	European Health and Digital Executive Agency
<b>EIT</b>	European Institute of Innovation and Technology	<b>REA</b>	European Research Executive Agency
<b>ELA</b>	European Labour Authority	<b>SRB</b>	Single Resolution Board

# 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 EU citizens, 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 EU bodies. Our mandate does not cover the three agencies working in the field of defence (the European Defence Agency, the European Institute for Security Studies and the European Union Satellite Centre), which are financed through Member States' contributions and are audited by other independent external auditors<sup>3</sup>.

**1.3.** This report presents the results of our annual audit of the EU agencies and other EU bodies (collectively referred to as 'the agencies') for the 2021 financial year, as well as additional agency-related audit results from other tasks such as special audits or opinions. In this report, for simplification, we refer to the agencies using their acronyms instead of their full names. A list of all agencies and their acronyms is provided at the beginning of this report. 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 44 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 matters and observations not calling these opinions into question.

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<sup>1</sup> Articles 285 to 287 of the [Treaty on the functioning of the European Union](#).

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

<sup>3</sup> [Review 01/2014](#): "Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements", paragraph 84.

**1.4.** Overall, our audit of the agencies for the financial year ended 31 December 2021 produced positive results, in line with those 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 all agencies' accounts;
- unqualified (clean) audit opinions on the legality and regularity of the payments underlying all agencies' accounts, except for eu-LISA for which we issued a qualified opinion.

**1.5.** Nevertheless, for most agencies, we draw attention to areas for improvement in our *emphasis of matter* and *other matter* paragraphs, and in our *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 have significant influence in areas of vital importance to European citizens' daily lives, such as health, safety, security, freedom and justice.

**1.7.** There are three types of EU agencies: decentralised agencies, the Commission executive agencies and other bodies. The differences between them are described below (see paragraphs [1.8-1.10](#)).

### Decentralised agencies address specific policy needs

**1.8.** The **33 decentralised agencies**<sup>4</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.

### Commission executive agencies implement EU programmes

**1.9.** The **seven Commission executive agencies**<sup>5</sup> carry out executive and operational tasks relating to EU programmes, such as supporting stakeholders in delivering the [European Green Deal](#) (CINEA) and managing certain Horizon Europe projects (REA). They are set up to operate for a fixed period of time (currently, until 31 December 2028).

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<sup>4</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, EUSPA, Eurofound, Eurojust, Europol, FRA, Frontex.

<sup>5</sup> CINEA, EACEA, EISMEA, ERCEA, HaDEA, REA and Chafea (which ceased to exist on 1 April 2021).

## Other bodies have specific mandates

**1.10.** The **four other bodies** are the EIT, EPPO, ESA and the SRB. The EIT is an independent decentralised EU body which pools scientific, business and education resources to boost the EU's innovation capacity by providing grant funding. The EPPO is an independent EU body which investigates and prosecutes crimes against the EU budget. The ESA was tasked with guaranteeing the regular and equitable supply of nuclear fuels to EU users in line with the Euratom Treaty. The SRB is the key authority of the Single Resolution Mechanism in the European Banking Union. Its mission is to ensure the orderly resolution of banks which are failing or likely to fail, with as little impact as possible on the real economy and public finances of EU Member States. In addition to this report, each year we also produce a report on the SRB's contingent liabilities<sup>6</sup>.

## Recent changes

**1.11.** The number of agencies has increased over the years. This report covers 44 agencies, as shown in [Figure 1.1](#), three more than our report for 2020. The three new agencies are:

- the European Labour Authority (ELA), which started operations on 17 October 2019 and has been financially autonomous since 26 May 2021;
- the European Public Prosecutor's Office (EPPO), which started operations on 1 June 2021 and has been financially autonomous since 24 June 2021
- the European Health and Digital Executive Agency (HaDEA), established on 16 February 2021<sup>7</sup>.

**1.12.** This report also covers the Consumers, Health, Agriculture and Food Executive Agency (Chafea). On 31 March 2021, Chafea was wound down, and its tasks were taken over by the newly created HaDEA, as well as the European Innovation Council and SMEs Executive Agency (EISMEA) and the European Research Executive Agency (REA).

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<sup>6</sup> See our [report](#) for the 2020 financial year.

<sup>7</sup> [Commission Implementing Decision \(EU\) 2021/173](#) establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency.

**1.13.** In addition, three agencies had their mandates modified in 2021, including a change of name in two cases:

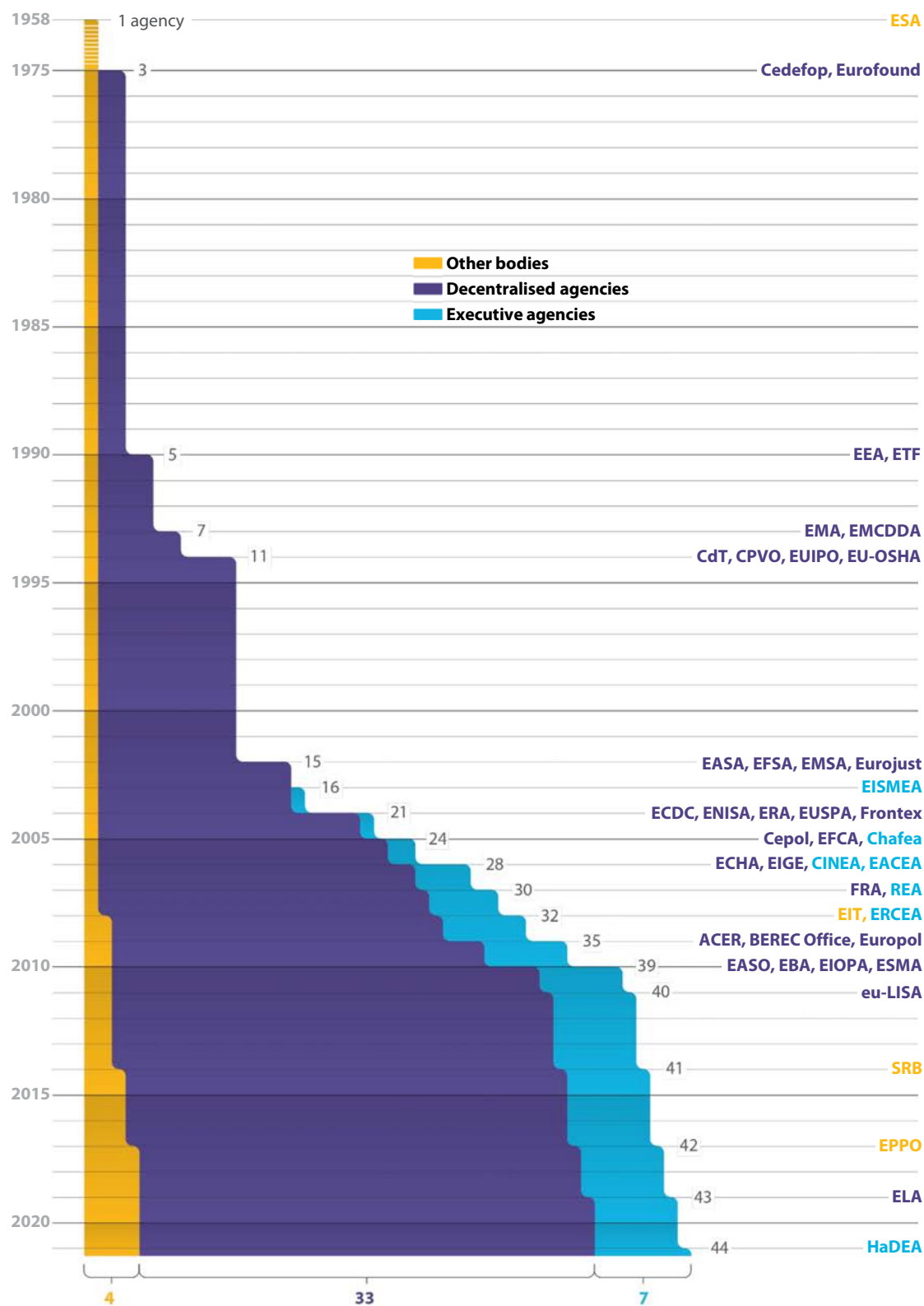
- the European Institute of Innovation and Technology (the EIT), previously operating under the same name
- the European Union Agency for the Space Programme (EUSPA), previously operating as the European Global Navigation Satellite System Agency (GSA);
- the European Asylum Support Office (EASO), superseded in 2022 by the European Union Asylum Agency (the EUAA).

**1.14.** Furthermore, five executive agencies had their mandate renewed in 2021, including a change of name in four cases.

- the European Climate Infrastructure and Environment Executive Agency (CINEA), previously operating as the Innovation and Networks Executive Agency (INEA);
- the European Education and Culture Executive Agency (EACEA), previously operating as the Education, Audiovisual and Culture Executive Agency (EACEA);
- the European Innovation Council and SMEs Executive Agency (EISMEA), previously operating as the Executive Agency for Small and Medium-sized Enterprises (EASME);
- the European Research Council Executive Agency (ERCEA), previously operating under the same name;
- European Research Executive Agency (REA), previously operating as Research Executive Agency (REA).



Figure 1.1 – Timeline and overview of the evolution of agencies

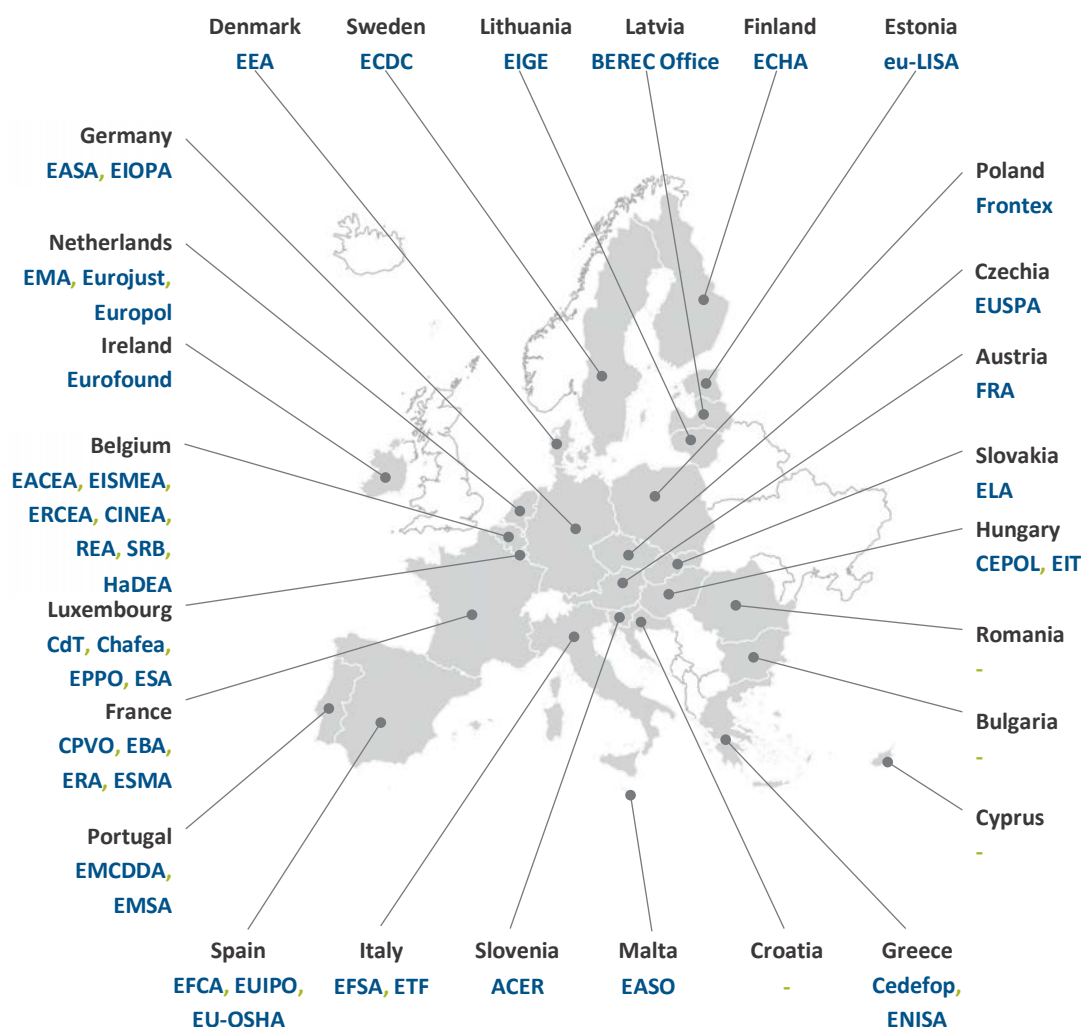


Note: The year mentioned in the figure refers to the year that the founding act of the agency (or its predecessor) came into force.

Source: ECA.

**1.15.** Now that Chafea no longer exists, all 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.

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

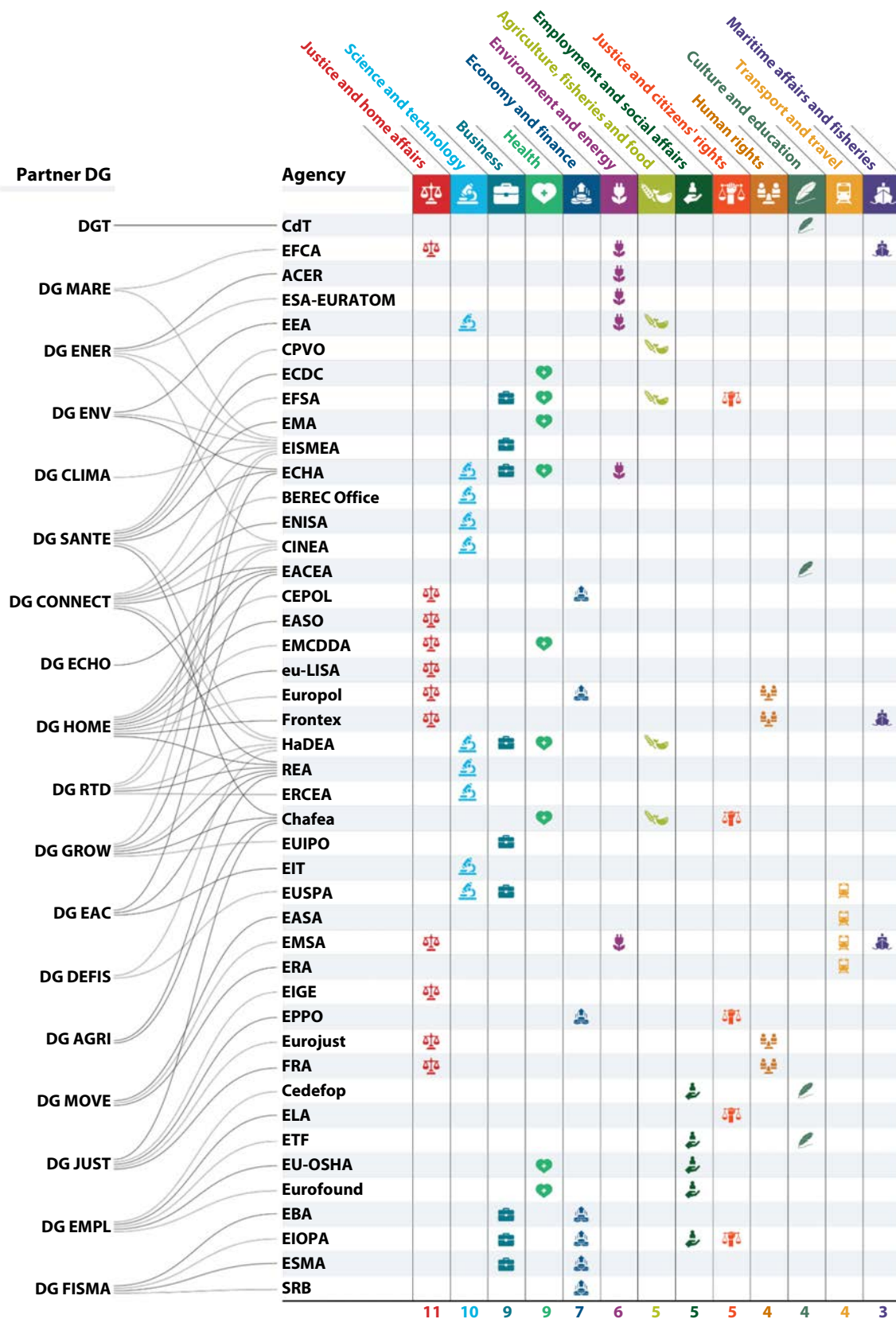


*Note:* To go straight to our individual statement of assurance on an agency, click on its name in the diagram.

*Source:* ECA.

**1.16.** As shown in [Figure 1.3](#), EU agencies work in many different areas, and do so in partnership with, and taking into account the guidance of Directorates-General of the Commission.

Figure 1.3 – EU agencies cover a wide range of topics



Source: ECA, based on information from the Commission.

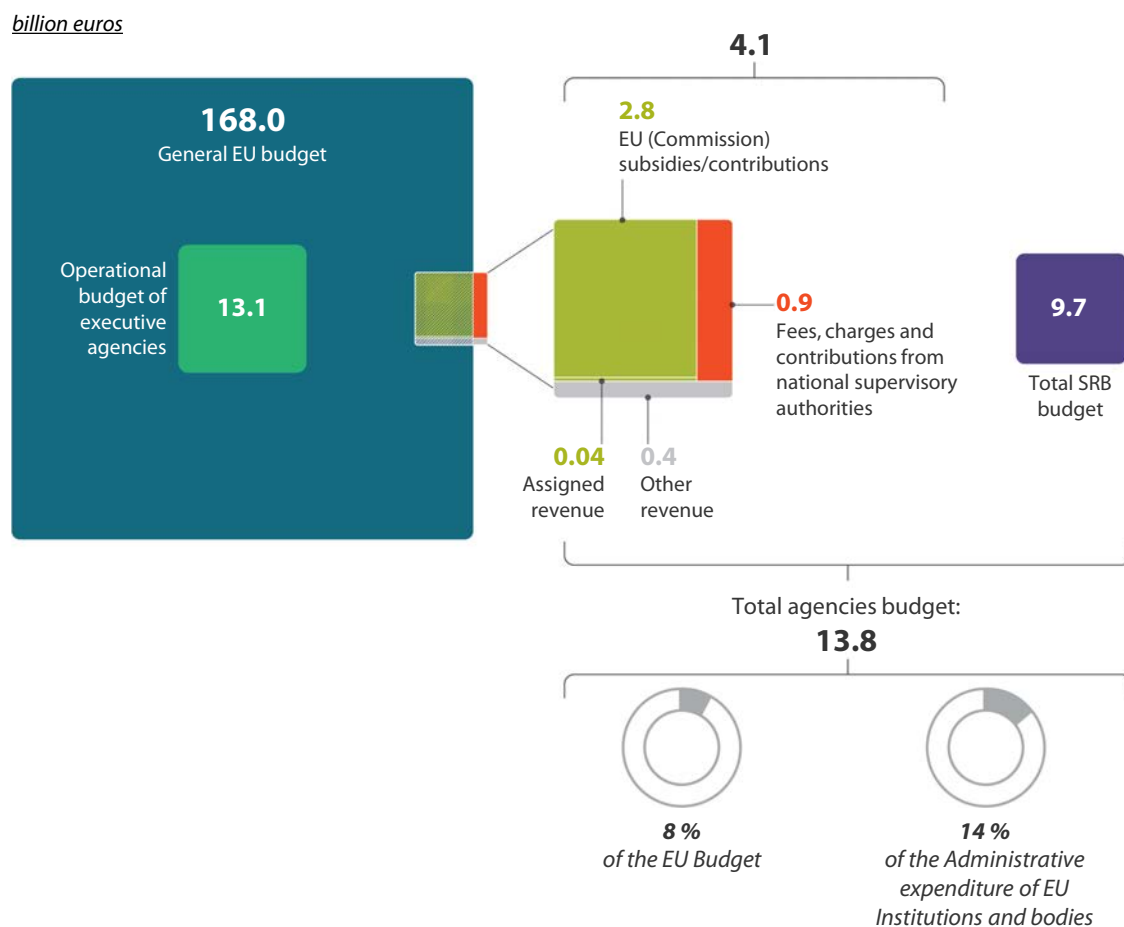
## Agencies are financed from various sources and under different MFF headings

**1.17.** In 2021, the total budget of all agencies (excluding the SRB) was €4.1 billion (2020: €3.7 billion). This is equivalent to 2.5 % of the EU's general budget for 2021 (2020: 2.3 %), as shown in [Figure 1.4](#).

**1.18.** The 2021 budget of the SRB was €9.7 billion (2020: €8.1 billion). This consists of contributions from banks to set up the Single Resolution Fund (€9.6 billion) and to finance the SRB's administrative expenditure (€119 million).

**1.19.** 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 Commission's budget. Their own budgets, amounting, in 2021, to €326 million (2020: €273 million), only cover their own staff and administrative expenditure. The amount (payment appropriations) spent by the executive agencies in 2021 on implementing programmes on behalf of the Commission amounted to €13.1 billion (2020: €14.9 billion).

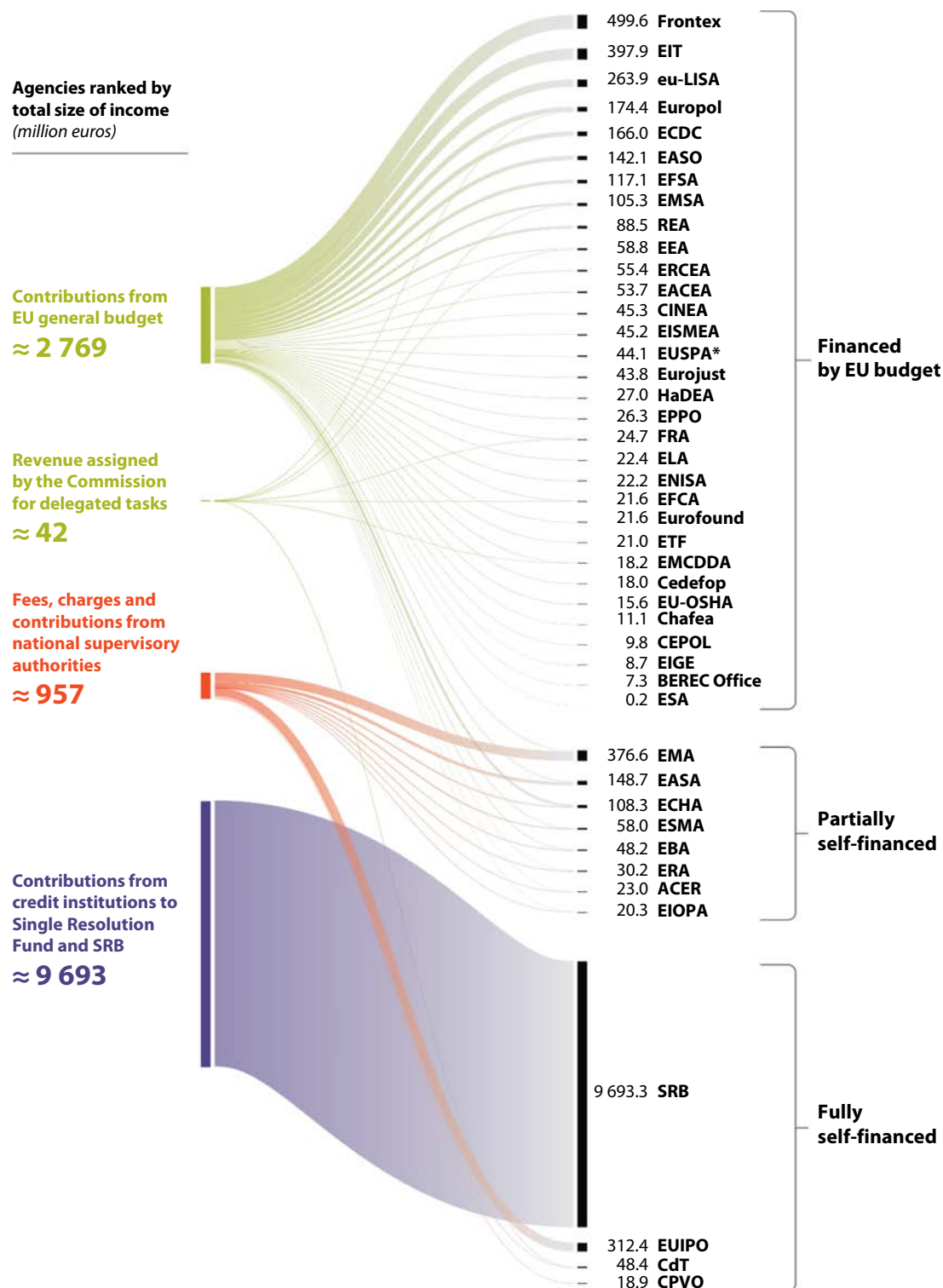
**Figure 1.4 – Agencies’ financing sources for 2021**



*Source:* Draft general budget of the European Union for the 2021 financial year; Final annual accounts of the European Union 2021 and Annual Activity Reports of the executive agencies for 2021, compiled by the ECA.

**1.20.** 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 1.5* shows a breakdown of the agencies’ budgets by source of revenue.

Figure 1.5 – Agencies' 2021 budgets by source of revenue



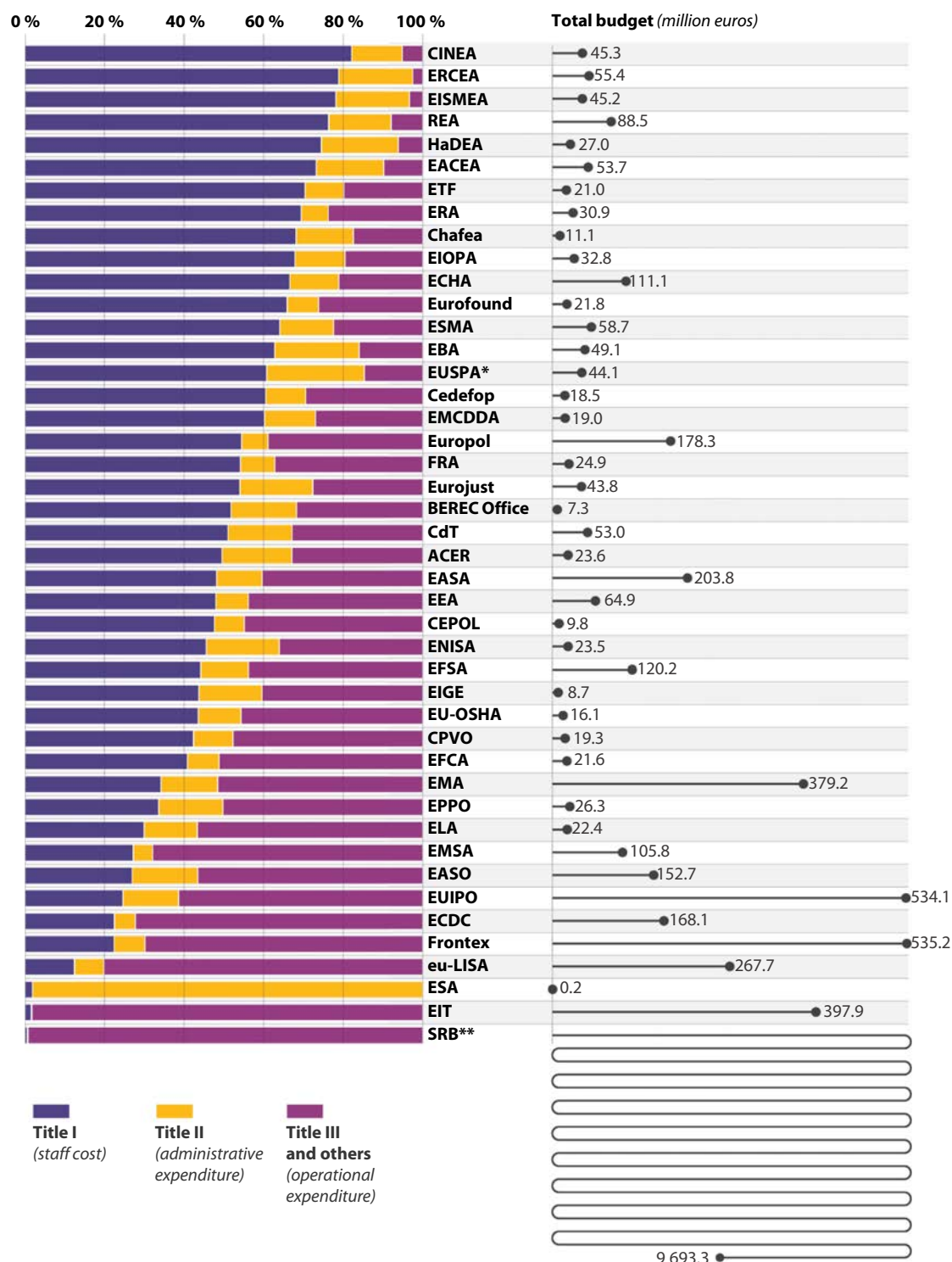
\* The accounts of EUSPA for 2021 present a final budget of €44.1 million, while actual revenue amounted to €1.8 billion. This difference is explained by operational activities that are financed through assigned revenue; these are included in the approved budget as a token entry.

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

Source: Agencies' final annual accounts 2021, compiled by the ECA.

**1.21.** *Figure 1.6* presents the agencies' 2021 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. Most agencies do not implement big operational spending programmes; instead, they deal with technical, scientific or regulatory tasks. As a result, most agencies' budgets consist mainly of staff and administrative expenditure. Overall, agencies' staff and administrative budgets represent around 14 % of total payment appropriations available for Multiannual Financial Framework (MFF) heading 7 – European public administration. This compares with 47 % for the Commission, 18 % for the Parliament, 9 % for the EEAS and 5 % for the Council.

Figure 1.6 – Agencies' 2021 expenditure for each budget title



\* The accounts of EUSPA for 2021 present a final budget of €44.1 million, while actual revenue amounted to €1.8 billion. This difference is explained by operational activities that are financed through assigned revenue that are included in the approved budget as a token entry.

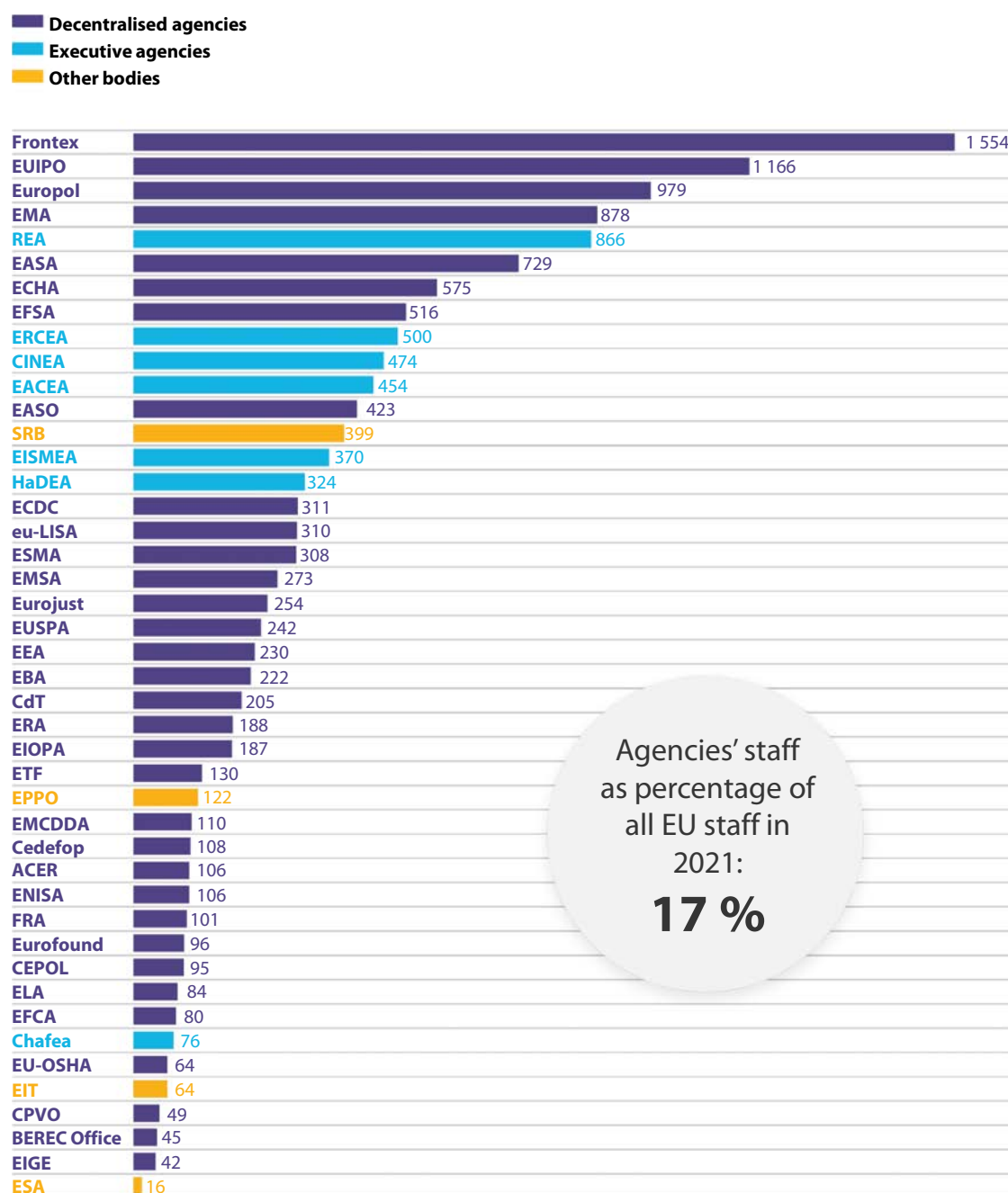
\*\* The figure for SRB comprises two parts: Part I with €119 million for the administration of the Board and Part II with €9 574 million for the Fund. It does not include the Reserve.

Source: Agencies' final annual accounts 2021, compiled by the ECA.



**1.22.** *Figure 1.7* shows how many staff members the agencies employed at the end of 2021. In total, the agencies employed 14 431 members of staff (2020: 12 881). This figure corresponds to the actual number of posts occupied by permanent officials, temporary and contract staff members and seconded national experts on 31 December 2021. Taking the establishment plans approved in the EU General Budget as a basis, about 17 % of all EU staff work for agencies. This compares with 50 % working for the Commission, 14 % for the Parliament, 6 % for the Council's and 4 % for the EEAS.

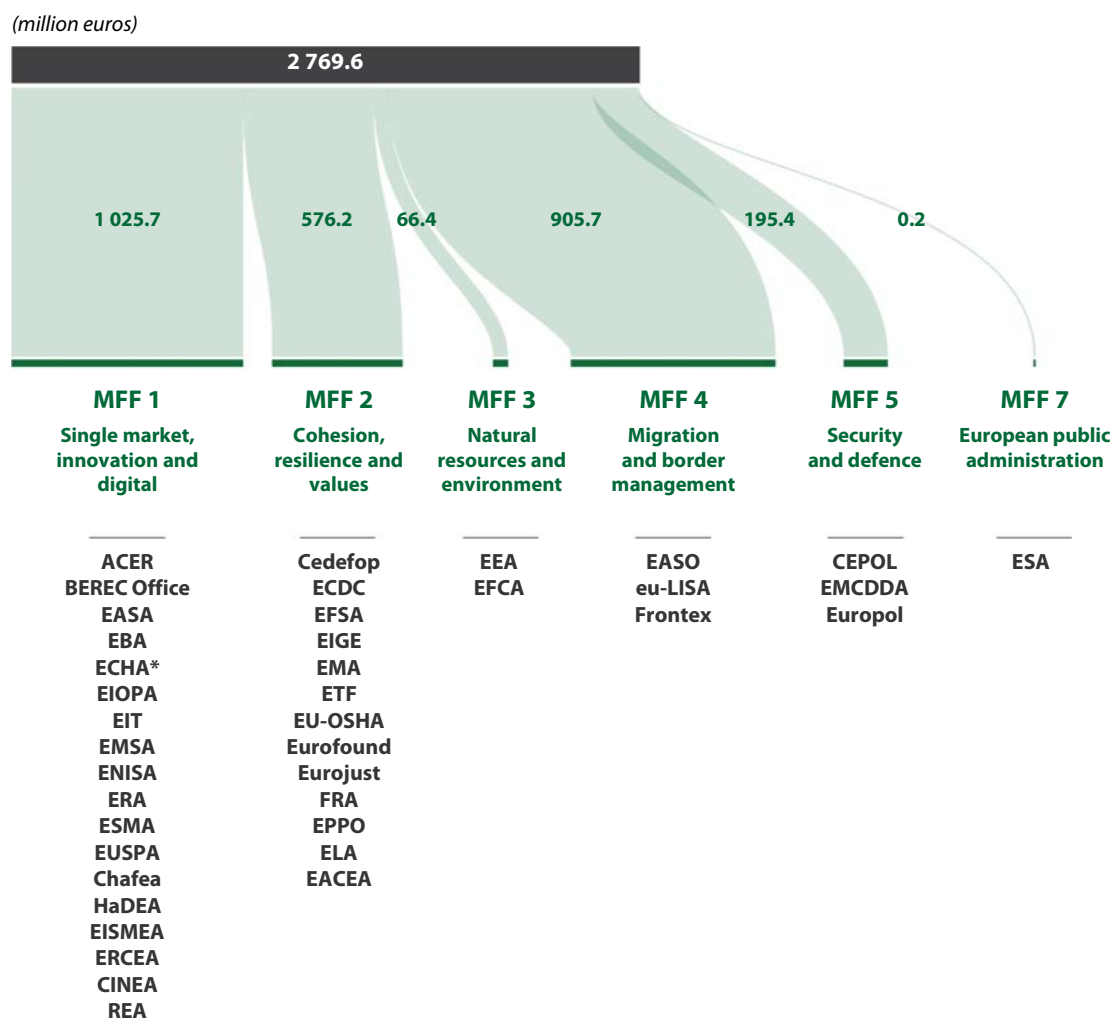
**Figure 1.7 – Number of staff per agency at the end of 2021**



Source: Compiled by the ECA.

**1.23.** The €2.8 billion in contributions from the EU general budget is financed under different MFF headings, as illustrated in *Figure 1.8*.

**Figure 1.8 – Agencies financed under each EU general budget’s MFF heading**



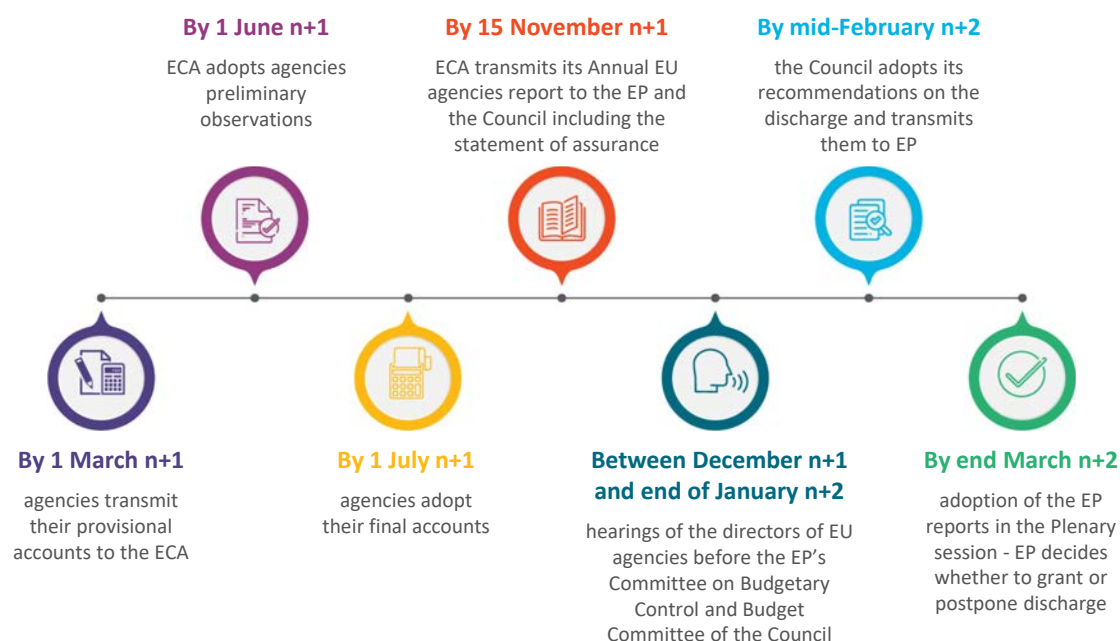
\* ECHA is mainly financed from MFF 1, but also, to a lesser degree, from MFF 3.

