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COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	28 November 2017
To:	Mr Märt KIVINE, President of the Council of the European Union
Subject:	Report on the annual accounts of the European Asylum Support Office for the financial year 2016 together with the Office's reply

Delegations will find attached the European Court of Auditors' report on the annual accounts of the European Asylum Support Office for the financial year 2016.

This report is accompanied by the Office's reply and will shortly be published in the *Official Journal of the European Union*.

Encl.: Report on the annual accounts of the European Asylum Support Office for the financial year 2016 together with the Office's reply.¹

¹ In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.



EUROPEAN
COURT
OF AUDITORS

Report on the annual accounts
of the European Asylum Support Office
for the financial year 2016
together with the Office's reply

INTRODUCTION

1. The European Asylum Support Office (hereinafter “the Office”, aka “EASO”), which is located in Valletta, was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council¹ with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need. Since 2015, the Office provides support to Greece and Italy in the context of the migration crisis. In 2016, the European Commission proposed to enhance the Office’s mandate and to considerably expand its tasks to address any structural weaknesses that arise in the application of the EU’s asylum system². Since March 2016, the Office’s teams in the hotspots also work on the operational implementation of the EU–Turkey Agreement and support the Greek Asylum Service.
2. **Table 1** presents key figures for the Office³.

TABLE 1: KEY FIGURES FOR THE OFFICE

	2015	2016
Budget (million euro) ⁴	15,9	53
Total staff as at 31 December ⁵	93	125

Source: data provided by the Office.

3. The table shows that the considerable increase of the Office’s tasks resulted in a 2016 final budget which was more than three times higher than in the previous year. In addition

¹ OJ L 132, 29.5.2010, p. 11.

² COM(2016) 271 final

³ More information on the Office’s competences and activities is available on its website: www.easo.europa.eu.

⁴ Budget figures are based on payment appropriations.

⁵ Staff includes officials, temporary and contract staff and seconded national experts.

the number of staff available in 2016 increased by 34 % and systems and procedures were still in the process of being adapted to cope with the new circumstances.

4. This report should be read in the context of these challenges and the Court's mandate which is governed by international audit standards.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

5. The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office's supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of management representations.

OPINION

6. We have audited:

- (a) the accounts of the Office which comprise the financial statements⁶ and the reports on the implementation of the budget⁷ for the financial year ended 31 December 2016, 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

7. In our opinion, the accounts of the Office for the year ended 31 December 2016 present fairly, in all material respects, the financial position of the Office at 31 December 2016, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with

⁶ The financial statements comprise the balance sheet, the statement of financial performance, the cashflow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁷ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

8. In our opinion, revenue underlying the accounts for the year ended 31 December 2016 is legal and regular in all material respects.

Payments

Basis of qualified opinion

9. The Court made material findings in relation to two out of five significant procurement procedures from 2016 for which payments were incurred during the year, as set out in paragraphs 9.1. and 9.2. This demonstrates a lack of rigour in the Office's procurement procedures:

9.1. Two of the three tenderers participating in one audited procurement procedure for the provision of travel services under a framework service contract amounting to 4 million euro for the period 2016 to 2020 were asked to provide additional information in relation to the same selection criteria. Although neither of them submitted the requested information (CVs of the persons to perform the task at EASO's premises), only one of them was excluded from the procedure for this reason. The other one was awarded the contract on the basis that the relevant CVs would be provided following the award of the contract. The procurement procedure therefore did not comply with the principle of equal treatment and the contract was awarded to a tenderer who did not fulfil all selection criteria. The framework contract and associated 2016 payments, amounting to 920 561 euro, are therefore irregular.

9.2. In February 2016 the Office directly awarded a framework contract (FWC) for interim services to support it in its response to the migration crisis for a period of 12 months amounting to 3,6 million euro. The FWC was awarded to a single preselected economic operator without

applying any of the procurement procedures laid down in the EU Financial Regulation⁸. The award was therefore not in compliance with the relevant EU rules and associated 2016 payments, amounting to 592 273 euro, are irregular.

10. The amounts involved in relation to the matters described in paragraphs 9.1 to 9.2 represent 2,9 % of the Office's total 2016 expenditure.

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

11. In our opinion, except for the effects of the matters described in the Basis of qualified opinion paragraph 9, the payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

Responsibilities of management and those charged with governance

12. In accordance with Articles 310 to 325 of the TFEU and the Office's Financial Regulation, management is responsible for the preparation and presentation of the accounts on the basis of internationally accepted accounting standards for the public sector and for the legality and regularity of the transactions underlying them. This responsibility includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them. The Office's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts.

