



EUROPEAN
COURT
OF AUDITORS

Annual report on EU agencies for the financial year 2019

Contents

	Paragraph
Annual report on EU agencies for the financial year 2019	
Executive summary	I-IV
What we audited	01-18
Decentralised agencies address specific policy needs	05
Commission executive agencies implement EU programmes	06
Other bodies have specific mandates	07
Agencies are financed from various sources and under different MFF headings	08-15
Budgetary and discharge arrangements are similar for all agencies, except for EUIPO, CPVO and SRB	16-17
The EU Agencies Network facilitates inter-agency cooperation and communication with stakeholders	18
Our audit	19-41
Our mandate covers annual audits, special audits and opinions	19-21
Our audits are designed to address key risks	22-30
Risk to the reliability of agencies' accounts is generally low	23
Risk to the legality and regularity of revenue is generally low, with some exceptions	24
Risk to the legality and regularity of payments is medium overall, but varies	25-27
The overall level of risk to sound financial management is medium	28-29
Other risks	30
We report suspected fraud to the European Anti-Fraud Office (OLAF)	31
Digitalisation of audit procedures at the ECA	32-41
Case study – the first ECA's pilot project on the EU agencies	34-41
What we found	42-65
'Clean' opinions on the reliability of all agencies' accounts	43-49

'Emphasis of matter' paragraphs are important for understanding the accounts (EBA, EMA and SRB)	44-47
An 'other matter' paragraphs addresses an issue of specific importance (Chafea, CdT and EACEA)	48-49
'Clean' opinions on the legality and regularity of the revenue underlying all agencies' accounts	50-54
'Emphasis of matter' paragraph helps to better understand the revenue (ECHA and SRB)	51-52
'Other matter' paragraph addresses an issue of specific importance for ESMA and SRB	53-54
'Clean' opinions on the legality and regularity of the payments underlying the agencies' accounts, except for ACER and EASO	55-59
Emphasis of matter paragraph on issue of importance for Frontex	58
'Other matter' paragraph on issues of specific importance for EIGE	59
Our observations address areas for improvement in 29 agencies	60-65
Public procurement management remains the most error prone area	61
Conflicts of interest and recruitment procedures need to be managed better	62-63
Budgetary management weaknesses identified	64
Agencies are following up on previous years' audit observations	65
Other agency-related products issued by the Court	66-68
Future of EU agencies – Potential for more flexibility and cooperation	66-68
Individual annual reports	69
The EU Agencies Network's reply	
Audit team	

Executive summary

I The European Court of Auditors (ECA) is the external auditor of the EU's finances. In this capacity, we act as the independent guardian of the financial interests of the citizens of the Union, helping to improve the EU's financial management¹.

II This document summarises our audit results for the 2019 financial year for the 41 EU agencies and other EU bodies under our mandate. At the end, it contains a link to the *statements of assurance* (audit opinions) on the reliability of the agencies' accounts and on the legality and regularity of the revenue and payments underlying these accounts, together with all matters and observations not calling into question these opinions. All of these statements of assurance are also published in a summary notice in the Official Journal (OJ), which includes a link to the corresponding documents on the Court's internet site.

III Overall, our audit of the agencies for the year ended 31 December 2019 confirmed the positive results reported in previous years. Through the *statements of assurance* issued for each agency, we provided:

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

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

¹ More information on our work can be found in our activity reports, our annual reports on the implementation of the EU budget, our special reports, our reviews and our opinions on new or updated EU laws or other decisions with financial management implications (www.eca.europa.eu).

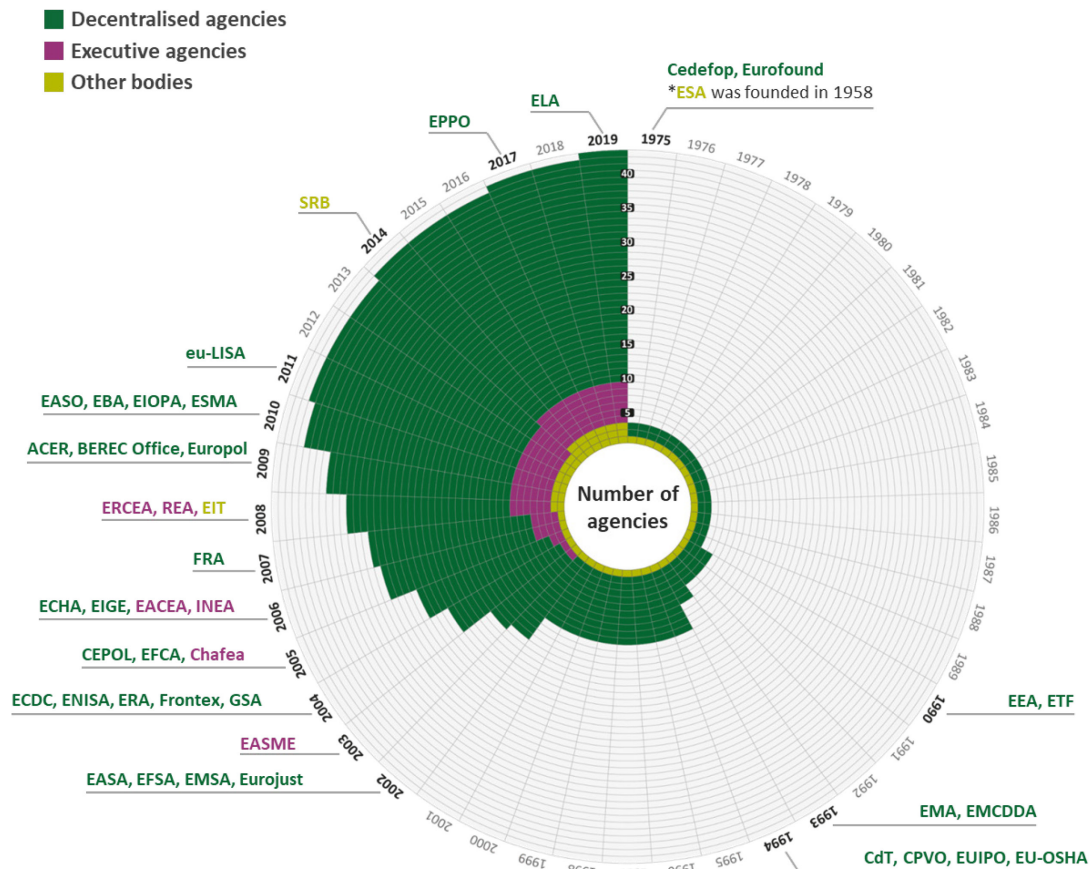
What we audited

01 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 highly visible in the Member States and have significant influence on policy- and decision-making and programme implementation in areas of vital importance to European citizens' daily lives, such as health, safety, security, freedom and justice. In this summary, we refer to the agencies using abbreviations of their full names. A list of these is provided in the list of acronyms at the end of the document.

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

03 The number of agencies has increased over the years. By the end of 2019, their number had reached 43, as shown in [Figure 1](#). This figure includes the two newest agencies, EPPO and ELA, even though they were not yet financially autonomous in 2019.

Figure 1 – Increase in the number of agencies



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

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

Source: ECA Annual Report on EU agencies for the financial year 2018.

04 All Commission executive agencies are located in Brussels and Luxembourg. Decentralised agencies and other bodies are located across the EU, as shown in [Figure 13](#). Their locations are decided by the Council or jointly by the Council and the European Parliament. Following the United Kingdom's decision to leave the EU, the EMA and the EBA were relocated to Amsterdam and Paris respectively during the first half of 2019. The EPPO is located in Luxembourg and the ELA will be located in Bratislava, Slovakia.

Decentralised agencies address specific policy needs

05 The **34 decentralised agencies**² 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.



Source: ECA.

Commission executive agencies implement EU programmes

06 The six Commission **executive agencies**³ carry out executive and operational tasks relating to EU programmes. They are set up to operate for a fixed period of time.

Other bodies have specific mandates

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

² ACER, BEREC Office, Cedefop, CdT, CEPOL, CPVO, EASA, EASO, EBA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EIOPA, ELA, EMA, EMCDDA, EMSA, ENISA, EPPO, ERA, ESMA, ETF, EUIPO, eu-LISA, EU-OSHA, Eurofound, Eurojust, Europol, FRA, Frontex, GSA.

³ Chafea, EACEA, EASME, ERCEA, INEA, REA.