Source: Agencies' final annual accounts 2021, compiled by the ECA.

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

**1.24.** For most decentralised agencies and other bodies and for all the 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.

**1.25.** However, two fully self-financed decentralised agencies (CPVO and EUIPO) are subject to budgetary and discharge procedures administered respectively by their Administrative Council or Budget Committee, but not by the European Parliament or the Council<sup>8</sup>. 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

**1.26.** 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, as well as actions with clear EU added-value. It recognises the agencies' need to communicate in a more coordinated way with their stakeholders and the general public on issues of shared concern, and provides a central point for gathering and disseminating information among all agencies. In 2015 EUAN endorsed its first multiannual strategy including priorities which are implemented in yearly work programmes specifying its activities and its objectives. In 2020, EUAN endorsed its second multiannual strategy (2021-2027)<sup>9</sup>

<sup>8</sup> Review 01/2014: "Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements", paragraph 84.

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

incorporating the political and strategic direction of the Commission around two strategic pillars:

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

**1.27.** 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. 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.

**1.28.** 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, COVID-19-related matters and data protection.

# Our audit

## We issue a statement of assurance for each agency

**1.29.** As required by Article 287 of the Treaty on the Functioning of the European Union, we have audited:

- the accounts of all 44 agencies, which comprise the financial statements (i.e. 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) and the reports on the implementation of the budget (which aggregate all budgetary operations and explanatory notes) for the financial year ended 31 December 2021, and
- the legality and regularity of the transactions underlying those accounts.

**1.30.** On the basis of the results of our audit, we provide the European Parliament and the Council, or the other discharge authorities (see paragraph [1.24](#)), with one statement of assurance as to the reliability of each agency's accounts and the legality and regularity of the underlying transactions. We complement the statements of assurance with significant audit observations, where appropriate.

**1.31.** The ECA also carries out audits, publishes special reports and issues opinions on specific topics. Some of these concern the EU agencies. See [Figure 2.12](#) for a list of ECA special reports referring to agencies and issued between 1 January 2021 and 30 June 2022.

## Our audit approach is based on an assessment of key risks

**1.32.** Our audit is designed to address the identified key risks based on our audit results from previous years. For the 2021 financial year, the audit was carried out in response to our risk assessment, which is summarised in [Figure 1.11](#) below.

Figure 1.11 – Assessment of key risks

	<b>HIGH risk</b>
	<b>MEDIUM risk</b>
	<b>LOW risk</b>
	<p><b>Reliability of agencies' accounts</b></p> <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 identified few material errors in the agencies' accounts.</p>
	<p><b>Legality and regularity of revenue</b></p> <p>The overall risk to the legality and regularity of revenue is low. Some agencies are partly or fully self-financing. In these cases, 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>
	<p><b>Legality and regularity of payments (expenditure)</b></p> <p><i>Risk is medium overall, but varies</i></p>
	<p><b>Title I - Staff expenditure</b></p> <p>Salaries are mainly administered by the Commission's PMO service, which the ECA audits regularly.</p>
	<p><b>Title II - Administrative expenditure</b></p> <p>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></p> <p>The level of risk affecting 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 affecting Title II, but with much higher amounts.</p>
	<p><b>Risk to sound financial management</b></p> <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>
	<p><b>Budget management</b></p> <p>Previous audits showed high carry-overs of committed appropriations. These, however, were usually justified by the multiannual nature of operations or were caused by factors beyond agencies' control.</p>

Source: ECA.

## Other risks

**1.33.** The COVID-19 pandemic has affected our work: in many cases, travel restrictions and remote working arrangements prevented us from carrying out on-the-spot checks, obtaining original documents and interviewing agency staff in person. We therefore carried out most of our work through desk reviews and remote interviews. While not carrying out on-the-spot checks may increase the detection risk, the evidence that we obtained from the agencies enabled us to complete our work and draw meaningful conclusions.

## We use the work of other auditors

**1.34.** Where appropriate, we use the work of other auditors to support our work on the agencies. We do so in particular in our work on the reliability of the EU's accounts. The financial statements of 34 decentralised agencies and other bodies – all except the CPVO, EUIPO and ESA – are audited by external audit firms. In accordance with auditing standards, we use the results of these audits after considering the independence and objectivity of the auditors, their professional competence, and after checking the scope and quality of their work. However, all audit opinions in this report are ours, and we take full responsibility for them.

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




**1.35.** We cooperate with the European Anti-Fraud Office (OLAF) in matters related to suspected fraud and other illegal activity affecting the EU's financial interests, and with the EPPO in matters related to suspected crimes against the EU's financial interests. We notify OLAF or the EPPO about any suspicion that arises in the course of our audit work, even though our audits are not designed specifically to identify fraud.

## Digitalisation of audit procedures at the ECA continues



**1.36.** Digitalisation has the potential to improve the effectiveness and efficiency of audits. This can be achieved by replacing audit checks based on statistical sampling with audit checks based on entire populations. This allows the auditors to focus their attention on potentially problematic cases that automated checks performed on the whole population identify as exceptions. In addition, they can test the plausibility of reported information through data analytics, including by examining patterns and trends and identifying unusual transactions. [Figure 1.12](#) shows the principal benefits of digital audit in the EU context. In the short term, the main gain is increased assurance, but there is also potential for time savings in the longer perspective, once economies of scale are achieved. Initially however, digitalisation of audit procedures usually requires a significant time investment.

## Figure 1.12 – Key benefits of digital audit procedures

### Benefits for the **auditor**

-  Human errors avoided by standardising and automating relatively simple audit procedures
-  Auditors focus on more complicated, analytical audit procedures
-  Higher processing speed and potential time savings given economies of scale

### Benefits for the **auditee**

-  More assurance for management and stakeholders through whole population testing
-  Less disruptive audit process that continues throughout the year and in real time

### Benefits for **citizens**

-  More transparency and accountability on the use of EU funds

Source: ECA.

**1.37.** While digital audit techniques can bring significant savings when implemented on a large scale, they still require complementary analysis by auditors. Audit involves a significant amount of professional judgement. This can be aided by technology, but it always depends on the knowledge and experience of an auditor. In addition, many audit procedures cannot be automated, at least not fully, due to their nature and the way the auditees' information systems are set up.

**1.38.** As mentioned in previous years' reports<sup>10</sup>, 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, procurement, budget, recruitments and the annual accounts. Of these, as [Table 1.1](#) shows, we have automated, at least partly, around a tenth. We extended the use of procedures related to salaries and data extraction to all agencies. Our testing of the legality and regularity of commitments and payments and of the reliability of the annual accounts still covered the EU executive agencies only, as they shared a sufficiently similar IT environment.

<sup>10</sup> Annual Report on EU agencies for the financial year 2019: paragraphs 2.34-2.41.



**Table 1.1 – Overview of the digital audit procedures we use**

Digital audit procedures	Developments in 2021	Agencies covered
Six digital audit procedures for testing the legality and regularity of commitments and payments on a whole population basis.	Same scope as previous year	Executive agencies only
Ten analytical procedures relating to salaries.	Scope expanded to decentralised agencies and other bodies	All EU agencies
Five digital audit procedures for the reliability of the annual accounts.	Refined audit test to reduce the number of exceptions mainly connected to the reconciliation of the trial balance and the corresponding mapping.	Executive agencies only
Automated extraction processes for the retrieval of information from the auditees' financial information systems.	The scope expanded to decentralised agencies and other bodies	All EU agencies

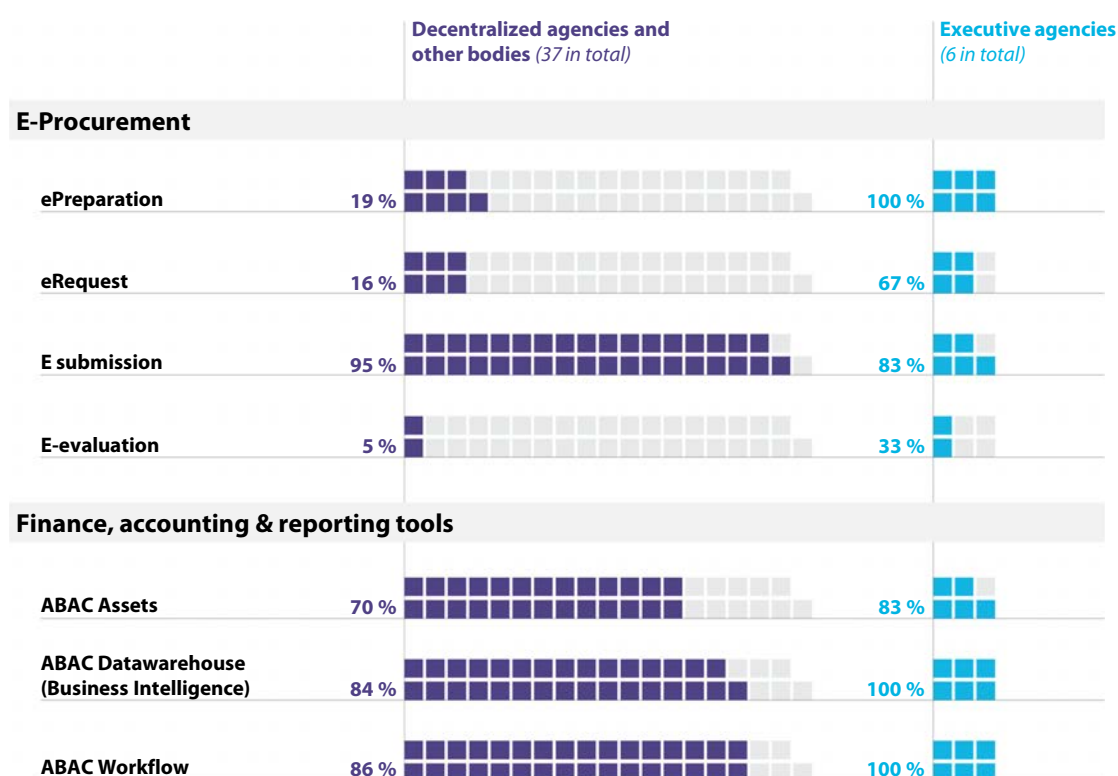
Source: ECA.

**1.39.** The implemented automated procedures have successfully delivered the following results.

- Digitalised audit procedures on the legality and regularity of commitments, payments and salaries and the reliability of the accounts have allowed full population testing to be performed within a very short time. These automated procedures have contributed to improving the level of assurance, as well as the quality and the efficiency of our audit.
- Automated analytical procedures provided the auditors with an interactive tool to identify patterns and trends and to investigate unusual transactions. The system automatically creates graphical reports which allow the auditors to see such patterns and to consider whether further examination of the underlying details is required.
- Automated procedures have allowed us to detect errors in the presentation of the provisional annual accounts and to mark them for correction before the submission of the final annual accounts.
- Automated retrieval of large volumes of support documentation have been automatically organised for the auditors' use, saving a significant amount of time and effort.

**1.40.** We intend to explore the possibilities to expand our use of digital audit techniques to other areas and to all agencies. However, in this we face serious obstacles because, as [Figure 1.13](#) shows, gaps in the use of standardised IT tools remain, in particular as regards the decentralised agencies. Besides, even though some agencies have the same IT systems, we have identified discrepancies in how they use some of the functionalities of these tools. This lack of consistency is another factor hampering opportunities for expanding the use of digital audit procedures.

**Figure 1.13 – Gaps in the use of standardised IT tools remain, in particular in the decentralised agencies**



Source: ECA, based on information provided by the agencies.

**1.41.** For 2022, we are launching a pilot project to digitalise aspects of the audit on EU agencies' public procurement. The project is based on the eProcurement program, which was launched by the Commission in May 2017. eProcurement is currently under development, but will eventually be rolled out to all Commission departments and other EU institutions and bodies (including EU agencies). It will cover the whole procurement process end-to-end, and is intended to be a fully integrated, automated and paperless solution. We are also following closely the developments related to the development and rollout of SUMMA, a new system for accounting, finance and budgeting due to replace ABAC, the current corporate financial platform, by 2025. In 2022, three EU agencies – CINEA, ERA and Eurojust – had implemented SUMMA on a pilot basis.

## **Chapter 2**

### **Overview of audit results**

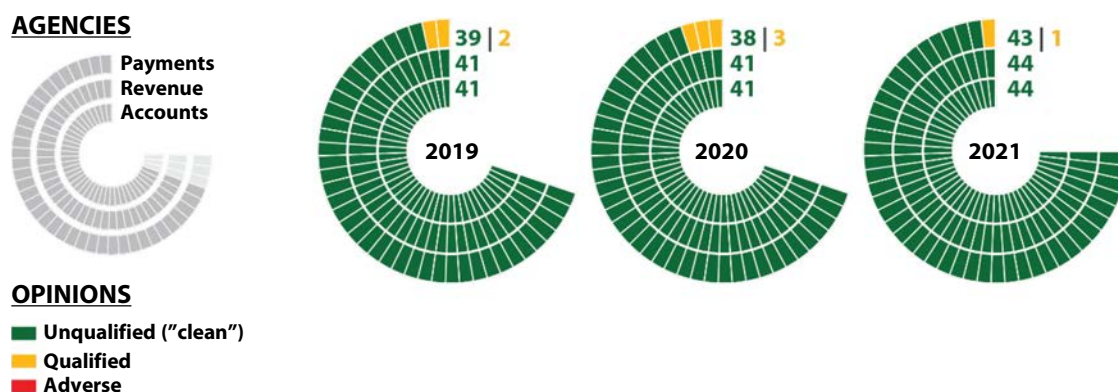
# Introduction

**2.1.** This Chapter presents an overview of the results from the ECA's annual audits of the agencies for the 2021 financial year, including work on a horizontal topic related to the risk of conflicts of interest, as well as other agency-related audit work carried out by the ECA during the same year. Based on our audit work, we suggest several actions to be taken by the agencies.

## Results from the annual agency audits for the 2021 financial year are positive overall

**2.2.** Overall, our audit of the annual accounts of the agencies for the financial year ending on 31 December 2021 had positive results (see [Figure 2.1](#)). However, we have raised observations on irregularities and weaknesses affecting the payments underlying the accounts, in particular in relation to procurements.

**Figure 2.1 – 2019-2021 annual audit opinions on agencies’ accounts, revenue and payments**



Source: ECA.

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

**2.3.** For the 2021 financial year, the ECA issues unqualified ("clean") audit opinions on the accounts of all 44 agencies (see [Figure 2.1](#)).

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

**2.4.** 'Emphasis of matter' paragraphs draw readers' attention to a matter, presented or disclosed in the accounts, which is of such importance that it is fundamental to their understanding of the accounts or the underlying revenue or payments. In the 2021 financial year, we have used 'emphasis of matter' paragraphs in our reports on four agencies: EMA, Frontex, SRB and the EIGE.

**2.5.** The EMA's accounts include significant disclosures on the lease on the EMA's former premises in London. This lease 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, the EMA reached an agreement with its landlord, and has sublet its former premises to a subtenant with effect from July 2019, under conditions that are consistent with the terms of the head lease. The term of the sublease lasts until the EMA's lease expires in June 2039. Since the EMA remains a party to the head lease, it 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 2021, the total estimated outstanding rent, associated service charges and landlord insurance to be paid by the EMA up to the end of the lease term was €383 million.

**2.6.** Frontex is funded by the EU budget and contributions from non-EU Schengen area countries (SACs). The accounts of Frontex include a disclosure that the non-EU Schengen area countries contributions were not correctly calculated. As a result, the non-EU Schengen area countries paid €2.6 million less than they should have done, an amount which was compensated from the EU budget. However, given that there was a surplus in 2021, this had no impact on the operating revenue of the statement of financial performance for 2021.

**2.7.** The SRB is exposed to litigation associated with its collection of contributions to the Single Resolution Fund, as well as to litigation associated with the tasks it performs in its capacity as the resolution authority. The SRB's accounts include a disclosure describing administrative appeals and judicial proceedings related to ex-ante contributions between some banks and national resolution authorities and the SRB, as well as other legal actions brought against the SRB before the General Court and the Court of Justice of the European Union. Their possible impact on the SRB's financial statements for the financial year ended 31 December 2021 (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.

**2.8.** EIGE disclosed a contingent liability in its accounts which will be incurred if the Lithuanian Supreme Court rules against EIGE in an ongoing case concerning temporary agency workers. The potential financial impact is estimated at €22 000.

**2.9.** We drew attention to the disclosures of three agencies (EASO, EUSPA and the SRB) regarding the impact of the Russian war of aggression against Ukraine on their activities. Faced with an increased demand for assistance from Member States receiving refugees from Ukraine, EASO requested additional human and financial resources. EUSPA's activities were affected by the interruption in the use of Russian Soyuz launchers for Galileo satellites. The SRB assesses that the war increased risks to financial stability, in particular credit risks in relation to banks' exposures toward counterparties in Russia, Belarus, and Ukraine and with loans to domestic firms most exposed to the effects of the war.

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

**2.10.** For the 2021 financial year, the ECA issues unqualified (“clean”) audit opinions on the legality and regularity of the revenue underlying all agencies’ accounts (see [Figure 2.1](#)).

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

**2.11.** We also used an ‘emphasis of matter’ paragraph in our report on the SRB, in connection with the issues described in paragraph 2.7 above, namely the fact that a part of the SRB’s revenue in relation to the ex-ante contributions to the SRF is under legal dispute. This is relevant for our opinion on the SRB’s revenue because, depending on the outcome of the litigation, the SRB might have to recalculate the amounts of contributions from certain banks.

### **‘Other matter’ paragraph address an issue of specific importance for the SRB’s revenue**

**2.12.** ‘Other matter’ paragraphs present significant issues, other than those presented or disclosed in the accounts, which are nevertheless relevant for the understanding of the accounts or the underlying revenue or payments.

**2.13.** The SRM Regulation does not establish a comprehensive and consistent control framework to ensure the reliability of the information provided by the banks to the SRB for the calculation of the ex-ante contributions to the SRF. However, the SRB performs consistency and analytical checks of the information, as well as some ex post checks at the level of the banks. Furthermore, the SRB cannot release details on the risk-adjusted contribution calculations for each bank as they are interlinked, and include confidential information about other banks. This may affect the transparency of these calculations.

**2.14.** We noted that for the calculation of the 2021 and 2022 contributions, the SRB has improved the transparency towards banks by organising a consultation phase. In this consultation, the SRB communicated data that allowed banks to simulate the calculation of the 2021 and 2022 ex-ante contributions.

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

**2.15.** For the 2021 financial year, we issued unqualified (“clean”) audit opinions on the legality and regularity of the payments underlying the annual accounts for 43 out of the 44 agencies (see [Figure 2.1](#)).

**2.16.** For eu-LISA, we issued a qualified opinion. Of the 28 payments we audited, six were non-compliant (see [Box 2.2](#)). Three of these payments related to a specific contract which implemented a framework contract without specifying the details of the services required (quantities and delivery dates), and thus did not create a clear legal commitment. We also identified other payments, outside our initial sample, linked to that contract and affected by the same non-compliance. The three other non-compliant payments from our initial sample related to three different specific contracts, which fundamentally deviated from the corresponding framework contracts. The total amount of expenditure affected is €18.11 million. This represents 6.2 % of the total payment appropriations available in 2021.

### Box 2.1

#### Issues with budgetary planning and procurement of eu-LISA

For the 2019 financial year, we reported about the risks associated with the practice of giving resources to eu-LISA before the adoption of the legislation defining the requirements for the IT systems to be developed. We found that these risks materialised: the resulting time pressure on eu-LISA to commit and spend the funds before they lapse, had contributed to non-compliances in procurement procedures and contract implementation. These non-compliances included absence of information, in a specific contract, on the quantities and delivery dates of the services acquired, and changes of contract scope, duration or value going beyond the flexibility allowed by the Financial Regulation. As a result, we issued a qualified opinion on the legality and regularity of eu-LISA’s 2021 payments. Already last year, we qualified our opinion on the legality and regularity of eu-LISA’s 2020 payments over similar non-compliances in contract implementation.

#### Action to be taken 1

eu-LISA should improve its procurement procedures and contract management, in particular as regards defining the services and goods acquired in the specific contracts and limiting changes to the scope, duration and value of contracts to the flexibility allowed by the Financial Regulation.



eu-LISA should also reach out to the Commission to propose changes to its multiannual budget planning, so that it only receives funds for developing systems once the legislation (including delegated or implementing regulations) defining the relevant requirements is adopted, and the project scope can be specified with sufficient detail.

### **‘Emphasis of matter’ paragraph helps to better understand Frontex’s payments**

**2.17.** Frontex’s accounts include a disclosure regarding €18.1 million of payments made in 2021 for the implementation of a budgetary commitment from 2020 carried to 2021 without Frontex having entered into a legal commitment before the end of 2020, as required by the EU Financial Regulation. We reported on this issue in our 2020 specific annual report<sup>11</sup>. Total payments in 2021 were €18 375 458. Frontex rectified this non-compliance by means of subsequent legal commitments throughout 2021.

### **‘Other matter’ paragraphs on issues of specific importance for HaDEA’s payments**

**2.18.** We draw attention to the fact that the Commission Implementing Decision (EU) 2021/173<sup>12</sup> entrusted the Director-General of DG SANTE with the authority to act as HaDEA’s interim Director until HaDEA gained the operational capacity to implement its own budget. On 19 February 2021, the Director-General of DG SANTE delegated that authority to another DG SANTE official, appointing him as interim Director of HaDEA. Article 26 of HaDEA’s Financial Regulation allows budgetary powers to be delegated. However, it cannot be interpreted as allowing the whole authority of the interim Director to be delegated, because this would contravene Commission Implementing Decision.

## **Our observations address areas for improvement in 33 agencies**

**2.19.** In total, we made 77 observations concerning 33 agencies to address areas where further improvements are needed. These numbers include the two observations which served as the basis for the qualified opinion for eu-Lisa, as well as the observation covered by the

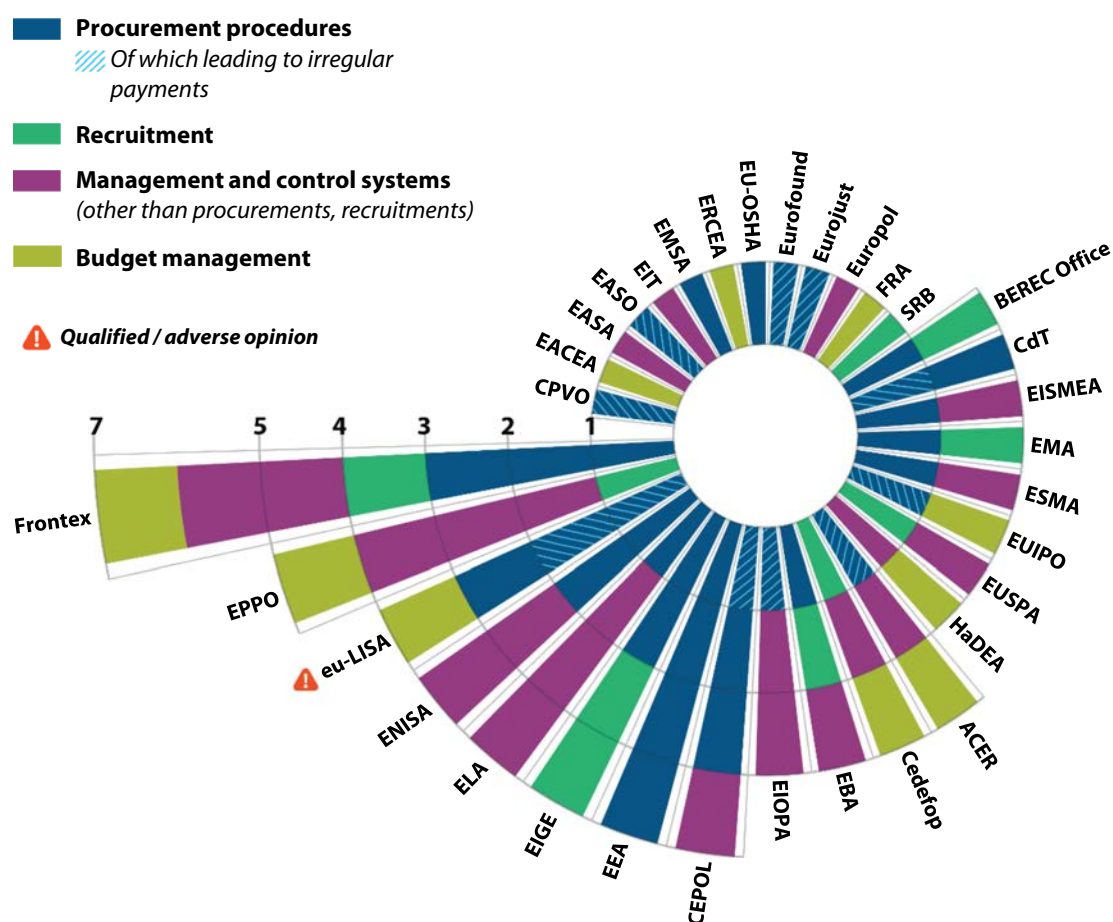
<sup>11</sup> [Annual report on EU agencies for the financial year 2020](#): paragraph 3.30.15.

<sup>12</sup> [Commission Implementing Decision \(EU\) 2021/173](#) establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency

‘other matter’ paragraph for HaDEA. For comparison, for the 2020 financial year we made 60 observations. Most of the observations concern shortcomings in management and control systems, public procurement procedures and in budgetary management. Weaknesses in public procurement procedures remain the main source of irregular payments.

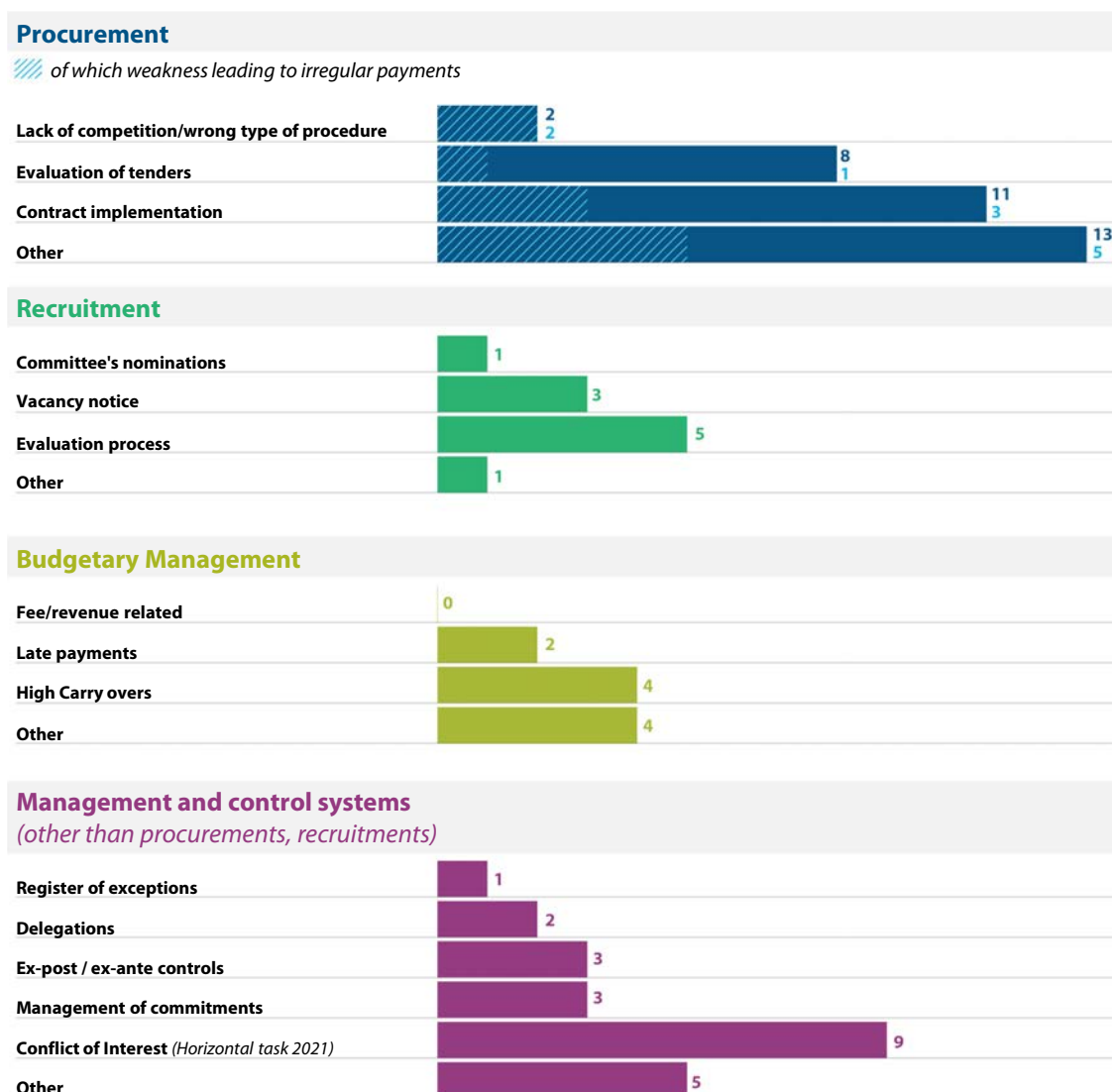
**2.20.** *Figure 2.2* and *Figure 2.3* show the number of different types of observations raised across 33 agencies throughout the report.

**Figure 2.2 – Number of observations concerning each agency**



Source: ECA.

Figure 2.3 – Number of observations by type of frequent weaknesses



Source: ECA.

## Public procurement weaknesses are increasing and remain the largest source of irregular payments

**2.21.** 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. We audited procurement in all the 44 agencies. For 22 agencies (ACER, BEREC Office, CdT, CEPOL, CPVO, EASO, EBA, EEA, EIGE, EIOPA, EISMEA, ELA, EMA, EMSA, ENISA, ESMA, EUIPO, eu-LISA, EU-OSHA, Eurofound, Eurojust and Frontex), we reported contracts affected by various sorts of public procurement shortcomings (see [Figure 2.3](#)), including payments made in the 2021 financial year, stemming from irregular procurement procedures reported in previous years. [Box 2.2](#) presents examples of typical irregularities in the implementation of procurement contracts.

## Box 2.2

### Example of irregular implementation of contracts

CEPOL had a framework contract, valid until March 2022, for travel agency services. The scope of the contract did not include certain countries outside the EU. Travel services for these countries were covered by other contracts until the end of 2020. In summer 2021, despite the unpredictable travel situation, it became probable that CEPOL would need to organise in-person activities in non-EU countries. After assessing the situation and the various available options, CEPOL opted to use the existing framework contract to cover the events in these countries, even though such events did not fall within the scope of the contract. This contravened the Financial Regulation. CEPOL noted this decision in its registry of exceptions. The associated payments, amounting to €76 590 in 2021, are irregular.

**2.22.** We note an increase in the number of procurement observations we raised over the last three financial years (from 20 in 2019 and 18 in 2020 to 34 in 2021), as well as in the number of agencies concerned (from 11 in 2019 and 14 in 2020 to 22 in 2021). As shown in [Figure 2.4](#), since the 2019 financial year, we have raised new procurement-related observations every year for two agencies (CEPOL and the EMA).

Figure 2.4 – Our observations on public procurement weaknesses and irregularities have become more frequent over the last three years

	2019	2020	2021	Total number of procurement-related observations	
CEPOL	€	€	△ € €	4	△ €
EMA	€	△ € €	€	4	Observation of the year affecting payments
Eurofound	△ € €	→ €	→ €	4	€
BEREC Office	△ € €		€	3	Observation of the year not affecting payments
EBA		△ € €	€	3	
ACER	△ €	→ €	→ €	3	→ €
EASO	△ €	→ €	→ €	3	Observations from previous years affecting payments
CdT			△ € €	2	
Cedefop	€	€		2	
EEA	€		€	2	
EIGE		→ €	€	2	
EIOPA		△ €	△ €	2	
ENISA	€		€	2	
ESMA		€	€	2	
EUIPO		→ €	→ €	2	
eu-LISA		△ €	△ €	2	
Eurojust		△ €	→ €	2	
Europol	△ € €			2	
CPVO			△ €	1	
EASA	€			1	
EFSA	€			1	
EISMEA			€	1	
ELA			€	1	
EMSA			€	1	
ERA	€			1	
ERCEA		△ €		1	
EU-OSHA			€	1	
Frontex			€	1	
<b>TOTAL number of agencies for which we raised a procurement-related observation in a given year</b>	<b>13</b>	<b>14</b>	<b>22</b>		

Source: ECA.

## Action to be taken 2

Public procurement errors remain the most frequent type of errors detected in our audits of the agencies. The agencies concerned should further improve their public procurement procedures, ensuring full compliance with the applicable rules, to ensure they achieve the best possible value for money.

In particular, when implementing framework contracts, agencies should only use specific contracts to procure goods or services covered by the associated framework contract. Agencies should also ensure that they comply with the conditions for modifying existing contracts set out in the Financial Regulation.

## Management and control systems are affected by weaknesses

**2.23.** Agencies have their own legal personality, and are governed by European law (see paragraphs 1.6 and 1.7). Management and control systems are crucial to ensure the proper functioning of EU agencies, and are a requirement of the Financial Regulation in support of the principle of sound financial management.

**2.24.** For 16 agencies (ACER, Cedefop, CEPOL, EASA, EBA, EIOPA, EISMEA, EIT, ELA, ENISA, EPPO, ESMA, Europol, EUSPA, Frontex and HaDEA) we report weaknesses in management and control systems other than those concerning procurements (see paragraphs 2.20-2.21) or recruitments (see paragraph 2.26). For these 16 agencies, our observations include potential cases of conflict of interest, missing ex-ante/ex-post controls, inadequate management of budgetary and legal commitments, and failures to report issues in the register of exceptions. [Figure 2.3](#) shows the most common types of internal control weaknesses we identified. [Box 2.3](#) provides examples of such weaknesses in relation to the risk of conflict of interest.

### Box 2.3

#### Governance issues and conflicts of interest can impede the effectiveness of EU agencies

The role of the three European supervisory authorities – EBA, EIOPA and ESMA – is to ensure an EU perspective and level playing field for the supervision of financial services. Their founding Regulations include various provisions to ensure that Members of their Boards of Supervisors (BoS) “*act independently and objectively in the sole interest of the*

*Union as a whole” and do not “seek nor take instructions from any government [...] or from any other public or private body”<sup>13</sup>.*

Under the European supervisory authorities’ rules of procedure, BoS members who have a conflict of interest may not take part in the BoS’s discussions or vote on the matter in question. However, the members may remain present in the meeting if nobody objects (EBA and EIOPA) or unless the majority of members vote to exclude them (ESMA). This creates a risk to the Boards’ independence, at least in appearance.

In the past years, we reported in several special reports on governance issues affecting the European supervisory authorities, and the detrimental impact of these issues on their objectives.

In our special report on **stress tests for banks**<sup>14</sup>, we found that national authorities have significant involvement in the EBA’s governance structure, since the EBA’s Board of Supervisors comprises national representatives whose appointment is not subject to any approval by EU bodies. This can give rise to tensions, as members of the board may act to promote of purely national rather than wider European interests.

In our special report on **insurance supervision**<sup>15</sup>, we observed that the efficiency and effectiveness of EIOPA’s work often relied on the quality of the input of national authorities, and depended on their willingness to co-operate. EIOPA’s current governance structure gives national authorities the power to influence the extent to which their own work will be reviewed, and the conclusions of such reviews. The BoS approves all key documents, such as EIOPA’s oversight strategy. This may compromise EIOPA’s independence and prevent it from achieving its objectives.

In our special report on **anti-money laundering**<sup>16</sup>, we found that EBA staff carried out thorough investigations of potential breaches of EU law, but we found written evidence of attempts to lobby panel members during the period when the panel was deliberating on a potential recommendation. In the end, the BoS rejected the draft recommendation.

In our special report on **investment funds**<sup>17</sup>, we found that ESMA faces challenges in using its tools effectively. These challenges include problems caused by ESMA’s own governance structure, its dependency on the goodwill of national authorities and the willingness of its own BoS. We found that both preferred “non-invasive” convergence

<sup>13</sup> Articles 42 of Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010.

<sup>14</sup> *ECA special report 10/2019: “EU-wide stress tests for banks: unparalleled amount of information on banks provided but greater coordination and focus on risks needed”.*

<sup>15</sup> *ECA special report 29/2018: “EIOPA made an important contribution to supervision and stability in the insurance sector, but significant challenges remain”.*

<sup>16</sup> *ECA special report 13/2021: “EU efforts to fight money laundering in the banking sector are fragmented and implementation is insufficient”.*

<sup>17</sup> *ECA special report 04/2022: “Investment funds: EU actions have not yet created a true single market benefiting investors”.*

tools, whose effectiveness has not yet been demonstrated and which often did not result in effective and consistent supervision. This limited ESMA's effectiveness.

In all cases, we recommended that the Commission should consider proposing changes to the European supervisory authorities' governance structure which would allow them to use their powers more effectively. In 2019, though, the legislator did not accept the Commission's proposed<sup>18</sup> revised governance structure.

**2.25.** Paragraphs [2.30-2.42](#) provide more details on how agencies handle potential conflicts of interest when their senior staff or board members take up paid outside activity during their EU service, or when they leave the agency and take up a new job elsewhere.

### Recruitment weaknesses are frequently related to the evaluation process

**2.26.** For nine agencies (BEREC Office, Cedefop, EBA, EIGE, EMA, EPPO, EUSPA, Frontex and the SRB) we report weaknesses related to various aspects of recruitment procedures, including evaluation processes and vacancy notices. [Figure 2.3](#) shows the most common types of weaknesses concerning recruitment procedures.

### Weaknesses in budgetary management typically result in high carry-overs or late payments

**2.27.** For 10 agencies (ACER, Cedefop, EACEA, EPPO, ERCEA, EUIPO, eu-LISA, FRA, Frontex, HaDEA), we report weaknesses related to various aspects of budgetary management, for example excessive carry-overs of appropriations and high rates of late payments. [Figure 2.3](#) shows the most common types of weaknesses concerning budgetary management.