13. In preparing the accounts, management is responsible for assessing the Office's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

14. Those charged with governance are responsible for overseeing the entity's financial reporting process.

⁸ Article 104 of Regulation (EU) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1), provides that procedures for awarding concession contracts or public contracts, including framework contracts shall take one of the forms listed in that article.

Auditor's responsibilities for the audit of the accounts and underlying transactions

15. Our objectives are to obtain reasonable assurance about whether the accounts of the Office are free from material misstatement and the transactions underlying them are legal and regular and to provide, on the basis of our audit, the European Parliament and the Council or other respective discharge authorities with a statement of assurance as to the reliability of the accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

16. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and the regularity of the transactions underlying them. The procedures selected depend on the auditor's judgment, including an assessment of the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error. In making those risk assessments, internal controls relevant to the preparation and fair presentation of the accounts and legality and regularity of underlying transactions, are considered 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 internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the accounts.

17. For revenue, we verify the subsidy received from the Commission and assess the Office's procedures for collecting fees and other income, if any.

18. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments other than advances at the point they are made. Advance payments are examined when the recipient of funds provides justification for their proper use and the Office accepts the justification by clearing the advance payment, whether in the same year or later.

19. In preparing this report and Statement of Assurance, we considered the audit work of the independent external auditor performed on the Office's accounts as stipulated in Article 208(4) of the EU Financial Regulation⁹.

20. The comments which follow do not call the Court's opinion into question.

COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

21. In August 2016 the Office launched an open procedure (five lots) to award a FWC to cover its needs for cultural mediators/interpreters in different countries. The total amount of the FWC for the four lots signed and audited (Lots 2 to 5) was 60 million euro over four years. These four lots were awarded to the same tenderer as first contractor-in-cascade. This contractor met the financial requirements of the selection criteria (1 million euro annual turnover) except for one of the three prior years, for which an availment contract was signed with a non-profit organisation which committed to make its "turnover" available to the contractor. The Financial Regulation permits reliance on financial and economic capacities of other entities. However, in this case it is not clear how the "turnover" of this entity can be made available, nor given the nature of its activities whether it can support the delivery of the services to be provided. The Office should have rejected the offer as it did not demonstrate compliance with the tenderers economic and financial capacity requirements. In consequence the framework contract and all related payments are irregular (no payments made in 2016).

COMMENTS ON INTERNAL CONTROLS

22. The special meeting of the European Council on 23 April 2015 and the 10 point plan on migration adopted by the Foreign and Interior Affairs Ministers on 20 April 2015 called upon Member States to ensure fingerprinting of all migrants. To meet this requirement there was an urgent need to increase the fingerprinting capacity of the Greek authorities. The Commission assigned this task to the Office. It necessitated the purchase and subsequent donation to the Greek State of 90 fingerprint-scanning machines and 90 compatible

⁹ Regulation (EU, Euratom) No 966/2012.

computers (equipment) for an amount of 1,1 million euro under a grant agreement between the Commission and the Office . The grant agreement required delivery of the equipment to the IT Division of the police in Athens and from there distribution to the hotspots located on the Greek Islands. The description of the action required Office staff to be on the spot to ensure a proper delivery, installation and subsequent ownership transfer to the Greek police. However, Office staff were not on the spot to meet this requirement and confirmation from the relevant Greek authorities that the equipment had been delivered to the hotspots in February and early March 2016 and is being used for its intended purpose was only received in July 2017.

23. Contracting authorities shall request in writing details of the constituent elements of the price or cost, if these appear to be abnormally low, and shall give the tenderer the opportunity to present its observations¹⁰. For two of the lots (Lots 3 and 5) procuring cultural mediators/interpreters in different countries (see also paragraph 21), the Office received financial offers which were 50 % and 31 % respectively lower than the next lowest offers. Whilst this is indicative of the offers being abnormally low, the Office did not consider it necessary to request any further explanation from the tenderer in this regard.

24. In its audit report dated October 2016, the Commission's Internal Audit Service (IAS) highlighted that there is no adequate planning for procurement procedures for administrative expenditure and that the monitoring of procedures and specific contracts concluded under framework contracts is weak. The Office and the IAS agreed on a plan to take corrective action.

