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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 Office of the Body of European Regulators for Electronic Communications 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 Office of the Body of European Regulators for Electronic Communications 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 Office of the Body of European Regulators for Electronic Communications 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
Office of the Body of European Regulators for Electronic Communications
for the financial year 2016

together with the Office's reply

INTRODUCTION

1. The Office of the Body of European Regulators for Electronic Communications (hereinafter “the Office”), which is located in Riga, was established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council¹. The Office’s main task is to provide professional and administrative support services to the Body of European Regulators for Electronic Communications (BEREC) and, under the guidance of the Board of Regulators, to collect and analyse information on electronic communications and to disseminate among National Regulatory Authorities regulatory best practices such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework.

2. **Table 1** presents key figures for the Office².

TABLE 1: KEY FIGURES FOR THE OFFICE

	2015	2016
Budget (million euro) ³	4,0	4,2
Total staff as at 31 December ⁴	26	27

Source: data provided by the Office

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

3. 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

¹ OJ L 337, 18.12.2009, p. 1.

² More information on the Office’s competences and activities is available in its website: www.berec.europa.eu.

³ Budget figures are based on payment appropriations.

⁴ Staff includes officials, temporary and contract staff and seconded national experts.

control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of management representations.

OPINION

4. We have audited:

- (a) the accounts of the Office which comprise the financial statements⁵ and the reports on the implementation of the budget⁶ 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

5. 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 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

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

⁵ 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.

⁶ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

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

7. In our opinion, 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

8. 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.

9. 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.

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

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

11. 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.

12. 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, is 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.

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

14. 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.

15. 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 Regulation⁷.

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

⁷ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

17. In March 2016 the Office launched a procurement procedure with the aim to sign one framework contract (FWC) with the two existing international schools in Riga for the children of its staff. While the technical specifications of the tender state that the Office would establish one multiple framework contract in cascade with two economic operators, the award criteria state that the choice of the school is with the parents. Consequently, the 400 000 euro framework contract signed in July 2016 is based on contradicting concepts, causing legal uncertainty to the Office and the schools. Moreover, in this specific case a FWC was unnecessary.

18. Following reclassification, one staff member was assigned to a higher grade directly at step 2 instead of step 1, which is not in line with the EU Staff Regulations.

COMMENTS ON SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

19. In March 2016 the Office signed a 60 000 euro for the provision of human resources related professional support and consultancy services. The procurement procedure was exclusively based on price. The engagement of a consultant without considering competence and expertise as award criteria does not ensure best value for money.

OTHER COMMENTS

20. In 2016, the average employment period in the Office was 2,58 years and staff turnover was high with 25 %. This situation affects the Office's efficiency and poses risks to the implementation of its work programmes. A possible reason is the salary correction coefficient applied for the host state (73 % as at 1 July 2016).

21. The Office's founding regulation does not require periodical external performance evaluations. The Office should, together with the Commission, consider commissioning such an evaluation at least every five years, as is the case for most of the other Agencies. Any future revision of the founding regulation should introduce such a requirement.

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

22. 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 19 September 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)
2014	The 2014 budget provision for contributions from EFTA's ¹ national regulatory authorities having observer status at BEREC did not materialise in the absence of agreements with EFTA countries.	Outstanding
2015	In 2013 the Office signed a four year framework contract for the provision of professional event organisation services. However, it underestimated its needs and the contract had reached its maximum amount in December 2014. A procurement procedure to sign a new framework contract was launched, but only in August 2015. In the meantime the Office procured these services from the same provider using purchase orders and low-value contracts (negotiated procedures) ² . The total amount of the services so procured exceeded the threshold value ³ . An open procurement procedure where all interested economic partners may submit a tender should have been used.	Completed
2015	The Office's audited budgetary implementation report differs from the level of detail provided by most other agencies which demonstrates the need for clear guidelines on the agencies' budget reporting.	Completed

¹ European Free Trade Association

² In the case of purchase orders and low-value contracts the procurement rules limit the competition to one and three candidates, respectively.

³ The total value of the contracts signed amounts to around 80 000 euro, whereas the threshold established by Article 137 of Regulation 1268/2012 is 60 000 euro.

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	Carry-overs of committed appropriations for Title II (administrative expenditure) were high at 134 228 euro, i.e. 44 % (2014: 91 757 euro, i.e. 40 %). These carry-overs are mainly related to the delivery of services that go beyond 2015.	N/A

THE BEREC OFFICE REPLY

18. The host Member State Latvia does not have an accredited European School. The establishment of a new accredited European School is a long process, and in the meantime the BEREC Office has established direct contracts with schools providing education in English, French and German as a main language of instruction as an interim measure to ensure international schooling for the pupils of the staff in line with the Commission guidelines on staff policy in the European Regulatory Agencies¹. The BEREC Office agrees with the findings of the auditors that the use of framework service contracts is not appropriate for the BEREC Office's schooling situation and in future will use direct service agreements with the schools without procurement. The BEREC Office would appreciate updated Commission guidelines to take into account the specificities of schooling services.

19. On the basis of the recommendations made by the Joint Reclassification Committee and based on the files of all temporary staff eligible for the reclassification, the Appointing Authority adopted the list of temporary staff members reclassified.

In addition, on proposal from the Administrative Manager, the Appointing Authority agreed, after thorough consideration, to reclassify the jobholder in the step 2 of the higher grade instead of step 1, and respectively an ex ante exception has been registered according to the rules on handling deviations from the established financial rules and procedures.

20. The BEREC Office widely agrees with the comment on the framework contract for human resource management services. The implementation of the first specific contract has already demonstrated some difficulties related to the fact that the award of the contract was exclusively based on pricing and not on the consultant's professional qualification and experience.

¹ COM(2005) 5304

In full agreement with the remarks of the auditors, the BEREC Office has terminated the framework contract and will put in place a different strategy to obtain the necessary services.

21. The BEREC Office recognises that the high staff turnover is a risk factor, which has been recorded in the risk register as a significant risk, especially taking into account the small size of the Agency, which makes that high turnover has a more negative impact (the BEREC Office is the smallest decentralized EU Agency).

The management is continuously working on the introduction of mitigation techniques but it must be emphasized that some structural and external horizontal elements affecting the turnover are outside the control of the BEREC Office, as they are stemming from the regional/local working environment of the BEREC Office.

The recent net salary decrease, a result of the continuous decreasing of the correction coefficient for Latvia, increased the risk factor.

Any action taken or planned by the BEREC Office to improve the situation can only mitigate the risk and in order to properly tackle the issue of the retention of staff, an external intervention, especially on the current system of correction coefficients, should be implemented.

22. The BEREC Office has cooperated with the Commission for the preparation of the evaluation report envisaged in Article 25 of its founding regulation and is ready to cooperate with the Commission for future evaluations. The BEREC Office will comply with any requirements in that area which could be introduced by the legislator. The BEREC regulation is currently under review and the Commission proposal includes a specific provision on recurring evaluation every five years.