**2.28.** 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>19</sup>. [Figure 2.5](#) shows the level of carry-overs, per budget title, for each agency. While the EU Financial Regulation does not set ceilings for such carry-overs and the multi-annual nature of operations can explain a number of them, excessive levels of carry-overs can indicate delays in the implementation of work programmes or procurement plans. Alternatively, they could indicate a structural issue, weak budgetary planning, or possibly a contravention of the

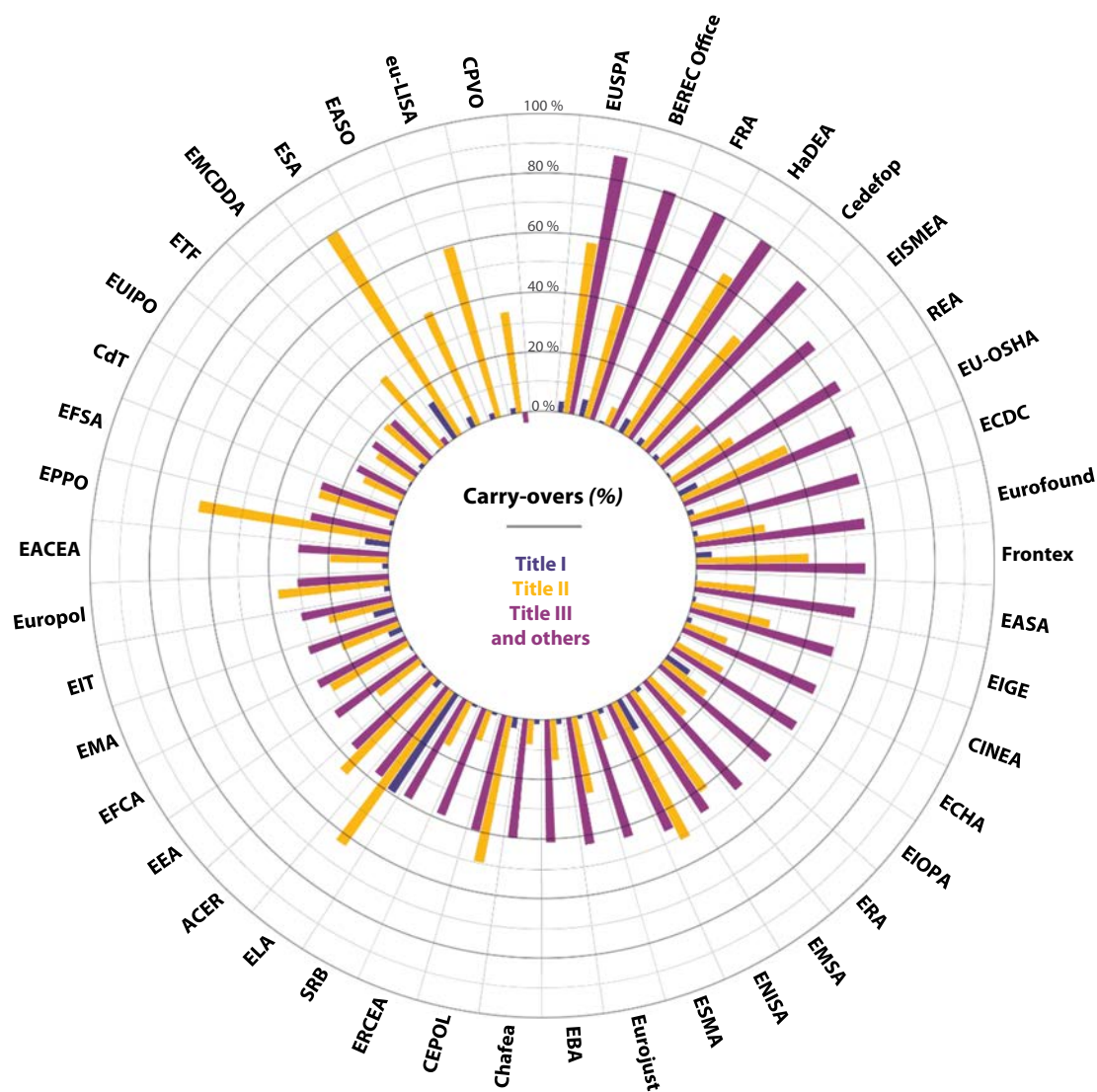
<sup>18</sup> Commission proposals on amendments to Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010, COM(2017) 536 final.

<sup>19</sup> Articles 12 and 13 of the EU Financial Regulation.



budgetary principle of annuality. We report such weaknesses concerning four agencies (ACER, EACEA, eu-LISA and FRA).

**Figure 2.5 – Level of carry-overs affecting each budget title**



Source: Agencies' 2021 final annual accounts, compiled by ECA.

### Action to be taken 3

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

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

**2.29.** We provide information on the status of follow-up actions taken by the agencies in response to observations from previous years. *Figure 2.6* shows that for the 139 observations that had not been addressed at the end of 2020, corrective action had been completed in 67 cases, and was ongoing in 39 cases in 2021. For 22 agencies (ACER, BEREC Office, CEPOL, CPVO, EASA, EASO, EFSA, EISMEA, EIT, EMA, EMCDDA, ERA, ESMA, ETF, EUIPO, eu-LISA, Eurofound, Eurojust, Europol, FRA, Frontex, and the SRB) we report a total of 48 observations from previous years that have not yet been implemented, 9 of which are outstanding.

**Figure 2.6 – Agencies' efforts to follow up on previous years' observations**



Source: ECA.

**2.30.** *Box 2.4* explains the different statuses of follow-up used in this report and gives examples of typical situations to which they apply.

### Box 2.4

#### Explanations of status of follow-up used in this report

**Completed:** The agency introduced improvements to address the observation, supported by evidence and checked by the ECA.

**Ongoing:** There is some evidence of corrective action having been taken, but the process is not yet fully implemented or complete.

**Outstanding:** No reaction to the observation or disagreement by the agency.

**N/A:** The observation is no longer applicable, or the contract which provoked the observation in question has expired. Applicable also when, due to a change of circumstances, the cost of addressing the issue outweighs the benefits.

## Weaknesses and good practice in the agencies' handling of potential 'revolving door' situations.

**2.31.** We complemented our recurrent audit work on the reliability of the agencies' accounts and the legality and regularity of their revenue and payments with an analysis of how agencies handled potential 'revolving door' situations. [Box 2.5](#) explains what 'revolving door' situations are, and how they relate to the risk of conflict of interest and policy capture.

### Box 2.5

#### What is the 'revolving door' and why is it important?

The Organization for Economic Co-operation and Development (OECD) defines the concept of a **'revolving door'** as follows. *"Conflicts of interest can arise and present the risk of policy capture in the movement between positions in the public and private sectors. When functions cover fields that are closed or were directly controlled by the former public official, this so-called **revolving door** phenomenon can be perceived as granting an unfair advantage in terms of information, relations or any other type of advantage gained in the previous public functions. In some cases, public officials may be tempted to make or be perceived to have made decisions not in the public interest, but in the interest of a former or future employer."* <sup>20</sup>

In the EU context, the European Ombudsman explains that<sup>21</sup> "[w]hen a public official moves to the private sector, they are often described as having gone through 'the **revolving door**'. This can present a risk to the integrity of EU institutions because valuable inside knowledge can move into the private sector, or because former officials may lobby their former colleagues or existing officials may be influenced by possible future employment."

Taking a paid outside activity while working for an EU institution or body, such as an agency, may present similar risks to taking a new job after leaving EU public service.

**2.32.** We decided to examine this topic because of its importance not just for the proper functioning of EU agencies, but also for their reputation and, more broadly, for the reputation of the EU as a whole. Agencies are particularly prone to the risk of 'revolving door' situations because of their reliance on temporary staff, which entails high rates of staff turnover, and

<sup>20</sup> OECD Public Integrity Handbook; Chapter 13.3.2.

<sup>21</sup> The European Ombudsman's work on revolving doors.

their governance model, which includes boards<sup>22</sup> whose members tend to serve for relatively short terms. For some agencies, this risk is further heightened by significant regulatory powers (e.g. EBA, EIOPA and ESMA) or links to industry (e.g. EASA, ECHA or EFSA).

We examined cases between 2019 and 2021 in which current or former senior agency staff (executive directors, directors and officials at grades AD14-16) took up a job after leaving an agency or performed a paid outside activity while working for an agency. We also looked into similar cases affecting members and former members of the agencies' boards, cases which some agencies had only assessed on the basis of their own internal rules. Our scope included 40 agencies. Only Chafea, which was closed in 2021, and the three agencies that only became operational or autonomous in 2021 (ELA, EPPO and HaDEA) were not considered. **Box 2.6** explains the relevant legal standards.

**2.33.** *Figure 2.7* illustrates the scope of our work.

### Box 2.6

#### The EU legal framework applicable to managing 'revolving door' risks

The **rules** applicable to handling potential '**revolving door**' situations and the associated risk of conflict of interest are set out, primarily, in the EU's **Staff Regulations**<sup>23</sup>. These rules apply to the former and current staff of EU institutions and bodies, including EU agencies. The rules include the following.

- Staff members have to inform their agency if they plan to take up a job within two years after leaving the EU civil service.
- Before granting or refusing authorisation for former staff members to carry out an outside activity or a new job, an agency must consult its Joint Committee.
- If an agency considers that there is a risk of a conflict of interest, it may forbid the staff member from accepting the job, or give approval only subject to conditions.
- An agency must also prohibit its former senior officials from lobbying or advocacy vis-à-vis the institution's staff during the 12 months after leaving the service.

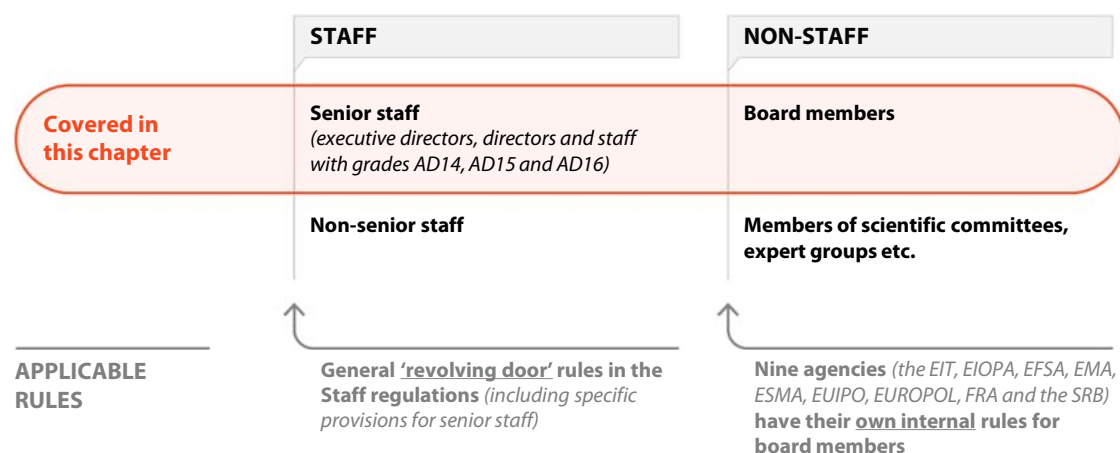
<sup>22</sup> The name of the board varies between agencies: for example, some agencies have a board of supervisors, others have an administrative board or a management board, and some a governing board. Executive agencies, on the other hand, are led by steering committees.

<sup>23</sup> Articles 12, 12b, 16 and 17 of the EU's **Staff Regulations** of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

- o An agency must publish a yearly list of the cases assessed in the context of the risk of lobbying and advocacy.

However, these rules **do not apply to members of the agencies' boards**, because they are not considered part of the agencies' staff. Nevertheless, nine agencies have internal rules dealing with this area.

**Figure 2.7 – Our work on ‘revolving door’ covered agencies’ senior staff and board members**



Source: ECA.

## The current legal framework lacks clear requirements on compliance and monitoring

**2.34.** As mentioned in [Box 2.6](#), the Staff Regulations (including their rules related to ‘revolving door’ situations and conflicts of interest more broadly), by definition do not apply to the members of agencies’ boards, who do not belong to the agencies’ staff. They also do not concern members of the agencies’ scientific committees, expert groups and other similar bodies. This leaves a legal vacuum, because there is no common legal basis defining a minimum level of requirements for these categories of people working for EU agencies, in relation to the risk of conflict of interest and ‘revolving door’ situations. The task of setting applicable rules is left to each individual agency.

## Action to be taken 4

The EU Agencies Network should reach out to the Commission and legislators to propose changes to the regulatory framework defining a minimum set of rules applicable to members of the EU agencies' boards in relation to conflict of interest and 'revolving door'. Where appropriate, similar rules should also apply to members of scientific committees, expert groups and similar bodies outside the scope of the staff regulations.

**2.35.** The EU legal framework for managing the risk of 'revolving door' situations sets out very limited obligations for EU institutions and bodies (including EU agencies) to monitor compliance of current and former staff with the 'revolving door' requirements. It does not define the manner in which such monitoring could take place or the tools that could be used for that purpose. In consequence, most agencies do not engage in any such monitoring activity (see paragraph 2.41), and undeclared 'revolving door' cases and breaches of restrictions imposed on departing staff in relation to their new jobs are likely to remain undetected.

**2.36.** The rules relating to monitoring and handling 'revolving door' situations and the associated risk of a conflict of interest are insufficiently explicit about the obligation for the EU institutions and bodies concerned to publish a yearly list of cases assessed in the context of the risk of lobbying and advocacy. The European Ombudsman already reported on this issue in 2017 (see [Box 2.7](#)). The relevant rules in the Staff Regulations have not changed since then.

### Box 2.7

#### The European Ombudsman called for more transparency on the assessment of cases in relation to the risk of lobbying and advocacy

In a 2017 report<sup>24</sup>, the European Ombudsman stated that “information should be published for all cases assessed, regardless of whether the institution took the view that the notified occupational activity could, or would, entail lobbying and advocacy. This is necessary to ensure an effective and meaningful application of Article 16(3) and 16(4).” The European Ombudsman stated that the information to be published should include:

- the name of the senior staff member concerned;
- the date of departure of the senior staff member;

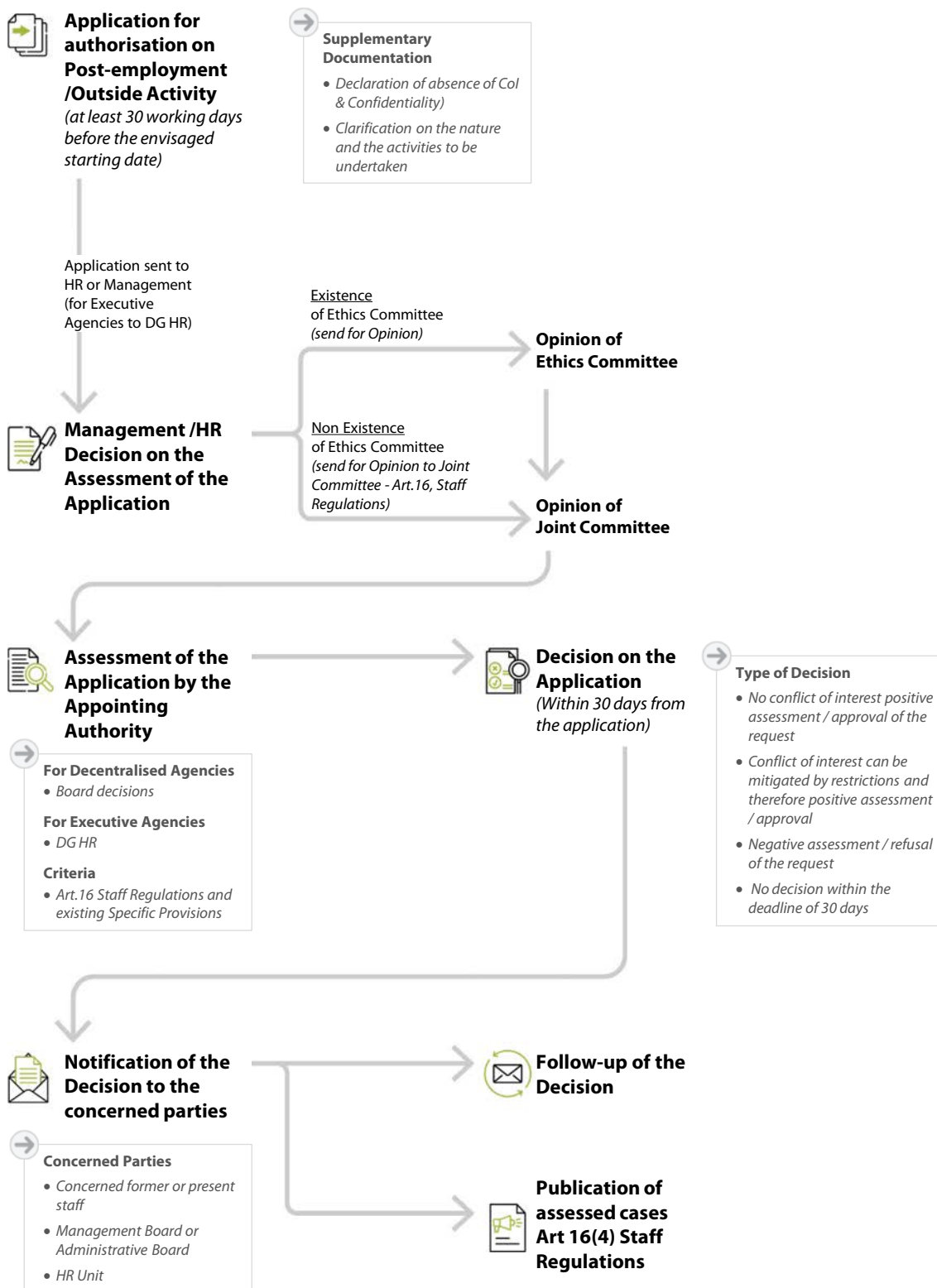
<sup>24</sup> Report of the European Ombudsman on the publication of information on former senior staff so as to enforce the one-year lobbying and advocacy ban.

- the type of post held by the senior staff member and a description of the duties carried out during the last three years in the EU civil service;
- the name of the future employer and a description of the type of duties to be carried out in the new job; alternatively, a description of the intended self-employed activities;
- if the future employer or the self-owned company is registered on the EU Transparency Register, a link to the relevant register entry;
- the institution's detailed assessment of the case, including its conclusion on whether to authorise it – with or without mitigating measures – and a statement about whether the intended activity may entail lobbying and advocacy and thus warrants the imposition of a lobbying and advocacy ban.

## Agencies mostly comply with their legal obligations

**2.37.** When a current or former staff member notifies an agency about their plans to take up a new job, the agency has 30 working days to issue a decision. No such time limit is set for outside activities. Before taking a decision, the agency has to consult the Joint Committee. The standard process for assessing a case is illustrated in [Figure 2.8](#).

**Figure 2.8 – Standard process for agencies when assessing potential ‘revolving door’ cases.**

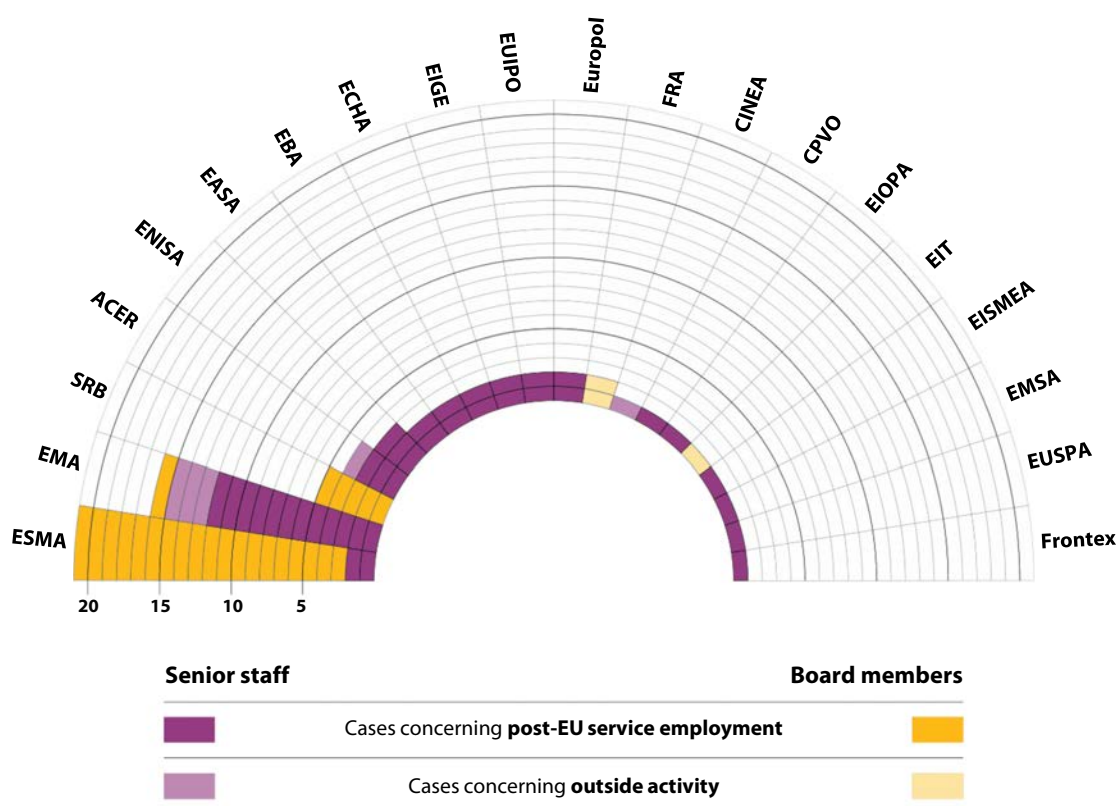


Source: ECA.



**2.38.** During the last three years (2019-2021), only 20 of the 40 agencies we examined had considered any potential revolving-door cases related to their senior staff members. Only five had assessed any cases related to members of their boards, taking up a new job or an outside activity. As shown in [Figure 2.9](#), the total number of cases assessed was 71, of which 43 cases concerned senior staff and 28 concerned board members. These numbers are based on the information we received from the agencies, which, in turn, had relied generally on self-declarations from the staff and board members concerned. We have not carried out an investigation to identify any undeclared cases.

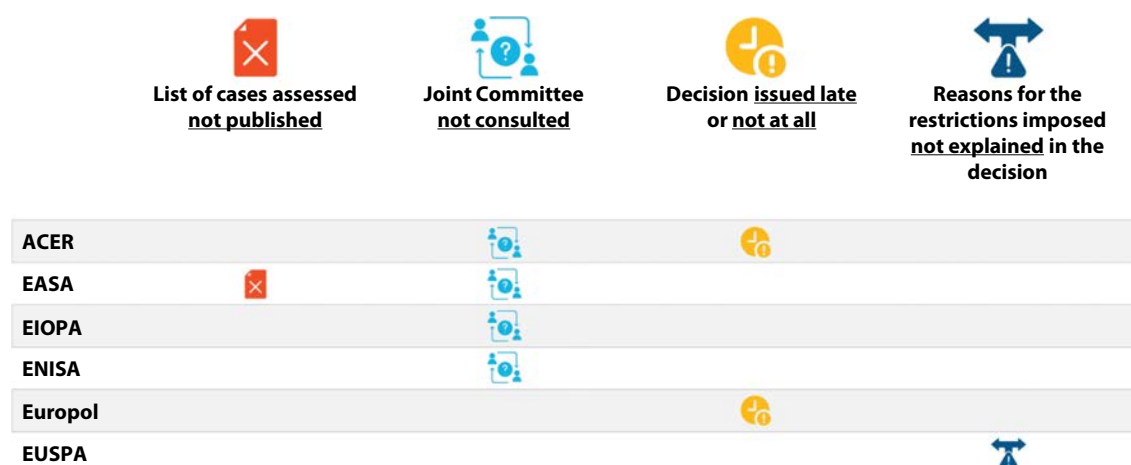
**Figure 2.9 – Most agencies assessed very few cases, or none at all**



Source: ECA, on the basis of information received from the agencies.

**2.39.** We examined a sample of 17 of these cases and concluded that the agencies generally complied with the applicable legal requirements. Exceptions are described in paragraphs [3.2.10](#), [3.4.9](#), [3.7.11](#), [3.10.12](#), [3.13.11](#) and [3.33.9](#). The infringements we identified concerned the obligation to publish the list of cases assessed, to consult the Joint Committee, or to issue a formal decision within 30 working days.

Figure 2.10 – We found procedural infringements in six agencies



Source: ECA.

## Action to be taken 5

Agencies should strengthen their internal procedures and controls concerning potential ‘revolving door’ situations, in order to ensure full compliance with the applicable rules. In particular, they should:

- issue formal decisions within the applicable time limit;
- consult the Joint Committee on all cases before issuing a decision;
- publish a list of all cases assessed in relation to the risk of lobbying and advocacy.

## Only a few agencies go beyond the minimum legal requirements when handling potential ‘revolving door’ situations

**2.40.** Nine agencies had introduced their own internal rules to deal with the lack of provisions in EU legislation governing the activities of members of agencies’ boards described in [Box 2.6](#). See [Box 2.8](#).

### Box 2.8

#### Nine agencies (EBA, EIOPA, the EIT, EMA, ESMA, EUIPO, Europol, FRA and the SRB) have specific provisions covering the risk of ‘revolving door’ situations in relation to members of their boards

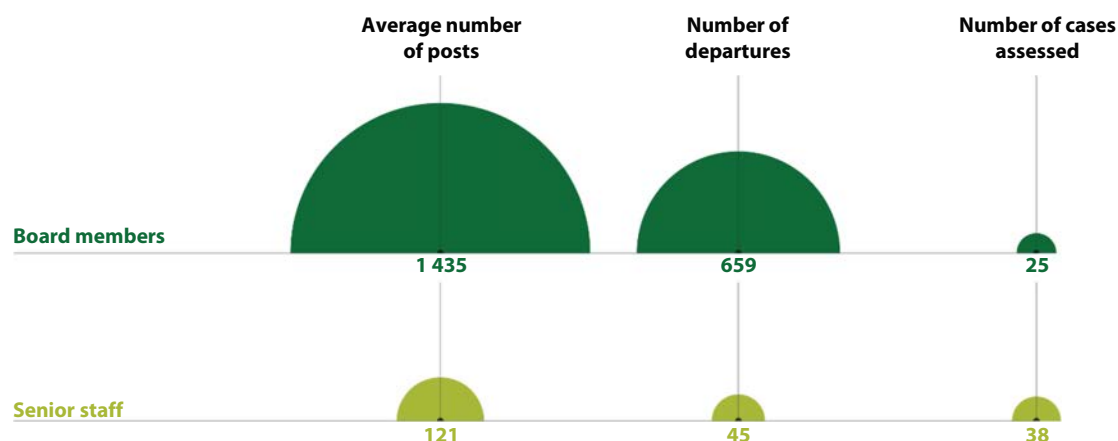
EMA’s internal rules require board members (and their alternates) to notify the EMA immediately of their intention to engage in occupational activities with pharmaceutical companies. From the moment it receives such a notification, the EMA must restrict the person concerned from further involvement in the board’s activities. Similar rules also apply to members of the EMA’s scientific committees and expert groups.

The EIT has a Code of Good Conduct, which addresses conflicts of interest for the members of the governing board. It prevents members of the board from taking any position, paid or unpaid, in any businesses, research centres or universities participating in the EIT’s Knowledge and Innovation Communities or receiving EIT grants, for two years after leaving their post.

**2.41.** The remaining 31 agencies only take into account potential ‘revolving door’ cases concerning their current and former staff. As a result, only a small fraction of potential ‘revolving door’ cases of agencies’ board members are subject to any assessment (see [Figure 2.11](#)). This can result in perceived or actual conflicts of interest, potentially leading to:

- decisions not being made in the public interest, but in the interest of the future employer of the board member concerned;
- unfair advantages for certain private-sector entities in terms of insider information or relations/lobbying.

**Figure 2.11 – Few potential ‘revolving door’ cases related to members of agencies’ boards are assessed**



Source: ECA, on the basis of information received from the agencies.

## Action to be taken 6

Agencies should introduce internal rules for members of their boards on conflicts of interest in general and ‘revolving door’ situations in particular.

**2.42.** In general, we found that agencies rely almost exclusively on self-declarations by the members of staff concerned for identifying potential ‘revolving door’ situations and the associated risk of conflicts of interest. Most agencies do not take any steps to detect whether current staff members may be carrying out undeclared outside activities, or whether their former staff members have taken up new jobs without informing the agency. Nor do they monitor whether former staff members comply with any restrictions imposed on them in relation to their new jobs. However, we have identified four examples of good practices where agencies have introduced procedures for monitoring this (see [Box 2.9](#)).

### Box 2.9

#### **Only four agencies (the BEREC Office, the SRB, EBA and ESMA) have procedures in place for monitoring compliance with the rules related to ‘revolving door’**

The BEREC Office has procedures in place to perform sample checks on former staff members’ compliance with their obligations under Article 16 of the Staff Regulations. These checks focus on senior staff members and on staff members who either were forbidden to engage in a certain occupational activity or were allowed to accept a new job subject to certain limitations.

The SRB has procedures to run compliance checks on former staff members who left the SRB within the last two years, including the use publicly available databases.

## Action to be taken 7

Agencies should engage in active monitoring of the professional activity of their senior staff members (including those that have left the agency within the last two years) in order to be able to detect undeclared ‘revolving door’ situations and ensure compliance with previously imposed restrictions.

## Other agency-related products issued by the ECA

**2.43.** Apart from audit reports specifically covering the agencies, in the course of 2021 and the first half of 2022, the ECA also issued a number of special reports on EU policy implementation which referred to a number of agencies. [Table 2.1](#) presents the content of five selected reports, while a full list is included in [Figure 2.12](#).

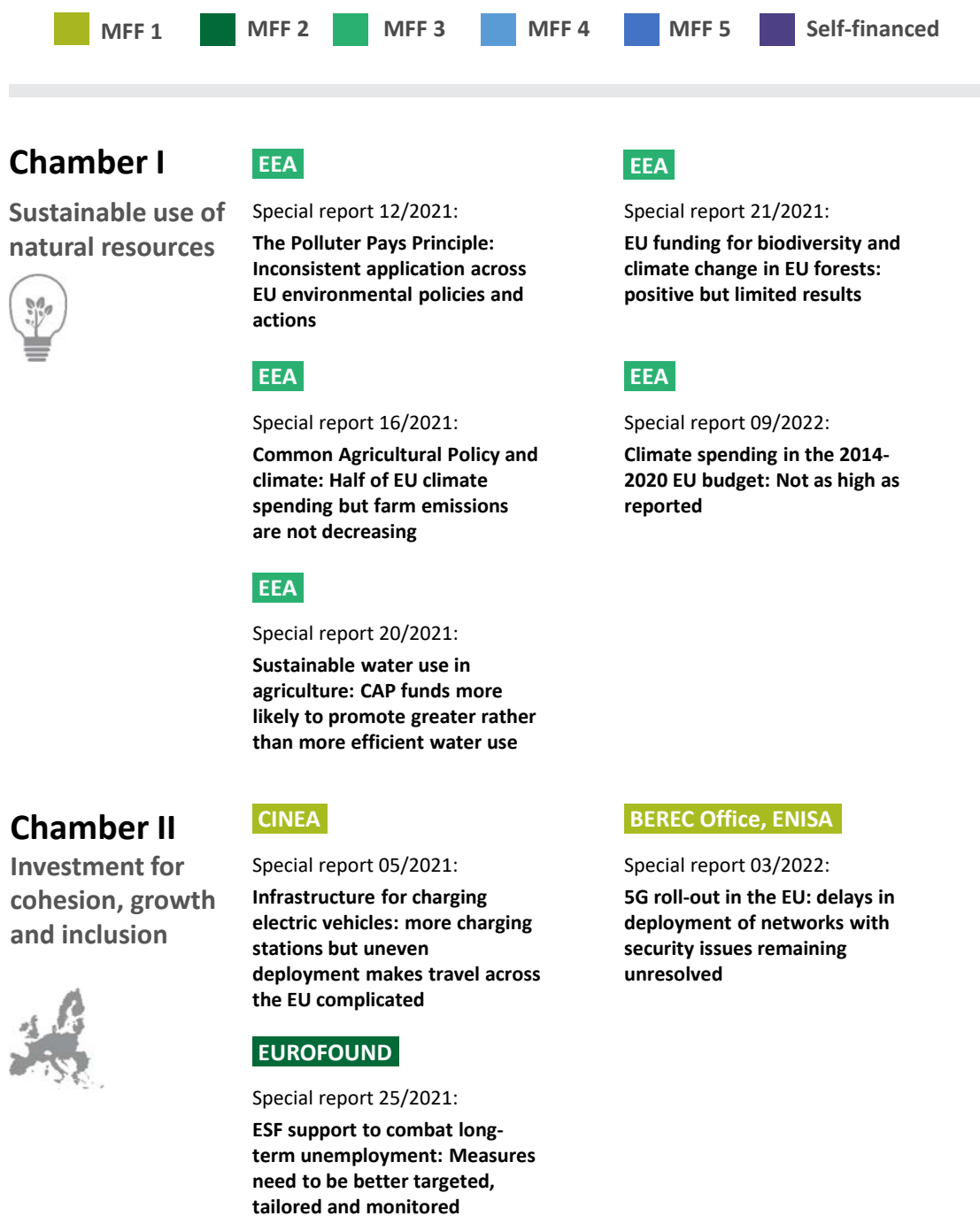
**Table 2.1 – Main points covered in our selected recent special reports related to EU agencies**

Special report and agency concerned	Main points covered
<p><a href="#">Special report 06/2022</a></p> <p>“EU intellectual property rights: Protection not fully waterproof”</p> <p>EUIPO</p>	<p>In this audit, we assessed whether intellectual property rights in EU trademarks, EU designs and geographical indications were well protected within the Single Market.</p> <p>We found that the protection was generally robust, despite some legislative shortcomings. The absence of a clear method for determining EU fees results in a level of fees which produces accumulated surpluses. We also found shortcomings in the legislation regarding EUIPO’s governance and accountability framework.</p> <p>We recommended that the Commission should complete and update the regulatory frameworks, assess the governance arrangements and method for determining fees in the context of its evaluation of EUIPO’s impact, effectiveness and efficiency and its working practices. We also recommended that EUIPO should improve its financing, control and evaluation systems by providing a sound method for calculating lump sums, properly justifying the running costs of EU public databases for EU trademarks and designs, and improving evaluation systems for European cooperation.</p>
<p><a href="#">Special report 05/2022</a></p>	<p>The number of cyberattacks on EU institutions, bodies and agencies (EUIBAs) is increasing sharply. As EUIBAs are strongly interconnected, weaknesses in one can expose others to security threats. We examined whether the EUIBAs have adequate arrangements to protect themselves against cyber threats.</p>

Special report and agency concerned	Main points covered
<p>“Cybersecurity of EU institutions, bodies and agencies: Level of preparedness overall not commensurate with the threats”</p> <p>ENISA</p>	<p>We found that, overall, EUIBAs’ level of preparedness is not commensurate with the threats, and that they have very different levels of cybersecurity maturity. We recommend that the Commission improve EUIBAs’ preparedness by proposing the introduction of binding cybersecurity rules and an increase in resources for the Computer Emergency Response Team (CERT-EU). The Commission should also promote further synergies among EUIBAs, and CERT-EU and the European Union Agency for Cybersecurity should focus their support on less mature EUIBAs.</p>
<p><a href="#">Special report 04/2022</a></p> <p>“Investment funds: EU actions have not yet created a true single market benefiting investors”</p> <p>ESMA</p>	<p>Investment funds play a key role in the European capital markets union, helping investors to allocate their capital efficiently. We assessed the suitability of the regulatory framework, the EU’s efforts to create similar and effective supervision in all Member States, as well as its investor protection and financial stability work.</p> <p>We found that EU actions had enabled a single market for investment funds, but had not yet achieved the desired outcomes, as true cross-border activities and benefits for investors remained limited. ESMA had strived to promote supervisory convergence, resulting in slightly improved quality of supervision and fewer divergences. However, ESMA was unable to measure this progress, and had limited knowledge of whether an equivalent level of supervision was performed across Member States. Nevertheless, ESMA’s work revealed weaknesses in national supervision and some divergent practices. To achieve consistent supervision, it relied on the goodwill of national supervisors and the willingness of its own Board of Supervisors.</p>
<p><a href="#">Special report 19/2021</a></p> <p>“Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and</p>	<p>Migrant smuggling has posed a major humanitarian and security challenge for the EU in recent years. Our audit assessed whether Europol had effectively supported EU Member States in dismantling criminal networks involved in organised migrant smuggling.</p> <p>We found that Europol’s partners appreciated its support, but weaknesses in measuring its results prevented us from fully evaluating its impact. We also found that Europol’s use of available European data sources was sometimes limited. We recommended that Europol should use all available data sources, enhance data</p>

Special report and agency concerned	Main points covered
<p>result measurement”</p> <p>Europol</p>	<p>exchange with its partners, improve performance monitoring and reporting of its activities on migrant smuggling, and make its process for prioritising cases of migrant smuggling originating in the Member States more transparent.</p>
<p><a href="#">Special report 08/2021</a></p> <p>“Frontex’s support to external border management: not sufficiently effective to date”</p> <p>Frontex</p>	<p>In this audit, we assessed whether Frontex carried out four out of its six primary activities effectively to contribute to implementing European integrated border management, and thus supporting Member States to prevent, detect and respond to illegal immigration and cross-border crime. We also examined how prepared Frontex was to fulfil its new and expanded 2019 mandate.</p> <p>We concluded that Frontex’s support for Member States and Schengen associated countries in fighting illegal immigration and cross-border crime was insufficiently effective. We found that Frontex had not fully implemented its 2016 mandate, and we highlighted several risks related to its 2019 mandate.</p>

Figure 2.12 – Other ECA special reports referring to agencies issued in 2021 and the first half of 2022



## Chamber I

### Sustainable use of natural resources



**EEA**

Special report 12/2021:  
**The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions**

**EEA**

Special report 21/2021:  
**EU funding for biodiversity and climate change in EU forests: positive but limited results**

**EEA**

Special report 16/2021:  
**Common Agricultural Policy and climate: Half of EU climate spending but farm emissions are not decreasing**

**EEA**

Special report 09/2022:  
**Climate spending in the 2014-2020 EU budget: Not as high as reported**

**EEA**

Special report 20/2021:  
**Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use**

## Chamber II

### Investment for cohesion, growth and inclusion



**CINEA**

Special report 05/2021:  
**Infrastructure for charging electric vehicles: more charging stations but uneven deployment makes travel across the EU complicated**

**BEREC Office, ENISA**

Special report 03/2022:  
**5G roll-out in the EU: delays in deployment of networks with security issues remaining unresolved**

**EUROFOUND**

Special report 25/2021:  
**ESF support to combat long-term unemployment: Measures need to be better targeted, tailored and monitored**



## Chamber III

External action,  
security and  
justice



### FRONTEX

Special report 17/2021:  
**EU readmission cooperation with  
third countries: relevant actions  
yielded limited results**

### ENISA

Special report 05/2022:  
**Cybersecurity of EU institutions,  
bodies and agencies: Level of  
preparedness overall not  
commensurate with the threats**

### ECDC EUSPA

Special report 13/2022:  
**Free movement in the EU during  
the COVID-19 pandemic:  
Limited scrutiny of internal  
border controls, and  
uncoordinated actions by  
Member States**

## Chamber IV

Regulation of  
markets and  
competitive  
economy



### SRB

Special report 01/2021:  
**Resolution planning in the Single  
Resolution Mechanism**

### EUSPA

Special report 07/2021:  
**EU space programmes Galileo  
and Copernicus: services  
launched, but the uptake needs a  
further boost**

### ESMA, EIOPA, EBA

Special report 04/2022:  
**Investment funds EU actions have  
not yet created a true single  
market benefiting investors**

### EUIPO

Special report 06/2022:  
**EU intellectual property rights:  
Protection not fully waterproof**

### FRONTEX

Special report 08/2021:  
**Frontex's support to external  
border management: not  
sufficiently effective to date**

### EISMEA

Special report 07/2022:  
**SME internationalisation  
instruments A large number of  
support actions but not fully  
coherent or coordinated**

### EBA

Special report 13/2021:  
**EU efforts to fight money  
laundering in the banking sector  
are fragmented and  
implementation is insufficient**

### REA

Special report 15/2022:  
**Measures to widen participation  
in Horizon 2020 were well  
designed but sustainable change  
will mostly depend on efforts by  
national authorities**

### EUROPOL

Special report 19/2021:  
**Europol support to fight migrant  
smuggling: a valued partner, but  
insufficient use of data sources  
and result measurement**

MFF 1
  MFF 2
  MFF 3
  MFF 4
  MFF 5
  Self-financed

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## Chamber V

Financing and  
administering  
the Union



### EIGE

Special report 10/2021:  
**Gender mainstreaming in the EU budget: time to turn words into action**

### ESMA, EIOPA, EBA

Special report 22/2021:  
**Sustainable finance: More consistent EU action needed to redirect finance towards sustainable investment**

### REA

Special report 11/2022:  
**Protecting the EU budget: Better use of blacklisting needed**

Source: ECA.

## The EU agencies network's reply

**1.25.** 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.

**2.19, 2.21, 2.24, 2.26.** The EUAN acknowledges the Court's 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 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 and related observations in chapter 3.

**2.34, 2.35.** EUAN fully supports the importance given to the issues of conflict of interest and revolving doors. The legal basis is, however, currently weak when it comes to members of Management Boards. The members are appointed by Council and unless there are clear legal provisions on how to prevent and manage the issues of conflict of interest and revolving doors, it is difficult for Agencies and their Management Boards to implement effective measures, for example when it comes to professional activities after leaving the Management Board. This notwithstanding, EUAN members will continue to do their best within the existing legal framework.