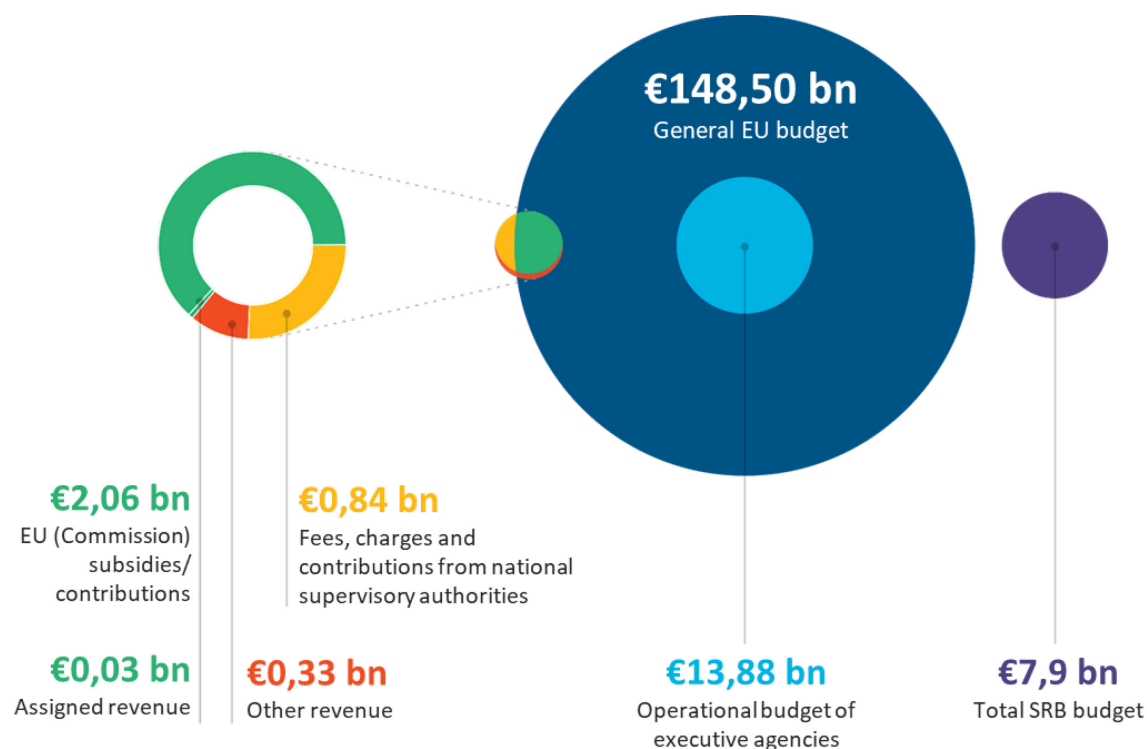
Agencies are financed from various sources and under different MFF headings

08 In 2019, the total budget of all agencies (excluding the SRB) was 3,3 billion euros. This is equivalent to 2,2 % of the EU's general budget for 2019 (2018: 2,1 %), as shown in *Figure 2*.

09 The 2019 budget of the SRB was 7,92 billion euros (2018: 6,9 billion euros). This consists of contributions from credit institutions and certain investment firms to set up the Single Resolution Fund and to finance the SRB's administrative expenditure.

10 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, and their own budgets (in 2019, around 267 million euros in total) only cover their own staff and administrative expenditure. The amount (commitment appropriations) implemented by the six executive agencies on behalf of the Commission in 2019 amounted to around 13,88 billion euros (2018: 11,3 billion euros).

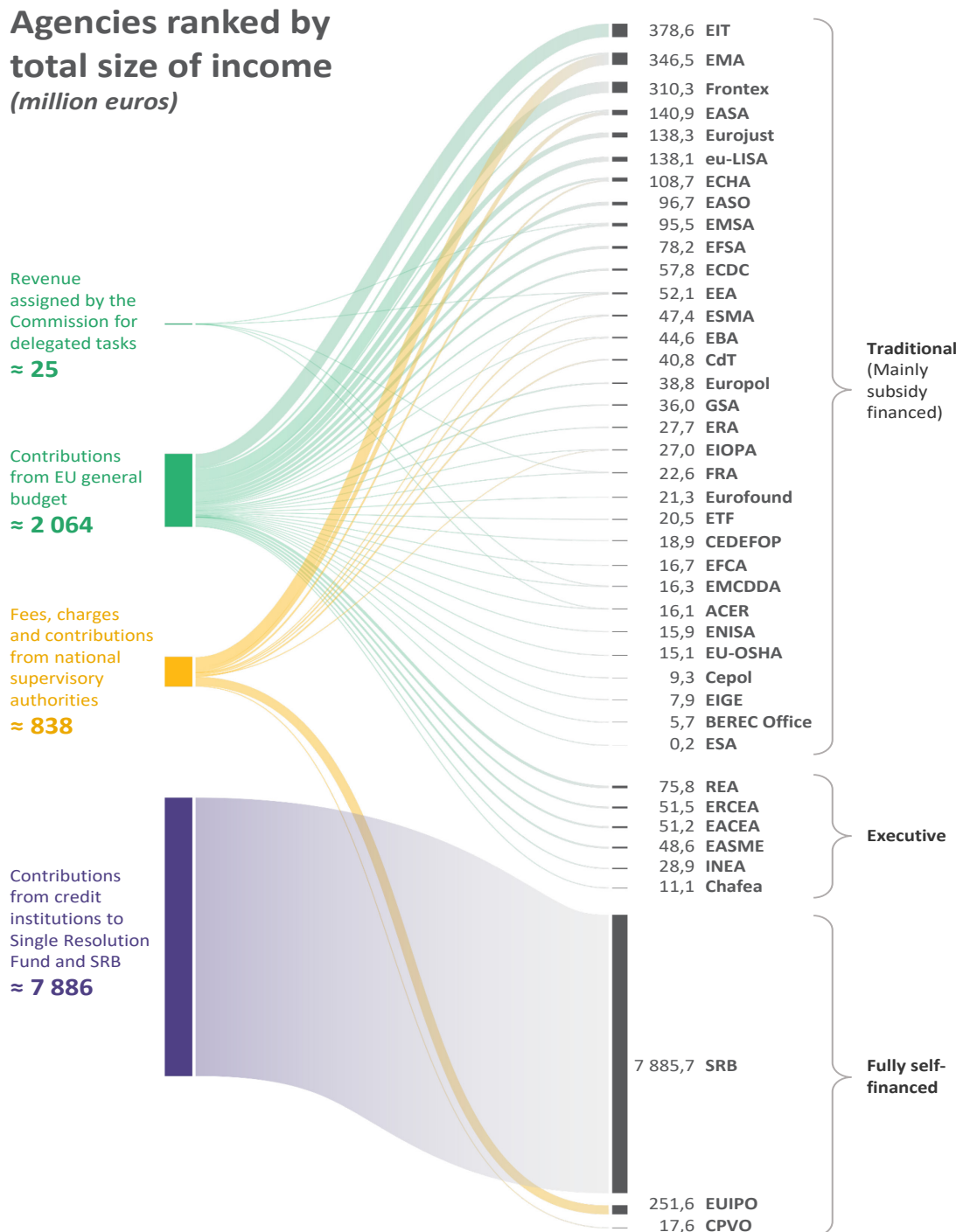
Figure 2 – Agencies' financing sources for 2019



Source: Draft general budget of the European Union for the financial year 2020; Provisional annual accounts of the European Union 2019 and Annual Activity Reports of the executive agencies for 2019, compiled by ECA.

11 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 3* shows a breakdown of the agencies' budgets by source of revenue.

Figure 3 – Agencies' 2019 budgets by source of revenue

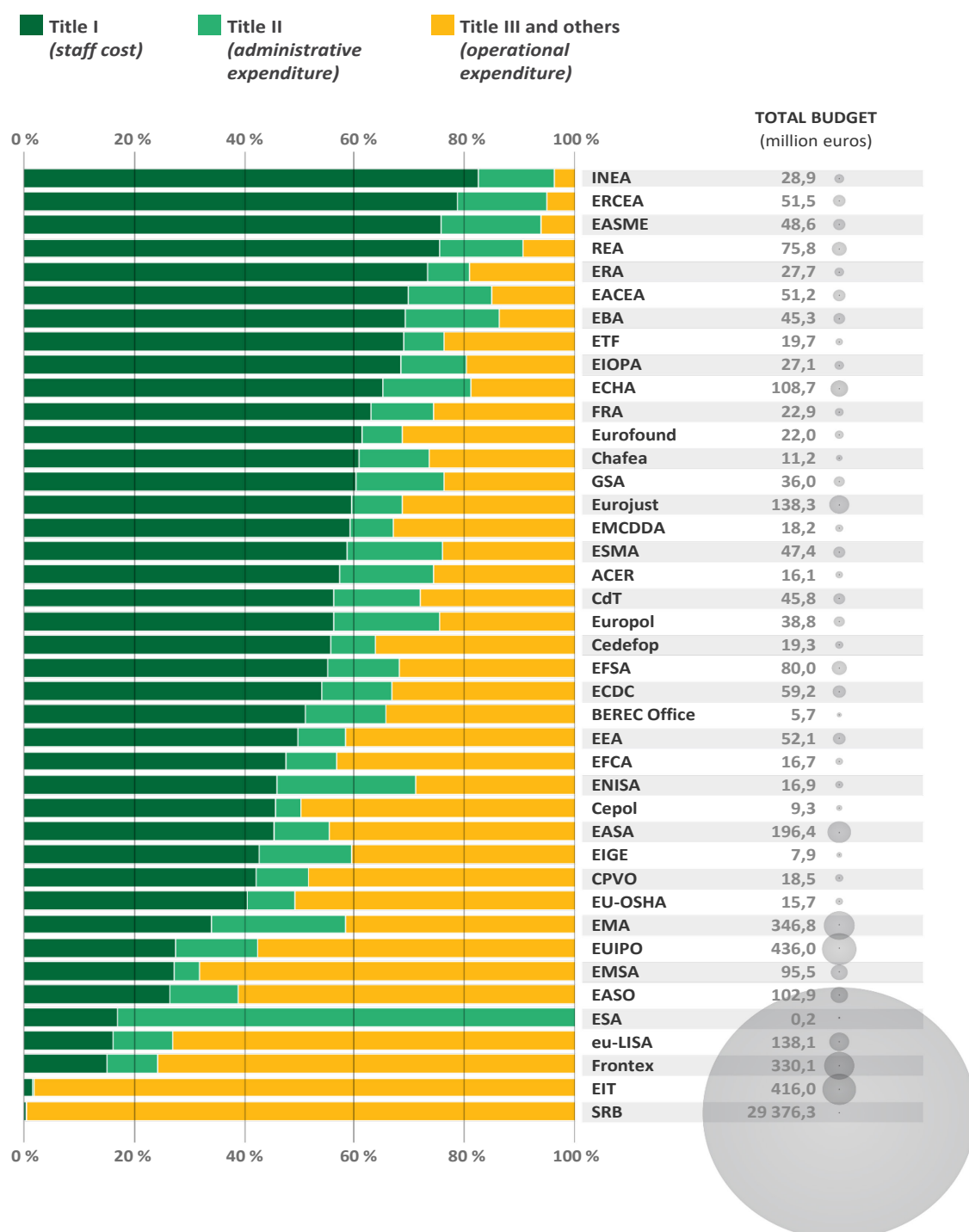


Note: Other miscellaneous revenue or budgetary reserves are not included.

