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## COVER NOTE

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From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	4 November 2015
To:	Mr Jean ASSELBORN, President of the Council of the European Union
Subject:	Report on the annual accounts of the European Railway Agency for the financial year 2014 together with the Agency's reply

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Delegations will find attached the European Court of Auditors' report on the annual accounts of the European Railway Agency for the financial year 2014.

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

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Encl.: Report on the annual accounts of the European Railway Agency for the financial year 2014 together with the Agency's reply.<sup>1</sup>

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<sup>1</sup> 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 Railway Agency  
for the financial year 2014  
  
together with the Agency's reply

## **INTRODUCTION**

1. The European Railway Agency (hereinafter “the Agency”, aka “ERA”), which is located in Lille and Valenciennes, was created by Regulation (EC) No 881/2004 of the European Parliament and of the Council<sup>1</sup>. The Agency's task is to enhance the level of interoperability of railway systems and to develop a common approach to safety in order to contribute to creating a more competitive European railway sector with a high level of safety<sup>2</sup>.

## **INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE**

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

### **STATEMENT OF ASSURANCE**

3. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- (a) the annual accounts of the Agency, which comprise the financial statements<sup>3</sup> and the reports on the implementation of the budget<sup>4</sup> for the financial year ended 31 December 2014, and
- (b) the legality and regularity of the transactions underlying those accounts.

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<sup>1</sup> OJ L 220, 21.6.2004, p. 3.

<sup>2</sup> ***Annex II*** summarises the Agency's competences and activities. It is presented for information purposes.

<sup>3</sup> These include the balance sheet and the statement of financial performance, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

<sup>4</sup> These comprise the budgetary outturn account and the annex to the budgetary outturn account.

***The management's responsibility***

4. The management is responsible for the preparation and fair presentation of the annual accounts of the Agency and the legality and regularity of the underlying transactions<sup>5</sup>:
- (a) The management's responsibilities in respect of the Agency's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer<sup>6</sup>; making accounting estimates that are reasonable in the circumstances. The Director approves the annual accounts of the Agency after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, inter alia, that he has reasonable assurance that they present a true and fair view of the financial position of the Agency in all material respects.
- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

***The auditor's responsibility***

5. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council<sup>7</sup> with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International

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<sup>5</sup> Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

<sup>6</sup> The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

<sup>7</sup> Article 107 of Regulation (EU) No 1271/2013.

Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Agency are free from material misstatement and the transactions underlying them are legal and regular.

6. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts. In preparing this report and Statement of Assurance, the Court considered the audit work of the independent external auditor performed on the Agency's accounts as stipulated in Article 208 (4) of the EU Financial Regulation<sup>8</sup>.

7. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

#### **Opinion on the reliability of the accounts**

8. In the Court's opinion, the Agency's annual accounts present fairly, in all material respects, its financial position as at 31 December 2014 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

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

9. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2014 are legal and regular in all material respects.

10. The comments which follow do not call the Court's opinions into question.

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<sup>8</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

### **COMMENTS ON BUDGETARY MANAGEMENT**

11. The overall level of committed appropriations was high at 97 %. However, there was also a high level of committed appropriations carried over for the operational budget (title III) at 2,2 million euro, i.e. 37,7 % (2013: 1,6 million euro, i.e. 25 %) due to delayed operational projects (safety, European Railways Traffic Management System - ERTMS) and delayed IT projects. This situation is at odds with the budgetary principle of annuality.

### **OTHER COMMENTS**

12. When implementing a multiple framework contract on ERTMS project follow-up, the Agency reopened a competition procedure for the award of a specific contract. However, both the excessive weighting of quality and the high maximum contract value in the reopening tender resulted in financial offers close to the maximum contract value. This is in contradiction with the objective of reopening a competition procedure, which is to ensure competition on price.

### **FOLLOW-UP OF PREVIOUS YEARS' COMMENTS**

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

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 8 September 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2011</b>	The Agency's Founding Regulation sets maximum employment periods for temporary staff recruited by the Agency from the professionals of the railways sector. According to these provisions, the Agency will have to replace half of its operational staff in the period 2013-2015, which may cause major disruptions in the Agency's operational activities <sup>1</sup> .	<b>On-going</b>
<b>2011</b>	There is room to improve the Agency's recruitment procedures in order to fully ensure transparency and equal treatment of candidates. As an example, vacancy notices did not provide information on the required minimum number of years of post-secondary or university studies which however was used as a selection criterion. The pass marks for interviews and reserve lists, the scoring of selection criteria, the questions for oral and written tests and the weightings between written and oral tests were not set before applications were examined.	<b>On-going</b>
<b>2012</b>	The Agency does not comply with its Internal Control Standard regarding business continuity; there are no approved IT Business Continuity and Disaster Recovery plans.	<b>Completed</b>
<b>2013</b>	There is room to improve the accuracy and documentation of information used in the Agency's procurement procedures.	<b>Completed</b>

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	<p>According to the Agency's founding regulation<sup>1</sup>, staff shall consist of:</p> <ul style="list-style-type: none"> <li>• temporary employees recruited by the Agency for a maximum of five years from among professionals from the railways sector on the basis of their qualifications and experience in the field of railway safety and interoperability;</li> <li>• officials assigned or seconded by the Commission or Member States for a maximum of five years; and</li> <li>• other servants to carry out implementing or secretarial tasks.</li> </ul> <p>At the end of 2013, 136 temporary employees were working for the Agency. The founding regulation also stipulates that during the first ten years of the Agency's operations, the five-year period for them may be extended by up to a maximum of a further three years when required to guarantee business continuity. The Agency used this option as standard practice until mid-2013. Furthermore, in the period from September 2013 to March 2014, the Agency re-employed four temporary employees (for an eight-year period) whose contracts with ERA had ended in 2013 after the maximum eight-year period.</p> <p>In 2013 the Agency adopted a new decision in agreement with its Administrative Board and the Commission, according to which temporary employees can have indefinite contracts. The proposal for a revised founding regulation for ERA includes similar provisions but it is unclear if and when this will be adopted by Parliament and Council.</p>	On-going



Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2013</b>	The Agency is located in Lille and Valenciennes. As the Court mentioned in its Specific Annual Report for the financial year 2006, it is likely that costs could be reduced if all operations were centralised in one location. This might also facilitate a comprehensive seat agreement with the host Member State thereby clarifying the conditions under which the Agency and its staff operate.	<b>On-going</b>

<sup>1</sup> Article 24(3) of Regulation (EC) No 881/2004, of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 1).

**Annex II****European Railway Agency****(Lille and Valenciennes)****Competences and activities**

<p><b>Areas of Union competence deriving from the Treaty</b></p> <p><i>(Article 91(1) of the Treaty on the Functioning of the European Union)</i></p>	<p>“For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:</p> <ul style="list-style-type: none"> <li>(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States,</li> <li>(b) the conditions under which non-resident carriers may operate transport services within a Member State,</li> <li>(c) measures to improve transport safety,</li> <li>(d) any other appropriate provisions.”</li> </ul>
<p><b>Competences of the Agency</b></p> <p><i>(Regulation (EC) No 881/2004 of the European Parliament and of the Council)</i></p>	<p><b>Objectives</b></p> <p>To contribute, on technical matters, to the implementation of the Union legislation aimed at:</p> <ul style="list-style-type: none"> <li>– improving the competitive position of the railway systems,</li> <li>– developing a common approach to safety on the European railway system,</li> </ul> <p>in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety.</p> <p><b>Tasks</b></p> <p>1. To address recommendations to the Commission on:</p> <ul style="list-style-type: none"> <li>– the common safety methods (CMS) and common safety targets (CSTs) provided in the Railway Safety Directive (2004/49/EC),</li> <li>– safety certificates and measures in the field of safety,</li> <li>– development of technical specifications for interoperability,</li> <li>– vocational competencies,</li> <li>– registration of rolling stock.</li> </ul> <p>2. To issue opinions on:</p> <ul style="list-style-type: none"> <li>– national safety rules,</li> </ul>

	<ul style="list-style-type: none"> <li>– monitoring the quality of the work of notified bodies,</li> <li>– interoperability of the trans-European network.</li> </ul> <p>3. To coordinate national bodies:</p> <p>Coordination of national safety authorities and national investigation bodies (as described in Directive 2004/49/EC, Articles 17 and 21).</p> <p>4. Publications and databases:</p> <ul style="list-style-type: none"> <li>– report on safety performance (every two years),</li> <li>– report on progress with interoperability (every two years),</li> <li>– public database of safety documents,</li> <li>– public register of documents on interoperability.</li> </ul>
<b>Governance</b>	<p><b>Administrative Board</b></p> <p>Comprises one representative from each Member State, four representatives from the Commission and six representatives, without the right to vote, from the professional sectors concerned.</p> <p><b>Director</b></p> <p>Appointed by the Administrative Board on a proposal from the Commission.</p> <p><b>External audit</b></p> <p>European Court of Auditors.</p> <p><b>Discharge authority</b></p> <p>European Parliament, following a recommendation from the Council.</p>
<b>Resources made available to the Agency in 2014 (2013)</b>	<p><b>Budget</b></p> <p>25,7 (25,8) million euro</p> <p><b>Staff at 31 December 2014</b></p> <p>Posts listed in the establishment plan: 140 (143)</p> <p>Posts occupied on 31.12.2014: 132 (135)</p> <p>Other staff: 19 (15)</p> <p>Total staff: 151 (150), of which assigned to:</p> <ul style="list-style-type: none"> <li>– operational tasks: 117 (116)</li> <li>– administrative tasks: 34 (34)</li> </ul>

<b>Products and services in 2014</b>	<p>Development of a programme plan setting out milestones to deliver a single safety certificate.</p> <p>Monitoring of and biennial report on safety performance.</p> <p>Evaluating transposition of the Safety Directive.</p> <p>NSA audits.</p> <p>NIB assessments.</p> <p>Drafting a recommendation on a revised Common Safety Method for assessing CSTs and NRVs.</p> <p>Annual reporting on CSTs.</p> <p>Running a pilot on a new regulatory monitoring matrix.</p> <p>Reviewing the current framework on assessment and supervision by NSAs.</p> <p>Implementing TSIs with extended geographical scope and guiding, supporting and advising the rail sector and Member States when implementing the telematics TSIs.</p> <p>Revising the PRM TSI.</p> <p>Closing the remaining open points.</p> <p>Developing the Reference Document Database.</p> <p>Facilitating trial “one-stop-shop” authorisations.</p> <p>Facilitating migration to the 4th Railway Package.</p> <p>Follow-up of the development, testing and implementation of ERTMS.</p> <p>Developing a roadmap to enable ETCS communications on packet-switched radio technologies.</p> <p>Developing and publishing guideline documents to simplify and standardise the engineering in relation to ERTMS.</p> <p>Supporting harmonised operations with ERTMS.</p> <p>Cooperation with the INEA Executive Agency in evaluating specific ERTMS projects.</p> <p>Continuously implementing appropriate tools and resources in order to become a modern organisation which can quickly adapt to any changes.</p>
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*Source:* Annex supplied by the Agency.