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 this report. We have met independence requirements and fulfilled our ethical obligations under the International Ethics Standards Board for Accountants Code of Ethics for Professional Accountants. 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 TFEU and the agencies' Financial Regulations, the management of each agency is 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 underlying transactions. This includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. The management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements satisfy the official requirements which govern those statements. The management of each agency bears ultimate responsibility for the legality and regularity of the transactions underlying each agency's accounts.

**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 the management intends either 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.** We have two objectives. One is to obtain reasonable assurance about whether the accounts of the agencies are free from material misstatement, and whether the transactions underlying them are legal and regular. The second is to provide the European Parliament and the Council or the other respective discharge authorities with statements of assurance, on the basis of our audit work, 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 all instances of material misstatement or non-compliance which may exist. These can arise from fraud or error and are considered material if, individually or taken together, 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 once the 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. We examine advance payments when the recipient of funds provides justification for their proper use, and when an agency accepts the justification by clearing the advance payment, 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 take the following steps.

- We 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 these are due to fraud or error. We 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 failing to detect a material misstatement or non-compliance resulting from fraud is higher than the risk of failing to detect one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the overriding of internal controls.
- We 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 those internal controls.
- We evaluate the appropriateness of the accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.

- We draw conclusions on the appropriateness of management's use of the going-concern basis of accounting and, based on the audit evidence obtained, on 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 to the related disclosures in the accounts in our auditor's report or, if these disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditors' report. However, future events may force an entity to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the accounts, including the disclosures, and assess whether the accounts fairly represent the underlying transactions and events.
- We obtain sufficient appropriate audit evidence on the financial information of the agencies to express an opinion on the accounts and transactions underlying them. We are responsible for directing, supervising and performing the audit. We remain solely responsible for our audit opinion.
- We consider the audit work of independent external auditors performed on the agencies' accounts, as stipulated in Article 70(6) of the EU Financial Regulation, where applicable.

We communicate with the management on matters such as the planned scope and timing of the audit and significant audit findings, including any significant weaknesses in internal controls that we identify during our audit. From our communications with the agencies, we determine those matters that were most significant in the audit of the accounts of the current period. We designate those matters as key audit matters. We describe these matters in our auditor's report, unless we are prohibited by legislation from doing so, 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 a communication.



## **Agencies funded under MFF heading 1 – Single Market, Innovation and Digital**

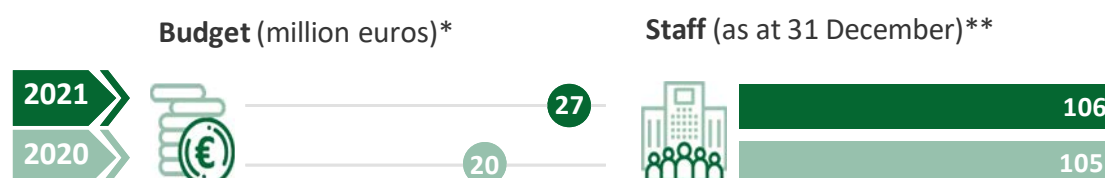


## 3.2. European Union Agency for the Cooperation of Energy Regulators (ACER)

### Introduction

**3.2.1.** The European Union Agency for the Cooperation of Energy Regulators (“ACER”), which is located in Ljubljana, was created by Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>25</sup>, later revised by Regulation (EU) 2019/942 of the European Parliament and of the Council<sup>26</sup>. ACER’s main task is to assist national regulatory authorities in exercising, at EU level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action. The Regulation on Wholesale Energy Market Integrity and Transparency (the REMIT Regulation<sup>27</sup>) gave ACER additional responsibilities in connection with the monitoring of the European wholesale energy market. *Figure 3.2.1* presents key figures for ACER<sup>28</sup>.

**Figure 3.2.1 – Key figures for ACER**



\* 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 ACER for the 2020 and 2021 financial years; staff figures provided by ACER.

<sup>25</sup> Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators.

<sup>26</sup> Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators.

<sup>27</sup> Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency.

<sup>28</sup> More information on ACER’s role 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 ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ACER’s management.

**3.2.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ACER’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 (“ACER”), which comprise the financial statements<sup>29</sup> and the reports on the implementation of ACER’s budget<sup>30</sup> for the financial year ended 31 December 2021, 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>29</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>30</sup> The reports on the 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

**3.2.5.** In our opinion, ACER's accounts for the year ended 31 December 2021 present fairly, in all material respects, ACER's financial position at 31 December 2021, 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 2021 is legal and regular in all material respects.

### Payments

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

**3.2.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.2.9.** In our audit report for the 2019<sup>31</sup> financial year, we concluded that several specific contracts under a framework contract for IT services were partly irregular. As a result, subsequent payments based on this framework contract may also be affected. In 2021, the associated payments amounted to €21 534.

## Observations on management and control systems

**3.2.10.** Between 2019 and 2021, ACER assessed three cases of a potential conflict of interest in relation to a senior member of staff taking up paid outside activity or a new job elsewhere. In the one case we reviewed, we found that, in contravention of Article 16 of the Staff Regulations, ACER did not consult the Joint Committee and issued its decision after the deadline. The decision included restrictions designed to mitigate the risk of conflict of interest. Because it was issued late, however, it could not be enforced, meaning that the person concerned was effectively authorised to take up the new job without any restrictions. ACER subsequently asked the person concerned to honour the restrictions set out in the initial decision, but this request lacked any legal basis.

## Observations on budgetary management

**3.2.11.** We found that ACER had carried over €6.6 million (29.9 %) of 2021 commitment appropriations to 2022. Of that amount, €4.0 million, or 54 % of operational expenditure, was related to core operational activities under the REMIT Regulation. High rates of carry-overs contradict the budgetary principle of annuality and suggest structural issues in the implementation of the budget.

## Follow-up of previous years' observations

**3.2.12.** 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>31</sup> Paragraph 7 of ECA's annual report on the 2019 ACER annual accounts.

## Annex – Follow-up of previous year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	ACER may consider introducing differentiated budget appropriations to better reflect the multiannual nature of operations.	Completed
2019	ACER 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. ACER concluded direct contracts for the items concerned, without a competitive procedure. The associated specific contracts are therefore irregular.	Ongoing  (until the framework contract expires in 2025)
2019	ACER incorrectly calculated the evaluation scores in a recruitment procedure, which led to a candidate being selected unduly. This contravenes the principle of equal treatment, and shows a failure to apply effective internal controls.	N/A
2019	We found evidence suggesting that ACER 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.	Outstanding

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

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2019	ACER had high rate of carry-overs, which were only partially justified. This is indicative of a structural issue. To resolve it, ACER should further improve its budget planning and its implementation cycles.	Ongoing
2019	ACER did not comply with internal control principle 12 of its own internal control framework, under which ACER must record deviations from the rules and procedures in its register of exceptions. This undermines the transparency and the effectiveness of ACER's internal control systems.	Completed
2020	Internal control weaknesses in recruitment procedures affected the candidate evaluation process, but did not call into question the audited procedures' legality or regularity.	N/A
2020	Other matter paragraph: ACER did not adopt internal rules to address the continuity of delegations in cases where delegating or delegated authorising officers leave their posts.	Completed

## ACER's reply

**3.2.9.** The Agency acknowledges the payment made under the framework contract in question. Its value represents 0.1% of all payments made in 2021. The Agency has minimised the use of the out of price list to the extent possible (bringing it below 10% of the value of each specific contract), taking into account the continuity of its operational activities.

**3.2.10.** The Agency acknowledges all the facts, as presented by the ECA. It should be noted that faced with this situation for the first time, the Agency tried to ensure that the proper terms and conditions would be imposed. However, the Agency did not manage to do so on time and had to withdraw the decision. The Agency considered the exchange of letters with the former staff member as representing a good solution to formalise the contractual obligations after the withdrawal of the decision, thus protecting from operational, legal and reputational risks. Having gained the experience of this process, the Agency is committed to apply the process in a timely and correct manner.

**3.2.11.** The Agency acknowledges the increased level of carry-overs. The year 2021 was the first year in which the Agency collected fees. With no prior experience in this domain, the Agency was cautious in contracting its resources and delayed the start of several operational projects planned to be covered by fees until the settlement of the first fees instalment. This resulted in a high level of carry-overs from the commitments open balances at year-end.

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

## 3.3. Agency for Support for Body of European Regulators for Electronic Communications (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<sup>32</sup>, replacing the previous Regulation (EC) No 1211/2009 of the European Parliament and of the Council<sup>33</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). Under the guidance of the Board of Regulators, it collects and analyses information on electronic communications and disseminates best practices such as common approaches, methodologies and guidelines on the implementation of the EU regulatory framework among national regulatory authorities. *Figure 3.3.1* presents key figures for the BEREC Office<sup>34</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: Annual accounts of the BEREC Office for the 2020 and 2021 financial years; staff figures provided by the BEREC Office.

<sup>32</sup> Regulation (EU) 2018/1971 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office).

<sup>33</sup> Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

<sup>34</sup> More information on the BEREC Office’s role 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 (BEREC Office)

## Information in support of the statement of assurance

**3.3.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by 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 our opinion, the responsibilities of the BEREC Office’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 (“the BEREC Office”), which comprise the financial statements<sup>35</sup> and the reports on the implementation of the BEREC Office’s budget<sup>36</sup> for the financial year ended 31 December 2021, 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>35</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>36</sup> The reports on the 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 BEREC Office's accounts for the year ended 31 December 2021 present fairly, in all material respects, the BEREC Office's financial position at 31 December 2021, 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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.3.9.** In our audit report for the 2019<sup>37</sup> financial year, we concluded that a procurement procedure for legal services was irregular. As a result, all subsequent payments made based on this framework contract are irregular. In 2021, the associated payments amounted to €4 444.

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<sup>37</sup> Paragraph 17 of [ECA's annual report on the 2019 BEREC Office annual accounts](#).

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

## Observations on management and control systems

**3.3.10.** In a recruitment procedure we checked, the selection committee had not established how points would be awarded for each selection criterion before examining the applications. This meant that there was little transparency in how candidates' scores were determined.

The chair of the selection committee had declared a professional conflict of interest in connection with two candidates working under his supervision. Yet the final evaluation report did not describe how this conflict of interest had been addressed.

These identified weaknesses undermined the principles of transparency and equal treatment in the recruitment procedure. They may expose the BEREC Office to reputational and legal risks.

**3.3.11.** In one audited procurement procedure for IT services, the BEREC Office requested an offer from a contractor without specifying in advance which services were required. Such an approach hinders the effectiveness, efficiency and economy of operations.

In addition, the BEREC Office did not perform checks to make sure that the prices applicable to specific contracts corresponded to the prices and discounts set out in the underlying framework contract. The lack of ex ante checks on prices is a weakness in the BEREC Office's internal control system.

## Follow-up of previous years' observation

**3.3.12.** 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 (BEREC Office)

## Annex – Follow-up of previous year’s observations

Year	The ECA’s observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	<p>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.</p>	Completed
2019	<p>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 the offers were compliant with the eligibility criteria. 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.</p>	Ongoing

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

## The BEREC Office's reply

**3.3.9.** The BEREC Office has undertaken improvements in its procurement to avoid repetition of mistakes from the past.

**3.3.10.** The BEREC Office takes note of the observation and will prepare new internal templates for selection procedures to improve the process.

The BEREC Office notes that while the mitigation measures imposed by the Director to avoid conflict of interest were applied, they were not properly documented.

The BEREC Office adopted internal rules on documenting compliance with the decision of the AACC to avoid the identified risks in future.

**3.3.11.** The BEREC Office acknowledges the observation and will improve the documentation of all steps of the process that lead to the approval of the Statement of work.

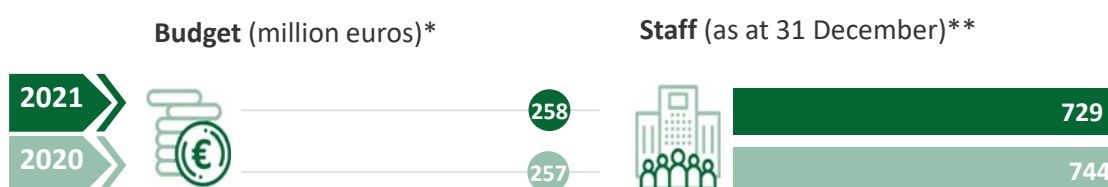
The BEREC Office will change its internal procedure and include a proper documentation of checks of all prices in the approval procedure of future specific contracts.

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

### Introduction

**3.4.1.** The European Union Aviation Safety Agency (“EASA”), which is located in Cologne, is governed by Regulation (EU) 2018/1139<sup>38</sup> of the European Parliament and of the Council of 4 July 2018, repealing Regulation (EC) No 216/2008<sup>39</sup>. EASA has specific regulatory and executive tasks in the field of aviation safety. *Figure 3.4.1* presents key figures for EASA<sup>40</sup>.

**Figure 3.4.1 – Key figures for EASA**



\* 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 EASA for the 2020 and 2021 financial years; staff figures provided by EASA.

### Information in support of the statement of assurance

**3.4.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EASA’s management.

<sup>38</sup> Regulation (EU) 2018/1139 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency.

<sup>39</sup> Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.

<sup>40</sup> More information on EASA’s role and activities is available on its website: [www.easa.europa.eu](http://www.easa.europa.eu).

## European Union Aviation Safety Agency (EASA)

**3.4.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EASA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Union Aviation Safety Agency (“EASA”), which comprise the financial statements<sup>41</sup> and the reports on the implementation of EASA’s budget<sup>42</sup> for the financial year ended 31 December 2021, 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, EASA’s accounts for the year ended 31 December 2021 present fairly, in all material respects, EASA’s financial position at 31 December 2021, 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>41</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>42</sup> The reports on the 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

**3.4.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 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 management and control systems

**3.4.9.** Between 2019 and 2021, EASA assessed two cases of a potential conflict of interest in relation to a senior member of staff taking up a new job elsewhere. In contravention of Article 16 of the Staff Regulations, which requires a list of the cases assessed, in the context of the risk of advocacy and lobbying, to be published, EASA did not do so in the one case we reviewed. In the same case, in contravention of another provision of Article 16 of the Staff Regulations, EASA did not consult the Joint Committee.

## Follow-up of previous years' observations

**3.4.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	EASA has accumulated a €52 million surplus from industry-financed activities over the years, for which there is no provision in EASA's Founding Regulation.	Ongoing (Not under EASA's control)
2018	EASA committed the funds for an agreement with the European Commission on archiving services after the renewal of the agreement. In order to ensure that funds are available, the budgetary commitment should be recorded before a legal obligation is entered into.	Completed

European Union Aviation Safety Agency (EASA)

## EASA's reply

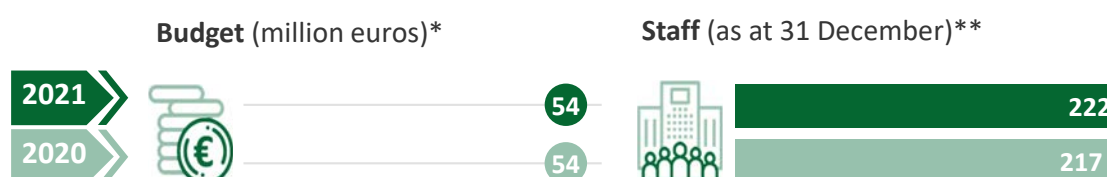
**3.4.9.** For the particular case highlighted here, EASA has thoroughly assessed it, as well as any further requests for occupational/consultancy activity reported by the former member staff, for the risk of an actual or potential (incl. perceived) conflict with the interest of EASA. Where needed, appropriate mitigating measures have been put in place and relevant restrictions imposed.

## 3.5. European Banking Authority (EBA)

### Introduction

**3.5.1.** The European Banking Authority (“the EBA”), which is located in Paris, was established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>43</sup>. The EBA contributes to establishing high-quality common regulatory and supervisory practices in the banking sector, monitors the application of EU banking law by national authorities, and takes decisions in emergency situations. *Figure 3.5.1* presents key figures for the EBA<sup>44</sup>.

**Figure 3.5.1 – Key figures for the EBA**



\* 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 EBA for the 2020 and 2021 financial years; staff figures provided by the EBA.

### Information in support of the statement of assurance

**3.5.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the EBA’s management.

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

<sup>43</sup> Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

<sup>44</sup> More information on the EBA’s role and activities is available on its website: [www.eba.europa.eu](http://www.eba.europa.eu).

## European Banking Authority (EBA)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Banking Authority ("the EBA"), which comprise the financial statements<sup>45</sup> and the reports on the implementation of the EBA's budget<sup>46</sup> for the financial year ended 31 December 2021, 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 EBA's accounts for the year ended 31 December 2021 present fairly, in all material respects, the EBA's financial position at 31 December 2021, 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>45</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>46</sup> The reports on the 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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.5.9.** The EBA sought to obtain access to banks' debt and capital market data and concluded that the services it required could only be provided by two specific economic operators. The EBA therefore entered into two separate negotiated procedures, for contracts worth €100 000 and €43 800, without the prior publication of a contract notice in accordance with Point 11.1 (b) (ii) and (iii) of Annex I of the Financial Regulation. In both cases, the EBA failed to follow all the necessary procedural steps required by Point 16 of Annex I of the Financial Regulation, such as sending an invitation to tender and drawing up tender specifications.

**3.5.10.** We found internal control weaknesses affecting recruitment procedures. In one procedure, we found no evidence that the EBA had established the minimum number of points that the candidates had to gain in order to be shortlisted before it examining their applications. This undermined the principles of transparency and equal treatment.

In another procedure, the selection board had been established by a series of e-mails rather than by a single nomination decision, so there was no complete audit trail for all the nominations. Following the audit, the EBA provided documentation to show that it had changed its processes.

## European Banking Authority (EBA)

**3.5.11.** Under the Rules of Procedure of the Board of Supervisors, members of the Board who have a conflict of interest may not take part in the Board's discussions or vote on the matter in question. However, the member may remain present in the meeting if nobody objects. This creates a risk to the Board's independence, at least in appearance.

### Follow-up of previous years' observations

**3.5.12.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2019	The EBA has never adjusted estimation-based pension contributions to actual figures, or made plans to do so. The National Competent Authorities (NCA)s' contributions were never adjusted to match the actual figures.	Completed
2019	The EBA's budget is financed by NCAs and the EU. EBA's founding Regulation establishes a ratio of contributions of 60 % for the NCAs and of 40 % for the EU. However, the actual ratio used is slightly different because of the contributions of the EFTA NCAs. When there is a budget surplus in year N-2, the EBA redistributes according to the ratio 60-40 in year N, and not on the basis of the actual ratio of the year N-2.	Completed
2020	In 2020, the EBA concluded a short-term banking agreement with a bank using a wrong procurement procedure due to an underestimation of the contract value. The negative interest paid was €38 430 for the period from January to August 2020.	N/A
2020	For a procurement, the justification to use the negotiated procedure without prior publication of a contract notice was inadequate and lacked an adequate audit trail. The contract value was €31 000.	N/A

## European Banking Authority (EBA)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	In a procurement procedure, 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 interest only after the opening of the tenders.	N/A
2020	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' NCAs. The amount of accrued interest for 2020 is €25 103. As a result of our audit and after consulting the European Commission, EBA decided to apply the late payment interest as of 2021.	Completed
2020	EBA has not formally updated its business continuity plan since 2017. Before the EBA moved from London to Paris in June 2019, a draft plan had been drawn up and used as a basis for addressing the COVID-19 pandemic. Yet it was not formally approved nor updated by the EBA's senior management.	Completed



## EBA's reply

**3.5.9.** EBA acknowledges its error in not following all the procedural steps required by Point 16 of the Financial Regulation, where services can only be provided by a single economic operator. Since receiving this preliminary observation from ECA, the EBA has complemented its internal processes and followed all necessary procedural steps for these kinds of procedures.

**3.5.10.** EBA is committed to ensuring the principles of transparency and equal treatment in all selection procedures by inter alia: systematically establishing the necessary scoring and threshold to pass for candidates to be shortlisted before examining their applications; inviting external members to its panels, especially for managerial positions.

After the audit, the EBA has further strengthened its internal processes and now systematically formalises nomination decisions in a single document (while emails could have been used in the past to accelerate the process) which should also make it easier to audit.

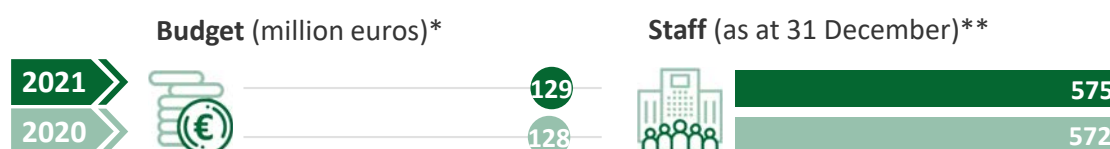
**3.5.11.** The Board of Supervisors adopted in its meeting of 21 June 2022 an amendment of its Rules of Procedure, as well as of the Management Board and the mandates of the Standing Committees on Resolution (ResCo) and on anti-money laundering and countering terrorist financing (AMLSC), whereby a member that has declared a conflict of interests is required in all cases to be absent from both the discussion itself and the vote.

## 3.6. European Chemicals Agency (ECHA)

### Introduction

**3.6.1.** The European Chemicals Agency (“ECHA”), which is located in Helsinki, was set up by Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>47</sup>. ECHA’s 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. ECHA also promotes the development of alternative methods for the assessment of hazards relating to substances. *Figure 3.6.1* presents key figures for ECHA<sup>48</sup>.

**Figure 3.6.1 – Key figures for ECHA**



\* 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 ECHA for the 2020 and 2021 financial years; staff figures provided by ECHA.

### Information in support of the statement of assurance

**3.6.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ECHA’s management.

**3.6.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ECHA’s management and of those charged with governance,

<sup>47</sup> Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency.

<sup>48</sup> More information on ECHA’s role and activities is available on its website: [www.echa.europa.eu](http://www.echa.europa.eu).

## European Chemicals Agency (ECHA)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Chemicals Agency ("ECHA"), which comprise the financial statements<sup>49</sup> and the reports on the implementation of ECHA's budget<sup>50</sup> for the financial year ended 31 December 2021, 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, ECHA's accounts for the year ended 31 December 2021 present fairly, in all material respects, ECHA's financial position at 31 December 2021, 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>49</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>50</sup> The reports on the 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 2021 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 2021 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.6.8.** 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 year's observations

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	Member States' national enforcement authorities are responsible for verifying volumes declared by companies, and ECHA has no enforcement powers. ECHA's ability to fulfil its mandate depends on the national authorities. This undermines the effective implementation of the <a href="#">REACH Regulation</a> and also affects the accuracy of fee calculation.	Completed
2018	ECHA 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 ECHA's operations and budget implementation. ECHA, together with the European Commission and the budgetary authorities, should launch a discussion about a viable new financing model.	Completed

European Chemicals Agency (ECHA)

## **ECHA's reply**

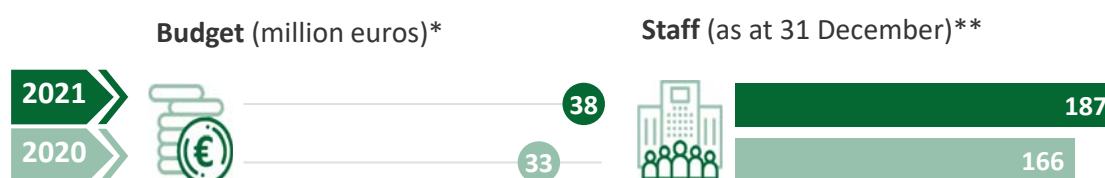
The Agency has taken note of the Court's report.

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

### Introduction

**3.7.1.** The European Insurance and Occupational Pensions Authority (“EIOPA”), which is located in Frankfurt, was established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>51</sup>. EIOPA’s task is to contribute to the establishment of high-quality common regulatory and supervisory standards and practices and to the consistent application of legally binding EU acts, as well as 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 3.7.1* presents key figures for EIOPA<sup>52</sup>.

**Figure 3.7.1 – Key figures for EIOPA**



\* 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 EIOPA for the 2020 and 2021 financial years; staff figures provided by EIOPA.

### Information in support of the statement of assurance

**3.7.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>51</sup> Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority).

<sup>52</sup> More information on EIOPA’s role and activities is available on its website: [www.eiopa.europa.eu](http://www.eiopa.europa.eu).

## European Insurance and Occupational Pensions Authority (EIOPA)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EIOPA's management.

**3.7.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EIOPA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Insurance and Occupational Pensions Authority ("EIOPA"), which comprise the financial statements<sup>53</sup> and the reports on the implementation of EIOPA's budget<sup>54</sup> for the financial year ended 31 December 2021, 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, EIOPA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EIOPA's financial position at 31 December 2021, 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

<sup>53</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>54</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.



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

**3.7.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.7.9.** EIOPA's rental contract for its premises stipulates that EIOPA's landlord must give consent in advance before changes can be made to the property and before additional equipment can be installed. It also stipulates that the associated works can only be carried out by contractors nominated by the landlord. As a result of these contractual constraints, EIOPA awarded refurbishment works directly to the contractors designated by the landlord, without an appropriate procurement procedure. This contravenes Articles 164, 167 and 170 of the Financial Regulation. The amounts concerned by this contract clause (€288 125 paid in 2021, of which €89 240 related to 2020 commitments) were therefore irregular.

## Observations on management and control systems

**3.7.10.** We found weaknesses in EIOPA's management and control systems relating to conflicts of interest.

- (a) Under the Rules of Procedure of the Board of Supervisors, members of the Board who have a conflict of interest may not take part in the Board's discussions or vote

## European Insurance and Occupational Pensions Authority (EIOPA)

on the matter in question. But the member may remain present in the meeting if nobody objects. This creates a risk to the Board's independence, at least in appearance.

- (b) In July 2020, EIOPA's Management Board adopted a policy on independence and decision-making for avoiding conflicts of interest for members of the Board of Supervisors, observers, panel members and other people who play a role at EIOPA but are not directly employed by it. However, responsibility for adopting practical arrangements for managing conflicts of interest lies with the Board of Supervisors, and not with the Management Board.
- (c) The Management Board appoints two assessors to draw up the chairperson's and the executive director's annual performance reports. The assessors maintain this role even in cases where conflicts of interest might exist; for example, when an assessor is an employee of a national competent authority to which EIOPA is considering applying a measure under Articles 16-19 of the [EIOPA Regulation](#) (such as a breach of Union law procedure). This may adversely affect the independence of the appraiser and re-appraiser, contrary to the requirement of Article 42(1) of the EIOPA Regulation.

**3.7.11.** Between 2019 and 2021, EIOPA assessed one case of a potential conflict of interest in relation to a senior member of staff taking up a new job elsewhere. In contravention of Article 16 of the Staff Regulations, EIOPA did not consult the Joint Committee as per Article 2 of Annex II to the Staff Regulations. Instead, EIOPA consulted an internally created body, the Advisory Committee on Conflicts of Interest composed by EIOPA's Ethics Officer (staff member appointed by the Appointing Authority), a member of EIOPA's Board of Supervisors and a member of EIOPA's Management Board, in order to ensure the independence in the assessment of conflict of interests situations involving senior members of staff. However, this body cannot replace the Joint Committee as provided in the Staff Regulations.

## Follow-up of previous years' observations

**3.7.12.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	Interim workers should work under the same conditions as workers employed directly. EIOPA should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.	Completed
2019	The 2019 budget documents do not describe fully how the contributions from EU and EFTA Members' national competent authorities (NCAs) were calculated. EIOPA has never adjusted, or made plans to adjust, NCAs' estimation-based pension contributions to actual figures.	Completed
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. However, the actual ratio used is slightly different 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.	Completed
2020	In May 2020, EIOPA signed a contract for the provision of in-person training courses. In August 2020, EIOPA signed an amendment to the contract, to include the provision of virtual training courses at higher prices (scope extension). The related payments of €3 850 made in 2020 and (€11 700 in 2021) are therefore irregular. Following our audit in	Completed

## European Insurance and Occupational Pensions Authority (EIOPA)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	2021, EIOPA terminated the amendment No 1, and launched a new procedure.	
2020	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' NCAs. After consulting the European Commission, EIOPA decided to apply the late payment interest and informed the NCAs about this.	Completed
2020	EIOPA does not have either an ex ante or an ex post control system in place to verify whether the amount of costs reimbursed in advance to and requested by the national authorities for seconded national experts is as agreed. As a result the reimbursement for the staff cost of seconded national experts may be calculated on the basis of inaccurate costs, or that subsequent staff cost changes may not be captured and addressed.	Completed

## EIOPA's reply

**3.7.9.** For security and operational reasons EIOPA's current lease contract obliges the Agency to use companies procured by the landlord to undertake construction works. Disregarding this clause would have implied a violation of EIOPA's contractual obligations. Following the Court's observation, EIOPA, in case of similar circumstances in the future, will seek to reconcile the agency's obligations under the Financial Regulation with the legal obligations and constraints imposed by the lease contract. In addition, when launching the procurement procedure for a new lease contract (the current contract expires in 2028), the agency will aim to avoid a similar challenge of conflicting obligations under the Financial Regulation with legal obligations imposed by the rental agreement.

**3.7.10.** a) EIOPA highlights that the Rules of Procedure of the Board of Supervisors (BoS) implement Article 42(3) of Regulation 1094/2010 already now and strictly meet its requirements. Still, EIOPA collaborates closely with ESMA and EBA to address the Court's concern about the presence of a conflicted member in a meeting at which the concerned item is being discussed or voted upon.

b) While EIOPA is of the opinion that the provision of Article 42(4) of the EIOPA Regulation on practical arrangements has in essence already been implemented through the current Rules of Procedure of the BoS, EIOPA acknowledges that legal certainty of all of its internal rules and practical arrangements needs to be ensured at any time. Consequently, EIOPA will, in line with the Court's observation, put forward the Management Board (MB) policy in question for adoption by the BoS.

c) EIOPA highlights that the practical implementation of the relevant MB decision (EIOPA-MB-12/018) on the appraisal of the Chairperson and the Executive Director is in line with the Court's view. To formalise its current practice, EIOPA accepts to include an explicit provision in that respect.

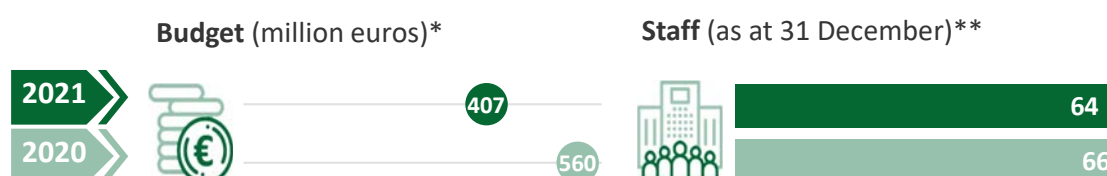
**3.7.11.** As per EIOPA's Ethics Rules (EIOPA-MB-20-006-Rev1, Article 3(7)), in order to ensure the independence of the assessors involved, the Advisory Committee on Conflicts of Interests (ACCI) -composed by EIOPA's Ethics Officer (staff member appointed by the Appointing Authority), a member of EIOPA's Board of Supervisors and a member of EIOPA's Management Board- has been established and entrusted with the assessment of ethics issues involving the Chairperson (acting also as Joint Committee as per Article 16 of the Staff Regulations). As such, the ACCI has been consulted and the case was assessed. The ACCI concluded that there is no conflict of interests and invited EIOPA's BoS to take a decision in that regard. Subsequently, EIOPA's BoS approved the activity by its decision of 11 November 2021, which the ACCI afterwards communicated to the person concerned. In view of the ECA's observation, EIOPA intends to consult both the ACCI and the Joint Committee in such matters in the future.

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

### Introduction

**3.8.1.** The European Institute of Innovation and Technology (“the EIT”), which is located in Budapest, was established by Regulation (EC) No 294/2008 of the European Parliament and of the Council<sup>55</sup>, repealed and replaced by Regulation (EU) 2021/819 of the European Parliament and of the Council<sup>56</sup>. The EIT contributes to sustainable economic growth and competitiveness in the EU by supporting innovation at EU and Member State level. To do this, it awards grants to “Knowledge and Innovation Communities” (KICs), which link the higher education, research and business sectors to boost innovation and entrepreneurship. In 2021, KIC grants amounted to €350 million (2020: €568 million), representing 98 % of the EIT’s total expenditure (2020: 99 %). *Figure 3.8.1* presents key figures for the EIT<sup>57</sup>.

**Figure 3.8.1 – Key figures for the EIT**



\* 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 EIT for the 2020 and 2021 financial years; staff figures provided by the EIT.

The budget decreased because of the significantly lower amount of grants awarded and implemented for the KICs in 2021 due to the transition between the previous and the new multi-annual financial framework periods.

<sup>55</sup> Regulation (EC) No 294/2008 establishing the European Institute of Innovation and Technology.

<sup>56</sup> Regulation (EU) 2021/819 on the European Institute of Innovation and Technology.

<sup>57</sup> More information on the EIT’s role and activities is available on its website: <https://eit.europa.eu/>.

## Information in support of the statement of assurance

**3.8.2.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the EIT's management.

**3.8.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the EIT's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Institute of Innovation and Technology ("the EIT"), which comprise the financial statements<sup>58</sup> and the reports on the implementation of the EIT's budget<sup>59</sup> for the financial year ended 31 December 2021, 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>58</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>59</sup> The reports on the 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

**3.8.5.** In our opinion, the EIT's accounts present fairly, in all material respects, the EIT's financial position as of 31 December 2021 and 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 2021 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 2021 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 management and control systems

**3.8.9.** For two audited payments, the EIT had authorised the related budgetary commitments only after the contracts were signed. This goes against Article 73(2) of the Framework Financial Regulation.



## Follow-up of previous years' observations

**3.8.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	The KICs did not fully use the grant amounts awarded by the EIT.	N/A
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).	Completed
2016/2019	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.	Outstanding Not under the EIT's control

European Institute of Innovation and Technology (EIT)

## The EIT's reply

**3.8.9.** The EIT has taken note of the Court's observation.

As from the 2023 grant cycle, the EIT will use the standard Horizon Europe IT tools of the European Commission to manage grants (eGrants), where appropriate internal controls preventing similar errors are embedded in the system.

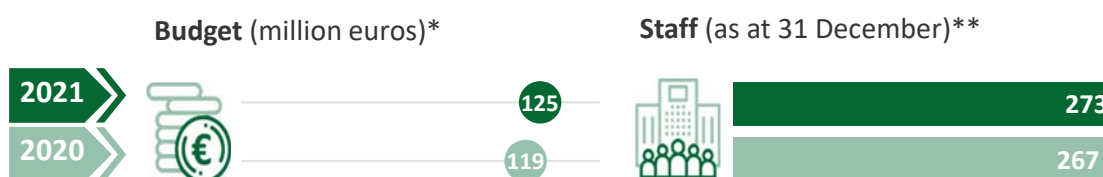
The relevant EIT Standard Operating Procedure for financial circuits will be updated to reflect the changes.

## 3.9. European Maritime Safety Agency (EMSA)

### Introduction

**3.9.1.** The European Maritime Safety Agency (“EMSA”), which is located in Lisbon, was set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>60</sup>. EMSA works to ensure a high level of maritime safety and to prevent pollution by ships. It also provides the European Commission and the Member States with technical assistance, and monitors and evaluates the implementation of EU legislation. *Figure 3.9.1* presents key figures for EMSA<sup>61</sup>.

**Figure 3.9.1 – Key figures for EMSA**



\* 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 EMSA for the 2020 and 2021 financial years; staff figures provided by EMSA.

### Information in support of the statement of assurance

**3.9.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EMSA’s management.

**3.9.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EMSA’s management and of those charged with governance,

<sup>60</sup> Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency.

<sup>61</sup> More information on EMSA’s role and activities is available on its website: [www.emsa.europa.eu](http://www.emsa.europa.eu).

## European Maritime Safety Agency (EMSA)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Maritime Safety Agency ("EMSA"), which comprise the financial statements<sup>62</sup> and the reports on the implementation of EMSA's budget<sup>63</sup> for the financial year ended 31 December 2021, 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

**3.9.5.** In our opinion, EMSA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EMSA's financial position at 31 December 2021, 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>62</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>63</sup> The reports on the 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

**3.9.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.9.9.** In 2021, EMSA amended 14 specific contracts for the provision of services on the basis of Article 172(3)(d) of the Financial Regulation. The total initial value of these contracts was €8.9 million and the total amended value was €15.7 million. Thus, the value of the amendments was €6.8 million, an increase of 76 % of the contracts' initial value.

Article 172(3)(d) of the Financial Regulation allows the modification of contracts that do not alter the minimum requirements of the initial procurement procedure and are limited to 10 % of the contracts initial value, unless such modification of value results from the strict application procurement documents or contractual provisions. EMSA used this specific case as legal basis for the 14 amendments in question.

The contracts (including the related procurement documentation) in question do not explicitly stipulate that the value may be increased. Therefore, an increase of the contract value could not result from "the strict application of procurement documents or contractual provisions". The 14 amendments in question increased the initial value of the contracts by more than 10 % and therefore, were not in line with Article 172 (3)(d) of the Financial Regulation.

However, the amounts paid in 2021 (€5.4 million) resulted from the application of the unit prices set in the respective framework contracts and were within the original framework contract ceiling. Given that each framework contract was concluded with a single economic

## European Maritime Safety Agency (EMSA)

operator, the amendments in question did not change the economic balance in favour of the contractor and did not lead to a distortion of competition. Thus, the resulting payments were not affected.

### Follow-up of previous years' observations

**3.9.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	The EU Financial Regulation states that payments must be made within a prescribed timeframe of 30 days. In 2020, EMSA failed to do so in 11 % of cases. We observed similar or higher levels of delays in 2019, 2018, 2017 and 2016. Some effort has been made to reduce the delays, but this recurrent weakness exposes EMSA to financial and reputational risk.	Completed
2020	In 2020, EMSA paid installation and daily subsistence allowances to all staff members who were recruited as temporary agents immediately after their secondment to EMSA. EMSA did not take sufficient steps to verify entitlements to these allowances This represents an internal control weakness.	Completed
2020	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. 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.	Completed



European Maritime Safety Agency (EMSA)

## EMSA's reply

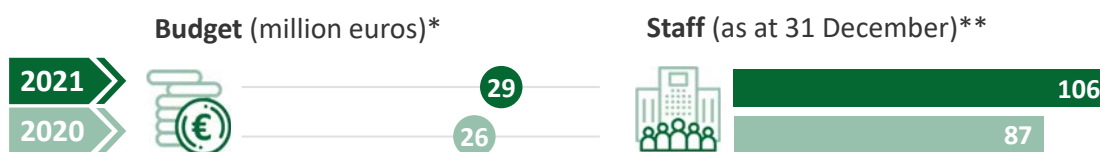
**3.9.9.** EMSA takes note of the ECA's observation and has taken measures to amend future tender specifications and contract templates accordingly

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

### Introduction

**3.10.1.** The European Union Agency for Cybersecurity (“ENISA”), which is located in Athens, was established by Regulation (EU) 2019/881 of the European Parliament and of the Council<sup>64</sup>. ENISA'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. ENISA was first established as European Network and Information Security Agency by Regulation (EC) No 460/2004 of the European Parliament and of the Council<sup>65</sup>. *Figure 3.10.1* presents key figures for ENISA<sup>66</sup>.

**Figure 3.10.1 – Key figures for ENISA**



\* 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 ENISA for the 2020 and 2021 financial years; staff figures provided by ENISA.

The increase in staff numbers in 2021 is due to ENISA’s success in filling in several long-term vacancies.

<sup>64</sup> Regulation (EU) 2019/881 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification.

<sup>65</sup> Regulation (EC) No 460/2004 establishing the European Network and Information Security Agency.

<sup>66</sup> More information on ENISA’s role and activities is available on its website: [www.enisa.europa.eu](http://www.enisa.europa.eu).