Source: Agencies' provisional annual accounts 2019, compiled by ECA.

12 Figure 4 below presents the agencies' 2019 budgets as published in the EU Official Journal. They are broken down by type of expenditure (Title I – staff costs, Title II administrative expenditure, and Title III – operational expenditure, together with any other titles used), not by activity.

Figure 4 – Agencies' 2019 expenditure as published in the EU Official Journal

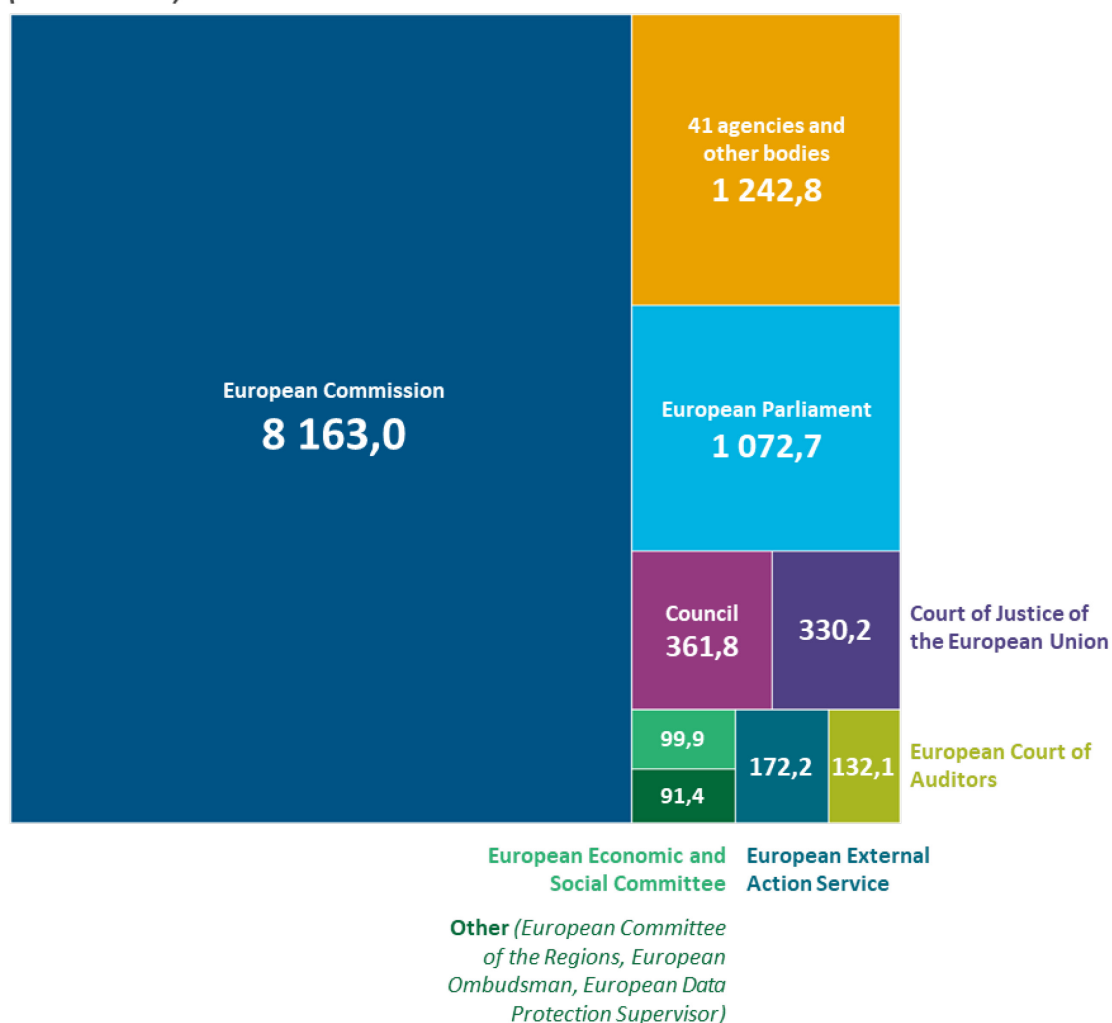


Source: Agencies' provisional annual accounts 2019, compiled by ECA.

13 Most agencies do not implement big operational spending programmes, but rather deal with technical, scientific or regulatory tasks. As a result, most agencies' budgets consist mainly of staff and administrative expenditure. Overall, agencies' staff and administrative expenditure represent around 11 % of total EU staff and administrative expenditure. See [Figure 5](#).

Figure 5 – Staff and administrative expenditure* of EU institutions and bodies in 2019

(million euros)

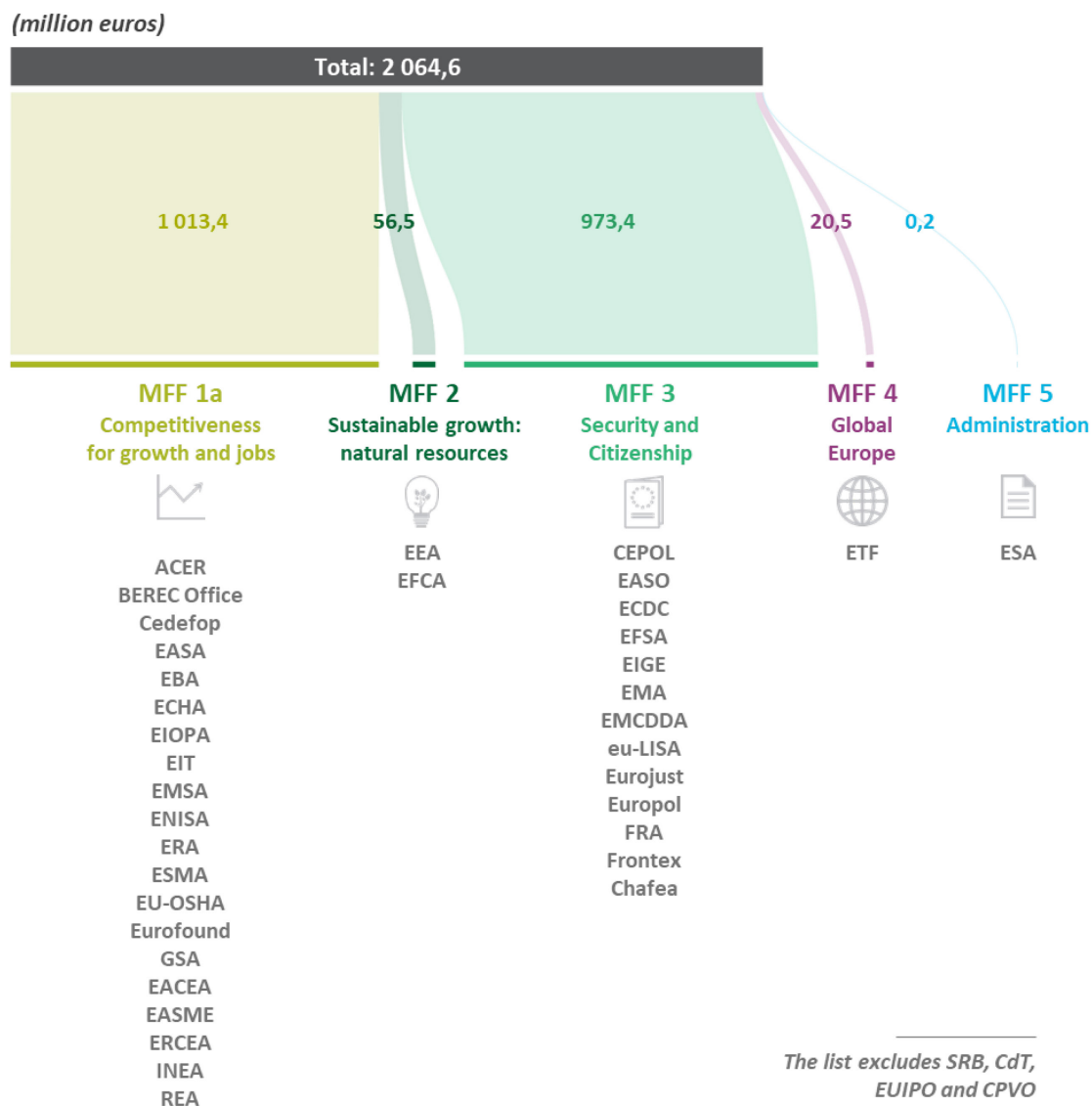


*Staff expenditure includes staff working both on operational and administrative activities. The pension contributions are not included in the agencies figures (except for self and partially self-financed).

Source: European Union's general budget for financial year 2019; Provisional annual accounts of the European Commission for financial year 2019 and Provisional annual accounts of the agencies 2019, compiled by ECA.

14 The 2,06 billion euros in contributions from the EU general budget are financed under different MFF headings as illustrated in [Figure 6](#).