25. In 2016 the Office faced several challenges in its operating environment, including not only a substantial increase in its budget and expansion of its tasks, but also a significant increase in the number of transactions, a change of the accounting officer (accountant) with several interim solutions and the introduction of a paperless workflow system. This situation of considerable change and instability was neither mitigated by a re-validation of the

¹⁰ Article 151 of Commission delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

accounting system nor by introducing a system of regular ex-post verifications of transactions¹¹.

26. In 2014, the Commission on behalf of more than 50 EU Institutions and bodies including the Office signed a framework contract with one contractor for the acquisition of software licences and the provision of maintenance and support. The framework contractor acts as an intermediary between the Office and suppliers that can address the Office's needs. For these intermediary services the framework contractor is entitled to uplifts of two to nine percent of the suppliers' prices. In 2016, total payments to the framework contractor amounted to 534 900 euro. The Office did not systematically check prices and uplifts charged with the suppliers' quotes and invoices issued to the framework contractor.

COMMENTS ON SOUND FINANCIAL MANAGEMENT AND ON PERFORMANCE

27. An external evaluation of the Office's performance in the period 2011 to 2014 was prepared on behalf of the Commission and the final report was delivered in December 2015. It confirmed the relevance of the Office's mission and tasks and concluded an overall effective implementation of its key tasks and that the majority of expected results had been achieved. The evaluation also referred to a need to increase the efficiency of operations and to further ensure cooperation and coherence of activities with other EU and international institutions and bodies working on migration issues. The Office is implementing an action plan agreed with the Management Board in the light of its extended mandate, with the final implementation report planned for June 2017.

28. The Office purchased and installed 65 containers to be used as mobile offices on the Greek and Italian hot-spots for a total amount of 852 136 euro. Some of the containers were placed in a location where similar containers not belonging to the Office were later destroyed by riots. The Office has not covered the containers against this risk with an insurance contract.

¹¹ Except for transactions made under delegation agreements with the Commission.

29. The Office has not recovered all its due receivables in a timely manner. VAT reimbursements for the years 2014 (180 919 euro) and 2015 (245 960 euro) remained unrecovered at the end of 2016.

BUDGETARY MANAGEMENT

30. The level of committed appropriations for Title II (administrative expenditure) carried over was high at 2,5 million euro, i.e. 43,9 % (2015: 1 076 583 euro, i.e. 36,9 %). The carry-overs mainly relate to IT infrastructure, translations and publications, business consultancy and Management Board meeting cost for which contracts were signed towards the end of 2016 and/or invoices were only issued in 2017.

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

31. An overview of the corrective action taken in response to the Court's comments from previous years is provided in the ***Annex***.

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA, Member of the Court of Auditors, in Luxembourg at its meeting of 17 October 2017.

For the Court of Auditors

Klaus-Heiner LEHNE

President

Follow-up of previous years' comments

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	There is room to improve the transparency of recruitment procedures: there was no evidence that weightings and threshold scores to be invited for interviews and for being put on the reserve list were set before examination of the applications, or that questions for interviews and written tests were set before the examination of applications.	Completed
2013	Of the total number of payments, 446 (18 %) were made after the time limits set in the Financial Regulation. The average delay for late payments was 21 days.	Outstanding¹
2013	Six of the 16 internal control standards have not been fully implemented.	Ongoing²

¹ In 2016 the Office made 2 007, i.e. 41,29 % (2015: 1 024, i.e. 29,2 %) payments after the time limits set in the Financial Regulation. The average delay for late payments was 35 (2015: 29) days.

² At the end of 2016 one ICS remains to be implemented.

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	There is room to improve the transparency of recruitment procedures: questions for interviews and written tests were drafted after examination of the applications, which increases the risk of questions being influenced by individual applications; the selection committees did not always award scores to all selection criteria included in the vacancy notices; the declaration of conflict of interest signed by selection committee members only considers a personal relationship to constitute a potential conflict of interest and explicitly excludes professional relationships; in the case of one specific recruitment procedure a discrepancy was noted between one eligibility criterion indicated in the vacancy notice and the corresponding selection criterion concerning the number of years of proven professional experience.	Completed
2014	The Office made 1 062 (28,6 %) payments after the time limits set in the Financial Regulation. The average delay for late payments was 24 days.	Outstanding¹
2014	The Office has a high staff turn-over, 14 staff left the Office in 2014, including four in key positions. This high turn-over of staff causes a considerable risk to the achievement of the objectives set in the annual and multi-annual work programme.	Ongoing³

³ 17 staff left the Office in 2016 and 70 new were recruited. The office received 50 new posts as per establishment plan for 2016.