## Information in support of the statement of assurance

**3.10.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ENISA’s management.

**3.10.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ENISA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Union Agency for Cybersecurity (“ENISA”), which comprise the financial statements<sup>67</sup> and the reports on the implementation of ENISA’s budget<sup>68</sup> for the financial year ended 31 December 2021, 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, ENISA’s accounts for the year ended 31 December 2021 present fairly, in all material respects, ENISA’s financial position at 31 December 2021, the

<sup>67</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>68</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

## European Union Agency for Cybersecurity (ENISA)

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

**3.10.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 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 management and control systems

**3.10.9.** ENISA systematically awards low value contracts without the relevant award decision approved and signed by the Authorising Officer, which is not in line with points 30.3-30.4 of Annex I of the Financial Regulation.

**3.10.10.** In order to decide whether to outsource a given service or to provide it in-house, ENISA has developed and uses a cost-benefit analysis methodology. However, this methodology has design deficiencies which can affect the objectivity of the decision-making process and exposes ENISA to financial risks.

**3.10.11.** In procurement procedures, Article 167 of the Financial Regulation requires a clear distinction between selection and award criteria. The selection criteria are to be linked strictly to the evaluation of tenderers, and the award criteria to the evaluation of tenders. We found that, in two procurement procedures, ENISA used, as an award criterion, the technical capacity of the company, which clearly relates to the evaluation of the tenderer, not the

## European Union Agency for Cybersecurity (ENISA)

tender. Such overlap between selection and award criteria undermines the legal certainty and exposes ENISA to reputational and legal risks.

**3.10.12.** Between 2019 and 2021, ENISA assessed three cases of a potential conflict of interest in relation to a senior member of staff taking up a new job elsewhere. In the one case we reviewed, we found that, in contravention of Article 16 of the Staff Regulations, ENISA did not consult the Joint Committee.

### Follow-up of previous years' observations

**3.10.13.** 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 year's observations

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	ENISA 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 ENISA's internal control standards. ENISA should adopt and implement such a sensitive post policy.	Completed
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 ENISA increased its dependency on interim workers across many different areas of its operations.	Completed
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.	Completed
2020	A staff member was authorising budgetary commitment as well as payments without a valid delegation of powers, from 1 <sup>st</sup> of January to 12 February. Despite the amount of payments do not exceed the materiality threshold set for this audit, as it represents 1.6 % of the total	Completed

## European Union Agency for Cybersecurity (ENISA)

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	payment appropriations available in 2020, the matter is material by nature.	
2020	ENISA has no internal rules to address the continuity of delegations in cases where delegating or delegated authorising officers leave their posts.	Completed
2020	The ECA found several weaknesses in ENISA's delegation procedures. In one case, a delegation was expired for several months despite the fact that the staff continued to authorise transactions. In other cases, staff were required to acknowledge the delegations granted to them with their signature. In most cases, this was done more than ten months later. Finally, a discrepancy was spotted between a delegation and its parameters in the IT system.	Completed

European Union Agency for Cybersecurity (ENISA)

## ENISA's reply

**3.10.9.** ENISA agrees and welcomes this audit observation and has already taken the necessary steps to address this concern.

**3.10.10.** ENISA agrees and welcomes this audit observation and has already taken the necessary steps to address this concern.

**3.10.11.** ENISA agrees and welcomes this audit observation and has already taken the necessary steps to address this concern.

**3.10.12.** While the Joint Committee has only a consultative role and consequently this identified weakness did not impact the decision making, ENISA nevertheless agrees and welcomes this audit observation. ENISA will therefore formally constitute a Joint Committee to comply with the applicable legal framework.

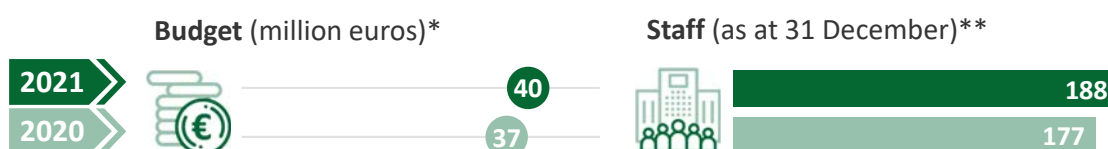


## 3.11. European Union Agency for Railways (ERA)

### Introduction

**3.11.1.** The European Union Agency for Railways (“ERA”), which is located in Lille and Valenciennes, was created by Regulation (EC) No 881/2004<sup>69</sup> of the European Parliament and of the Council, which was repealed and replaced in 2016 by Regulation (EU) 2016/796 of the European Parliament and of the Council<sup>70</sup>. ERA's task is to enhance the levels of interoperability and safety of European railway systems. ERA is also the EU authority responsible for issuing authorisations, certificates and approvals in this field. *Figure 3.11.1* presents key figures for ERA<sup>71</sup>.

**Figure 3.11.1 – Key figures for ERA**



\* 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 ERA for the 2020 and 2021 financial years; staff figures provided by ERA.

### Information in support of the statement of assurance

**3.11.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ERA’s management.

<sup>69</sup> Regulation (EC) No 881/2004 establishing a European Railway Agency.

<sup>70</sup> Regulation (EU) 2016/796 on the European Union Agency for Railways.

<sup>71</sup> More information on ERA’s role and activities is available on its website: [www.era.europa.eu](http://www.era.europa.eu).

## European Union Agency for Railways (ERA)

**3.11.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ERA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Railways (ERA), which comprise the financial statements<sup>72</sup> and the reports on the implementation of ERA's budget<sup>73</sup> for the financial year ended 31 December 2021, 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

**3.11.5.** In our opinion, ERA's accounts for the year ended 31 December 2021 present fairly, in all material respects, ERA's financial position at 31 December 2021, 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>72</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>73</sup> The reports on the 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

**3.11.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.11.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.11.8.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	ERA is located in Lille and Valenciennes. It is likely that costs could be reduced if all operations were centralised in one location.	N/A
2018	In 2019, ERA 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. ERA should introduce effective controls to check the SME status of applicants.	Ongoing
2019	ERA did not check the amounts invoiced by the European Commission under a service-level agreement for the provision of different IT services. This indicates weaknesses in ERA's internal controls.	Completed

European Union Agency for Railways (ERA)

## **ERA's reply**

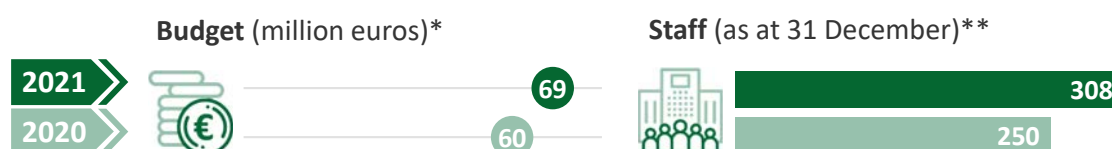
The Agency has taken note of the ECA's report.

## 3.12. European Securities and Markets Authority (ESMA)

### Introduction

**3.12.1.** The European Securities and Markets Authority (“ESMA”), which is located in Paris, was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>74</sup>. ESMA’s mission is to enhance investor protection and promote stability and order in financial markets. 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 3.12.1* presents key figures for ESMA<sup>75</sup>.

**Figure 3.12.1 – Key figures for ESMA**



\* 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 ESMA for the 2020 and 2021 financial years; staff figures provided by ESMA.

### Information in support of the statement of assurance

**3.12.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ESMA’s management.

**3.12.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ESMA’s management and of those charged with governance,

<sup>74</sup> Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority).

<sup>75</sup> More information on ESMA’s role and activities is available on its website: [www.esma.europa.eu](http://www.esma.europa.eu).

## European Securities and Markets Authority (ESMA)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Securities and Markets Authority ("ESMA"), which comprise the financial statements<sup>76</sup> and the reports on the implementation of ESMA's budget<sup>77</sup> for the financial year ended 31 December 2021, 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, ESMA's accounts for the year ended 31 December 2021 present fairly, in all material respects, ESMA's financial position at 31 December 2021, 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>76</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>77</sup> The reports on the 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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.12.9.** In a procurement of services with an estimated value of €45 000, we found that ESMA had launched a negotiated procedure without advertising it, in breach of point 3.1 of Annex I of the Financial Regulation, for reasons related to the nature of the service. ESMA's internal control standards require all cases of deviations from established processes and procedures to be justified and approved in centrally logged exceptions reports before action is taken. In this case, however, ESMA did not do so until after our audit.

**3.12.10.** We found weaknesses in ESMA's management and control systems relating to conflicts of interest.

- (a) Under the Rules of Procedure of the Board of Supervisors, members of the Board who have a conflict of interest may not take part in the discussions or vote on the matter in question. But the member may remain present in the meeting unless the majority of members vote to exclude them. This creates a risk to the Board's independence, at least in appearance.
- (b) ESMA's rules on the appraisal of the chairperson and the executive director do not explicitly state that a member of the Board of Supervisors whose NCA is or is likely to be subject to procedures under Articles 16 - 19 of Regulation (EU) No 1095/2010



## European Securities and Markets Authority (ESMA)

(such as a breach of EU law) cannot be an appraiser or appeal appraiser of the chairperson or the executive director. This may adversely affect the independence of the appraiser and the appraisee. We found that in previous years a risk of conflict of interest had arisen during such an appraisal exercise, and ESMA had been slow to take mitigating action. We also found that ESMA did not actively monitor potential conflict of interest situations; for example, by assessing whether past decisions relating to an NCA may create a potential conflict.

### Follow-up of previous years' observations

**3.12.11.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
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. ESMA should find a means of avoiding such cross-financing.	Outstanding (not under ESMA's control)
2019	ESMA has never adjusted, or had made plans to adjust, national competent authorities' estimation-based pension contributions for the year N to actual figures.	Completed
2020	Information from trade repositories for fee calculation were only subject to limited reviews by independent auditors. A consultation paper, which proposes a simplification of the method used to determine their turnover was published. The revision of the delegated acts on fees for credit rating agencies and trade repositories depends on the Commission. ESMA have reiterated that the revision is necessary.	Outstanding (not under ESMA's control)
2020	The <a href="#">Credit Rating Agencies Regulation (CRA)</a> provides scope for circumventing the fee-charging mechanism. CRAs could also avoid fees by transferring revenue into non-EU jurisdictions. The Regulation is subject to the European Commission's right to initiate the legislative changes. ESMA published a consultation paper and submitted a technical advice to the European Commission on amending the Regulation.	Outstanding (not under ESMA's control)

## European Securities and Markets Authority (ESMA)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	Weak internal controls in monitoring the time charged to ESMA in a "time and means contract" under a framework contract for IT consultancy services (check of number of days off-site).	Completed
2020	ESMA signed a "data services master agreement". The maximum amount of the contract was not clearly stated, because the template of the provider was used. Furthermore, the authorising officer who signed was only authorised to sign legal commitments for half of the amount in question. Subsequently to the audit, ESMA took corrective action to address it (i.e. the Executive Director countersigned the contract).	Completed
2020	ESMA did not apply the late interest for a number of credit rating agencies. The authorising officer did not establish the amounts receivable and did not take a formal decision to waive the amounts.	Completed

## ESMA's reply

**3.12.9.** The omission of ex-ante publicity was justified by the specific scope of the procurement. This exception was duly documented ex-post (end 2021) and approved following ECA's audit. Furthermore, ESMA took already the necessary measures to prevent a similar situation in the future.

**3.12.10.** ESMA is fully committed to the highest ethical standards on conflicts of interest' prevention, as framed in ESMA's founding Regulation.

a) ESMA's current rules on conflict of interest are fully consistent with Article 42(3) of the ESMA Regulation, which requires that conflicted members "abstain from participating in the discussion and voting" on measures for which Board members are potentially conflicted.

The practice for potentially conflicted Board Members (and accompanying staff), the ESMA Chair and Executive Director to leave the (virtual) Board room is already observed at ESMA.

ESMA's Board of Supervisors has amended its policy on 7 July, to explicitly require that conflicted members leave the room in accordance with the existing practice.

b) ESMA takes note of the ECA's observation. ESMA is of the view that the risk of conflict of interest in that particular situation was fully mitigated, given that the assessor did not contribute to the final assessment.

For all activities carried out by Board Members within ESMA, including as assessors, they remain subject to their declaration of duties in application of the conflict of interest policy for non-staff, which includes the obligation to report ad hoc conflict of interest as they arise, on top of the annual declaration of interests and in addition to possible conflicts of interest arising from the points under discussion or decision at a given Board meeting/call/written procedure.

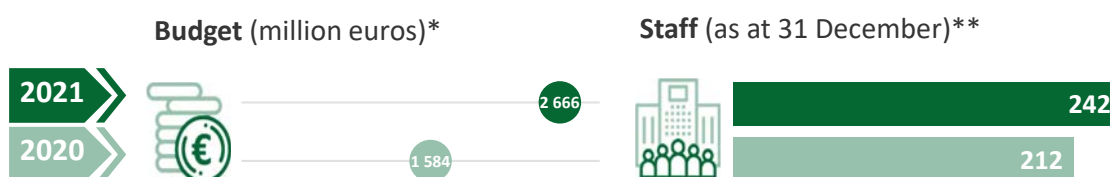
ESMA has no objection to introduce an explicit cross-reference to conflict of interest policy in its appraisal process. In addition, ESMA already put in place an additional safeguard by collecting ad hoc confirmations of absence of conflict of interest by the Management Board Members who were elected by their peers to prepare the draft appraisal reports on ESMA's senior managers for 2021.

## 3.13. European Union Agency for the Space Programme (EUSPA)

### Introduction

**3.13.1.** The European Union Agency for the Space Programme (“EUSPA”), which is located in Prague, was established by Regulation (EU) 2021/696<sup>78</sup>. EUSPA manages the EU’s space programme, contributing to the EU’s prosperity and security. EUSPA superseded the European Global Navigation Satellite System Agency (“GSA”) which in 2010 had previously taken over all tasks previously assigned to the GALILEO Joint Undertaking . *Figure 3.13.1* presents key figures for EUSPA<sup>79</sup>.

**Figure 3.13.1 – Key figures for EUSPA**



\* 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 EUSPA for the 2020 and 2021 financial years; staff figures provided by EUSPA.

The increase of the budget in 2021 was driven by EUSPA’s enlarged mandate based on the new EU Space Programme.

### Information in support of the statement of assurance

**3.13.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>78</sup> Regulation (EU) 2021/696 establishing the Union Space Programme and the European Union Agency for the Space Programme.

<sup>79</sup> More information on EUSPA’s role and activities is available on its website: [www.euspa.europa.eu](http://www.euspa.europa.eu).

## European Union Agency for the Space Programme (EUSPA)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EUSPA's management.

**3.13.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EUSPA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Union Agency for the Space Programme ("EUSPA"), which comprise the financial statements<sup>80</sup> and the reports on the implementation of EUSPA's budget<sup>81</sup> for the financial year ended 31 December 2021, 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, EUSPA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EUSPA's financial position at 31 December 2021, 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

<sup>80</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>81</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

## European Union Agency for the Space Programme (EUSPA)

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

**Emphasis of matter**

**3.13.6.** We draw attention to note 6.1 of the accounts, which describes the impact of the Russian war of aggression against Ukraine in EUSPA's statement of financial performance and balance sheet.

**Legality and regularity of the transactions underlying the accounts****Revenue****Opinion on the legality and regularity of revenue underlying the accounts**

**3.13.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

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

**3.13.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

**Observations on management and control systems**

**3.13.10.** We found a number of procedural deficiencies in two audited recruitment procedures which undermine the principles of transparency and equal treatment.

- (a) In both cases, the vacancy notices did not establish the number of points candidates needed to achieve in order to be shortlisted or put on a reserve list, or the number of candidates to be shortlisted or put on a reserve list. These numbers had only been formally stated in the selection board's final reports, published after the examination of the candidates' applications.

European Union Agency for the Space Programme (EUSPA)

- (b) The instructions issued by the selection board on awarding points for the various selection criteria were not detailed enough to ensure that selection board members applied a consistent approach.
- (c) In one of the two recruitment procedures, no scoring scheme had been set in advance for one of the tests.

**3.13.11.** Between 2019 and 2021, EUSPA assessed one case of a potential conflict of interest in relation to a senior member of staff taking up a new job elsewhere. EUSPA approved the new job with restrictions. However, despite the general obligation to give reasons for its decisions, EUSPA did not provide justification for those restrictions.

### **Follow-up of previous years' observations**

**3.13.12.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	E-procurement: The GSA is not yet using any of the e-procurement IT tools developed by the European Commission.	Completed
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.	Completed

## EUSPA's reply

**3.13.10.** The Agency plans to introduce a number of modifications to its recruitment procedures to address the observations identified.

**3.13.11.** EUSPA takes note of the ECA's observation and will take it duly into account in its procedures. EUSPA would like to clarify that, in this particular case, it did not state the reasons for the restrictions in the decision, because it considered them self-evident, given that:

- The restrictions were limited to preparation of offers for procurement, grant or prize calls in which the person concerned was involved when working for the Agency.
- The decision concerns a former senior staff member of the Agency, who is assumed to be fully aware of the applicable rules.



## **Agencies funded under MFF heading 2 – Cohesion, Resilience and Value**

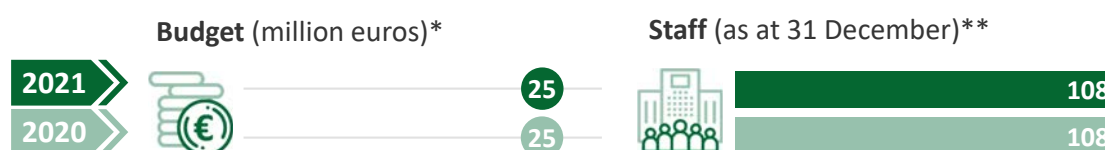
## 3.14. European Centre for the Development of Vocational Training (Cedefop)

### Introduction

**3.14.1.** The European Centre for the Development of Vocational Training (“Cedefop”), which is located in Thessaloniki, was established by Council Regulation (EEC) No 337/75<sup>82</sup>, which was repealed by Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019<sup>83</sup>. Cedefop fosters the development of vocational training at EU level by compiling and disseminating documentation on vocational training systems.

*Figure 3.14.1* presents key figures for Cedefop<sup>84</sup>.

**Figure 3.14.1 – Key figures for Cedefop**



\* 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 Cedefop for the 2020 and 2021 financial years; staff figures provided by Cedefop.

### Information in support of the statement of assurance

**3.14.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>82</sup> Regulation (EEC) No 337/75 establishing a European Centre for the Development of Vocational Training.

<sup>83</sup> Regulation (EU) 2019/128 establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Council Regulation (EEC) No 337/75.

<sup>84</sup> More information on Cedefop’s role 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)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by Cedefop's management.

**3.14.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of Cedefop's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Centre for the Development of Vocational Training ("Cedefop"), which comprise the financial statements<sup>85</sup> and the reports on the implementation of Cedefop's budget<sup>86</sup> for the financial year ended 31 December 2021, 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, Cedefop's accounts for the year ended 31 December 2021 present fairly, in all material respects, Cedefop's financial position at 31 December 2021, 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

<sup>85</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>86</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.14.9.** We found weaknesses in Cedefop's recruitment procedures.

- (a) In one case, Cedefop used external consultants to screen applications on pre-selection criteria set out in the vacancy notice. The consultants delivered their assessment, but for some of the pre-selection criteria, the selection board decided not to use it. Instead, it re-performed that part of the screening process itself. We noted large discrepancies between the assessment performed by Cedefop and the one performed by the consultants. These discrepancies, which could benefit or disadvantage candidates, were caused by a lack of clear and detailed guidelines for scoring the pre-selection criteria.
- (b) In two recruitment procedures, remote written tests took place over several days, increasing the risk of the test content being disclosed without authorisation. In one of these two cases, the procedure took place over four days, with a weekend in between. Cedefop did not undertake all necessary measures to establish an effective internal control mechanism to mitigate the associated risks. Following our audit, Cedefop adapted its procedures for future recruitment procedures.

**3.14.10.** We also found weaknesses in payment management, in particular with regard to ex-ante controls.

- (a) A framework contract for IT services and products allowed the contractor to charge an uplift fee on the actual prices. Cedefop paid an invoice of €11 614 without checking first whether the invoiced amounts were correct, even though the Financial Regulation requires ex-ante controls of this sort to be carried out. Following our audit, Cedefop adapted its internal procedures in order to prevent similar occurrences in the future.
- (b) On another occasion, Cedefop paid €180 590 in respect of an order form under a framework contract associated with the development of a new website. It made this payment without having received the specific declarations required from the contractor under the framework contract. The omission affected all 28 order forms associated with this framework contract, with a total value of €883 539, and could expose Cedefop to legal risks in relation to intellectual property rights. Following our audit, Cedefop asked the contractors to supply the missing declarations subsequently, and registered the incident in its non-compliance registry. It also adapted its internal procedures in order to prevent similar occurrences in the future.
- (c) In April 2020, a grant beneficiary submitted a request for final payment. Cedefop delayed the processing of the payment beyond the 60-day limit stipulated in the grant agreement and made the final payment only in January 2021. According to Cedefop, the delay was mostly due to the absence of the project manager and subsequent delays in communication with the beneficiary. Cedefop did not have a contingency plan to prevent staff absences from delaying grant approval procedures. Following our audit, Cedefop adapted its internal procedures in order to address it.

## Observations on budgetary management

**3.14.11.** On 23 June 2021, Cedefop started using a new accounting system, the ABAC, which is also used by the European Commission. We found two weaknesses in Cedefop's move to the new system.

- (a) In ABAC, the final dates of implementation for budgetary commitments carried over from 2021 to 2022 were not recorded correctly. As a result, outstanding budgetary commitments that should have been cancelled because the time limit of their associated legal commitments elapsed by the end of 2021 could potentially have been irregularly carried over to 2022. Following our audit, in 2022, Cedefop reviewed and updated the final dates of implementation for all of the budgetary

European Centre for the Development of Vocational Training (Cedefop)

commitments in question and cancelled 11 budgetary commitments with a total value of €45 923.

- (b) In 2021, ABAC wrongly calculated €2 834 in late interest in respect of five payments. The error was caused by the deadline in ABAC for these payments being wrongly set to 30 days, while the actual legal deadline was 60 or 90 days. Cedefop spotted the error and cancelled the recovery orders for the wrongly calculated late interest.

## Follow-up of previous years' observations

**3.14.12.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2019, 2020	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 (2020: €20 272 higher), and the EU's contribution was €38 924 higher than it should have been (2020: €20 272 lower).	Completed
2020	Cedefop signed a contract based on a negotiated procedure with one tenderer for €19 800 which was above the Financial Regulation's threshold of €15 000. The initial assessment of the contract value was for €10 000 and was not supported by any cost estimates based on current market values, or on any documented market research. The procurement procedure is therefore irregular.	Completed

## Cedefop's reply

### **3.14.9.**

(a) Cedefop takes note of the observation and will improve its guidelines. When Cedefop realised that the deliverables could not be immediately taken as the final assessment outcome, it faced the choice of sticking to the advice or partially redoing the exercise. Cedefop opted for the effective and efficient finalisation of the selection procedure considering the alternatives and the respective future costs of an ill-advised hiring decision.

(b) Cedefop accepts the finding.

### **3.14.10.**

(a) Cedefop accepts the finding.

(b) Cedefop accepts the finding.

(c) Cedefop accepts the finding.

### **3.14.11.**

(a) Cedefop accepts the finding and took immediate action to address the Court's recommendation.

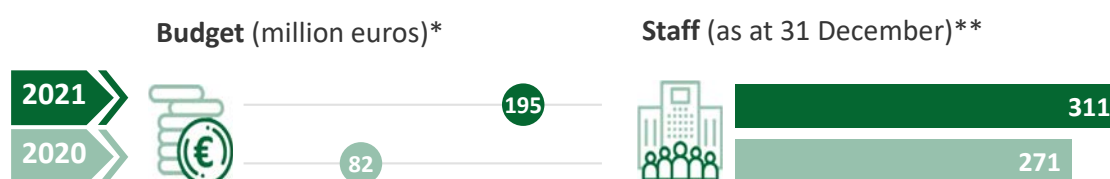
(b) Cedefop accepts the finding and took immediate action to address the Court's recommendation.

## 3.15. European Centre for Disease Prevention and Control (ECDC)

### Introduction

**3.15.1.** The European Centre for Disease Prevention and Control (“the ECDC”), which is located in Stockholm, was established by Regulation (EC) No 851/2004 of the European Parliament and of the Council<sup>87</sup>. ECDC collects and disseminates data on the prevention and control of human diseases and provides scientific opinions on this subject. ECDC also coordinates the European network of bodies operating in this field. *Figure 3.15.1* presents key figures for the ECDC<sup>88</sup>.

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



\* 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 ECDC for the 2020 and 2021 financial years; staff figures provided by the ECDC.

The increase to the budget is explained by new activities assigned to the ECDC with the launch of the European Health Emergency Preparedness and Response Authority.

### Information in support of the statement of assurance

**3.15.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>87</sup> Regulation (EC) No 851/2004 establishing a European Centre for disease prevention and control.

<sup>88</sup> More information on the ECDC’s role and activities is available on its website: [www.ecdc.europa.eu](http://www.ecdc.europa.eu).

## European Centre for Disease Prevention and Control (ECDC)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the ECDC's management.

**3.15.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the ECDC's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Centre for Disease Prevention and Control ("the ECDC"), which comprise the financial statements<sup>89</sup> and the reports on the implementation of the ECDC's budget<sup>90</sup> for the financial year ended 31 December 2021, 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 ECDC's accounts for the year ended 31 December 2021 present fairly, in all material respects, the ECDC's financial position at 31 December 2021, 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

<sup>89</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>90</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

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 2021 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 2021 are legal and regular in all material respects.

European Centre for Disease Prevention and Control (ECDC)

## The ECDC's reply

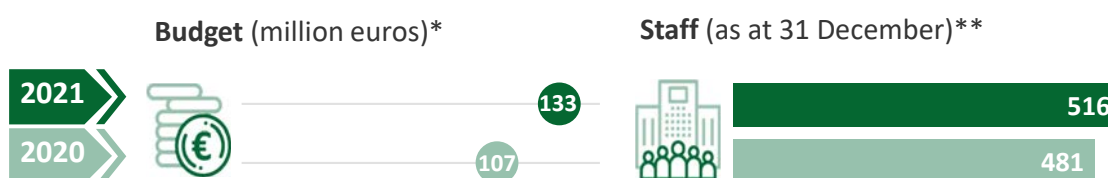
The Centre has taken note of the Court's report

## 3.16. European Food Safety Authority (EFSA)

### Introduction

**3.16.1.** The European Food Safety Authority (“EFSA”), which is located in Parma, was established by Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>91</sup>. EFSA supplies the scientific information needed for drafting EU legislation on food and food safety, collects and analyses data to identify and monitor risks, and provides independent information on these risks. *Figure 3.16.1* presents key figures for EFSA<sup>92</sup>.

**Figure 3.16.1 – Key figures for EFSA**



\* 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 EFSA for the 2020 and 2021 financial years; staff figures provided by EFSA.

### Information in support of the statement of assurance

**3.16.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EFSA’s management.

**3.16.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EFSA’s management and of those charged with governance, and

<sup>91</sup> Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

<sup>92</sup> More information on EFSA’s role and activities is available on its website: [www.efsa.europa.eu](http://www.efsa.europa.eu).

## European Food Safety Authority (EFSA)

the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Food Safety Authority ("EFSA"), which comprise the financial statements<sup>93</sup> and the reports on the implementation of EFSA's budget<sup>94</sup> for the financial year ended 31 December 2021, 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, EFSA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EFSA's financial position at 31 December 2021, 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>93</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>94</sup> The reports on the 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 2021 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 2021 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](#).

## Annex – Follow-up of previous year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	There is a need to strengthen the accounting officer's independence by making him directly responsible to EFSA's Director (administrative) and Management Board (functional).	Responsibility to Director: Outstanding Responsibility to Management Board: Completed
2020	In 2020, seven of EFSA's management posts were occupied by acting managers. Six of these posts had been vacant for more than one year. One post had remained unoccupied for nine years. This precarity at the level of managerial positions may impair EFSA's leadership and its strategic continuity.	Completed

European Food Safety Authority (EFSA)

## EFSA's reply

**3.16.5.** 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.

## 3.17. European Institute for Gender Equality (EIGE)

### Introduction

**3.17.1.** The European Institute for Gender Equality (“EIGE”), which is located in Vilnius, was established by Regulation (EC) No 1922/2006 of the European Parliament and of the Council<sup>95</sup>. EIGE collects, analyses and disseminates information on gender equality, and develops, evaluates and disseminates methodological tools to support the incorporation of gender equality into all EU policies. *Figure 3.17.1* presents key figures for EIGE<sup>96</sup>.

**Figure 3.17.1 – Key figures for EIGE**



\* 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 EIGE for the 2020 and 2021 financial years; staff figures provided by EIGE.

### Information in support of the statement of assurance

**3.17.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EIGE’s management.

**3.17.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EIGE’s management and of those charged with governance, and

<sup>95</sup> Regulation (EC) No 1922/2006 on establishing a European Institute for Gender Equality.

<sup>96</sup> More information on EIGE’s role and activities is available on its website: [www.eige.europa.eu](http://www.eige.europa.eu).

## European Institute for Gender Equality (EIGE)

the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Institute for Gender Equality (EIGE), which comprise the financial statements<sup>97</sup> and the reports on the implementation of EIGE's budget<sup>98</sup> for the financial year ended 31 December 2021, 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, EIGE's accounts for the year ended 31 December 2021 present fairly, in all material respects, EIGE's financial position at 31 December 2021, 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>97</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>98</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

## Emphasis of matter

**3.17.6.** We draw attention to Note 4.1 of the accounts, where EIGE has disclosed a contingent liability of €22 224 which will be incurred if the Lithuanian Supreme Court reaches an adverse decision in an ongoing case concerning temporary agency workers working at EIGE.

## Legality and regularity of the transactions underlying the accounts

### Revenue

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

**3.17.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.17.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.17.10.** In May 2020, EIGE launched a call for expressions of interest with the purpose of establishing a list of external experts to assist EIGE in specific areas of work. While translation services were not in the scope of the call, it was used to procure such services. As a result, EIGE was not able to choose the most suitable candidates. The call for expressions of interest was not in line with Articles 160 and 237 of the Financial Regulation. We also found that five payments made in 2021 for services provided by experts selected under the call for expressions of interest were related to translation. Since translation services were outside the scope of the call, these payments, with a total value of €12 200, are irregular.

## Observations on management and control systems

**3.17.11.** In one recruitment procedure we found a number of weaknesses which undermine the principles of transparency and equal treatment:

- (a) The selection committee members had signed their declarations of confidentiality and non-conflict of interest only after the candidates had been shortlisted.
- (b) EIGE had not drawn up detailed instructions on how to award points under the various selection criteria. This led to significant differences in how different selection committee members had awarded points to candidates.
- (c) EIGE had not established the minimum number of points or the maximum number of candidates to be shortlisted for interviews or for the written tests phase, before examining the applications.
- (d) There was no direct link between some of the criteria on which the candidates were assessed and the ones set out in the vacancy notice.
- (e) EIGE had not awarded scores to shortlisted candidates based on their final interviews, the step which preceded the decision about which of them to recruit.

**3.17.12.** EIGE has set up specific procedures for selecting seconded national experts. We found that in one selection procedure, EIGE had not followed part of its own procedures. These omissions undermine the transparency and objectivity of the selection procedure for seconded national experts, and suggest weaknesses in EIGE's internal controls.

**3.17.13.** In a procurement procedure, all four members of the evaluation committee appointed to evaluate the tenders against the award criteria belonged to the same unit of EIGE. This goes against Article 150(3) of the Financial Regulation.

## Follow-up of previous years' observations

**3.17.14.** 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 year’s observations

Year	ECA’s observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	A framework contract with a temporary work agency did not require compliance with certain legal requirements (i.e. to grant its workers the same working conditions as EIGE’s staff). There is no evidence that the EIGE itself carried out such comparison. The EIGE should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.	Completed
2019, 2020	In 2019 and 2020, the ECA concluded that EIGE’s procedures for selecting and contracting the external experts 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 were irregular.	N/A
2019, 2020	In its budgets for 2019 and 2020, EIGE did not include €550 000 and €378 950 respectively as revenue assigned under the Instrument for Pre-Accession Assistance 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)”.	N/A



## European Institute for Gender Equality (EIGE)

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2019	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 EIGE's internal control environment.	Completed

## EIGE's reply

**3.17.6.** The Supreme Court of Lithuania issued its ruling on 23.02.2022. The Court ruled in favour of interim workers confirming the principle of equal treatment of interim workers with statutory staff. EIGE was a third party in the case and no direct claims were made against it.

**3.17.10.** EIGE takes note of the Court's observations and will not engage external experts for translation services. Such services will be procured via open procurement procedures. The experts' database will continue to be used for quality assurance services and review of gender sensitive language.

**3.17.11.** EIGE takes note of the Court's observations and will address the internal control weaknesses identified:

- (a) The workflow in the Director's Decision No 136 of 11 July 2017 on Selection Procedures for Recruitment will be updated to clarify confidentiality and conflict of interest assessment procedures.
- (b) Detailed instructions will be drawn for Selection Panels on how to award points under the selection criteria.
- (c) EIGE's general approach in selection procedures will be formalised.
- (d) EIGE will adapt its recruitment procedures accordingly.
- (e) EIGE accepts this observation as best practice. However, after taking into account the recommendation of the selection committee and the findings of the Assessment Centre, the Appointing Authority can then appoint any candidate on the Reserve List.

**3.17.12.** EIGE takes note of the Court's observation and will address the internal control weaknesses identified. EIGE will revise the procedure for recruitment of Seconded National Experts in view of simplifying it.

**3.17.13.** EIGE takes note of the Court's observation and will clarify the procedures of the evaluation committees in the procurement guidelines and templates.

## 3.18. European Labour Authority (ELA)

### Introduction

**3.18.1.** The European Labour Authority (“ELA”), which is located in Bratislava, was created by Regulation (EU) 2019/1149<sup>99</sup> of the European Parliament and of the Council and achieved financial autonomy on 26 May 2021<sup>100</sup>. ELA ensures that EU rules on labour mobility and social security coordination are enforced in a fair, simple, and effective way, making it easier for citizens and businesses to reap the benefits of the internal market. ELA started operations on 17.10.2019 and has been financially independent since 26.5.2021. *Figure 3.18.1* presents key figures for ELA<sup>101</sup>.

**Figure 3.18.1 – Key figures for ELA**



\* 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 ELA for the 2020 and 2021 financial years; staff figures provided by ELA.

### Information in support of the statement of assurance

**3.18.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ELA’s management.

<sup>99</sup> Regulation (EU) 2019/1149 establishing a European Labour Authority.

<sup>100</sup> Decision No 5/2021, of 7 May 2021, of the Management Board on ELA’s Financial Autonomy Requirements (ELA/MB/2021/023).

<sup>101</sup> More information on ELA’s role and activities is available on its website: [www.ela.europa.eu](http://www.ela.europa.eu).

## European Labour Authority (ELA)

**3.18.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ELA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Labour Authority (“ELA”), which comprise the financial statements<sup>102</sup> and the reports on the implementation of ELA’s budget<sup>103</sup> for the financial year ended 31 December 2021, 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, ELA’s accounts for the year ended 31 December 2021 present fairly, in all material respects, ELA’s financial position at 31 December 2021, 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>102</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>103</sup> The reports on the 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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.18.9.** ELA recorded assets with a total value of €73 118 in ABAC Assets and in the inventory record. These assets mostly consisted of office furniture. ELA assigned an inventory identification and a future location to each item. However, due to the COVID-19 pandemic, at the time of the audit the assets were not labelled, and were not yet placed in their assigned locations. The absence of complete and updated inventories specifying the location of ELA's tangible assets goes against Article 87 of the Financial Regulation, and adversely affects ELA's ability to ensure the safeguarding of its assets.

**3.18.10.** On 11 December 2020, ELA signed a specific contract for the European network of employment services (EURES) training activities covering the first quarter of 2021. The contract amount was €299 437. A new framework contract to provide EURES training activities was signed on 9 November 2021. The value of this framework contract was €12 million; the maximum duration was 48 months. No payments associated with this framework contract were made in 2021. ELA did not establish ex-ante and ex-post controls relating to the operational and financial aspects of the training activities based on direct evidence from the implemented training activities. Instead, it relied on reports issued by trainers. This lack of formalised procedures based on direct evidence may present risks to the implementation of management directives, and to the achievement of ELA's objectives.

## European Labour Authority (ELA)

**3.18.11.** ELA has not yet adopted a Business Continuity Plan. The lack of an established and comprehensive Business Continuity Plan constitutes a major internal weakness in ELA's procedures.

**3.18.12.** ELA's management board approved the [European Commission's Internal Audit Service mission charter](#) and [ELA's internal control framework](#). However, ELA had not yet adopted an appropriate risk management and control strategy. Nor had it adopted the charter of the authorising officer or the charter of the authorising officers by sub-delegation, or the charter of the accountant. These gaps hinder the implementation of ELA's internal control framework.

## ELA's reply

**3.18.9.** Due to COVID pandemic restrictive measures, following the delivery, the tangible assets (chairs and desks) have been recently placed in the designated areas according to the location plan and number of staff. The labelling process of these assets is ongoing, the physical completion of the inventories is planned in the coming month.

**3.18.10.** ELA acknowledges the need to set up the appropriate structure internally, to introduce formalised procedures based on direct evidence to ensure that management directives are carried out and that financial actors take the necessary actions to address risks of not achieving the entity's objectives.

**3.18.11.** Due to the COVID pandemic situation a teleworking Business Continuity solution was in place on daily basis. ELA recognizes the importance of a comprehensive document describing the Business Continuity Plan (BCP), which is planned to be completed in 2023.

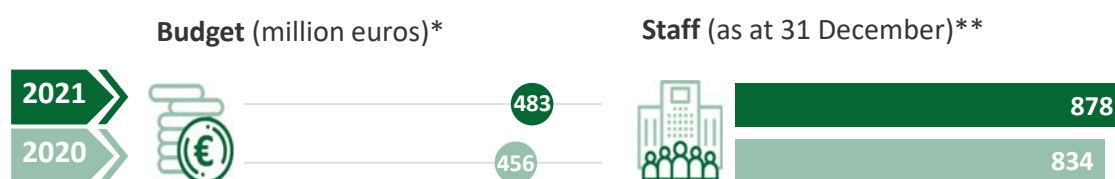
**3.18.12.** Following the European Court of Auditors' audit, ELA finalized the risk assessment process. ELA has several policies, and procedures in place to implement the Internal Control Framework (ICF), and continuously works to strengthen its ICF further and plans the adoption of the relevant charters. ELA recognizes the importance of completing the ICF to sustain operational and financial performance.

## 3.19. European Medicines Agency (EMA)

### Introduction

**3.19.1.** The European Medicines Agency (“the EMA”), which is located in Amsterdam, was established by Regulation (EC) No 726/2004 of the European Parliament and of the Council<sup>104</sup>. The EMA 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. The EMA is a successor of the European Agency for the Evaluation of Medicinal Products, established by Council Regulation (EEC) No 2309/93<sup>105</sup>. *Figure 3.19.1* presents key figures for the EMA<sup>106</sup>.

**Figure 3.19.1 – Key figures for the EMA**



\* 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 EMA for the 2020 and 2021 financial years; staff figures provided by the EMA.

<sup>104</sup> Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency.

<sup>105</sup> Council Regulation (EEC) No 2309/93 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products.

<sup>106</sup> More information on the EMA’s role and activities is available on its website: [www.ema.europa.eu](http://www.ema.europa.eu).