Figure 6 – Agencies’ financing from the EU general budgets’ MFF heading



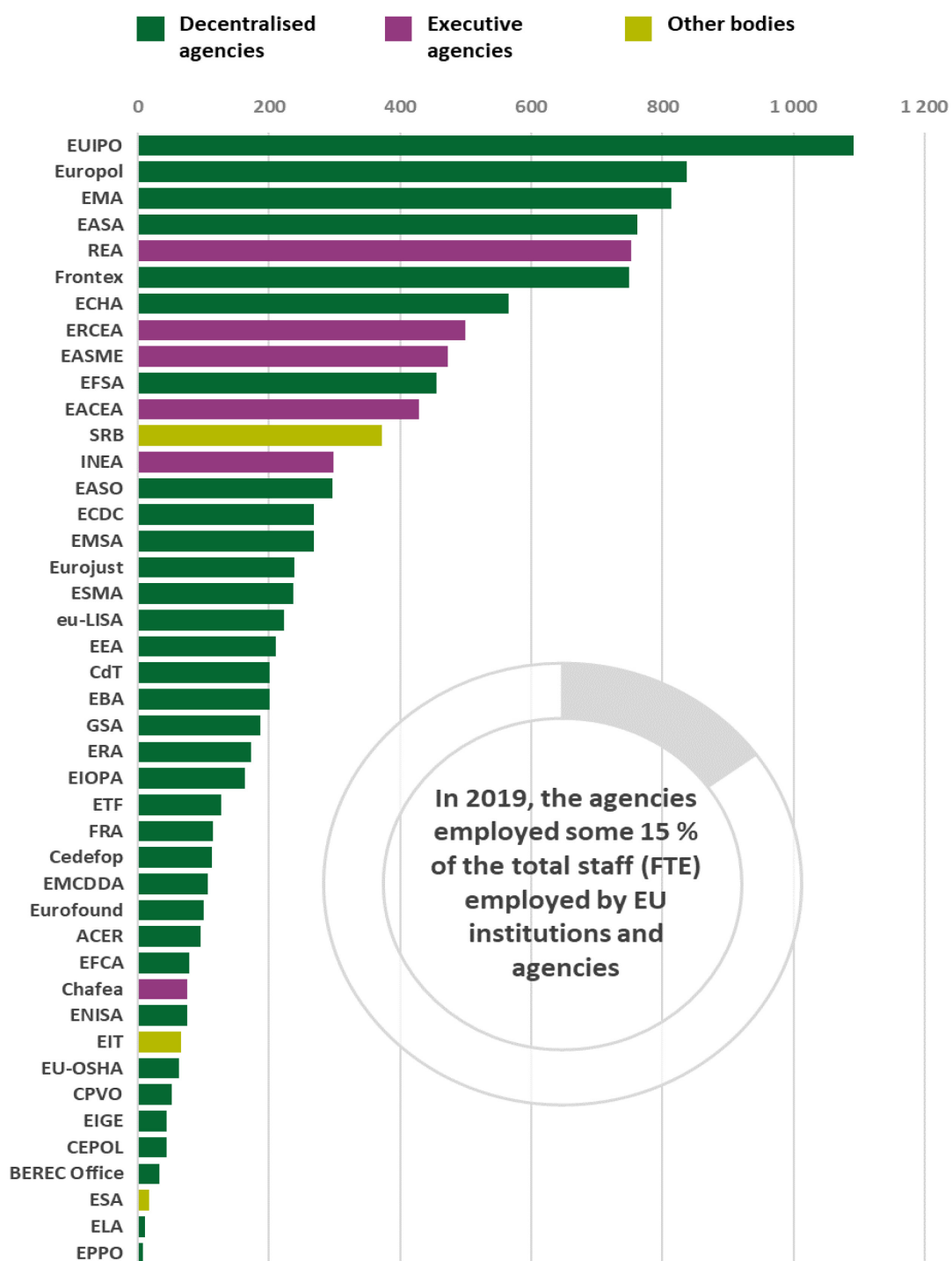
Source: Agencies’ provisional annual accounts 2019, compiled by ECA.

15 Figure 7 shows how many staff members the agencies employed at the end of 2019. In total, the agencies employed around 11 900 staff⁴ (2018: around 11 400), about 15 % of the total number of staff members⁵ employed by the EU institutions and agencies.

⁴ The “staff” figures include actual number of posts occupied by permanent officials, temporary and contract staff members and seconded national experts on 31 December 2019.

⁵ The figures used are based on the full-time equivalent (FTE) of permanent officials, temporary and contract staff members, and seconded national experts.

Figure 7 – Number of staff in each agency at the end of 2019

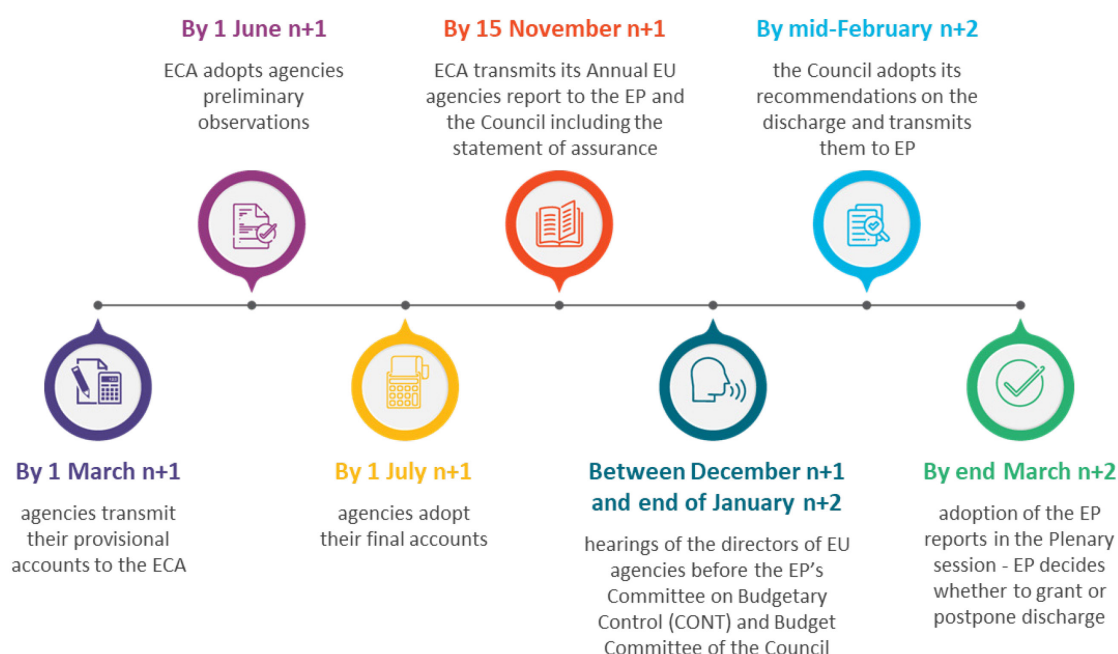


Source: Agencies, compiled by ECA.

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

16 For most decentralised agencies and other bodies and for all 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 8*.

Figure 8 – Discharge procedure for most agencies



Source: ECA.

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

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

18 The EU Agencies Network (EUAN) facilitates inter-agency cooperation and communication with stakeholders. EUAN was set up by the agencies as an inter-agency cooperation platform to enhance the agencies' visibility, identify and promote possible efficiency gains, and add value. EUAN operates on the basis of priorities agreed by the agencies in a five-year strategy agenda (2015-2020) and yearly work programmes

specifying its activities and its objectives. One important role assigned to EUAN is to ensure efficient communication between the agencies and their stakeholders, which are mainly the European institutions. EUAN is chaired by a different agency every year on a rota basis.

Our audit

Our mandate covers annual audits, special audits and opinions

19 As required by Article 287 of the Treaty on the Functioning of the European Union (TFEU), we have audited⁶:

- (1) the accounts of all agencies, which comprise the financial statements⁷ and the reports on the implementation of the budget⁸ for the financial year ended 31 December 2019, and
- (2) the legality and regularity of the transactions underlying those accounts.

20 On the basis of the results of our audit, we provide the European Parliament and the Council, or the other discharge authorities (see paragraph **16**) with an individual statement of assurance for each agency as to the reliability of the agencies' accounts and the legality and regularity of the underlying transactions. We complement the statements of assurance with significant audit observations, where this is appropriate.

21 The Court also carries out audits, publishes special reports and issues opinions on specific topics. Some of these concern the EU agencies. See [Figure 12](#) for a list of these.

Our audits are designed to address key risks

22 The annual audit of EU agencies' accounts and underlying revenue and payments is designed to address identified key risks, which are briefly presented below.

⁶ ELA and the EPPO were not audited in 2019, because they were not yet financially autonomous.

⁷ 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.

⁸ The reports on implementation of the budget are reports which aggregate all budgetary operations and explanatory notes.

Risk to the reliability of agencies' accounts is generally low

23 Overall, across all agencies, we consider the risk to the reliability of the accounts to be low. The agencies' accounts are established by applying the accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector. In the past, we have identified only few material errors in the agencies' accounts. Nevertheless, the increasing number of delegation agreements with the Commission assigning additional tasks and revenue to agencies represents a challenge in terms of the consistency and transparency of the agencies' accounting and budgeting.

Risk to the legality and regularity of revenue is generally low, with some exceptions

24 For most agencies, the risk to the legality and regularity of the revenue underlying the accounts is low. Most agencies are fully financed from the EU general budget, and their budgets and revenue are agreed with the budgetary authorities during their annual budget procedures. Some other agencies are partly or fully self-financing⁹. 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.

Risk to the legality and regularity of payments is medium overall, but varies

Title I (Staff expenditure)

25 The level of risk to the legality and regularity of the agencies' staff expenditure is generally low. Salaries are mainly administered by the Commission's PMO service, which the Court audits regularly. We have found no material errors in relation to staff expenditure in recent years. However, in cases where agencies have to recruit a high number of additional staff within a short time, we have identified a higher level of risk to the legality and regularity of recruitment procedures.