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	<p>According to a decision by the Executive Director, participants in meetings organized by EASO are classified in one of the three categories (A, B or C) for cost reimbursements. Total 2014 reimbursements to meeting participants amounted to 997 506 euro. Category "A" participants, who are supposed to assume a specific duty in the meetings, receive a flat rate reimbursement for travel and daily subsistence costs, whereas Category "B" participants receive a flat rate reimbursement for travel costs only. Category "C" participants are not eligible for any reimbursement. The number of participants classified as recipients of category "A" reimbursements increased from 61 % in 2013 to 69 % in 2014. There is no documentation justifying the classification of participants in the three categories.</p>	Ongoing⁴
2015	<p>The Office committed only 14,5 million euro, i.e. 93,7 % of the approved budget (2014: 12,4 million euro, i.e. 84,7 %). The level of committed appropriations carried over for Title II (administrative expenditure) was high at 1 076 583 euro, i.e. 36,9 % (2014: 635 492 euro, i.e. 28,7 %). The carry-overs mainly relate to consulting services for ICT developments contracted in the last quarter of 2015 (0,4 million euro) and investments in IT infrastructure (0,3 million euro) in view of the expected recruitment of additional staff following the decision of the budget authority at the end of 2015 to increase the establishment plan.</p>	N/A
2015	<p>The Director of the Office approved a new policy for the recruitment of temporary and contract agents in November 2015. The new policy addresses most issues identified by the Court during past audits. Its implementation will be followed up in 2016 when a significant number of recruitments is expected.</p>	Completed

⁴ In 2015, reimbursements to meeting participants amounted to 987 515 euro. The number of participants classified as recipients of category "A" reimbursements decreased from 69 % in 2014 to 52 % in 2015. In 2016, reimbursements to meeting participants amounted to 1 012 147 euro. The number of participants classified as recipients of category "A" reimbursements decreased from 52 % in 2015 to 37 % in 2016.

THE OFFICE'S REPLY

9.1. The Office takes note of the Court's observation however, EASO made its decision based on the fact that the awarded company was the only one with the existing capacity to fulfil the contractual obligations.

9.2. The Office takes note of the Court's observation and will ensure to avoid similar situations in the future. EASO's actions were in the context of extreme urgency linked to the refugee crisis which was at its peak at the time, compounded by the necessity to implement the decisions of the Council regarding the emergency tasks entrusted to the Office and to compensate for the shortage of Member States' experts.

The contractor chosen under these extreme circumstances was the same who was previously contracted by another EU agency located in Greece. EASO relied on the eligibility and financial capacity checks performed by that agency. The decision was documented and approved in an exception request.

In the meantime, EASO has launched a new open tender procedure to award a new framework contract.

21. The Office takes note of the Court's opinion. EASO endeavoured to operate within the applicable provision. Case law on reliance and separate entities leaves room for interpretation, and EASO believed it had acted in a compliant manner.

22. EASO responded to the urgent need to increase the fingerprinting capacity in Greece by procuring the equipment and delivering it to the Greek Police on 12 February 2016 and 2 March 2016.

It therefore had to start the procedure in advance of the signature of the grant contract which was signed on 3 March 2016. It was not possible for EASO staff to be on the spot to confirm the installation of the EURODAC devices because the grant was signed after the devices had been already delivered, and the police had already started the process of distributing them to the hotspots.

The Office had first formally requested confirmation on the delivery and installation of the equipment in the Hotspots on 23 May 2016 from the Greek authorities but only received it on 20 July 2017.

23. The Office takes note of the Court's observations.

24. The Office takes note of the Court's comment and refers to the fact that many of the actions included in the plan have already been implemented.

25. The Office takes note of the Court's comment but refers to the fact that a clean opinion on the accounts was issued by an independent external auditor. Nonetheless the re-validation of the accounting system is planned for 2017. An ex-post verification strategy will be considered in the medium term.

26. The Office takes note of the Court's comment and informs the Court that in line with ECA's view on the matter of introducing a systematic check, the Office will introduce systematic checks for every quotation above 135 000 euro from 1 January 2018.

28. The Office takes note of the Court's comment but refers to the fact that the EASO Management decided that it was not cost-effective to obtain insurance.

29. There was a change imposed by the National Authorities from annual to quarterly returns of VAT that resulted in a need to resubmit requests for VAT reimbursements for the years 2014 and 2015 on quarterly basis.

30. The Office takes note of the Court's comment but refers to the fact that due to budget amendments during the second half of the year, payments for the respective commitments accumulated over the last quarter and this resulted in the effects mentioned by the Court.