## Information in support of the statement of assurance

**3.19.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EMA’s management.

**3.19.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the EMA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Medicines Agency (“the EMA”), which comprise the financial statements<sup>107</sup> and the reports on the implementation of the EMA’s budget<sup>108</sup> for the financial year ended 31 December 2021, 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 EMA’s accounts for the year ended 31 December 2021 present fairly, in all material respects, the EMA’s financial position at 31 December 2021,

<sup>107</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>108</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

## European Medicines Agency (EMA)

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

**3.19.6.** We draw attention to note 3.1.3, note 4.8.1 and note 4.8.2 to the EMA's accounts, which provide significant disclosures in connection with property-related obligations. The lease on the EMA's former 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, the EMA reached an agreement with its landlord, and has sublet its former premises to a subtenant with effect from July 2019, under conditions that are consistent with the terms of the head lease. The term of the sublease lasts until the EMA's lease expires in June 2039. Since the EMA remains a party to the head lease, it 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. On 31 December 2021, the total estimated outstanding rent, associated service charges and landlord insurance to be paid by the EMA up to the end of the lease term was €383 million. We note that the EMA and its management board have 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

**3.19.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

#### Payments

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

**3.19.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.19.10.** We found a number of procedural deficiencies in two audited recruitment procedures, which undermine the principles of transparency and equal treatment.

- (a) The vacancy notices did not clearly link the selection criteria with the phases of the procedure (such as pre-selection, written and oral tests). They also did not establish the number of points candidates needed to achieve in order to be placed on a reserve list, or the number of candidates that would be placed on a reserve list.
- (b) Some members of the selection committee had declared conflicts of interest in connection with some candidates. Yet, the final evaluation report did not describe how these conflicts of interest had been addressed.
- (c) In one of the two procedures, the selection committee had opted not to evaluate all the published selection criteria and instead evaluated the candidates on one additional criterion that had not been included in the vacancy notices. For some criteria, there was no clear guidance on how to award points.

**3.19.11.** In a procurement procedure for a framework contract with a maximum period of four years, the EMA set the financial and economic capacity requirement at €11 million of annual turnover: the maximum level allowed by Point 19 of Annex I of the Financial Regulation considering that the estimated value of the contract was €22 million. However, the actual value of the contract was only half as much as the initial estimate. The EMA's overestimation of the contract value meant that the threshold it used was almost twice as high as the Financial Regulation would have allowed if the EMA's estimate had been closer to reality. A lower threshold could have allowed more companies to submit tenders.

## Follow-up of previous years' observations

**3.19.12.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016/2017/2018	The EMA 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 EMA 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 EMA 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.	Completed for Pharmacovigilance  Ongoing for Clinical Trials
2016	The Founding Regulation requires an external evaluation of the EMA and its operations by the European Commission only every ten years.	N/A
2019	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.	Completed

## European Medicines Agency (EMA)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2019	The EMA launched a procurement procedure combining two 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 EMA extended the duration of contract from four to six years based on insufficient grounds for such an extension.	N/A
2019	The 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 EMA 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.	Ongoing
2019	The 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.	Ongoing

## European Medicines Agency (EMA)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	The selection panels in recruitment procedures are only appointed by an e-mail sent by the Head of the Executive Director) without a formal authorisation by the Executive Director.	Completed
2020	In a catering and restaurant services framework contract, the 2020 prices were amended even though the contract did not permit this. Furthermore, for an audited payment of €125 954 made in March 2020, the EMA was not able to reconcile whether the amount invoiced by the contractor was correct.	Completed

## EMA's reply

The European Medicines Agency (“the Agency” or “EMA”) welcomes the Court’s positive opinion on the reliability of the 2021 accounts and on the legality and regularity of the transactions underlying the accounts.

**3.19.6.** 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 17 years, till 2039. Despite negotiated guarantee measures, the subletting solution is not without risks, magnified by the 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.

**3.19.10.** a) The Agency notes the observation. The currently developed Hiring Manager Guidelines will stipulate thresholds (number of candidates to be placed on the reserve list) to be applied across all selections. Once the Hiring Manager Guidelines are adopted, candidates will be informed accordingly. Also, for further clarity, EMA Rating Scales will be clearly referenced in the final report of each selection.

b) The conflicts of interests were managed in line with the Agency’s policy. The Agency notes the observation and will include such information in the final evaluation report.

c) Considering that the vacancy notice constitutes the legal framework for each selection, the Agency notes the observation and will strive to adapt its internal procedure.

**3.19.11.** The minimum turnover was set up in compliance with the Financial Regulation on the basis of the value of the contract as estimated at that time. EMA acknowledges that the final value of the contract was significantly lower. For this tender, most companies were grouped into consortia to increase capacity to deliver the complex Clinical Trial Information System (CTIS), resulting in a significantly higher turnover (on average 50 times higher) than the indicated minimum €11 million turnover. Therefore EMA considers that this had no negative effect on competition. The Agency notes the observation and will continue carefully assessing minimum turnover requirements taking into account business imperatives.

## 3.20. European Public Prosecutor's Office (EPPO)

### Introduction

**3.20.1.** The European Public Prosecutor's Office ("EPPO"), which is located in Luxembourg, was set up by Regulation (EU) 2017/1939<sup>109</sup> to investigate and prosecute offences affecting the EU's financial interests. Currently, 22 EU Member States are part of EPPO. Each of these Member States appoints a European Prosecutor to EPPO that constitute EPPO's College, its governing body. The College is chaired by the European Chief Prosecutor. Each participating Member State also has at least two European Delegated Prosecutors who conduct investigations in their home country. EPPO started operations on 1 June 2021, and has been financially autonomous since 24 June 2021. *Figure 3.20.1* presents key figures for EPPO<sup>110</sup>.

**Figure 3.20.1 – Key figures for EPPO**



\* 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 EPPO for the 2020 and 2021 financial years; staff figures provided by EPPO.

### Information in support of the statement of assurance

**3.20.2.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control

<sup>109</sup> Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

<sup>110</sup> More information on EPPO's role and activities is available on its website: [www.eppo.europa.eu](http://www.eppo.europa.eu).



## European Public Prosecutor's Office (EPPO)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EPPO's management.

**3.20.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EPPO's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

**3.20.4.** We have audited:

- (a) the accounts of the European Public Prosecutor's Office ("EPPO"), which comprise the financial statements<sup>111</sup> and the reports on the implementation of EPPO's budget<sup>112</sup> for the financial year ended 31 December 2021, 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

**3.20.5.** In our opinion, EPPO's accounts for the year ended 31 December 2021 present fairly, in all material respects, EPPO's financial position at 31 December 2021, 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>111</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>112</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

## Emphasis of matter

**3.20.6.** We draw attention to Note 2.1, 2.2 and 3.1 of EPPO's final accounts, which disclose that the majority of the assets included in the accounts were transferred to EPPO from the Commission free of charge. We also draw attention to Note 4.2, which discloses that EPPO received office space free of charge from the Host Member State.

## Legality and regularity of the transactions underlying the accounts

### Revenue

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

**3.20.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.20.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.20.10.** In 2021, 21 % of EPPO's payments were made late. In addition, EPPO relied on interim staff for processing payments, which goes against EPPO's financial rules<sup>113</sup>. These shortcomings also reflect a lack of resources allocated to finance and procurement functions, and constitute a weakness in EPPO's human resources management.

**3.20.11.** EPPO has not yet signed a lease agreement with the Host Member State for its premises as mentioned in article 3.2 of the Headquarters Agreement. The lack of a written

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<sup>113</sup> Article 41(1) of [Decision of the College of EPPO 002/2021](#).

## European Public Prosecutor's Office (EPPO)

lease agreement deprives EPPO and its staff of the certainty and stability needed to perform their duties.

**3.20.12.** EPPO has not yet established comprehensive internal procedures regarding its organisational structure and the ex-ante controls associated with the operational and financial aspects of its operations. The lack of formalised procedures hinders the implementation of management directives, and may pose a risk to the achievement of EPPO's objectives.

**3.20.13.** EPPO has not yet adopted a comprehensive Business Continuity Plan. The lack of an established and comprehensive Business Continuity Plan constitutes a major internal weakness in EPPO's procedures.

**3.20.14.** In one recruitment procedure, we found no evidence that EPPO had established a minimum number of points that the candidates had to gain in order to be shortlisted before it examined their applications. This undermined the principles of transparency and equal treatment.

## EPPO's reply

**3.20.10.** 34% of the late payments were 1 day late and 75% of the late payments were less than 5 days late. The EPPO however acknowledge that its capacity to process timely invoices should be improved. Initiating as early as possible its prosecution and investigative roles required to dynamically adapt the EPPO control framework as activities grew and staff was made available. These constraints led to accept a limited and transparently disclosed use of interim staff as part of the risk based management in place. In the broader context of the health crisis, the EPPO continued to recruit staff during 2021 to strengthen its operational and administrative capacities.

**3.20.11.** It is beyond the EPPO to enforce a specific timeline for the Host Member State to define the lease agreement terms. The EPPO did due diligence in collaborating and reminding the Host Member State of its obligation on the matter. The Lease Agreement has been signed by the EPPO in March 2022 and has been sent to the Host Member State for signature.

**3.20.12.** The EPPO has since acquiring financial autonomy from the European Commission (24 June 2021) continued to apply the same standards of verification of when operating under the European Commission. The EPPO takes note of the finding and confirms it is finalising its own procedures on the matter.

**3.20.13.** The EPPO's Business Continuity Plan (BCP) has been initiated in 2021 and should be approved during 2022.

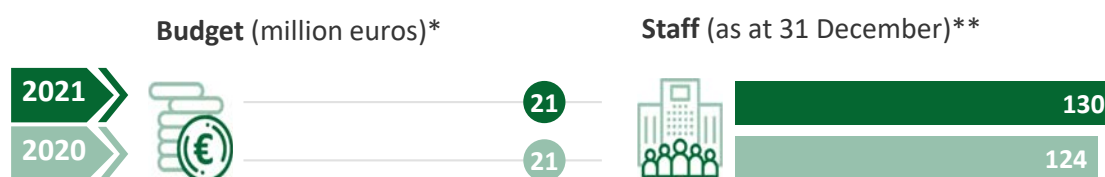
**3.20.14.** The EPPO takes note of the finding of the ECA and confirms its commitment to transparency and equal treatment of all candidates.

## 3.21. European Training Foundation (ETF)

### Introduction

**3.21.1.** The European Training Foundation (“the ETF”), which is located in Turin, was established by Council Regulation (EEC) No 1360/90<sup>114</sup> (recast Regulation (EC) No 1339/2008 of the European Parliament and of the Council<sup>115</sup>). The ETF’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 3.21.1* presents key figures for the ETF<sup>116</sup>.

**Figure 3.21.1 – Key figures for the ETF**



\* 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 ETF for the 2020 and 2021 financial years; staff figures provided by the ETF.

### Information in support of the statement of assurance

**3.21.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the ETF’s management.

<sup>114</sup> Council Regulation (EEC) No 1360/90 establishing a European Training Foundation.

<sup>115</sup> Regulation (EC) No 1339/2008 establishing a European Training Foundation (recast).

<sup>116</sup> More information on the ETF’s role and activities is available on its website: [www.etf.europa.eu](http://www.etf.europa.eu).

## European Training Foundation (ETF)

**3.21.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the ETF's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Training Foundation ("the ETF"), which comprise the financial statements<sup>117</sup> and the reports on the implementation of ETF's budget<sup>118</sup> for the financial year ended 31 December 2021, 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 ETF's accounts for the year ended 31 December 2021 present fairly, in all material respects, the ETF's financial position at 31 December 2021, 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>117</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>118</sup> The reports on the 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 2021 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 2021 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](#).

## Annex – Follow-up of previous year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	In a public procurement procedure for temporary agency services, ETF applied award criteria that consisted of mostly non-competitive price elements. The ETF should use award criteria that focus on competitive price elements.	Outstanding  (until the contract expires in 2023)
2020	The ETF did not comply with internal control principle 12 of its own internal control framework, under which it 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 in the register of exceptions.	Completed



European Training Foundation (ETF)

## The ETF's reply

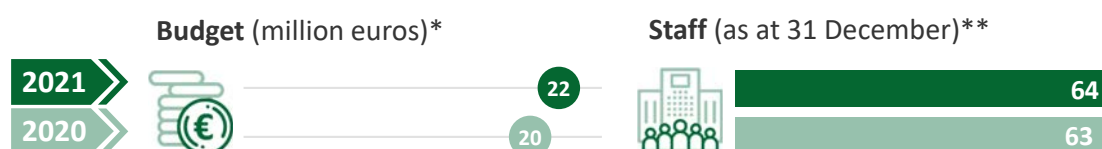
The Foundation has taken note of the Court's report.

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

### Introduction

**3.22.1.** The European Agency for Safety and Health at Work (“EU-OSHA”), which is located in Bilbao, was created by Council Regulation (EC) No 2062/94<sup>119</sup>, which was repealed and replaced by Regulation (EU) 2019/126 of the European Parliament and of the Council on 16 January 2019<sup>120</sup>. EU-OSHA's tasks include collecting and disseminating information on national and EU priorities in the field of health and safety at work, and supporting national and EU organisations involved in making and implementing policies in that field. *Figure 3.22.1* presents key figures for EU-OSHA<sup>121</sup>.

**Figure 3.22.1 – Key figures for EU-OSHA**



\* 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 EU-OSHA for the 2020 and 2021 financial years; staff figures provided by EU-OSHA.

### Information in support of the statement of assurance

**3.22.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>119</sup> Council Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work.

<sup>120</sup> Regulation (EU) 2019/126 establishing the European Agency for Safety and Health at Work (EU-OSHA).

<sup>121</sup> More information on EU-OSHA’s role 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)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EU-OSHA's management.

**3.22.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EU-OSHA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Agency for Safety and Health at Work (EU-OSHA), which comprise the financial statements<sup>122</sup> and the reports on the implementation of EU-OSHA's budget<sup>123</sup> for the financial year ended 31 December 2021, 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, EU-OSHA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EU-OSHA's financial position at 31 December 2021, 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

<sup>122</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>123</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

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

**3.22.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.22.9.** In one open procurement procedure divided into lots, we noted that in one lot, the members of the evaluation committee had signed the declaration of absence of conflicts of interest only after the contract was awarded. This represents a weakness in the procurement procedure and goes against the requirements of Articles 61 and 150 of the Financial Regulation.

## 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](#).

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

## Annex – Follow-up of previous year's observations

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	The level of committed appropriations carried forward to 2019 was high for Title II and for Title III. EU-OSHA should analyse the reasons for excessive carry-forwards and improve budget planning accordingly.	Completed
2019	The amounts of carry-forwards suggests an overestimation of budgetary needs, and contradicts the budgetary principle of annuality.	Completed

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

## **EU-OSHA's reply**

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

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

### Introduction

**3.23.1.** The European Foundation for the Improvement of Living and Working Conditions (“Eurofound”), which is located in Dublin, was established by Council Regulation (EEC) No 1365/75<sup>124</sup>, repealed and replaced by Regulation (EU) 2019/127 of the European Parliament and of the Council<sup>125</sup>. Eurofound’s task is to contribute to the planning and establishment of better living and working conditions in the EU by increasing and disseminating knowledge which is relevant to this subject. *Figure 3.23.1* presents key figures for Eurofound<sup>126</sup>.

**Figure 3.23.1 – Key figures for Eurofound**



\* 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 Eurofound for the 2020 and 2021 financial years; staff figures provided by Eurofound.

<sup>124</sup> Regulation (EEC) No 1365/75 on the creation of a European Foundation for the improvement of living and working conditions.

<sup>125</sup> Regulation (EU) 2019/127 establishing the European Foundation for the improvement of living and working conditions (Eurofound).

<sup>126</sup> More information on Eurofound’s role 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)

## Information in support of the statement of assurance

**3.23.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by Eurofound’s management.

**3.23.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of Eurofound’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Foundation for the Improvement of Living and Working Conditions (“Eurofound”), which comprise the financial statements<sup>127</sup> and the reports on the implementation of Eurofound’s budget<sup>128</sup> for the financial year ended 31 December 2021, 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>127</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>128</sup> The reports on the 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

**3.23.5.** In our opinion, Eurofound's accounts for the year ended 31 December 2021 present fairly, in all material respects, Eurofound's financial position at 31 December 2021, 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

**3.23.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.23.9.** In our audit report for the 2019<sup>129</sup> financial year, we concluded that the procurement procedure for the supply of electricity was irregular. As a result, all subsequent

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<sup>129</sup> Paragraph 17 of ECA's [annual report on the annual accounts of Eurofound for the financial year 2019](#).

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

payments made in connection with this contract are irregular. In 2021, the associated payments amounted to €30 689. The underlying contract has expired in June 2021.

## Follow-up of previous years' observations

**3.23.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2019	The procurement for the supply of electricity was irregular. As a result, all subsequent payments associated with this contract are irregular.	Ongoing
2019	A procurement procedure for the refurbishment of sanitary facilities was irregular.	N/A
2020	Eurofound has a policy in place defining its sensitive functions and related mitigating controls, but the inventory 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.	Completed

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

## Eurofound's reply

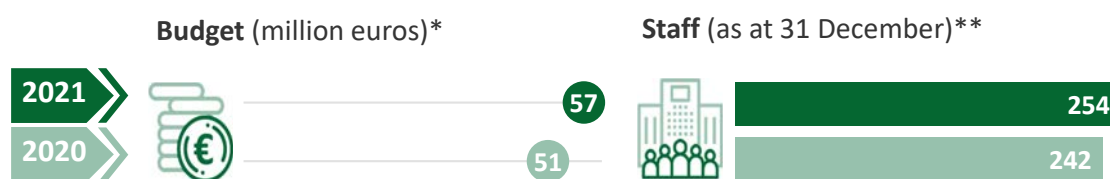
**3.23.9.** The 2019 finding was already accepted, and the contract ended in June 2021. The associated payments in 2021 were a direct consequence of the original tender procedure. The internal procedures for procurement were adjusted accordingly. The final payments from January to June 2021 were executed according to our legal obligation.

## 3.24. European Union Agency for Criminal Justice Cooperation (Eurojust)

### Introduction

**3.24.1.** The European Union Agency for Criminal Justice Cooperation (“Eurojust”), which is located in The Hague, was set up by Regulation (EU) 2018/1727 of the European Parliament and of the Council<sup>130</sup>. Eurojust’s mission is to support the fight against serious organised crime by improving the coordination of cross-border investigations and prosecutions. *Figure 3.24.1* presents key figures for Eurojust<sup>131</sup>.

**Figure 3.24.1 – 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: Annual accounts of Eurojust for the 2020 and 2021 financial years; staff figures provided by Eurojust.

### Information in support of the statement of assurance

**3.24.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by Eurojust’s management.

**3.24.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of Eurojust’s management and of those charged with governance,

<sup>130</sup> Regulation (EU) 2018/1727 on the European Union Agency for Criminal Justice Cooperation.

<sup>131</sup> More information on Eurojust’s role and activities is available on its website: [www.eurojust.europa.eu](http://www.eurojust.europa.eu).

European Union Agency for Criminal Justice Cooperation (Eurojust)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Union Agency for Criminal Justice Cooperation ("Eurojust"), which comprise the financial statements<sup>132</sup> and the reports on the implementation of Eurojust's budget<sup>133</sup> for the financial year ended 31 December 2021, 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, Eurojust's accounts for the year ended 31 December 2021 present fairly, in all material respects, Eurojust's financial position at 31 December 2021, 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 the 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

**3.24.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.24.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.24.9.** In our audit report for the 2020<sup>134</sup> financial year, we concluded that a procurement procedure for leasing of vehicles was irregular. As a result, all subsequent payments made based on this framework contract are irregular. In 2021, the associated payments amounted to €34 022.

## Follow-up of previous years' observations

**3.24.10.** 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> Paragraph 3.27.9 of the ECA's [annual report on EU agencies for the financial year 2020](#)

## Annex – Follow-up of previous year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	Eurojust signed a framework contract with a single company for the leasing of vehicles. As the vehicle-leasing market is subject to frequent fluctuations in price, Eurojust should have reopened the procurement procedure when a vehicle was required.	Ongoing
2020	Eurojust signed a specific contract whose pricing deviated from the price lists attached to the original framework contract. 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.	N/A



European Union Agency for Criminal Justice Cooperation (Eurojust)

## **Eurojust's reply**

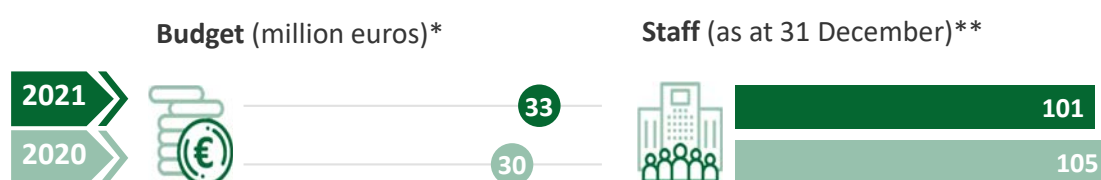
The Agency has taken note of the ECA's report.

## 3.25. European Union Agency for Fundamental Rights (FRA)

### Introduction

**3.25.1.** The European Union Agency for Fundamental Rights (“the FRA”), which is located in Vienna, was established by Council Regulation (EC) No 168/2007<sup>135</sup>. The FRA provides assistance and expertise in implementing EU law related to fundamental rights to EU and Member State authorities. *Figure 3.25.1* presents key figures for the FRA<sup>136</sup>.

**Figure 3.25.1 – Key figures for the FRA**



\* 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 FRA for the 2020 and 2021 financial years; staff figures provided by the FRA.

### Information in support of the statement of assurance

**3.25.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the FRA’s management.

**3.25.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the FRA’s management and of those charged with governance,

<sup>135</sup> Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights.

<sup>136</sup> More information on the FRA’s role and activities is available on its website: [www.fra.europa.eu](http://www.fra.europa.eu).

## European Union Agency for Fundamental Rights (FRA)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Union Agency for Fundamental Rights ("the FRA"), which comprise the financial statements<sup>137</sup> and the reports on the implementation of the FRA's budget<sup>138</sup> for the financial year ended 31 December 2021, 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 FRA's accounts for the year ended 31 December 2021 present fairly, in all material respects, the FRA's financial position at 31 December 2021, 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>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 the 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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on budgetary management

**3.25.9.** We found that the FRA had carried over €7 million (27 %) of 2021 commitment appropriations to 2022. Of that amount, €6.7 million (96 %) related to operational activities. Recurrent high rates of carry-overs contradict the budgetary principle of annuality and are indicative of structural issues in the implementation of the budget.

## Follow-up of previous years' observations

**3.25.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	Carry-overs of committed appropriations were high for operating expenditure and only partially justified. The FRA should improve its budget planning and its implementation cycles.	Ongoing

European Union Agency for Fundamental Rights (FRA)

## The FRA's reply

**3.25.9.** The level of carry-overs mainly reflects the nature of the Agency's core business including 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 outturn rate (above 99.5%) and, consequently, the low level of cancelled appropriations.



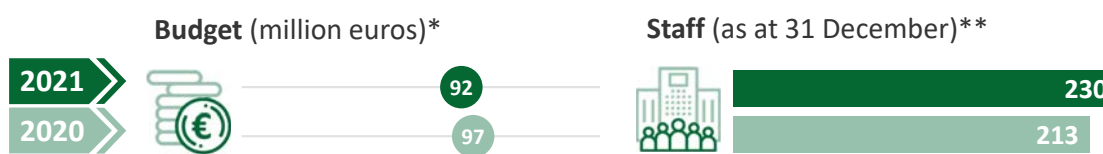
## **Agencies funded under MFF heading 3 – Natural Resources and Environment**

## 3.26. European Environment Agency (EEA)

### Introduction

**3.26.1.** The European Environment Agency (“the EEA”), which is located in Copenhagen, was established by Council Regulation (EEC) No 1210/90<sup>139</sup>, repealed and replaced by Regulation (EC) No 401/2009 of the European Parliament and of the Council<sup>140</sup>. The EEA is responsible for 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. *Figure 3.26.1* presents key figures for the EEA<sup>141</sup>.

**Figure 3.26.1 – Key figures for the EEA**



\* 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 EEA for the 2020 and 2021 financial years; staff figures provided by the EEA.

### Information in support of the statement of assurance

**3.26.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the EEA’s management.

<sup>139</sup> Regulation (EEC) (No) 1210/90 on the establishment of the European Environment Agency and the European Environment Information and Observation Network.

<sup>140</sup> Regulation (EC) No 401/2009 on the European Environment Agency and the European Environment Information and Observation Network.

<sup>141</sup> More information on the EEA’s role and activities is available on its website: [www.eea.europa.eu](http://www.eea.europa.eu).



## European Environment Agency (EEA)

**3.26.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the EEA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Environment Agency (“the EEA”), which comprise the financial statements<sup>142</sup> and the reports on the implementation of the EEA’s budget<sup>143</sup> for the financial year ended 31 December 2021, 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 EEA’s accounts for the year ended 31 December 2021 present fairly, in all material respects, the EEA’s financial position at 31 December 2021, 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>142</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>143</sup> The reports on the 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

**3.26.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.26.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.26.9.** The EEA amended a framework service contract for the provision of building repair and maintenance services by doubling the initial maximum budget from €500 000 to €1 000 000. The legal justification used was the derogation applicable to negotiated procedures without prior publication, as laid down in paragraphs 11.1(e) and 11.4 of Annex I to the Financial Regulation. The cumulative conditions of paragraphs 11.1(e) and 11.4 were not met. In such cases, Article 172 (3) of the Financial Regulation allows contracts to be modified without a new procurement procedure, under certain conditions, but in most cases with a limit on the value of the modification. These conditions were not met for the contract modification in question. Therefore, the amendment was irregular. However, in 2021 there were no related payments.

## Observations on management and control systems

**3.26.10.** We audited a framework contract for the provision of canteen and catering services on EEA premises. We found that the initial contract had been extended on two separate occasions: in February 2021 by eight months, and again in December 2021 by another six months, increasing the total duration from 48 months to 62 months. The EEA's internal control standards require it to document, justify and approve all deviations from established

## European Environment Agency (EEA)

policies and procedures. Concerning the first extension above, the EEA did not file any exception note. Regarding the second extension, the EEA drew up such a note to the file, but had not filed it in the central register of exceptions at the time of the ECA's audit in February 2022.

**3.26.11.** In a service contract for the provision of the Geographic Information System support services, the EEA used a contract amendment to extend the performance of the services by one month, from 28 February 2021 to 31 March 2021. However, the amendment only entered into force on 22 March 2021 when signed by both contracting parties, effectively leaving a period of 22 days of service provision with no contract. Although the EEA had discovered this, as demonstrated by the retroactive effect of the amendment (from 28 February 2021), no exception note was filed.

**3.26.12.** We audited a payment made under a framework contract for the provision of IT services. Under this contract, the EEA could order ancillary, non-core services under a separate work package. The price for these ancillary services depended on the daily rates for the different consultancy profiles, and whether the services were performed on or off-site. The audited transaction included an amount of €25 000 for such ancillary consultancy services. We found that the EEA had paid this amount without first verifying which exact profiles and daily rates the contractor had effectively applied when delivering and invoicing the services.

## EEA's reply

### Observations on the legality and regularity of transactions

**3.26.9.** The Agency confirms having carried out a negotiated procedure pursuant to Article 164.1(d) of the Financial Regulation and point 11.1(e) of Annex I thereto, namely negotiated procedure without publication of a contract notice Ref. No EEA/ADS/21/003 as evidenced by the invitation to tender registered both in the Agency's Management Plan System and in its Documents Management System. In doing so, the Agency consulted thoroughly the general guidance from the Central Financial Service Helpdesk of DG BUDG which provides for a step-by-step procurement process leading to the amendment of the existing contract.

The responsible authorising officer signed the award decision for this negotiated procedure on 19.10.2021, whereas a contract award notice indicating the new total budget of the framework contract was published on TED on 21.12.2021.

### Observations on management and control systems

**3.26.10.** The Agency had initially planned launching a call for tenders for the award of a new framework service contract for the provision of canteen and catering services in the last quarter of 2020. The constantly evolving COVID pandemic hindered however the planning and compelled the Agency to seek alternatives to ensure the business continuity, owing to the important role played by the canteen in terms of social cohesion and wellbeing for staff members in period of crisis.

The Agency acknowledges that the third amendment to the framework contract leading to the first extension of its duration was not supplemented by an exception note. The exception note for the second extension was attached as supporting document in the ARES signatory workflow for the signature of the fourth amendment to the framework contract, but not included in the central register of exceptions.

**3.26.11.** The Agency confirms the facts established by the ECA in their findings and observation. Although the Agency's representatives discussed and agreed with the supplier in early February, an extension of the specific contract, owing to an oversight, the issuing and signature of the amendment was delayed.

The Agency will reinforce its controls and procedures firstly, to lessen the risk of delays in entering into contract extensions and secondly, to ensure exception notes are filed where involuntary breaches of the Finance Regulation occur.

**3.26.12.** The Agency takes note of the ECA's analysis. The budget estimate of this consultancy task came from an exchange between the project manager and the service provider. An estimation of 35 person days, based on Senior consultancy rate (P2), amounting to EUR 25 000, was deemed reasonable in the project manager's best professional judgement. The offer provided in reply to the request for services was perfectly aligned with what had been

European Environment Agency (EEA)

discussed and agreed and, therefore, accepted as a lump sum. The provision of timesheets for this component was not requested.

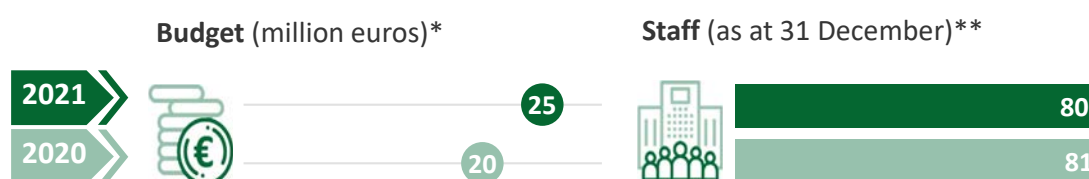
The Agency takes note of the ECA's concerns and confirms that it has taken steps to address them for future orders.

## 3.27. European Fisheries Control Agency (EFCA)

### Introduction

**3.27.1.** The European Fisheries Control Agency (“EFCA”), which is located in Vigo, was established by Council Regulation (EC) No 768/2005<sup>144</sup>, repealed and replaced by Regulation (EU) 2019/473 of the European Parliament and of the Council<sup>145</sup>. EFCA’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 3.27.1* presents key figures for EFCA<sup>146</sup>.

**Figure 3.27.1 – Key figures for EFCA**



\* 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 EFCA for the 2020 and 2021 financial years; staff figures provided by EFCA.

The budget of EFCA was reinforced in 2021 in view of additional activities assigned to EFCA in the framework of the Trade and Cooperation Agreement with the UK.

### Information in support of the statement of assurance

**3.27.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>144</sup> Council Regulation (EC) No 768/2005 establishing a Community Fisheries Control Agency.

<sup>145</sup> Regulation (EU) 2019/473 on the European Fisheries Control Agency.

<sup>146</sup> More information on EFCA’s role and activities is available on its website: [www.efca.europa.eu](http://www.efca.europa.eu).

## European Fisheries Control Agency (EFCA)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EFCA's management.

**3.27.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EFCA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 the European Fisheries Control Agency (EFCA), which comprise the financial statements<sup>147</sup> and the reports on the implementation of EFCA's budget<sup>148</sup> for the financial year ended 31 December 2021, 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, EFCA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EFCA's financial position at 31 December 2021, 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>147</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>148</sup> The reports on the 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 2021 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 2021 are legal and regular in all material respects.



European Fisheries Control Agency (EFCA)

## **EFCA's reply**

The Agency has taken note of the Court's report



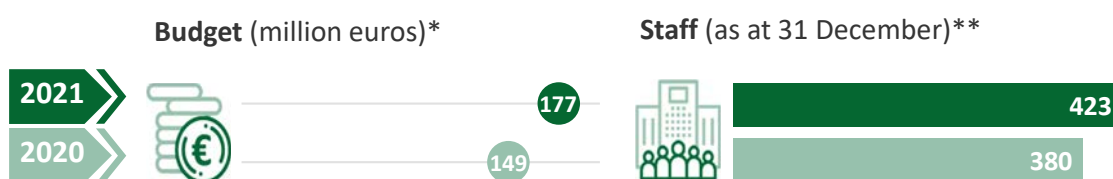
## **Agencies funded under MFF heading 4 – Migration and Border Management**

## 3.28. European Asylum Support Office (EASO)

### Introduction

**3.28.1.** The European Asylum Support Office (“EASO”) was located in Valletta. It was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council<sup>149</sup> to enhance practical cooperation on asylum matters and to help Member States fulfil their European and international obligations to give protection to people in need. It had regional offices in Italy and Greece and, from 2018, in Cyprus. In 2022, it was superseded<sup>150</sup> by the European Union Agency for Asylum (“EUAA”), which assumed all of EASO’s responsibilities and legal commitments, as well as a number of new tasks associated with the Common European Asylum System. *Figure 3.28.1* presents key figures for EASO<sup>151</sup>.

**Figure 3.28.1 – Key figures for EASO**



\* 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 EASO for the 2020 and 2021 financial years; staff figures provided by EASO.

### Information in support of the statement of assurance

**3.28.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EASO’s management.

<sup>149</sup> Regulation (EU) No 439/2010 establishing a European Asylum Support Office.

<sup>150</sup> Regulation (EU) No 2021/2303 on the European Union Agency for Asylum.

<sup>151</sup> More information on EASO’s role and activities is available on its website: [www.easo.europa.eu](http://www.easo.europa.eu).

## European Asylum Support Office (EASO)

**3.28.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EASO’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA’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 Asylum Support Office (“EASO”), which comprise the financial statements<sup>152</sup> and the reports on the implementation of EASO’s budget<sup>153</sup> for the financial year ended 31 December 2021, 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, EASO’s accounts for the year ended 31 December 2021 present fairly, in all material respects, EASO’s financial position at 31 December 2021, 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>152</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>153</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

## Emphasis of matter

**3.28.6.** We draw attention to note 3.7.1 of EASO's final accounts, which discloses that the lack of human resources in 2022 may limit the ability to perform some of the tasks of its new EUAA mandate; and to note 3.7.2, which discloses that the financial effects of the Russian war of aggression against Ukraine cannot be reliably estimated.

## Legality and regularity of the transactions underlying the accounts

### Revenue

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

**3.28.7.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.28.8.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on legality and regularity of transactions

**3.28.10.** In our report for the 2017<sup>154</sup> and 2020<sup>155</sup> financial years, we concluded that the procurement procedures for rented premises in Lesbos and Rome were irregular. As a result, all subsequent payments made in connection with these procedures are irregular. In 2021, the associated payments amounted to €362 204.

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<sup>154</sup> Paragraph 3.20.23 of ECA's annual report on EU agencies for the financial year 2017.

<sup>155</sup> Paragraph 3.20.12 of ECA's annual report on EU agencies for the financial year 2020.

## Follow-up of previous years' observations

**3.28.11.** 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 year’s observations

Year	ECA’s observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	EASO did not achieve the target for staff recruitment set out in its establishment plan.	Completed
2017	Contract monitoring for compliance with national rules on interim workers was poor.	Completed
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.	Completed
2017	There were significant weaknesses in the areas of needs assessment and amendments to contracts.	Completed
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	Completed

## European Asylum Support Office (EASO)

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	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.	
2018	EASO should establish effective financial ex-post controls.	Ongoing
2018	The procurement of interim workers in Italy was irregular. As a result, all subsequent payments under this contract are irregular.	Completed
2019	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.	Completed
2020	The procurement procedure used for the rented premises in Rome was irregular. As a result, all subsequent payments under these contracts are irregular.	Ongoing
2020	A high number of management posts are vacant, of these many 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.	Ongoing



## European Asylum Support Office (EASO)

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	The carry-overs to 2021 on Title III and the cancellation rate of budget appropriation from 2019 to 2020 were high. EASO should improve its budget planning and its implementation cycles.	Completed
2020	EASO has not updated its policy for the management and prevention of conflict of interest.	Ongoing
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, EASO approved its business continuity plan on 31 May 2021.	Completed
2020	We note a case pending before the European General Court case T-621/20 (EMCS), challenging the outcome of the procurement procedure for the provision of temporary agency workers in Malta.	Completed

European Asylum Support Office (EASO)

## **EASO's reply**

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

## 3.29. European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

### Introduction

**3.29.1.** The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (“eu-LISA”), 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>156</sup>, repealed and replaced by Regulation (EU) 2018/1726 of the European Parliament and of the Council, which strengthened the mandate of eu-LISA<sup>157</sup>. The core mission of eu-LISA 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 2018 extension of eu-LISA’s mandate covers the development and operational management of the Entry/Exit System of non-EU nationals and the European Travel Information and Authorisation System. *Figure 3.29.1* presents key figures for eu-LISA<sup>158</sup>.

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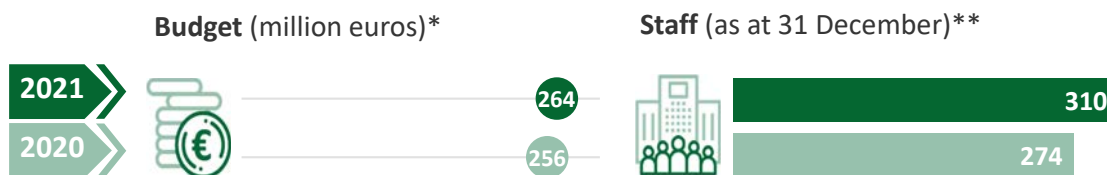
<sup>156</sup> Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

<sup>157</sup> Regulation (EU) 2018/1726 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA).

<sup>158</sup> More information on eu-LISA’s role 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 3.29.1 – Key figures for eu-LISA**



\* 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 eu-LISA for the 2020 and 2021 financial years; staff figures provided by eu-LISA.

## Information in support of the statement of assurance

**3.29.2.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by eu-LISA's management.

**3.29.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of eu-LISA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), which comprise the financial statements<sup>159</sup> and the reports on the implementation of eu-LISA's budget<sup>160</sup> for the financial year ended 31 December 2021, 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, eu-LISA's accounts for the year ended 31 December 2021 present fairly, in all material respects, eu-LISA's financial position at 31 December 2021, 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>159</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>160</sup> The reports on the 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 2021 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

**3.29.7.** We audited 28 eu-LISA payments. Of these, six were non-compliant. We also identified other payments, outside our initial sample, affected by the same non-compliance. The total amount of expenditure affected is €18.11 million. This represents 6.2 % of the total payment appropriations available in 2021. This exceeds the materiality threshold set for this audit.

**3.29.8.** eu-LISA signed a specific contract of €40 million to implement a framework contract related to large-scale IT systems, without specifying the details of the services acquired (quantities, date of deliveries). The specific contract contained generic provisions and stated that service request forms would contain further details. The duration of the specific contract was more than three years. Because of its extended duration and lack of precision on the services and dates required, in practice, the specific contract worked like a framework contract inside another framework contract. According to eu-LISA's explanation, the reason for signing such a contract was to create a legal commitment to allow the carryover of funds that would have otherwise been cancelled by the end of 2018. For the 2019 financial year<sup>161</sup>, we reported about the risk associated with the practice of giving resources to eu-Lisa before the adoption of legislation (including delegated and implementing regulations) defining the requirements for the IT systems to be developed.

We consider that the specific contract did not properly implement the framework contract because it did not create a clear legal commitment. The payments made in 2021

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<sup>161</sup> Report on the annual accounts of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for the financial year 2019, paragraph 19.

European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

linked to this specific contract, with a total value of €15.67 million, are non-compliant with article 73(3) of eu-Lisa's Financial Regulation.

**3.29.9.** For three of the audited payments, we found that specific contracts fundamentally deviated from framework contracts, and that no amendments were made to the framework contracts. As a result the specific contracts were non-compliant with the framework contracts, as were the associated 2021 payments of €2.44 million.

For one specific contract related to the Maintenance of the Common Shared Infrastructure (CSI) catalogue that included a fixed part and a variable part, we found that while the fixed part corresponded to the price of the framework contract, the variable part was nearly ten times higher. After an amendment to the specific contract the variable part was more than 22 times higher than the initial amount of the framework contract. In addition, the pricing structure of the specific contract does not correspond to the one of the framework contract. We audited a payment of €796 838.82 related to this contract.

For another specific contract, the contractual delivery dates were not respected. Nevertheless, eu-LISA paid €1.2 million without a modification to the specific contract and the framework contract.

For another specific contract related to fixed price elements, the value of the contract, €1.77 million, corresponded to the value of the framework contract. Subsequently, eu-LISA signed an amendment to the specific contract and increased the amount to €2.15 million. We audited a payment of €443 684.32 related to this contract.