Title II (Administrative expenditure)

26 In our opinion, there is a medium level of risk to the legality and regularity of the agencies' administrative expenditure. Agencies often need to conduct procurement

⁹ CdT, CPVO, EASA, EBA, ECHA, EIOPA, EMA, ESMA, EUIPO, SRB.

procedures for different kinds of services, with increasing amounts related to IT. These procedures often involve complex procurement rules and procedures, and agencies are not always successful in achieving the satisfactory levels of transparency and value for money. In the past, serious procurement errors have always been one of the main reasons why the Court has been obliged to issue qualified audit opinions and observations. Having said that, by far the most significant component of agencies' administrative expenditure is office rent, a relatively stable expenditure item which usually needs to be procured only when agencies move to new premises. Since this makes up a large proportion of administrative expenditure, the overall level of risk to the entire expenditure category is medium.

Title III (Operational expenditure)

27 The level of risk affecting the legality and regularity of operational expenditure varies by agency, running the entire range of risk levels from low to high. It depends on the specific type of operational expenditure that each agency incurs. In general, the risks involved are similar to the risks affecting procurement under Title II. However, the amounts involved under Title III are often far higher. As far as grants paid under budget Title III are concerned, previous audits found that, while the agencies' controls have generally improved, they are not always fully effective.

The overall level of risk to sound financial management is medium

28 In our opinion, the level of risk to sound financial management is medium. Most of the problems we identified concerned public procurement procedures which did not ensure that the best possible value for money was achieved.

29 The need to have separate administrative structures and procedures for all agencies constitutes an inherent risk to administrative efficiency.

Other risks

30 In line with our observations from previous years, and taking into account EU policy developments in certain areas, we consider that the level of risk is higher when agencies' operations depend on Member States' cooperation, e.g. Frontex, the EASO and the ECHA. Frontex is mandated to ensure European integrated management of the external borders, a responsibility it shares with national authorities, the purpose of which is to manage entries from outside the external borders in an efficient manner. The EASO depends on both Member States' cooperation and the secondment of national experts to carry out its operations. In the case of the ECHA, cooperation with

Member States is important because their national enforcement authorities are responsible for verifying information on a company's size, which the Agency uses to calculate its fees.

We report suspected fraud to the European Anti-Fraud Office (OLAF)

31 Although our audits are not specifically designed to search for fraud, we sometimes detect cases in which we suspect that irregular or fraudulent activity may have taken place. When this happens, we inform OLAF. OLAF then follows up on these cases, decides whether to launch an investigation and cooperates as necessary with Member State authorities. In 2019 we came across three such cases.

Digitalisation of audit procedures at the ECA

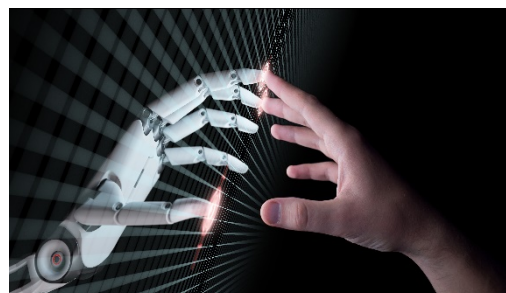
32 The Court has recognised the need to make more use of digital resources in its audit work. Digital technologies are transforming the world at an unprecedented speed. Digitalisation has the potential to replace or enhance audit based on statistical sampling with audit based on entire populations. Artificial intelligence, machine-learning and big-data analytics provide substantial opportunities to enhance the precision and comprehensiveness of financial and compliance audits. Process automation is another new development with the potential to remove the need for humans to perform repetitive tasks. The characteristics of millions of entries can be checked in a few minutes, immediately flagging this way any exceptions so that auditors can concentrate on potential errors. The digitalisation of audit can also enhance the reporting and internal quality control processes, allowing reports and visualisations to be generated automatically.

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

Case study – the first ECA’s pilot project on the EU agencies

34 The ECA identified the annual audit of the EU agencies as an opportunity to test the potential of automated audit procedures. We selected the executive agencies for this project because they share similar administrative procedures and IT systems.

35 This pilot project, which is only the first step in a fundamental transformation process of the ECA and in incorporating the use of automation in its audit procedures, started early in 2019. We expect that supplementing auditors’ professional judgement with digital working methods and IT tools will bring significant advantages into the future.



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36 First, we analysed our existing audit procedures and identified the data sources we used, seeking to identify the potential for automation. We also explored possible changes to our existing audit procedures. We were particularly interested in means of obtaining paper-based information in electronic format to allow a shift from manual to automated processes. Our aim was to run specific checks on a full population of transactions and to produce an exception report to be followed up by the auditors.

37 Based on our analysis, we identified two especially promising technologies which could support the automation of our audit work: data analytics and robotic process automation.

- o Data analytics is not a new technology, but the development of larger storage capabilities has made it much more powerful. The Court’s auditors already have access to several data sources used by the agencies; in the pilot project, we used data-analysis techniques to extract, transform and analyse data in order to identify and better assess risks, and in this way plan and perform our audit procedures more efficiently.
- o Robotic process automation software can be used to automate repeatable rule-based tasks. In this pilot project, the software was programmed to perform the same sequence of steps that a human user would carry out. In particular, it helped the auditors to download documentation and other data from agencies’ IT systems, and prepared the files for the audited transactions. The software interacts with these IT systems through the user interface. However, it operates much faster than a human, and it can perform the tasks at any time; for example, during the night and at the weekend.

38 In close cooperation with DG BUDG and executive agencies, the team retrieved data from various systems used by the executive agencies. The data included dates and amounts of commitments, payments, contracts and invoices retrieved from the budgetary system. From the payroll system, the team downloaded data on salaries and allowances. We incorporated all this data into a dedicated database, which we then used to perform automated audit tests and analytical procedures using data analytics.

39 For example, an automated test can be used to check whether the amount of a budgetary commitment squares with the value of the underlying contract, or whether invoices have been paid on time and within the legal deadline. The auditors were able to carry out these automated checks on around 8 000 payments and 1 400 commitments in the six executive agencies in a split-second. The results took the form of a list of transactions which required further examination by the auditors.

Box 1: Results of the pilot project automated tests

Scope of the tests

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

Preliminary results

The preliminary results of the automated testing show that a majority of the populations or 99,98 % had no issues affecting them.

The tests flagged a limited number of transactions (i.e. exceptions) for further examination by the auditors.

- In a test of 1 400 budgetary commitments to check if their amount was equal to that of the corresponding legal commitment, the system flagged 51 transactions.
- In a test of 7 872 payment requests to check if their amount was equal to that of the corresponding invoice, the system flagged 113 transactions.
- In a test of 7 869 payment requests to check if payments have been made within legal time limits, the system flagged 410 transactions.

The analysis of flagged transactions allowed the audit teams to identify and document:

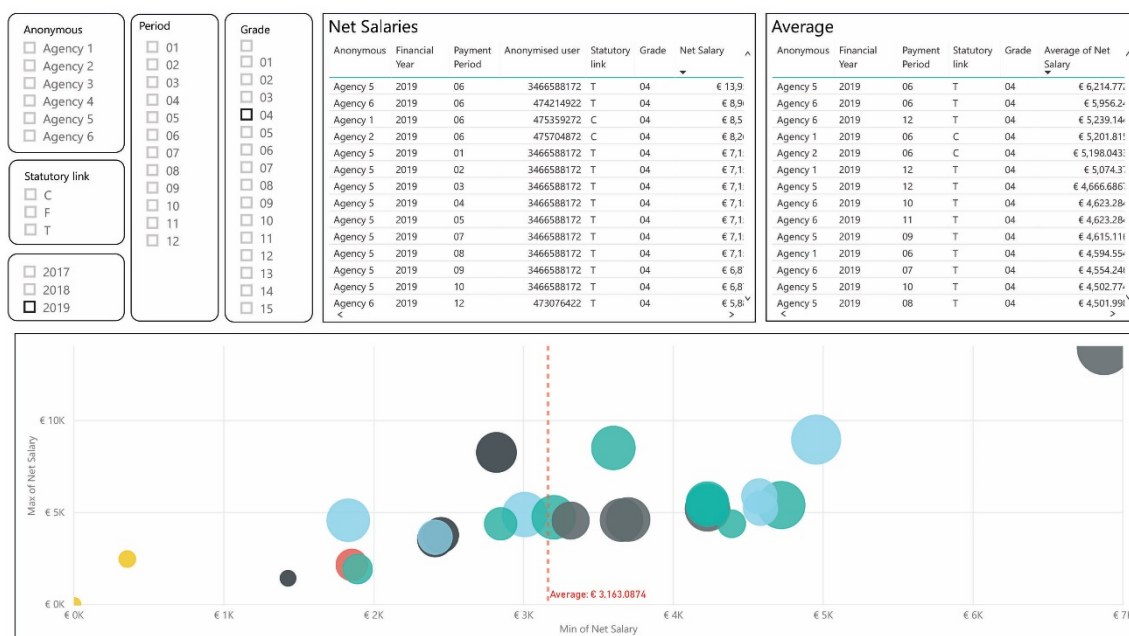
- transactions that were affected by errors – for example, we found a case when two budgetary commitments were made, instead of only one as required by the Financial Regulation (0,02 % of the tested transactions);
- instances of wrongly coded data causing transactions to be flagged by the automated tests, even though they were not affected by errors (0,21 % of the tested transactions);
- transactions free of error which had been flagged by the automated tests indicating a need to refine the algorithm (0,46 % of the tested transactions);
- valuable feedback on certain types of transactions that will be useful in refining the automated tests.

40 While these kind of automated tests allow an entire population to be tested in a very short time, the results depend strongly on the quality of the underlying data. The project revealed a number of data-quality issues for data which had been entered

manually by the agencies (mainly contract data). This will need to be addressed before the agencies' IT systems can be deemed to be reliable.