In previous years, we and the Commission's Internal Audit Service reported non-compliances and deficiencies in eu-LISA's internal control systems related to procurement and contract management.

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

**3.29.10.** In our opinion, except for the issues explained in the "Basis for a qualified opinion on the legality and regularity of the payments" paragraph, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

**Observation on management and control systems**

**3.29.12.** Eu-LISA amended the value of three contracts, two in 2021 and one 2019: one for the Implementation and Maintenance in Working Order of the Entry Exit System (EES), one for the provision of the Common Shared Infrastructure (CSI) and one for the Maintenance in Working Order of the Schengen Information System (MWO SIS II).

## European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

The amendments increased the maximum amount of the contracts by 50 % (€70.4 million, €20 million and €40 million respectively).

The CSI and the MWO SIS II contracts expire in 2022 and the EES contract expires in 2023. The amount committed at the signature of the amendment was less than 50 % for the CSI contract, 86 % for the MWO SIS II contract and 76 % for the EES contract.

In 2020 Eu-LISA signed new contracts under its new procurement approach for the Transversal Engineering Framework (TEF). In addition, the Transversal Operational Framework (TOF) contracts are to be signed in 2022. These contracts supersede the contracts amended.

Because the contracts amended were close to expiry and that the amount committed was still considerably lower than the maximum amount of the contract, eu-LISA could have used the TEF and TOF contracts as soon as possible instead of amending the legacy contracts by the maximum amount allowed by the Financial Regulation.

**3.29.13.** For two audited payments with a total value of €2.56 million, we found that products that were included in the specific contract were not included in the framework contract.

Eu-LISA should improve the contracts management in order to assure that specific contracts are always aligned with the framework contracts.

### Observations on budgetary management

**3.29.14.** We found that eu-LISA had carried over €11.41 million of 2021 commitment appropriations to 2022. Of that amount, €11.1 million, (97 %), related to administrative expenditure (Title II). Recurrent high rates of carry-overs contradict the budgetary principle of annuality and are indicative of structural issues in the implementation of the budget.

### Follow-up of previous years' observations

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



European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

## Annex – Follow-up of previous year's observations

Year	The ECA's observations	Status of corrective action (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 EU's policy area of freedom, security and justice. Such an approach may prevent eu-LISA from achieving economies of scale and synergies between the different systems.	Ongoing  (Not under the control of the eu-LISA)
2018	eu-LISA increased the prices of a framework contract without amending it and extended one specific contract after the expiry of the framework contract.	N/A
2018/2019/2020	Budget implementation was less than planned. eu-LISA, together with the European Commission, should improve alignment of budgetary planning with the timing of the related legal acts.	Ongoing
2019	eu-LISA made a payment of €284 000 for services provided in a time period not covered by the underlying framework contract.	N/A
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. 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. The specific contract is	N/A

## European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	therefore non-compliant with the framework contract, as is the associated payment of €10.4 million.	
2020	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.	N/A

## eu-LISA's reply

**3.29.7.** The Agency takes note of the ECA's conclusion.

**3.29.8.** The Agency takes note of the ECA's observation. Specific contract (SC) 19/2018 was signed at a time when the budget made available in 2017 for the Exit Entry System – Visa Information System interoperability had to be committed by end 2018 or lost. It was only in February 2019 that the Commission Implementing Decision was adopted, and all necessary technical aspects became definitively known.

The Implementing Decision allowed the Agency to implement SC 19 through 36 Service Requests, which provide a clear and detailed description of tasks, deliverables and timelines. Payments were based on Service Requests signed by an authorising officer, not on the SC only.

The Agency is of the view that:

- payments were executed in respect of the underlying Framework Contract, Specific Contract and Service Request;
- no prejudice to the EU financial interests occurred;
- the project on the EES-VIS integration is nearing successful conclusion;
- 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.

**3.29.9.** The Agency takes note of the ECA's observation. Regarding the payment of € 1.2 million (for the modular data centre) the Agency would like to clarify that the contracted services and products were eventually fully delivered and the non-compliance of the payment did not have a negative effect on the EU budget.

For the other two payments, the Agency is of the view that the requirements of the project needed adaptation due to factors outside the control of the Agency. Furthermore, the Agency has already taken actions to reinforce contract monitoring practices.

**3.29.12.** The Agency takes note of the observation which does not call into question the legality and regularity of the amendments. The Agency has already undertaken a transition to horizontal procurement with the Transversal Engineering Framework, recently complemented by the Transversal Operational Framework.

**3.29.13.** The Agency takes note of the observation and is revising its processes in order to respond to change management by prior amendment of Framework Contracts when required.

**3.29.14.** The Agency takes note of the ECA's observation. In this context, the Agency would like to emphasise that the 2021 global implementation rate was 100% in both commitment and

European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

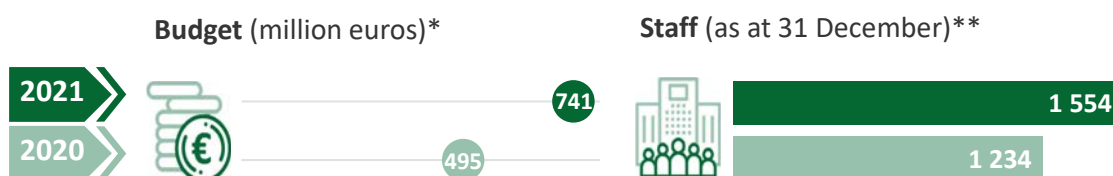
payment appropriations. In addition, cancellations of carry-overs in administrative expenditure in 2021 were reduced in half, compared to 2020.

## 3.30. European Border and Coast Guard Agency (Frontex)

### Introduction

**3.30.1.** The European Border and Coast Guard Agency (Frontex), which is located in Warsaw, was established by Regulation (EU) 2016/1624 of the European Parliament and of the Council<sup>162</sup>, repealed and replaced by Regulation (EU) 2019/1896 of the European Parliament and of the Council<sup>163</sup>. Frontex is the successor to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, created by Council Regulation (EC) No 2007/2004<sup>164</sup>. Frontex and the national authorities of Member States responsible for border management and return operations jointly constitute the European Border and Coast Guard, sharing responsibilities for ensuring European integrated border management and managing entries across the external borders efficiently. *Figure 3.30.1* presents key figures for Frontex<sup>165</sup>.

**Figure 3.30.1 – Key figures for Frontex**



\* 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 Frontex for the 2020 and 2021 financial years; staff figures provided by Frontex.

<sup>162</sup> Regulation (EU) 2016/1624 on the European Border and Coast Guard.

<sup>163</sup> Regulation (EU) 2019/1896 on the European Border and Coast Guard.

<sup>164</sup> Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

<sup>165</sup> More information on Frontex's role and activities is available on its website: [www.frontex.europa.eu](http://www.frontex.europa.eu).

## European Border and Coast Guard Agency (Frontex)

The significant increase in Frontex's budget and staff figures is due to the enlarged mandate under Regulation (EU) 2019/1896.

### Information in support of the statement of assurance

**3.30.2.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by Frontex's management.

**3.30.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of Frontex's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

### The ECA'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 (Frontex), which comprise the financial statements<sup>166</sup> and the reports on the implementation of Frontex's budget<sup>167</sup> for the financial year ended 31 December 2021, 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>166</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>167</sup> The reports on the 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, Frontex's accounts for the year ended 31 December 2021 present fairly, in all material respects, Frontex's financial position at 31 December 2021, 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

**3.30.6.** We refer to Note 4.0.4 "Other important information regarding the budget implementation" on the carry-over to 2021 of a budgetary commitment dated 21 December 2020 "Preparatory measures for 2021 deployments SC Cat 1 and 2" without the backing of a legal commitment before the end of 2020. We reported this issue in our 2020 specific annual report<sup>168</sup>. The total payments in 2021 were €18 375 458. Frontex addressed this non-compliance by means of subsequent legal commitments throughout 2021.

**3.30.7.** We draw attention to Note 4.0.3 "The financing sources of the budget", which explains that contributions from non-EU Schengen area countries (SAC) and, in consequence, the balancing EU contribution are not correctly calculated. The EU contribution is overstated by €2.6 million and the SAC contributions are understated by the same amount. As the EU contribution is a balancing contribution, and there is a surplus in 2021, there is no impact on the operating revenue of the statement of financial performance for the year 2021.

**3.30.8.** We draw attention to Note 1.3 "Certification of the accounts" where the Accounting Officer declares the lack of the necessary information for the validation of a new system laid down by the authorising officer and used for supplying accounting information.

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<sup>168</sup> Annual Report on EU Agencies for the financial year 2020, paragraph 3.30.15.

## Legality and regularity of the transactions underlying the accounts

### Revenue

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

**3.30.9.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.30.10.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

### Emphasis of matter

**3.30.11.** We note that the emphasis of matter paragraph for reliability of the accounts described in paragraph [3.30.6](#) also applies in full for the legality and regularity of payments.

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

## Observations on management and control systems

**3.30.13.** In July 2021, Frontex launched a procurement procedure for a framework contract with a single contractor for a maximum duration of four years, for the provision of travel services including the deployment of the Standing Corps. The contract was signed at the end of December 2021. We found the following:

- (a) For the evaluation of technical and professional capacity, Frontex required bidders to provide an experienced team of at least 10 travel agents plus a team manager, without requiring a minimum size in terms of overall staff. Setting the technical and professional capacity requirement so low exposed Frontex to a risk that the contractor would not be able to deliver the contracted services at the minimum quality and on time.



## European Border and Coast Guard Agency (Frontex)

- (b) In order to assess the economic and financial capacity of bidders, Frontex based its work on the estimated value of the contract, which was €15 million. However, this amount included only the fees paid to the contractor and not the underlying value of the contract covering planned mission costs, which were estimated at approximately €240 million. Frontex required bidders to demonstrate an average annual turnover of at least €2 million. Setting the financial capacity requirement so low exposed Frontex to a risk that the contract would not be performed correctly.

In February 2022, Frontex suspended the contract due to lack of performance that resulted in serious disruptions of business continuity. In May 2022, following verifications, the contract was terminated.

**3.30.14.** Frontex's internal guidelines for recruitment procedures require selection committees to attempt to reach their conclusions by consensus. In two audited recruitment procedures, we found that the selection committees applied the arithmetical average of their members' individual assessments, instead of a consensual method. Furthermore, there was a lack of clear standards or instructions to selection committee members on how to assess the individual selection criteria. These design and implementation weaknesses undermine the principles of transparency and equal treatment of the candidates in recruitment procedures and may expose Frontex to reputational and legal risks.

**3.30.15.** The authorising officers (by delegation or sub-delegation) approving payments in 2021, as well as the related legal and budgetary commitments, had not formally accepted the conditions of the Executive Director's Decision of 22 December 2020 on delegations. Moreover, they have not formally declared their compliance with Article 4 of the decision on the declaration of the absence of conflicts of interest. This is a serious internal control weakness in Frontex's delegation process.

**3.30.16.** In May 2021, Frontex signed multiple interinstitutional framework contracts through the re-opening of competition for the provision of personal protective equipment and sanitary items. The contracts did not have a standard price list but included a maximum gross margin percentage for every product ordered. When implementing the contracts, Frontex did not carry out systematic checks on the gross margin applied to some of the orders placed. This is not compliant with the Financial Regulation and constitutes an internal weakness in Frontex's ex-ante controls.

**3.30.17.** We also found the following internal control weaknesses in Frontex's procurement procedures:

- (a) For a framework contract comprising two lots, Frontex had published the award decision significantly later than the deadlines set by the Financial Regulation.

## European Border and Coast Guard Agency (Frontex)

- (b) In another procurement procedure, in order to assess bidders' economic and financial capacity Frontex requested twice the average minimum annual turnover allowed by the Financial Regulation. Setting a higher threshold is only allowed in duly justified cases. However, there was no documented justification for using a higher threshold amount.

**3.30.18.** In the case of three audited grant agreements, the beneficiaries did not respect the 75-day deadline after the end of the agreements for requesting final payment. Frontex did not ensure that the processing and final monitoring of these grants was carried out at the right time. Furthermore, it did not make final payments within 60 days of receiving the corresponding requests for payment of the balance. These delays in the process are in breach of the grant agreement provisions and the Financial Regulation, and constitute a systematic issue with Frontex's grant payment cycle.

**3.30.19.** Our overall analysis of payments made in 2021 showed that:

- (a) out of 7 776 payment requests, 1 269 were settled late (16.3 %, 2020: 23 %);
- (b) out of the total value of payment requests (€317 994 125), €39 731 717 was paid late (12.5 %, 2020: 12.1 %);
- (c) of the 1 269 late payments, 1 205 had been legally required within 30 days (2020: 1 932 payments), and 62 within 60 days (2020: 38 payments).

These payment delays are a serious deficiency in Frontex's internal controls.

## Follow-up of previous years' observations

**3.30.20.** 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 year's observations

Year	The ECA's observations	Status of corrective action (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.	Completed
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.	Completed for the deployment of human resources  Ongoing for the deployment of heavy technical equipment
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. Frontex may also consider introducing differentiated budget appropriations.	Ongoing
2017	Although Frontex already moved to its current premises in 2014, it still has no comprehensive Business Continuity Plan approved by the Management Board.	Completed

## European Border and Coast Guard Agency (Frontex)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	The ex-ante verifications were ineffective. Frontex 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	Frontex 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. Frontex should strive for more precise cost estimates and budget forecasts.	Ongoing
2018/2019	Frontex did not reach the required occupancy laid down in the staff establishment plan. Frontex should improve the guidance given to selection committee members and verify more closely the candidates' financial entitlements for salary payments.	Ongoing
2020	Declaration by a national authority of unannounced return operations totalling €355 000 in a grant agreement at the financial closure of the action. Frontex made an ex-post budgetary commitment to cover the resulting budget deficit, which is not in line to its financial regulation.	Ongoing

## European Border and Coast Guard Agency (Frontex)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	Ombudsman opened two inquiries: (a) In November 2020 it assessed the effectiveness and transparency of Frontex's Complaint's mechanism and the role and independence of Frontex's 'Fundamental Rights Officer' and issued on 15 June 2021 nine suggestions. (b) In March 2021 aimed to look into how Frontex complies with its fundamental rights obligations and ensure accountability in relation to its new enhanced responsibilities. There are also two ongoing investigations: (a) From OLAF over allegations of harassment, misconduct and migrant pushbacks concerning Frontex and (b) from the European Parliament (EP) into possible allegations of violations of fundamental rights in Frontex.	Ongoing
2020	Delay in the recruitment of the required 40 fundamental rights monitors, which poses a serious risk to the operations and reputation of Frontex.	Ongoing
2020	Frontex was exposed to reputational damage and litigation due to offers for AD7 posts sent to 47 advanced-level candidates (instead of the approved AST posts), in anticipation of the Commission's reply on the posts. Commission subsequently concluded that Frontex had not legal authority to upgrade these posts.	Ongoing
2020	No registration of an authorised exception in a payment schedule governing a contract, into Frontex's central registry.	Completed

## European Border and Coast Guard Agency (Frontex)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	The four Schengen Associated Countries (SAC) contributions in Frontex initial budget are understated as they made up of 6.91 % instead of 7.43 % of the budget. There is a need for horizontal guidance from the European Commission to EU bodies on how to calculate contributions from non-EU countries consistently.	Outstanding
2020	A provisional budgetary commitment of €18.1 million for the preparation of field deployments in 2021 was carried forward without Frontex having entered into legal commitments within the time limit laid down in Article 75 of the Frontex's Financial Regulation.	N/A
2020	When calculating its performance indicators, Frontex treated the reductions to the budget not as amending budgets but as acts of budget implementation which contradicts two decisions by the Management Board.	Outstanding
2020	An increase of €10 million of the EU funding by the EU amending budget no1 is not visible in Frontex's budgetary accounts. This reduces transparency.	N/A

## Frontex's reply

**3.30.7.** In 2021 MB has decided that the Agency should continue using the same calculation method, taking into account internal advice and the several meetings on the topic. The annual report from ECA for the 2020 accounts indicates that in this matter there is the need for horizontal guidance of the EC in this matter to all bodies, not only Frontex, and that the issue of different interpretation of the legal framework regarding contributions by non-EU countries, is also highlighted in ECA review 3/2021.

**3.30.13.** The Agency takes note and will follow up this observation in the upcoming public procurement procedures.

**3.30.14.** Frontex acknowledged a room for improvement in the implementation of the defined rules on selection procedures and in January 2022 adopted more clear instructions to the selection committee members ensuring more consistent assessment and harmonised procedures.

**3.30.15.** There was indeed an oversight at the time the ED Decision on the budget implementation powers was approved. This was a result of all AOs having it already signed at the time the new decision was approved. This was detected during the year, and it will be corrected in 2022 with a new ED Decision. In the meantime, new AOs were required to sign the documentation.

**3.30.16.** The Agency accepted, that as binding obligation, the margin will be checked by the Contract Managers of the Contracting Authority unilaterally, whenever it is decided, following a relevant risk assessment.

**3.30.17.** a) The Agency agrees with the finding. The Agency incorporated a control mechanism to monitor and prevent such situations in the future.

b) The Agency takes note of the finding and that this exception was not documented in the procurement file. The Agency, in order to safeguard its financial interests and to ensure that the contractor would be able to manage such a contract and order scheme, indicated that level of turnover, after having assessed thoroughly various factors:

- The level of annual turnover in similar tenders at national and international level and the specificities of the market of weapons and ammunition.
- The analysis by a defence procurement advisor contracted by the Authority.

**3.30.18.** The Agency takes note of the finding. Grant Agreements issued by Frontex cover deployments of technical equipment and human resources in various locations in the Member States, therefore the process of collection of documents by the central financial unit is lengthy. Moreover, in case of deployment of heavy technical equipment, there are multiple service providers to the MS beneficiaries and late submission of invoices, causes delays in the process.

### European Border and Coast Guard Agency (Frontex)

The Agency often needs to cooperate with new beneficiaries that are not familiar with grant provisions. This may generally imply additional challenges in getting the required documentation on time.

**3.30.19.** The Agency takes note of the finding and would like to underline that there are various reasons for these delays that are not always under the Agency's control. For example, several late payments, with high amounts that stem from delays of the Member States in introducing their claims for grants. The Agency is committed to continuously improving in the field of late payments.





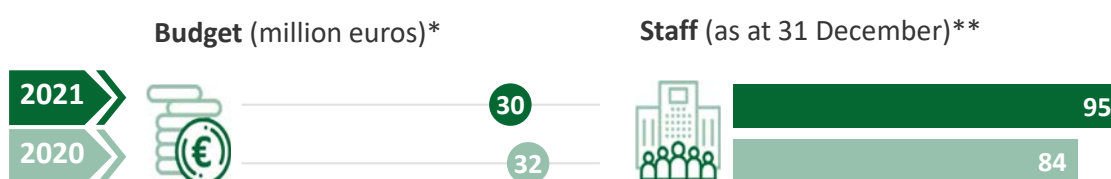
## **Agencies funded under MFF heading 5 – Security and Defence**

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

### Introduction

**3.31.1.** The European Union Agency for Law Enforcement Training (“CEPOL”), which is located in Budapest, was established by Regulation (EU) 2015/2219<sup>169</sup> of the European Parliament and of the Council. CEPOL’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 3.31.1* presents key figures for CEPOL<sup>170</sup>.

**Figure 3.31.1 – Key figures for CEPOL**



\* 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 CEPOL for the 2020 and 2021 financial years; staff figures provided by CEPOL.

### Information in support of the statement of assurance

**3.31.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by CEPOL’s management.

**3.31.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of CEPOL’s management and of those charged with governance,

<sup>169</sup> Regulation (EU) 2015/2219 on the European Union Agency for Law Enforcement Training.

<sup>170</sup> More information on CEPOL’s role and activities is available on its website: [www.cepola.eu](http://www.cepola.eu).

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

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Union Agency for Law Enforcement Training ("CEPOL"), which comprise the financial statements<sup>171</sup> and the reports on the implementation of CEPOL's budget<sup>172</sup> for the financial year ended 31 December 2021, 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, CEPOL's accounts for the year ended 31 December 2021 present fairly, in all material respects, CEPOL's financial position at 31 December 2021, 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>171</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>172</sup> The reports on the 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 2021 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 2021 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 the legality and regularity of transactions

**3.31.9.** CEPOL had a valid framework contract on travel arrangement services until March 2022, the scope of which did not include certain countries outside EU. Travel services for these non-EU countries were covered by other contracts until the end of 2020. Due to the COVID-19 pandemic, it was uncertain whether actual on-site events could be organised. In summer 2021, it became probable that CEPOL, despite the still very unpredictable travel situation related to COVID-19, might need to organise on-site activities in non-EU countries. After assessing the situation and the various available options, CEPOL opted to use the existing framework contract to cover the events in these countries, although they did not fall within the scope of the contract. This contravened the Article 172 of the Financial Regulation. CEPOL noted this decision in its registry of exceptions. The related payments, amounting to €76 590 in 2021, are irregular. In January 2022, CEPOL signed a new framework covering events in those countries.

## Observations on management and control systems

**3.31.10.** In August 2021, CEPOL launched a procurement procedure for a framework contract with a single operator for the provision of educational editorial services, for a value of €1 080 000. We found that in one award criterion CEPOL evaluated higher the winning bidder,

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

which used its subcontractor's prior CEPOL experience, to include in its offer more CEPOL-related content. The other two bidders provided offers with more generic content and were scored lower. However, the tender specifications for that award criterion did not clearly require such CEPOL-related content. In addition, given that the procurement was for editing educational content which is produced by law enforcement experts, the emphasis on CEPOL-related content in the procedure was not justified. Nevertheless, we found no evidence that the result of the procurement would have been different, had the criterion in question been assessed differently.

**3.31.11.** In another procurement procedure, we noticed an overlap between selection criteria and award criteria. A lack of clear separation between the two constitutes a procedural weakness, compromises the principle of transparency and exposes CEPOL to reputational and legal risks.

**3.31.12.** For a training event that took place in December 2019, CEPOL failed to monitor outstanding payments and closed the budgetary commitment in December 2020. Immediately afterwards, it received three invoices amounting to €28 032 related to this event. To pay them, CEPOL had to open a new budgetary commitment in February 2021. This internal control failure exposed CEPOL to the risk of not meeting its financial obligations towards third parties in case of budget restrictions.

### Follow-up of previous years' observations

**3.31.13.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2016	Staff turnover is high, which may impact business continuity and CEPOL's ability to implement the activities provided for in its work programme. There was only a limited number of employment applications from other Member States.	N/A
2020	CEPOL paid a cancellation fee of €5 335 for a hotel booking in Budapest which was cancelled due to COVID-19 restrictions imposed by the Hungarian government. It did not invoke the "force majeure" clause in the framework contract, which could have allowed to cancel the reservation without cost.	N/A
2020	We observed weaknesses in CEPOL's internal control environment, in relation to the management of budgetary commitments; (a) CEPOL signed three legal commitments before the respective budgetary commitments had been approved; (b) two different specific contracts (legal commitments) were linked with the same individual budgetary commitment.	Ongoing

## CEPOL's reply

**3.31.9.** The Agency has taken note of the Court's findings. Under the 2018 framework contract, CEPOL introduced a disclaimer to exclude booking of local transportation, accommodation, restaurants and meeting venues booked in specific countries in the context of CEPOL projects. This is a significant clarification, since all tenderers that submitted a tender in the original procedure were still supposed to be able to provide those services in those countries for activities that were not related to CEPOL projects. To ensure transparency, we have formalised an exception note with proposals to reduce to the minimum the usage of the 2018 framework contract in project activities in non-EU countries, thus covering exclusively for urgent business needs. We therefore consider this is a justified exception to the rules in order to ensure business continuity and sound financial management until the finalisation of an open procedure that resulted in the signing of a new all-inclusive framework contract with no limitations in January 2022.

**3.31.10.** The Agency has taken note of the Court's findings; CEPOL established award criteria and weightings with the aim to award the contract to the tender offering the best value for money. The scoring method, emphasising how CEPOL would provide higher scores for tenders providing "added value" was also published under the award criteria section. The effort put by tenderers to make specific reference to CEPOL educational context as described under the award criteria section was recognised and where the offer contained solutions that went beyond the required solution, "added value" was recognised and awarded through points. However, tenderers that did not make a specific reference were not deemed non-compliant under this criterion.

**3.31.11.** The Agency has taken note of the Court's findings. CEPOL as a complement to the award criteria, indicated information to be provided with the technical offer, not with the aim to assess the capacity of tenderers, but to support the elaboration of how the works would be executed in full compliance with the relevant standards.

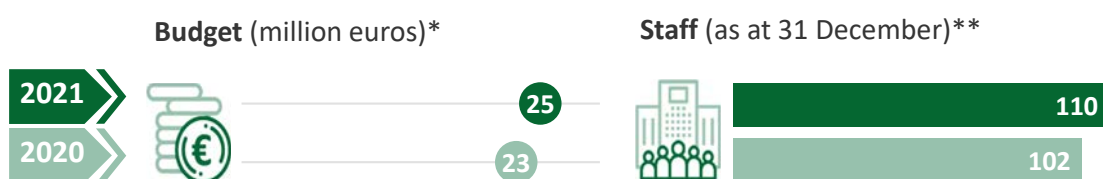
**3.31.12.** The Agency acknowledges and accepts the Court's findings. CEPOL has regular contract management training for project managers and other relevant staff and will repeat them in 2022 to increase awareness and reduce occurrence of such cases.

## 3.32. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

### Introduction

**3.32.1.** The European Monitoring Centre for Drugs and Drug Addiction (“the EMCDDA”), which is located in Lisbon, was created by Council Regulation (EEC) No 302/93<sup>173</sup>, which was repealed by Regulation (EC) No 1920/2006 of the European Parliament and of the Council<sup>174</sup>. The EMCDDA’s main task is to collect, analyse and disseminate information about drugs and drug addiction in order to prepare and publish objective, reliable and comparable information at European level. The information is intended to provide a basis for analysing demand for drugs and ways of reducing it, as well as other phenomena associated with the drug market. *Figure 3.32.1* presents key figures for the EMCDDA<sup>175</sup>.

**Figure 3.32.1 – Key figures for the EMCDDA**



\* 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 EMCDDA for the 2020 and 2021 financial years; staff figures provided by the EMCDDA.

### Information in support of the statement of assurance

**3.32.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>173</sup> Regulation (EEC) No 302/93 establishing a European Monitoring Centre for Drugs and Drug Addiction.

<sup>174</sup> Regulation (EC) No 1920/2006 on the European Monitoring Centre for Drugs and Drug Addiction.

<sup>175</sup> More information on the EMCDDA’s role and activities is available on its website: [www.emcdda.europa.eu](http://www.emcdda.europa.eu).



## European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the EMCDDA's management.

**3.32.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the EMCDDA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 European Monitoring Centre for Drugs and Drug Addiction ("the EMCDDA"), which comprise the financial statements<sup>176</sup> and the reports on the implementation of the EMCDDA's budget<sup>177</sup> for the financial year ended 31 December 2021, 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 EMCDDA's accounts for the year ended 31 December 2021 present fairly, in all material respects, the EMCDDA's financial position at 31 December 2021, 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>176</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>177</sup> The reports on the 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

**3.32.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.32.8.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	The EMCDDA hired interim workers through a framework contract without respecting the requirements of Directive 2008/104/EC and of the Portuguese labour law. The EMCDDA should analyse the working conditions of its interim workers and ensure they are in line with European and national labour law.	Ongoing

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

## The EMCDDA's reply

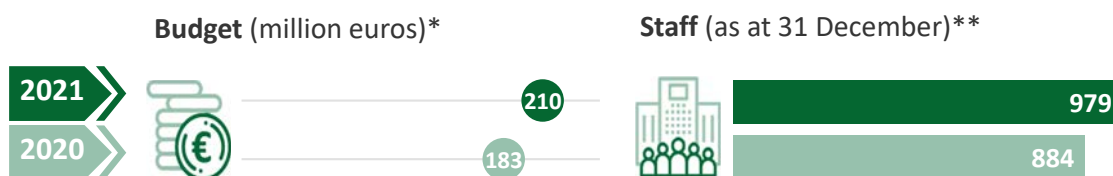
The EMCDDA has no comments/remarks.

## 3.33. European Union Agency for Law Enforcement Cooperation (Europol)

### Introduction

**3.33.1.** The European Union Agency for Law Enforcement Cooperation (“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>178</sup> replacing and repealing Council Decision (2009/371/JHA)<sup>179</sup>. Europol’s objective is to support action by the Member States’ police authorities and other law enforcement services. It also supports mutual cooperation in preventing and combating serious crime affecting two or more Member States, forms of crime which affect a common interest covered by EU policy, and terrorism. *Figure 3.33.1* presents key figures for Europol<sup>180</sup>.

**Figure 3.33.1 – Key figures for Europol**



\* 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 Europol for the 2020 and 2021 financial years; staff figures provided by Europol.

### Information in support of the statement of assurance

**3.33.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>178</sup> Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol).

<sup>179</sup> Council Decision of 6 April 2009 establishing the European Police Office (Europol).

<sup>180</sup> More information on Europol’s role and activities is available on its website: [www.europol.europa.eu](http://www.europol.europa.eu).

## European Union Agency for Law Enforcement Cooperation (Europol)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by Europol's management.

**3.33.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of Europol's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 European Union Agency for Law Enforcement Cooperation ("Europol"), which comprise the financial statements<sup>181</sup> and the reports on the implementation of Europol's budget<sup>182</sup> for the financial year ended 31 December 2021, 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, Europol's accounts for the year ended 31 December 2021 present fairly, in all material respects, Europol's financial position at 31 December 2021, 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

<sup>181</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>182</sup> The reports on the implementation of the budget comprise the reports, which aggregate all budgetary operations, and the explanatory notes.

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

**3.33.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.33.9.** Between 2019 and 2021, Europol assessed two cases of a potential conflict of interest in relation to a senior member of staff taking up a new job elsewhere. In the one case we reviewed, we found that, in contravention of Article 16 of the Staff Regulations, Europol did not issue its decision within the deadline and thus effectively authorised the person concerned to take up the new job without any restrictions.

## Follow-up of previous years' observations

**3.33.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	Europol irregularly prolonged the duration of a framework contract for the provision of business travel services after it expired, and introduced new price aspects. Europol's contract management and ex-ante controls should be improved.	Completed
2019	Europol irregularly prolonged the duration of a framework contract for the provision of business travel services by signing two amendments to it after it had expired in 2018. This demonstrates weaknesses in contract management and ex-ante controls.	Completed
2019	The tender specifications for a framework contract for furniture, accessories and related services were not specific enough. This undermined the competitive nature of the tendering procedure. Europol 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.	N/A
2020	Europol had paid late in 33 % of cases. We observed similar levels of delays in 2019, 2018 and 2017. This recurrent weakness exposes Europol to reputational risk.	Ongoing



European Union Agency for Law Enforcement Cooperation (Europol)

## Europol's reply

**3.33.9.** Europol takes note of the ECA's observation and will adapt its procedures for communicating to the concerned senior staff member the related decision within the applicable timelines. From a present-day assessment of the case ex-post, Europol ascertains that the organisation was not exposed to a conflict of interest situation under Article 16 of the EU Staff Regulations, and thus no restrictions were required.



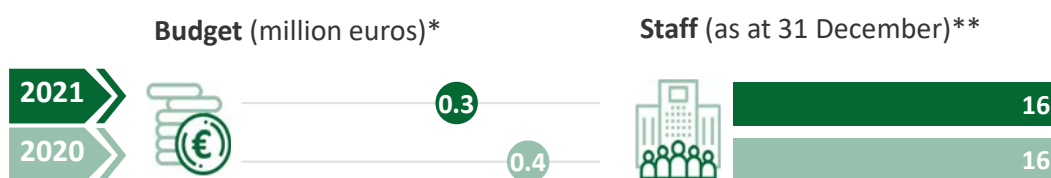
## **Agencies funded under MFF heading 7 – European Public Administration**

## 3.34. Euratom Supply Agency (ESA)

### Introduction

**3.34.1.** The Euratom Supply Agency (“ESA”), located in Luxembourg, was created in 1958<sup>183</sup>. Its statutes were overhauled by Council Decision 2008/114/EC, Euratom<sup>184</sup>. ESA's main task is to ensure there is a regular supply of nuclear materials, in particular nuclear fuels, to EU users. It does so by managing a common supply policy based on the principle of equal access to sources of supply. *Figure 3.34.1* presents key figures for ESA<sup>185</sup>.

**Figure 3.34.1 – Key figures for ESA**



\* 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 ESA for the 2020 and 2021 financial years; staff figures provided by ESA.

### Information in support of the statement of assurance

**3.34.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ESA’s management.

**3.34.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ESA’s management and of those charged with governance, and

<sup>183</sup> OJ 27, 6.12.1958, p. 534/58.

<sup>184</sup> Council Decision 2008/114/EC, Euratom establishing Statutes for the Euratom Supply Agency.

<sup>185</sup> More information on ESA’s role and activities is available on its website: <http://ec.europa.eu/euratom/index.html>.

## Euratom Supply Agency (ESA)

the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

### The ECA'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 Euratom Supply Agency (ESA), which comprise the financial statements<sup>186</sup> and the reports on the implementation of ESA's budget<sup>187</sup> for the financial year ended 31 December 2021, 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, ESA's accounts for the year ended 31 December 2021 present fairly, in all material respects, ESA's financial position at 31 December 2021, 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>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 the 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

**3.34.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 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 2021 are legal and regular in all material respects.

## Follow-up of previous years' observations

**3.34.8.** 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 year's observations

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	Carry-overs of committed appropriations were high for Title II (administrative expenditure). 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 further improve its budget planning and its implementation cycles.	Completed

Euratom Supply Agency (ESA)

## **ESA's reply**

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



## **Self-financed Agencies**



## 3.35. Translation Centre for the Bodies of the European Union (CdT)

### Introduction

**3.35.1.** The Translation Centre for the Bodies of the European Union (“the CdT”), which is located in Luxembourg, was created by Council Regulation (EC) No 2965/94<sup>188</sup>. The CdT's task is to provide European Union bodies with translation services. *Figure 3.35.1* presents key figures for the CdT<sup>189</sup>.

**Figure 3.35.1 – Key figures for the CdT**



\* 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 CdT for the 2020 and 2021 financial years; staff figures provided by the CdT.

### Information in support of the statement of assurance

**3.35.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the CdT’s management.

**3.35.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the CdT’s management and of those charged with governance,

<sup>188</sup> Regulation (EC) No 2965/94 setting up a Translation Centre for bodies of the European Union.

<sup>189</sup> More information on the CdT’s role 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)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

#### 3.35.4. We have audited:

- (a) the accounts of the Translation Centre for the Bodies of the European Union ("the CdT"), which comprise the financial statements<sup>190</sup> and the reports on the implementation of the CdT's budget<sup>191</sup> for the financial year ended 31 December 2021, 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

**3.35.5.** In our opinion, the CdT's accounts for the year ended 31 December 2021 present fairly, in all material respects, the CdT's financial position at 31 December 2021, 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>190</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>191</sup> The reports on the 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

**3.35.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.35.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.35.9.** We observed a number of weaknesses in the CdT's public procurement procedures. In two cases, the CdT had signed a contract using a negotiated procedure with a single provider and in one case – with three providers, in all three cases, without the prior publication of a contract notice. In two of the three cases, the CdT justified its choice of procedure by the need to protect exclusive rights, including intellectual property rights. In the other case, it justified its choice of procedure by extreme urgency. In all three cases, we found that the CdT's justification was insufficient, as the intellectual property rights were not identified and the extreme urgency was not demonstrated. Consequently, the contracts are irregular, as is the total amount of €108 200 in associated payments.

## Observations on management and control systems

**3.35.10.** We also found weaknesses in the way that two of these three procedures had been documented. In one case, the members of the evaluation committee had not signed declarations of absence of conflict of interest. In the other case, the CdT had not taken a formal decision not to appoint an evaluation committee, had not issued an evaluation report or an award decision, and had not published an award notice.

## The CdT's reply

**3.35.9.** The Centre takes note of the observation and is committed to take swift action in order to ensure that applicable rules and regulations are respected.

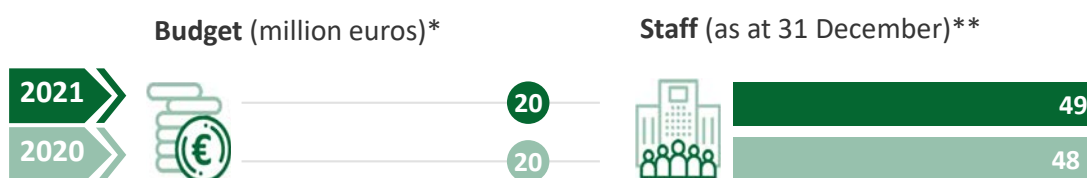
**3.35.10.** The Centre takes note of the observation and is committed to ensure that all pertinent actions are taken in order to address it.

## 3.36. Community Plant Variety Office (CPVO)

### Introduction

**3.36.1.** The Community Plant Variety Office (“the CPVO”), which is located in Angers, was created by Council Regulation (EC) No 2100/94<sup>192</sup>. Its main task is to register and examine applications for the grant of EU 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 3.36.1* presents key figures for the CPVO<sup>193</sup>.

**Figure 3.36.1 – Key figures for the CPVO**



\* 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 CPVO for the 2020 and 2021 financial years; staff figures provided by the CPVO.

### Information in support of the statement of assurance

**3.36.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the CPVO’s management.

**3.36.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the CPVO’s management and of those charged with

<sup>192</sup> Regulation (EC) No 2100/94 on Community plant variety rights.

<sup>193</sup> More information on the CPVO’s role and activities is available on its website: [www.cpvo.europa.eu](http://www.cpvo.europa.eu).

## Community Plant Variety Office (CPVO)

governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Community Plant Variety Office ("the CPVO"), which comprise the financial statements<sup>194</sup> and the reports on the implementation of the CPVO's budget<sup>195</sup> for the financial year ended 31 December 2021, 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 CPVO's accounts for the year ended 31 December 2021 present fairly, in all material respects, the CPVO's financial position at 31 December 2021, 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>194</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>195</sup> The reports on the 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 2021 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 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.36.9.** In a procurement procedure for security services, we found the following shortcomings.

- (a) The annual turnover threshold had been set too high in the tender specifications, at €240 000, or four times the estimated annual contract value. This goes against point 19 of Annex I of the Financial Regulation, which stipulates that the minimum yearly turnover must not exceed two times the estimated annual contract value. One tenderer had been incorrectly excluded for not reaching this threshold.
- (b) Another tenderer, a business created in April 2019, was unable to produce annual accounts for the last two years to show the required yearly turnover. The evaluation committee had not accepted the insurance (to cover a risk of €8 000 000) provided by the tenderer, or asked it to demonstrate its financial capacity in another way; for example, by producing a business plan for 2021, which contravenes Article 167 of the Financial Regulation. The evaluation committee excluded this tenderer.

Based on the above, we consider that the procurement procedure (which concluded with a contract to the value of €249 604 being awarded) and the associated payments (€37 441 in 2021) were irregular.

## Community Plant Variety Office (CPVO)

**Follow-up of previous years' observations**

**3.36.10.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	Although the CPVO became operational in 1995, no headquarters agreement has yet been signed with the host Member State.	Ongoing (Not under the CPVO's control)
2016	The CPVO's founding Regulation does not require periodic external performance evaluations.	Ongoing (Not under the CPVO's control)

Community Plant Variety Office (CPVO)

## **CPVO's reply**

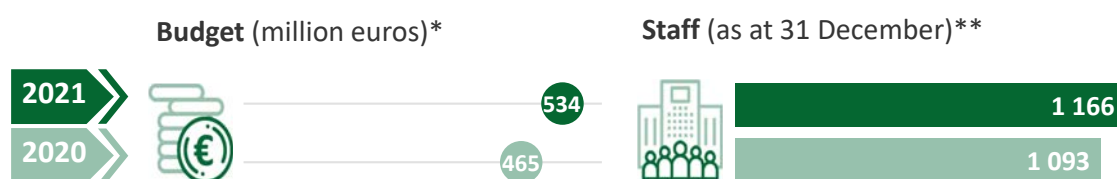
The CPVO takes note of the observations of the Court on the legality and regularity of transactions and shall apply this in future procedures.