41 The auditors also used automated analytical procedures to identify unusual patterns or transactions in the agencies' payroll. The system automatically creates graphical reports which allow the auditors to see such patterns and to consider whether further examination of underlying details is required. *Figure 9* shows an example of such a report. The auditors used these reports to identify salaries outliers, to single them out for further checks.

Figure 9 – Distribution of the salary paid for a given grade around the average salary



Source: ECA.

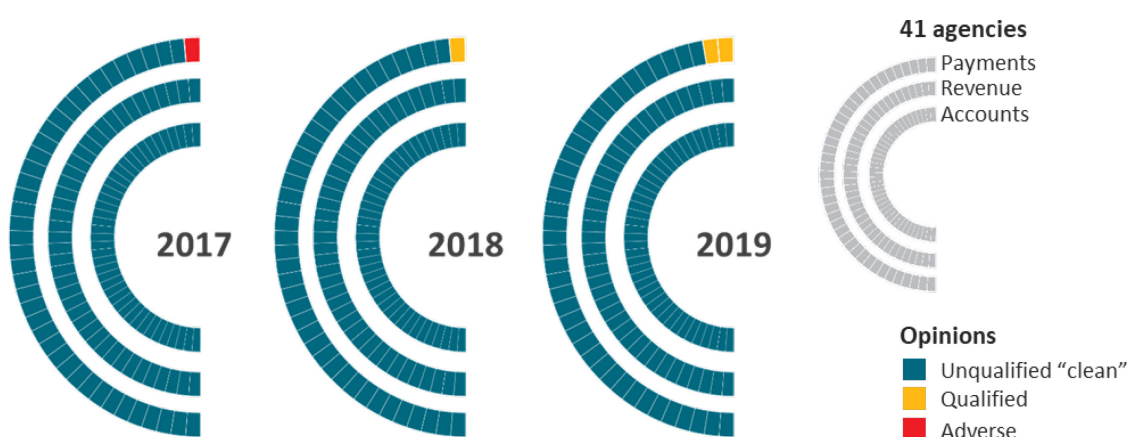
What we found

42 Overall, our audit of the annual accounts of the agencies for the year ended 31 December 2019 and the revenue and payments underlying them confirmed the positive results reported in previous years.



Source: ECA – Auditors on the spot at the start of the COVID-19 outbreak.

Figure 10 – 2017 – 2019 annual audit opinions on agencies' accounts, revenue and payments



Source: ECA.

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

43 We issued *unqualified ("clean") audit opinions* on the accounts of 41 agencies. In our opinion, these accounts present fairly, in all material respects, the agencies' financial positions as of 31 December 2019 and the results of their operations and their cash flows for the year then ended, in accordance with the provisions of the applicable financial regulations and the accounting rules adopted by the Commission's Accounting Officer¹⁰.

¹⁰ These are based on internationally accepted accounting standards for the public sector.

‘Emphasis of matter’ paragraphs are important for understanding the accounts (EBA, EMA and SRB)

44 ‘Emphasis of matter’ paragraphs draw readers’ attention to matters of importance that are fundamental to understanding the accounts. In the 2019 financial year, we have used ‘emphasis of matter’ paragraphs in our reports on three agencies: the **EBA**, the **EMA** and the **SRB**.

45 For the **EBA**, the previously London-based agency which moved to Paris, we draw attention to Note II.3 of the financial statements of the Authority’s final accounts, which contains information on an issue with funds to the value of 10,1 million euros related to the lease agreement of the EBA’s London office.

46 For the **EMA**, the previously London-based agency which moved to Amsterdam, we draw attention to an issue with the lease agreement for the Agency’s previous premises in London. The agreement lasts until 2039, with no provision for early termination. In July 2019, the EMA reached an agreement with its landlord and has managed to sublease its former office premises with effect from July 2019, under conditions that are consistent with the terms of the head lease. The sublease term lasts until the expiry of the EMA’s lease. Since the EMA remains a party to the rental contract, the Agency could be held liable for the entire amount remaining payable under that contract if the subtenant fails to meet its obligations.

47 Concerning the accounts of the **SRB**, we point out that administrative appeals or judicial proceedings related to contributions between some credit institutions and national resolution authorities and the Board, as well as other legal actions brought against the SRB before the General Court and the Court of Justice of the European Union, were not subject to our audit. Their possible impact on the Board’s financial statements for the financial year ended 31 December 2019 (in particular on contingent liabilities, provisions and liabilities) is subject to a separate specific annual audit carried out by the ECA, as stipulated under Article 92(4) of the SRM Regulation.

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

An ‘other matter’ paragraphs addresses an issue of specific importance (Chafea, CdT and EACEA)

48 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 contains plans to transfer the tasks of **Chafea** to Brussels-based agencies. However, since these operations will be transferred to other EU consolidated entities, this has no impact on the amounts of assets and liabilities in the 2019 annual accounts. At this time, contingent liabilities resulting from this transfer cannot be reliably estimated.

49 For the **CdT** and **EACEA** we point out a lack of disclosures related to the crisis arising from the COVID-19. Appropriate disclosures on the impact of COVID-19 measures on the CdT’s and the EACEA’s current and anticipated operations should have been made in the final annual accounts, as reasonably known at the date of the transmission of the final annual accounts.

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

50 For all agencies, we issued unqualified (‘clean’) audit opinions on the legality and regularity of the revenue underlying the annual accounts for the year ended 31 December 2019. In our opinion, revenue was legal and regular in all material respects.

‘Emphasis of matter’ paragraph helps to better understand the revenue (ECHA and SRB)

51 For the **ECHA**, the Court again emphasises that the agency is partly self-financed and receives a fee from every company applying for the registration of chemicals as required under the REACH Regulation¹¹. The agency calculates and invoices the fees on the basis of self-declarations provided by the companies. Ex-post verifications by the agency identified the need for considerable fee corrections, with the total amount of corrections being unknown at the end of 2019.

¹¹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1).

52 We also used an ‘emphasis of matter’ paragraph in our report on the **SRB**, in connection with the issue described in paragraph above.

‘Other matter’ paragraph addresses an issue of specific importance for ESMA and SRB

53 Concerning **ESMA**, fees charged to credit rating agencies are based on their revenue as legal entities, but not as a group or group of related entities. This creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU. The likely financial effect of this loophole in the regulations is unknown. The Authority proposed to the Commission to make the necessary modifications.

Furthermore, for the **ESMA**, fees to trade repositories are calculated based on each individual trade repository’s applicable turnover. Although, the Regulation on fees does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, all of the trade repositories were able to produce independent auditors’ opinions stating that their 2018 financial statements (used for the fee calculations) gave a true and fair view. However, the information they submitted on the number of trades reported to the trade repository during 2018 and the number of recorded outstanding trades on 31 December 2018 were only subject to limited review by independent auditors. The Authority informed the Commission and suggested a revision of the Regulation.

54 Without prejudice to our formal audit opinion, we emphasised that the Single Resolution Board 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 did not verify its reliability. Given that the SRM Regulation does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, no checks are carried out at the level of the credit institutions. However, the SRB performs consistency and analytical checks of the information. Furthermore, the SRB cannot release details on the risk-assessed contribution calculations for each credit institution as they are interlinked and include confidential information about other credit institutions. This affects the transparency of these calculations.

'Clean' opinions on the legality and regularity of the payments underlying the agencies' accounts, except for ACER and EASO

55 For 39 agencies, we issued unqualified ('clean') audit opinions on the legality and regularity of the payments underlying the annual accounts for the year ended 31 December 2019. In our opinion, payments were legal and regular in all material respects for these agencies (see [Figure 10](#)).

56 For the **ACER** we issue a qualified opinion based on two irregular procurement procedures. In both cases, the agency had failed to carry out appropriate competitive procurement procedures which means that all associated payments are irregular. The irregular payments which have thus been made under the contracts arising from the incorrectly conducted procurement procedures represent 6,3 % of all payments made by ACER in 2019.

57 For the **EASO** we issued a qualified opinion in relation to our findings reported since the 2016 financial year. In annual audit for 2019, we also found that a number of payments associated with a selection procedure for expert consultants were irregular, since there was a systematic lack of any information which could have constituted a proper audit trail. Overall, we conclude that the amount of funds associated with this unsatisfactory situation represents 14,6 % of the value of all payments made by EASO in 2019.

Emphasis of matter paragraph on issue of importance for Frontex

58 While we do not modify our audit opinion on the legality and regularity of expenditure, we draw the attention to the fact that, in 2019, **Frontex** managed grant agreements with cooperating countries for operational activities amounting to 183 million euros (171 million euros in 2018), representing 55 % of the Agency's budget. Certain equipment-related expenditure falling under this amount (35 % of total expenditure for operational activities, or 64 million euros) appears to be rather prone to errors. Attempts to simplify the financial management of expenditure related to the deployment of technical equipment, have so far been unsuccessful. We also want to emphasise that Frontex has implemented a number of recommendations from our previous reports. In particular, the Agency has taken steps to improve ex-ante verifications, and has re-introduced ex post verifications on reimbursements in 2019, in line with recommendations made in previous years.

‘Other matter’ paragraph on issues of specific importance for EIGE

59 For the **EIGE**, we note that a case pending before the Court of Justice of the European Union¹², has a bearing on aspects of our audit opinion. The case concerns several questions asked by the Lithuanian Supreme Court concerning the application of Directive 2008/104/EC of the European Parliament and of the Council¹³, on temporary agency work, to EU Agencies. In particular, the Lithuanian court has asked whether the Directive applies to EU agencies in their capacity as public bodies engaged in economic activities. It also asked whether EU agencies must apply in full the provisions of Article 5(1) of that Directive concerning the rights of temporary agency workers to basic working and employment conditions, in particular as regards pay. Since the Court of Justice’s ruling with regard to these questions may have an impact on the Court’s position concerning the EIGE’s use of interim workers, the Court has refrained from making any observations, including follow-ups of observations from previous years, until the Court of Justice has issued a final ruling in this case.

Our observations address areas for improvement in 29 agencies

60 In addition to the opinions and accompanying ‘emphasis of matter’ and ‘other matter’ paragraphs, we also made 82 observations concerning 29 agencies to address areas where further improvements are needed. Most of these observations concern shortcomings in public procurement procedures, as was the case in previous years.

¹² Case No C-948/19 (Manpower Lit).

¹³ OJ L 327, 5.12.2008, p. 9.

Public procurement management remains the most error prone area

61 The objective of public procurement rules is to ensure fair competition between tenderers and to procure goods and services at the best price, respecting the principles of transparency, proportionality, equal treatment and non-discrimination. Our audit included framework, specific and direct contracts from all agencies. In nine agencies (the **BEREC Office, Cedefop, EASA, EFSA, EMA, ENISA, ERA, Eurofound** and the **Europol**), the contracts we audited were affected by public procurement shortcomings of different kinds, mostly concerning sound financial management and regularity. Moreover, in **CEPOL** we found weaknesses in the internal controls system used in the procurement procedure and for the **EEA** we identified weaknesses in the monitoring of a contract once in place. The agencies are encouraged to further improve their public procurement procedures, ensuring full compliance with the applicable rules.

Conflicts of interest and recruitment procedures need to be managed better

62 During our annual audit of the agencies for 2019, we noted an increase in weaknesses identified in recruitment procedures. We audited recruitment procedures in 19 agencies. For five of them, (**ACER, EASME, EMSA, EUIPO** and the **eu-LISA**) we found shortcomings.

- We found various instances where internal controls aimed at managing potential conflicts of interest had not been applied properly (EASME, EMSA, EUIPO). We found that members of various selection panels had systematically failed to declare and document potential conflicts of interest associated with candidates in a recruitment procedure. If conflicts of interest within a recruitment process are not disclosed, or if they are not managed correctly, the end result could be that agencies are exposed to litigation and reputational risks. The issue may also result in a waste of resources due to recruitment procedures being cancelled or delayed.
- We also identified a number of weaknesses concerning the application of the principle of equal treatment and/or transparency (ACER, EMSA, EUIPO, eu-LISA), lack of audit trail (EMSA, EUIPO), and one case of a failure to apply effective internal controls (ACER). These issues could also be reputationally and financially detrimental to the agencies concerned.

63 Situations of actual or potential conflict of interest may arise also when staff members leaving the EU civil service take up positions in the private sector. Confidential information could be disclosed, or former staff members could misuse

their close personal contacts and friendships with their former colleagues¹⁴. If such a situation is even perceived to exist, it could be damaging to the EU's reputation. According to information provided by EBA, in 2019, the **EBA's** Executive Director resigned to take on the role of Chief Executive Officer of the Association for Financial Markets, which represents the finance industry in Europe. The Board of Supervisors gave its approval for the former Executive Director to take on the new role, subject to some conditions. The European Ombudsman opened an inquiry into the situation in January 2020. On 7 May 2020, the European Ombudsman found that the EBA's decision not to forbid its Executive Director from becoming the CEO of a financial industry lobby was maladministration¹⁵. "Forbidding the job move would have been a necessary and proportionate measure in this particular case."¹⁶ The Ombudsman also found there was maladministration in that the EBA did not immediately withdraw its Executive Director's access to confidential information. The Ombudsman made recommendations to strengthen how the EBA deals with any such future situations¹⁷.

The Ombudsman's recommendation required the EBA to send a detailed reply to the Ombudsman by 31 August 2020. The EBA sent this reply on 28 August 2020¹⁸. In its reply, the EBA stated that it had adopted a new policy to address the Ombudsman's detailed recommendations.

Budgetary management weaknesses identified

64 Under the Financial Regulation, budget appropriations granted for a given year can be carried over to the next year under certain conditions¹⁹. While the Financial Regulation does not set ceilings for such carry-overs and the multi-annual nature of operations can explain them to a considerable extent, excessive levels can indicate delays in the implementation of work programmes or procurement plans. Alternatively, they could indicate a structural issue, weak budgetary planning and

¹⁴ See the Decision of the European Ombudsman in her strategic inquiry OI/3/2017/NF on how the European Commission manages 'revolving doors' situations of its staff members, 28 February 2019

¹⁵ See paragraph 33 or page 11 of the Recommendation of the European Ombudsman in case 2168/2019/KR.

¹⁶ See paragraph 33 or page 11 of the Recommendation of the European Ombudsman in case 2168/2019/KR.

¹⁷ See page 11 of the Recommendation of the European Ombudsman in case 2168/2019/KR.

¹⁸ <https://www.ombudsman.europa.eu/en/correspondence/en/131987>

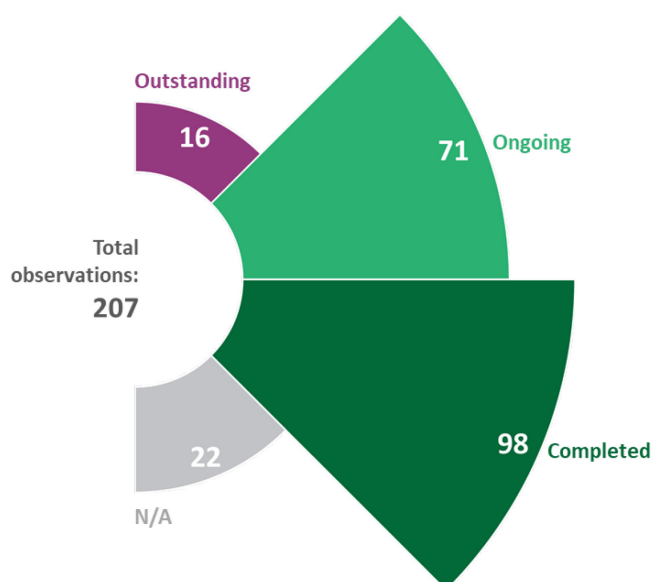
¹⁹ Conditions for carry-overs are explained in Articles 12 and 13 of the Financial Regulation.

possibly a contravention of the budgetary principle of annuality. For five agencies (**ACER, CHAFEA, EASME, EU-OSHA** and the **FRA**) we report some such weaknesses.

Agencies are following up on previous years' audit observations

65 We provide information on the status of follow-up actions taken by the agencies in response to observations from previous years. *Figure 11* shows that for the 207 observations that had not been addressed at the end of 2018, corrective action was completed or ongoing in most cases in 2019. Of the 87 outstanding and ongoing observations, the necessary corrective action to address 16 observations was not under the agency's (sole) control.

Figure 11 – Agencies' efforts to follow up on previous years' observations



Source: ECA.

Other agency-related products issued by the Court

Future of EU agencies – Potential for more flexibility and cooperation

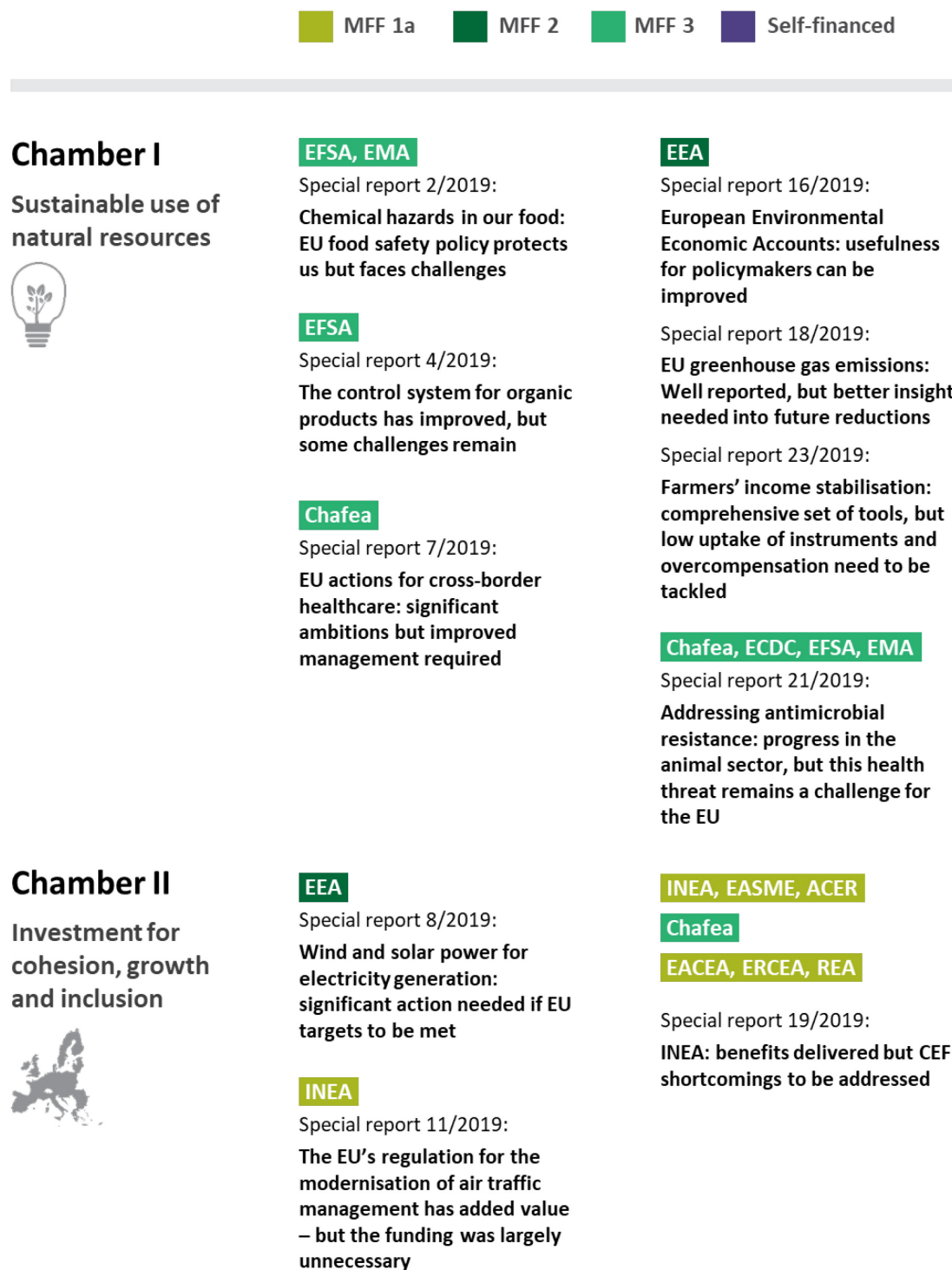
66 Having mainly focused in the past on the performance of individual agencies in 2019, we have carried out the first overall assessment of the conditions put in place by the EU to ensure that the agencies are effectively delivering its policies to the benefit of all citizens. We conclude that agencies are playing an increasingly important role in the delivery of EU policies and that the conditions in place have supported their performance. However, our audit identified a need for more flexibility in the set-up, functioning and possible winding-up of agencies. Our findings also suggest that some agencies would have been able to perform their role more fully if they had received more support from Member States, industry, the Commission or other agencies.