## 3.37. European Union Intellectual Property Office (EUIPO)

### Introduction

**3.37.1.** The European Union Intellectual Property Office (“EUIPO”), which is located in Alicante, was established by Regulation (EU) 2017/1001 of the European Parliament and of the Council<sup>196</sup>. EUIPO is responsible for managing the EU trademark and registered Community designs, European and international cooperation in the field of intellectual property, as well as the European Observatory on Infringements of Intellectual Property Rights. EUIPO is the successor of the Office for Harmonisation in the Internal Market (“OHIM”) set up by Council Regulation (EC) No 40/94<sup>197</sup>. *Figure 3.37.1* presents key figures for EUIPO<sup>198</sup>.

**Figure 3.37.1 – Key figures for EUIPO**



\* 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 EUIPO for the 2020 and 2021 financial years; staff figures provided by EUIPO.

### Information in support of the statement of assurance

**3.37.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EUIPO’s management.

<sup>196</sup> Regulation (EU) 2017/1001 on the European Union trade mark.

<sup>197</sup> Regulation (EC) No 40/94 on the Community trade mark.

<sup>198</sup> More information on EUIPO’s role and activities is available on its website: [www.euiipo.europa.eu](http://www.euiipo.europa.eu).

## European Union Intellectual Property Office (EUIPO)

**3.37.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EUIPO’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

**3.37.4.** We have audited:

(a) the accounts of the European Union Intellectual Property Office (“EUIPO”), which comprise the financial statements<sup>199</sup> and the reports on the implementation of EUIPO’s budget<sup>200</sup> for the financial year ended 31 December 2021, 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

**3.37.5.** In our opinion, EUIPO’s accounts for the year ended 31 December 2021 present fairly, in all material respects, EUIPO’s financial position at 31 December 2021, 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>199</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>200</sup> The reports on the 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

**3.37.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.37.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on the legality and regularity of transactions

**3.37.9.** In our audit report for the 2018<sup>201</sup> financial year, we concluded that a procurement procedure for cleaning services was irregular. As a result, all subsequent payments made based on this framework contract are irregular. In 2021, the associated payments amounted to €1 708 242.

## Observations on budgetary management

**3.37.10.** EUIPO modified its budget structure in 2021, presenting the payment of €8.5 million made to the European School in Alicante under Title 4, "Contribution to EU policies", instead of Title 1, "Expenditure relating to persons working with the Office", which had been the practice in previous years.

EUIPO justified this change, stating in its accounts that the "financing of the European School of Alicante, under a renewed agreement concluded in 2020 in accordance with Article 7 of the Office's Financial Regulation, is treated since 2021 as 'separate budget items', within the meaning of Article 10(4) of the Office's Financial Regulation, and therefore funded through the

<sup>201</sup> Paragraph 3.34.8 of [ECA's annual report on EU Agencies for the financial year 2018](#).

## European Union Intellectual Property Office (EUIPO)

Office's financial reserves. This allows for productively mobilising the financial reserves. It is therefore reported under a different category together with the other contributions to EU policies funded through the financial reserves." However, we note that the agreement concerning the financing of the European School in Alicante by EUIPO does not meet the cumulative conditions set in Article 7(1) of the EUIPO's Financial Regulation, i.e. the requirement of making use of specific expertise of the Office and of the contribution to the financing of the European School in Alicante falling within EUIPO's objectives.

In this context, it should also be noted that under the EU multiannual financial framework (MFF), the expenditure for the financing of European Schools is covered under the same heading as the administrative expenditure of the institutions, which includes staff expenditure (e.g. Heading 7 – European Public Administration of the 2021-2027 MFF or Heading 5 – Administration of the 2014-2020 MFF).

Therefore, and in view of the School's role in educating EUIPO staff members' children and its contribution to attracting and retaining EUIPO's highly qualified staff, we consider that EUIPO's payment to the European School is not a contribution to EU policies, as suggested by the inclusion of that expenditure in Title 4 of EUIPO's budget.

In essence, we consider co-financing of the European School to be an instrument of human resources policy, linked to the wellbeing of the EUIPO's staff and their families. Re-classifying the related payments as a contribution to an EU policies goes against the nature of the expenditure.

### Follow-up of previous years' observations

**3.37.11.** 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 year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2018	EUIPO signed a contract for cleaning services with a tenderer who submitted an abnormally low offer. The procurement procedure and the underlying payments are irregular. EUIPO should analyse situations of potentially abnormal offers in a rigorous manner to ensure compliance with the Financial Regulation and fair competition.	Ongoing
2019	<p>EUIPO 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 EUIPO, had been invited.</p>	Ongoing

## European Union Intellectual Property Office (EUIPO)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	The selection procedure was therefore irregular, as these weaknesses undermined the principles of transparency and equal treatment of candidates.	
2019	EUIPO grants an allowance to staff performing stand-by duty in the areas of infrastructure. 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 EUIPO. This is in line with the practice in the EU institutions. Furthermore, EUIPO should improve the checks it carries out in connection with stand-by duty in order to prevent irregular payments.	N/A
2019	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. 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.	N/A
2019	We recall that in the <a href="#">ECA's opinion No 01/2019 on EUIPO's Financial Regulation</a> , the ECA concluded that EUIPO's budget surpluses were not being put to any productive use, either at the level of EUIPO or at the level of the EU, and that EUIPO, together with the European Commission, should explore for example the possibility of using the budget surpluses	Completed



## European Union Intellectual Property Office (EUIPO)

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	to back up financial instruments supporting European enterprises' research and innovation activities and growth.	

## EUIPO's reply

**3.37.9** As stated in the Office's reply included in the 2018 audit report, 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.

The Office did not identify any reasons to terminate the contract early and consequently it has remained in force until its expiry in March 2022.

**3.37.10** The reporting of the Office's contribution to the European School of Alicante under Title 4 of the budget was performed in 2021 as a consequence of a renewed agreement with the Commission and the European School entering into force end of 2020 and with the aim of complying with the new provisions of its revised Financial Regulation (which came into force in 2019), in particular Article 10 (4) which holds, amongst others, that "where the Office implements agreements concluded in accordance with Article 7 of this Regulation (contribution Agreements, grant agreements and financial framework partnerships), it shall hold separate budget items on the revenue and expenditure operations" and in order to productively use the budget surplus; alleviating pressure on the EU budget.

In view of the above, the Office considered appropriate to report separately in its budget the co-financing of the complementary contribution which, in the absence of contribution agreement with the Office, would continue to be paid by the European Commission from the EU budget, in accordance with Article 25 of the Convention defining the Statute of the European Schools of 21 June 1994.

Besides, the agreement, being limited in time and only renewable upon approval of the Office's governing bodies, the Office considers that it does not constitute recurrent administrative expenditure of the Office, all the more relevant since the legislator did not include this type of expenditure amongst the tasks or other obligations of the Office.

This was transparently presented to all stakeholders involved in the adoption of the Office's budget and the work programme, including representatives of the European Commission.

Furthermore, prior to adoption, a formal consultation on the work programme was carried out with the European Commission in accordance with the Financial Regulation of the Office and did not call its sound character into question. Also, the SPD template expressly provides for contribution agreements by agencies with the European Commission for the European Schools.

The Office's co-financing of the European School is performed via a tri-partite agreement, most recently renewed in 2020 for a period of 5 years. With this agreement, the Office continued to pay a complementary contribution with own financial resources.

### European Union Intellectual Property Office (EUIPO)

The final beneficiary of the agreement between the Commission, the Office and the European School is the Commission since the former reduced its financing to the European school against the Office's contribution.

The Office considers that reporting the co-financing of the European School of Alicante as staff related cost under the operational budget would go against the requirements ("shall hold separate budget items") of Article 10(4) of the Financial Regulation.

Given that the expenditures relating to the Contribution relate to an agreement signed between EUIPO, the Commission and the European Schools based on Article 7, the Office considers that the use of the surplus for the financing of the contribution and its itemisation in Title 4 is not only legal but also legitimate.

For this reason, the Office considers that the contribution to the European School does not correspond to recurrent administrative expenditure of the Office since the agreement is limited in time and there is no legal instrument other than the agreement that would require the Office to pay the contribution (contractual nature).

The Office will however take into consideration the Court's observation together with the stakeholders involved in the context of future budgeting exercises.

## 3.38. Single Resolution Board (SRB)

### Introduction

**3.38.1.** The Single Resolution Board (“the SRB”), 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>202</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, can be 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. 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.

**3.38.2.** 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 3.38.1* presents key figures for the SRB<sup>203</sup>.

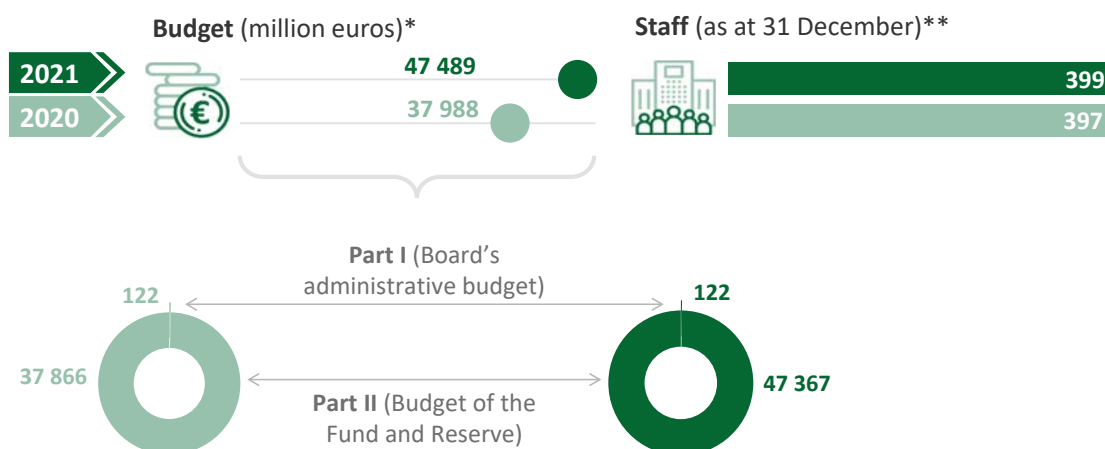
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<sup>202</sup> Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

<sup>203</sup> More information on the SRB’s role and activities is available on its website: <https://www.srb.europa.eu>.

## Single Resolution Board (SRB)

Figure 3.38.1 – Key figures for the SRB



\* 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 SRB for the 2020 and 2021 financial years; staff figures provided by the SRB.

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.

## Information in support of the statement of assurance

**3.38.3.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by the SRB's management.

**3.38.4.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of the SRB's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## The ECA'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 Single Resolution Board (“the SRB”), which comprise the financial statements<sup>204</sup> and the reports on the implementation of the SRB's budget<sup>205</sup> for the financial year ended 31 December 2021, 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 SRB's accounts for the year ended 31 December 2021 present fairly, in all material respects, the SRB's financial position at 31 December 2021, 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

**3.38.7.** We draw attention to note 8.L “Disclosure on appeals and legal cases” of the SRB's accounts, which describes administrative appeals and judicial proceedings related to the 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.

<sup>204</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>205</sup> The reports on the implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

## Single Resolution Board (SRB)

The SRB considers that it is probable that some of the pending cases will require an outflow of economic resources to settle. Consequently, the exposure related to those cases is recognised as a provision for an amount of € 242 750 corresponding to the legal costs of the opposing party's legal representations (in note 7.F). The SRB considers it is not probable that an outflow of economic resources will be required to settle the other cases. Therefore, the related exposure is not recognised as a provision in the statement of financial position.. Their possible impact on the SRB's financial statements for the financial year ended 31 December 2021 (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.

**3.38.8.** We draw attention to Note 8.S “Events after the reporting period” of the SRB's accounts, which describes the subsequent events of the resolution of Sberbank AG and the effect of the Russian war of aggression against Ukraine on the activities of the SRB and its portfolio of investments.

### Legality and regularity of the transactions underlying the accounts

#### Revenue

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

**3.38.9.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

#### Emphasis of matter

**3.38.10.** We note that the emphasis of matter paragraph for reliability of the accounts described in paragraph [3.38.7](#) also applies in full for the legality and regularity of revenue.

#### Other matter

**3.38.11.** Without calling into question the opinion expressed above, we wish to emphasise that Fund contributions are calculated on the basis of information provided by credit institutions (and some investment firms) 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 insist that a comprehensive and consistent control framework be put in place 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. We also noted that for entities that are part of a group referred to in Article 7(2) (a) of SRM Regulation, agreed procedures by auditors are mandatory from

## Single Resolution Board (SRB)

2022. The SRB cannot release details of the risk assessed contribution calculation for each credit institution, as they are interlinked and include confidential information about other credit institutions. Although this may affect the transparency of these calculations, the Court of Justice considered that the SRB's obligation to state reasons for its ex-ante contributions' decisions must be balanced against the principle of the protection of business secrets. It ruled<sup>206</sup> that "Delegated Regulation 2015/63 does not prevent the SRB from disclosing, in collective and anonymised form, sufficient information to enable an institution to understand how its individual situation was taken into account in the calculation of its ex ante contribution to the SRF relative to the situation of all the other institutions concerned." We noted that for the calculation of the 2021 contributions, SRB organised a consultation phase for the institutions in question in order for them to issue comments on any aspect of the calculation exercise. In this consultation, common data points from the contributions calculation exercise were communicated that allowed institutions, together with the data in the institution's individual data reporting form, to simulate the calculation of the 2021 ex-ante contribution. This new step in the contribution calculation process has increased the SRB's transparency towards institutions. Such a consultation phase was also organised for the calculation of the 2022 contributions.

### Payments

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

**3.38.12.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

### Observations on management and control systems

**3.38.14.** We found some deficiencies in two audited recruitment procedures which could undermine the principle of transparency.

- (a) In one of these procedures, even though the selection panel had initially decided to place a maximum of five candidates on the reserve list, after evaluating the candidates, it decided to increase the number to eight.
- (b) We could not find a direct link between some of the general competences mentioned in the vacancy notice and the agreed interview questions, oral presentations and written tests.

<sup>206</sup> Judgment of 15 July 2021, Commission / Landesbank Baden-Württemberg and SRB (C-584/20 P and C-621/20 P), paragraphs 120 and 139.



## Single Resolution Board (SRB)

**Follow-up of previous years' observations**

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

## Single Resolution Board (SRB)

## Annex – Follow-up of previous year's observations

Year	ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	The SRB has not carried out an assessment of whether the service provider of the Investment Management Agreement with a national central bank of the Eurosystem for the outsourcing of the operational aspects of the investment process of the Single Resolution Fund (SRF) and the custodian agreement with the same NCB for the safeguarding of assets, cash management, and reconciliation and oversight duties on the assets under management, 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.	Ongoing
2020	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.	Ongoing

## SRB's reply

**3.38.11.** 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, 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. 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.

**3.38.14. a)** The SRB takes note of the finding and will document the reasons for any changes in the pre-defined number of the candidates to be placed in the final reserve list.

**3.38.14. b)** The SRB takes note of the observation and has added an additional internal document to map the competences explicitly to the current assessment documents (interview questions, oral presentation and written test).

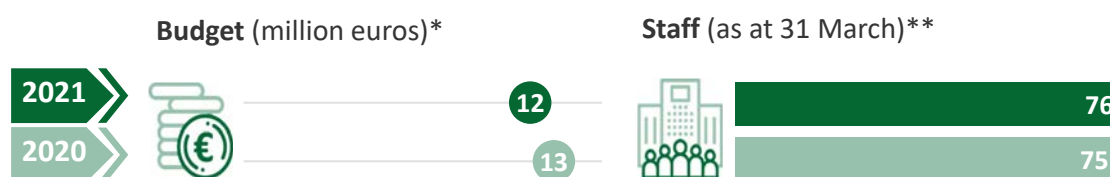
## **European Commission Executive Agencies**

## 3.39. Consumers, Health, Agriculture and Food Executive Agency (Chafea)

### Introduction

**3.39.1.** Between its establishment on 1 January 2005 and its closure on 31 March 2021, the Consumers, Health, Agriculture and Food Executive Agency (“Chafea”) was located in Luxembourg. On 1 April 2021, Chafea’s tasks were taken over by the European Innovation Council and SMEs Executive Agency (EISMEA), European Research Executive Agency (REA), and by a newly created European Health and Digital Executive Agency (HaDEA)<sup>207</sup>. All remaining assets and liabilities were taken over HaDEA. *Figure 3.39.1* presents key figures for Chafea<sup>208</sup>.

**Figure 3.39.1 – Key figures for Chafea**



\* 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 Chafea for the 2020 and 2021 financial years; staff figures provided by Chafea.

### Information in support of the statement of assurance

**3.39.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by Chafea’s management.

**3.39.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of Chafea’s management and of those charged with governance,

<sup>207</sup> Commission Implementing Decision (EU) 2021/173 on the executive agencies.

<sup>208</sup> More information on Chafea’s role and activities is available on its website: <http://ec.europa.eu/chafea>.

Consumers, Health, Agriculture and Food Executive Agency (Chafea)

and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

#### 3.39.4. We have audited:

- (a) the accounts of the Consumers, Health, Agriculture and Food Executive Agency (Chafea), which comprise the financial statements<sup>209</sup> and the reports on the implementation of Chafea's budget<sup>210</sup> for the period 1 January to 31 March 2021, 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

**3.39.5.** In our opinion, Chafea's accounts for the period 1 January to 31 March 2021 present fairly, in all material respects, Chafea's financial position at 31 March 2021, 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>209</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>210</sup> The reports on the 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

**3.39.6.** In our opinion, the revenue underlying the accounts for the period 1 January to 31 March 2021 is legal and regular in all material respects.

### Payments

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

**3.39.7.** In our opinion, the payments underlying the accounts for the period 1 January to 31 March 2021 are legal and regular in all material respects.

## Follow-up of previous years' observations

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

Consumers, Health, Agriculture and Food Executive Agency (Chafea)

## Annex – Follow-up of previous year’s observations

Year	The ECA’s observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
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.	Completed



Consumers, Health, Agriculture and Food Executive Agency (Chafea)

## Chafea's reply

"The Agency has taken note of the ECA's report".

## 3.40. European Climate Infrastructure and Environment Executive Agency (CINEA)

### Introduction

**3.40.1.** The European Climate, Infrastructure and Environment Executive Agency (“CINEA”), which is located in Brussels, was set up by Commission Implementing Decision (EU) 2021/173<sup>211</sup>, applicable from 1 April 2021 to 31 December 2028. CINEA’s mission is to support stakeholders in delivering the European Green Deal. It also implements parts of various EU programmes, most of them associated with environment and climate policy. CINEA is the successor of the Innovation and Networks Executive Agency (“INEA”), set up by Commission Implementing Decision 2013/801/EU<sup>212</sup>, which operated from 1 January 2014 to 31 March 2021. *Figure 3.40.1* presents key figures for CINEA<sup>213</sup>.

**Figure 3.40.1 – Key figures for CINEA**



\* 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 CINEA for the 2020 and 2021 financial years; staff figures provided by CINEA.

The increase to the budget and the staff numbers is explained by the expansion of the agency’s mandate in 2021.

<sup>211</sup> Commission Implementing Decision (EU) 2021/173 establishing the European Climate, Infrastructure and Environment Executive Agency.

<sup>212</sup> 2013/801/EU: Commission Implementing Decision establishing the Innovation and Networks Executive Agency.

<sup>213</sup> More information on CINEA’s role and activities is available on its website: [https://cinea.ec.europa.eu/index\\_en](https://cinea.ec.europa.eu/index_en).

## Information in support of the statement of assurance

**3.40.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by CINEA’s management.

**3.40.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of CINEA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

**3.40.4.** We have audited:

- (a) the accounts of the European Climate Infrastructure and Environment Executive Agency (“CINEA”), which comprise the financial statements<sup>214</sup> and the reports on the implementation of CINEA’s budget<sup>215</sup> for the financial year ended 31 December 2021, 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>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 the 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

**3.40.5.** In our opinion, CINEA's accounts for the year ended 31 December 2021 present fairly, in all material respects, CINEA's financial position at 31 December 2021, 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

**3.40.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.40.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

European Climate Infrastructure and Environment Executive Agency (CINEA)

## **CINEA's reply**

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

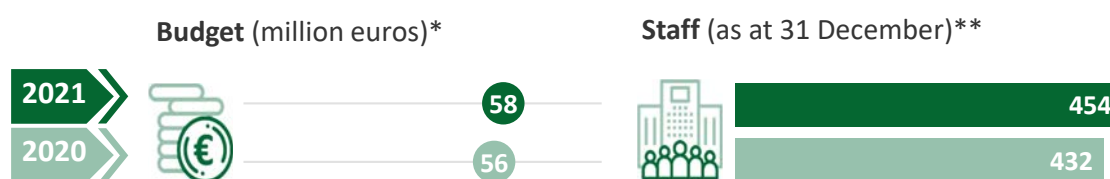
## 3.41. European Education and Culture Executive Agency (EACEA)

### Introduction

**3.41.1.** The European Education and Culture Executive Agency (“EACEA”), which is located in Brussels, was set up by Commission Implementing Decision (EU) 2021/173<sup>216</sup>, applicable from 1 April 2021 to 31 December 2028. EACEA’s thematic focus remains on educational and creative activities, and on projects close to EU citizens. EACEA is the successor of the Education, Audiovisual and Culture Executive Agency (“EACEA”), set up by Commission Decision 2013/776/EU<sup>217</sup>, which had operated from 1 January 2014 to 31 March 2021.

*Figure 3.41.1* presents key figures for EACEA<sup>218</sup>.

**Figure 3.41.1 – Key figures for EACEA**



\* 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 EACEA for the 2020 and 2021 financial years; staff figures provided by EACEA.

<sup>216</sup> Commission Implementing Decision (EU) 2021/173 establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency.

<sup>217</sup> Commission Implementing Decision (EU) 2013/776 establishing the ‘Education, Audio-visual and Culture Executive Agency’.

<sup>218</sup> More information on EACEA’s role and activities is available on its website: [www.eacea.europa.eu](http://www.eacea.europa.eu).

## Information in support of the statement of assurance

**3.41.2.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EACEA's management.

**3.41.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EACEA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

**3.41.4.** We have audited:

- (a) the accounts of the European Education and Culture Executive Agency ("EACEA"), which comprise the financial statements<sup>219</sup> and the reports on the implementation of EACEA's budget<sup>220</sup> for the financial year ended 31 December 2021, 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>219</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>220</sup> The reports on the 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

**3.41.5.** In our opinion, EACEA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EACEA's financial position at 31 December 2021, 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

**3.41.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.41.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on budgetary management

**3.41.9.** We found that EACEA had carried over €6.36 million (12 %) of 2021 appropriations to 2022. Of that amount, €2.6 million, (29 %), related to administrative expenditure (Title II), and €2.7 million, (54 %), to operational expenditure (Title III). High rates of carry-overs contradict the budgetary principle of annuality and suggest structural issues in the implementation of the budget.



European Education and Culture Executive Agency (EACEA)

Out of the Title II appropriations carried over to 2022, €938 thousand were justified by EACEA by high inflation expectations. However, such considerations should have been taken into account when deciding EACEA's budget. When implementing it, the budgetary principle of annuality should be respected.

European Education and Culture Executive Agency (EACEA)

## **EACEA's reply**

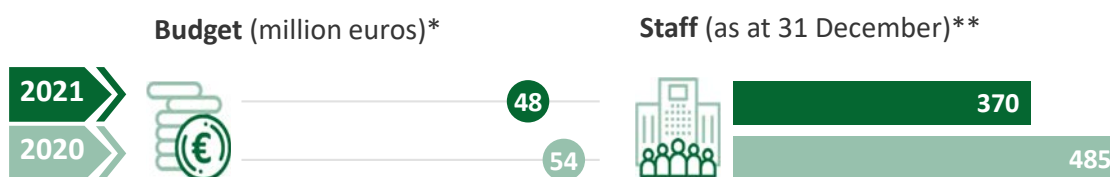
The Agency has taken note of the Court's report.

## 3.42. European Innovation Council and SMEs Executive Agency (EISMEA)

### Introduction

**3.42.1.** The European Innovation Council and SME Executive Agency (“EISMEA”), which is located in Brussels, was set up by Commission Implementing Decision (EU) 2021/173<sup>221</sup>, applicable from 1 April 2021 to 31 December 2028. EISMEA’s mission is to reinforce the EU’s position as a global leader in research and innovation by providing support to European innovators, researchers, businesses and consumers. EISMEA is the successor of the Executive Agency for Small and Medium-sized Enterprises (“EASME”), which operated from 1 January 2014 to 31 March 2021. *Figure 3.42.1* presents key figures for EISMEA<sup>222</sup>.

**Figure 3.42.1 – Key figures for EISMEA**



\* 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 EISMEA for the 2020 and 2021 financial years; staff figures provided by EISMEA.

The differences in the number of staff between 2021 and 2020 is due to the new mandate of EISMEA, which is different from that of EASME.

### Information in support of the statement of assurance

**3.42.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>221</sup> Commission Implementing Decision (EU) 2021/173 establishing the “European Innovation Council and SME’s Executive Agency”.

<sup>222</sup> More information on EISMEA’s role and activities is available on its website: [https://eisma.ec.europa.eu/index\\_en](https://eisma.ec.europa.eu/index_en).

## European Innovation Council and SMEs Executive Agency (EISMEA)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by EISMEA's management.

**3.42.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of EISMEA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

## Opinion

**3.42.4.** We have audited:

- (a) the accounts of the European Innovation Council and SMEs Executive Agency (EISMEA), which comprise the financial statements<sup>223</sup> and the reports on the implementation of EISMEA's budget<sup>224</sup> for the financial year ended 31 December 2021, 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, EISMEA's accounts for the year ended 31 December 2021 present fairly, in all material respects, EISMEA's financial position at 31 December 2021, 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>223</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>224</sup> The reports on the 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

**3.42.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.42.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on management and control systems

**3.42.9.** In May 2020 EISMEA's predecessor, EASME, launched an inter-institutional procurement procedure for communication and event organisation services, with a total estimated value of €130 million, comprising estimates of the participating institutions. EASME's initial estimate for its share in the contract, substantiated by a supporting justification, was €30 million. However, before the launch of the procurement procedure, some of the participating institutions lowered their initial estimates and the overall estimate was €22 million less as a result. Although EASME's initial estimate of its needs did not change, its share of the contract value was subsequently increased to €52 million, i.e. including a buffer of €22 million, in order to maintain the initial estimated €130 million budget for the whole inter-institutional framework contract. This contravenes point 34 of Annex I of the Financial Regulation.

**3.42.10.** In 2021 EISMEA made several entries related to contract management issues in its registry of exceptions and non-compliance events. These included cases where services had been provided before a contract had been signed, and contract had been amended without any valid budgetary or legal commitments in place. We observed similar issues in 2020 in EISMEA's predecessor (EASME) This recurrence of non-compliance events during the implementation of contracts suggests a weakness of EISMEA's internal controls. This could expose EISMEA to financial, legal and reputational risks.

## Follow-up of previous years' observations

**3.42.11.** 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 year's observations

Year	The ECA's observations	Status of corrective action (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 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	EASME 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 EASME to the risk that potential conflicts of interest may have remained undetected.	Completed
2020	EASME paid for a software licence and maintenance under a framework contract for the acquisition of software licences and IT services 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.	Ongoing

## EISMEA's reply

**3.42.9.** At the time of the launch of the tender procedure, negotiations were still ongoing regarding EU's budget 2021-2027, so that the final list of programmes and final figures were not yet available. In addition, at the time of the assessment of the estimated budget, it was still expected that EASME would add more programmes to its portfolio and would grow bigger. Therefore, the estimations had to provide for a margin for possible future unexpected needs, including additional contingency to cover for any institution, agency or body, which may be established within the duration of the future contract.

**3.42.10.** 2021 was a transition year, witnessing significant changes as to the composition of staff and the management of newly delegated programs, at the time where the procedures were in the process of being established.

The Agency reviews its register of deviations two times per year to ensure that action plans to prevent similar events from happening in the future have been effectively implemented. Awareness raising activities and trainings are also organised.

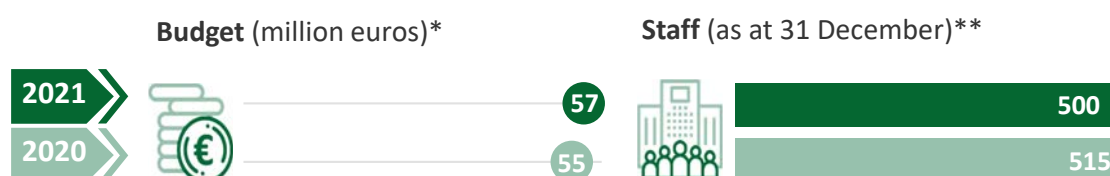


## 3.43. European Research Council Executive Agency (ERCEA)

### Introduction

**3.43.1.** The European Research Council Executive Agency (“ERCEA”), which is located in Brussels, was created by Commission Decision 2008/37/EC<sup>225</sup>, repealed and replaced by Commission Implementing Decision 2013/779/EU<sup>226</sup>, itself replaced by the new Commission Implementing Decision<sup>227</sup> (EU) 2021/173. The new Decision, which is applicable from 1 April 2021 until 31 December 2028, gives ERCEA responsibility for implementation of European Research Council actions under Horizon Europe. *Figure 3.43.1* presents key figures for ERCEA<sup>228</sup>.

**Figure 3.43.1 – Key figures for ERCEA**



\* 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 ERCEA for the 2020 and 2021 financial years; staff figures provided by ERCEA.

<sup>225</sup> Commission Decision 2008/37 EC setting up the European Research Council Executive Agency for the management of the specific Community programme Ideas in the field of frontier research.

<sup>226</sup> Commission Implementing Decision 2013/779/EU establishing the European Research Council Executive Agency.

<sup>227</sup> Commission Implementing Decision (EU) 2021/173 establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency.

<sup>228</sup> More information on ERCEA’s role and activities is available on its website: <https://erc.europa.eu/about-erc/erc-executive-agency-ercea>.

## Information in support of the statement of assurance

**3.43.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by ERCEA’s management.

**3.43.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of ERCEA’s management and of those charged with governance, and the auditor’s responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

**3.43.4.** We have audited:

- (a) the accounts of the European Research Council Executive Agency (“ERCEA”), which comprise the financial statements<sup>229</sup> and the reports on the implementation of ERCEA’s budget<sup>230</sup> for the financial year ended 31 December 2021, 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>229</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>230</sup> The reports on the 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

**3.43.5.** In our opinion, ERCEA's accounts for the year ended 31 December 2021 present fairly, in all material respects, ERCEA's financial position at 31 December 2021, 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

**3.43.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.43.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

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

## Observations on budgetary management

**3.43.9.** ERCEA's rental contract obliged it to reimburse its landlord for any taxes associated with the premises. The commune of Saint-Josse-ten-Noode (Brussels), where the premises are located, imposed a municipality tax on the landlord, who asked ERCEA for reimbursement. The landlord disputes its liability for this tax and has initiated a legal procedure in this matter before a Belgian Court. At the end of 2021, the Commission's Office for Infrastructure in Brussels recommended to ERCEA to reimburse the landlord. The 2021

## European Research Council Executive Agency (ERCEA)

budgetary appropriations were insufficient to cover the legal obligations. ERCEA did not ask for an amending budget. The gap was €222 667.

The insufficiency of appropriations to cover legal obligations entered into in 2021 was not entered into the register of exceptions until after our audit, going against internal control principles.

### Follow-up of previous years' observations

**3.43.10.** 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 year’s observations

Year	The ECA’s observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2020	In July 2019, ERCEA launched a procurement procedure for the provision of audio-visual services. The evaluation committee did not properly assess the quality criterion for a case study. The procedure and the related payments of €36 400 made in 2020 were irregular. ERCEA subsequently re-evaluated the tenders, terminated the framework contract and ranked the tenders afresh.	Completed

European Research Council Executive Agency (ERCEA)

## ERCEA's reply

**3.43.9.** ERCEA followed the common approach recommended by OIB. This recommendation to commit and pay the municipality tax for the years 2019-2021 was received only on 21<sup>st</sup> December 2021. ERCEA committed all funds available at that date to cover the tax amount, and lacked €222 667. A budget amendment was impossible, both in terms of time and due to lack of possibility (administrative expenditure is not foreseen by the central services in the end of year transfer exercise).

The insufficiency of appropriations to cover legal obligations was entered into the register of exceptions in May 2022.

## 3.44. European Health and Digital Executive Agency (HaDEA)

### Introduction

**3.44.1.** The European Health and Digital Executive Agency (“HaDEA”), which is located in Brussels, was set up by Commission Implementing Decision (EU) 2021/173<sup>231</sup>. HaDEA was established for a period beginning on 16 February 2021 and ending on 31 December 2028. Its tasks include managing EU action in the area of public health, coordinating digital programmes in areas including industry and space, and implementing outstanding elements of former EU programmes<sup>232</sup>. In April 2021, HaDEA also took over certain support activities previously performed by the Consumers, Health, Agriculture and Food Executive Agency (“Chafea”)<sup>233</sup>.

**3.44.2.** Commission Implementing Decision (EU) 2021/173 established a transitional period<sup>234</sup> during which the Commission managed HaDEA. The transitional period ended on 16 February 2022, when HaDEA gained the operational capacity to implement its own budget.

**Figure 3.44.1** presents key figures for HaDEA<sup>235</sup>.

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<sup>231</sup> Commission Implementing Decision (EU) 2021/173 establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency.

<sup>232</sup> Article 7(2) of Commission Implementing Decision (EU) 2021/173.

<sup>233</sup> Article 21(3) of Commission Implementing Decision (EU) 2021/173.

<sup>234</sup> Article 22 of Commission Implementing Decision (EU) 2021/173.

<sup>235</sup> More information on HaDEA’s role and activities is available on its website: <https://hadea.ec.europa.eu>.

**Figure 3.44.1 – Key figures for HaDEA**

\* 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 HaDEA for the 2020 and 2021 financial years; staff figures provided by HaDEA.

## Information in support of the statement of assurance

**3.44.3.** The ECA's audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency's supervisory and control systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by HaDEA's management.

**3.44.4.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of HaDEA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.



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

### Opinion

#### 3.44.5. We have audited:

- (a) the accounts of the European Health and Digital Executive Agency ("HaDEA"), which comprise the financial statements<sup>236</sup> and the reports on the implementation of HaDEA's budget<sup>237</sup> for the financial year ended 31 December 2021, 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

**3.44.6.** In our opinion, HaDEA's accounts for the year ended 31 December 2021 present fairly, in all material respects, HaDEA's financial position at 31 December 2021, 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

**3.44.7.** We draw attention to note 3.3 of HADEA's final accounts, which discloses that the rental agreement with the Commission's Office for Infrastructure and Logistics in Brussels (OIB) has not been signed yet. Therefore, the figures related to the rental of HaDEA's premises from OIB disclosed in the accounts are based on an estimate.

<sup>236</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>237</sup> The reports on the 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

**3.44.8.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.44.9.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

### Other matter

**3.44.10.** Article 22 of Commission Implementing Decision (EU) 2021/173 entrusted the Director-General of DG SANTE with the authority to act as HaDEA's interim Director until HaDEA gained the operational capacity to implement its own budget. On 19 February 2021, the Director-General of DG SANTE delegated that authority to another DG SANTE official, appointing him as interim Director of HaDEA. Article 26 of HaDEA's Financial Regulation allows budgetary powers to be delegated. However, it cannot be interpreted as allowing the whole authority of the interim Director to be delegated, because this would empty Article 22 of Commission Implementing Decision (EU) 2021/173 of its substance and meaning.

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

## Observations on budgetary management

**3.44.12.** By 31 December 2021, HaDEA had not signed a service-level agreement with the Commission for the rental of its office space. Therefore, the provisional budgetary commitments for office rental in 2021 – a total amount of €2 479 446 – were carried forward without HaDEA having entered into a legal commitment within the time limit laid down in Article 114 of the EU Financial Regulation.

European Health and Digital Executive Agency (HaDEA)

## HaDEA's reply

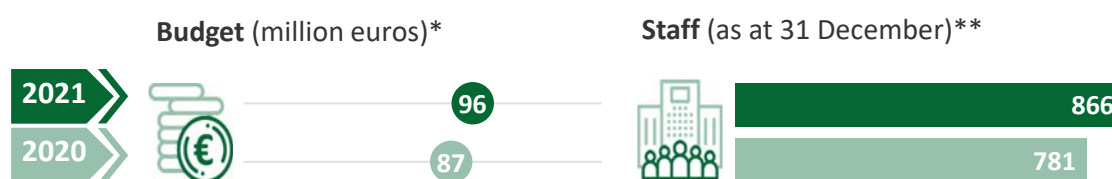
**3.44.7.** HaDEA wishes to clarify that has “de facto” occupied the premises in question since 1/4/2021. Therefore, HaDEA incurred the associated costs and has the legal obligation to pay it. HaDEA has been waiting for the OIB to finalise the rental agreement. HaDEA will execute the payment after the signature of the rental agreement in 2022 that will take effect retroactively to 2021.

## 3.45. European Research Executive Agency (REA)

### Introduction

**3.45.1.** The European Research Executive Agency (“REA”), which is located in Brussels, was set up by Commission Implementing Decision<sup>238</sup> (EU) 2021/173, applicable from 1 April 2021 to 31 December 2028. REA supports the EU Research and Innovation policy by managing projects supported by Horizon Europe framework programme and by its predecessor Horizon 2020. REA also manages the Research Fund for Coal and Steel and promotion measures concerning agricultural products. REA is the successor of the Research Executive Agency, set up by Commission Decision 2008/46/EC<sup>239</sup>, which operated until 31 March 2021. *Figure 3.45.1* presents key figures for REA<sup>240</sup>.

**Figure 3.45.1 – Key figures for REA**



\* 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 REA for the 2020 and 2021 financial years; staff figures provided by REA.

### Information in support of the statement of assurance

**3.45.2.** The ECA’s audit approach comprises analytical audit procedures, direct tests of transactions, and an assessment of key components of an agency’s supervisory and control

<sup>238</sup> Commission Implementing Decision (EU) 2021/173 establishing the European Research Executive Agency.

<sup>239</sup> 2008/46/EC: Commission Decision setting up the Research Executive Agency.

<sup>240</sup> More information on REA’s role and activities is available on its website: [www.ec.europa.eu/rea](http://www.ec.europa.eu/rea).

## European Research Executive Agency (REA)

systems. This is supplemented by evidence resulting from the work of other auditors, and by an analysis of information provided by REA's management.

**3.45.3.** Please refer to section 3.1 of the report for the description of the basis for our opinion, the responsibilities of REA's management and of those charged with governance, and the auditor's responsibilities for the audit of the accounts and underlying transactions. The signature on page 344 forms an integral part of the opinion.

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

### Opinion

**3.45.4.** We have audited:

- (a) the accounts of the European Research Executive Agency ("REA"), which comprise the financial statements<sup>241</sup> and the reports on the implementation of REA's budget<sup>242</sup> for the financial year ended 31 December 2021, 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

**3.45.5.** In our opinion, REA's accounts for the year ended 31 December 2021 present fairly, in all material respects, REA's financial position at 31 December 2021, 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>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 the 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

**3.45.6.** In our opinion, the revenue underlying the accounts for the year ended 31 December 2021 is legal and regular in all material respects.

### Payments

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

**3.45.7.** In our opinion, the payments underlying the accounts for the year ended 31 December 2021 are legal and regular in all material respects.

## Follow-up of previous years' observations

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

European Research Executive Agency (REA)

## Annex – Follow-up of previous year's observations

Year	The ECA's observations	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2017	By the end of 2017, REA had introduced e-invoicing for certain procedures, but it had not yet implemented e-tendering or e-submission.	Completed

European Research Executive Agency (REA)

## REA's reply

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



This Report was adopted by Chamber IV, headed by Mr Mihails Kozlovs, Member of the Court of Auditors, in Luxembourg at its meeting of 20 September 2022.

*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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