67 We recommend that the Commission and the agencies:

- (1) ensure the relevance, coherence and flexibility of the set-up of agencies;
- (2) allocate resources in a more flexible manner;
- (3) improve governance, accountability and reporting on performance; and
- (4) strengthen the role of agencies as centres of expertise and networking.

68 The full audit conclusions, together with the related recommendations and the Commission's and the agencies' replies, are addressed in our special report No 22/2020 which is available on our website eca.europa.eu.

Figure 12 – Other ECA special audit reports referring to agencies



MFF 1a MFF 2 MFF 3 Self-financed

Chamber III

External action,
security and justice



eu-LISA, Frontex

Special report 20/2019:
EU information systems supporting border control - a strong tool, but more focus needed on timely and complete data

EASO, Frontex, FRA

Special report 24/2019:
Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results

Chamber IV

Regulation of
markets and
competitive
economy



EBA

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

SRB

Opinion 2/2019:
Opinion on a proposal for the Financial Regulation of the Single Resolution Board laying down the financial provisions applicable to the Board ('the proposed Financial Regulation')

EUIPO

Opinion 1/2019:
Opinion concerning the proposal for regulation BC-01-2019 of the Budget Committee of the European Intellectual Property Office laying down the financial provisions applicable to the Office ('the proposed Financial Regulation')

CPVO

Opinion 3/2019:
Opinion on a proposal for the Financial Regulation for the Community Plant Variety Office ('the proposed Financial Regulation')

Chamber V

Financing and
administering
the Union



EPPO

Special report 1/2019:
Fighting fraud in EU spending: action needed

EU-OSHA

Special report 13/2019:
The ethical frameworks of the audited EU institutions: scope for improvement

Source: ECA.

Individual annual reports

69 To go straight to our individual statement of assurance (audit opinion) on an agency, click on its name on the diagram below. There is a list of acronyms on the next page.

Figure 13 – Links to the individual annual reports on the agencies' accounts

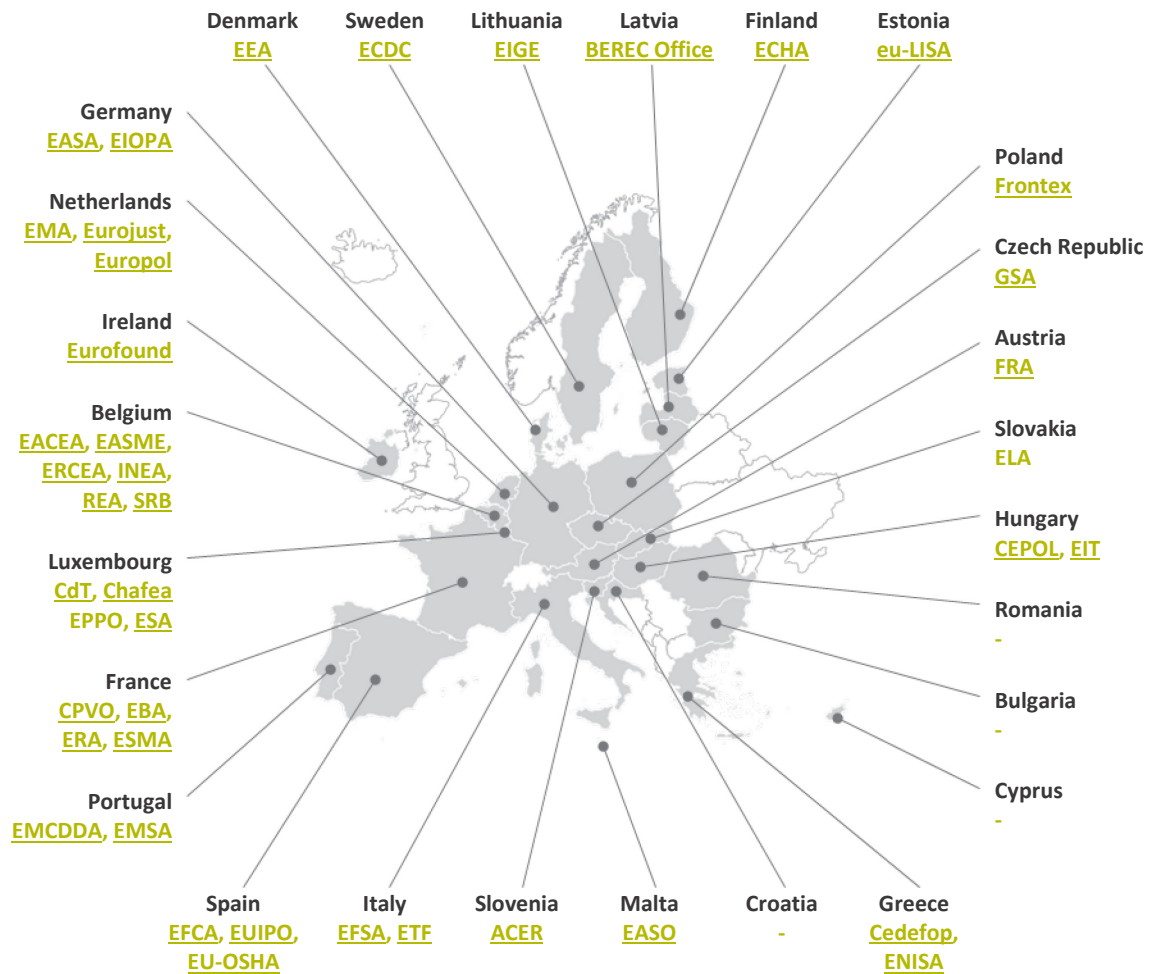


Figure 14 – List of acronyms used

Acronym	Full name
ACER	European Union Agency for the Cooperation of Energy Regulators
BEREC Office	Agency for Support for BEREC
CdT	Translation Centre for the Bodies of the European Union
Cedefop	European Centre for the Development of Vocational Training
CEPOL	European Union Agency for Law Enforcement Training
Chafea	The Consumers, Health, Agriculture and Food Executive Agency
CPVO	Community Plant Variety Office
EACEA	Education, Audiovisual and Culture Executive Agency
EASA	European Union Aviation Safety Agency
EASME	Executive Agency for Small and Medium-sized Enterprises
EASO	European Asylum Support Office
EBA	European Banking Authority
ECDC	European Centre for Disease Prevention and Control
ECHA	European Chemicals Agency
EEA	European Environment Agency
EFCA	European Fisheries Control Agency
EFSA	European Food Safety Authority
EIGE	European Institute for Gender Equality
EIOPA	European Insurance and Occupational Pensions Authority
EIT	European Institute of Innovation and Technology
ELA	European Labour Authority
EMA	European Medicines Agency
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMSA	European Maritime Safety Agency
ENISA	European Union Agency for Cybersecurity
EPPO	European Public Prosecutor's Office
ERA	European Union Agency for Railways
ERCEA	European Research Council Executive Agency
ESA	EURATOM Supply Agency
ESMA	European Securities and Markets Authority
ETF	European Training Foundation

EUIPO	European Union Intellectual Property Office
eu-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
EU-OSHA	European Agency for Safety and Health at Work
Eurofound	European Foundation for the Improvement of Living and Working Conditions
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
GSA	European Global Navigation Satellite Systems Agency
INEA	Innovation and Networks Executive Agency
REA	Research Executive Agency
SRB	Single Resolution Board

THE EUAN'S REPLY

17

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 annual 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.

60, 61, 62 and 63

The EU Agencies Network (EUAN) welcomes the annual report on EU Agencies for the financial year 2019 of the European Court of Auditors (ECA). The EUAN acknowledges the Court's preliminary observations, particularly in the areas of public procurement management, conflicts of interest and recruitment procedures, and budgetary management. The EUAN members are committed to continuously improve their policies and procedures. The Network wishes to highlight that the preliminary observations of the individual cases differ from Agency to Agency and therefore the Network would like to make reference to the Agencies' individual response to the statement of assurance.

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This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg on 22 September 2020.

For the Court of Auditors

A handwritten signature in black ink, appearing to read 'k-H se', written in a cursive style.

Klaus-Heiner Lehne

President

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