

ACER's view on the most recent report of the European Court of Auditors, rendering a so-called qualified opinion on ACER's annual accounts for 2019

What has the European Court of Auditors criticised?

On 22 October 2020, in [its report on the annual accounts for ACER for 2019 the European Court of Auditors](#) issued a qualified opinion on the legality and regularity of some payments underlying the accounts. The total amount paid out irregularly by ACER in 2019 was € 988,138. This represents 6.3 % of all payments made by ACER in 2019. These irregular amounts exceed the materiality threshold set for this audit. Such an error observed by the European Court of Auditors is not a measure of fraud or waste of money, but an estimate of irregular spending against the rules.

What do we as ACER think about this criticism?

The Agency acknowledges the error observed by the European Court of Auditors.

Why have we applied this practice up until now?

The error is mainly relating to the higher usage of goods/services from 'out of price list' in a EUR 20m value contract for information technology services. The framework contract at stake was concluded for IT system integration services and IT consultancy services and covered, *inter alia*, service desk, infrastructure and operations, software development and maintenance, project and service management, as well as, application management services over a period of up to 8 years. When ACER procured the relevant framework contract, ACER was of the opinion that the nature of the services under this contract did not enable an all-inclusive list of services and products. The Agency included in the tender specifications, therefore, the option for 'out of price list' services and products to be able to cover the full scope required, thus complementing the main services and products, where needed. Before accepting the offers from the supplier, the Agency performed market researches to ensure that the prices of the goods/services offered were aligned to the market and the Agency was not overcharged, even though this research was not formally documented in the procurement files.

The error has to be seen in the context of serious underfunding of ACER over several years causing an accumulated IT investment need, which could only be satisfied thanks to an extraordinary budget transfer from the European Commission. Whilst it would have been regular if ACER had been in the position of distributing the 'out of price list' services over several years and several specific contracts, the previous underfunding and urgent investment need in 2019 made the accumulated use of 'out of price list' services in the specific contracts at stake irregular.

By way of background, the [European Court of Auditors' report on the future of EU Agencies](#), which was published also on 22 October 2020, acknowledges the aforementioned underfunding of ACER. The Court bases this observation on a survey conducted of different EU agencies' stakeholders where a relatively high share of ACER stakeholders, compared to other agencies' stakeholders, found ACER did not have sufficient financial nor human resources at its disposal. That report is the Court's 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.

How will we tackle this in future contracts?

ACER strives to further improve its financial management. For the forthcoming procurement procedures, the Agency will strive to include a more detailed list of services and products in

the tender specifications and will limit the use of “out of price list” orders to the extent possible. Given the very nature of such broader system integration services, fully eliminating the use of these types of orders will be difficult in the Agency’s view.

How will we tackle the issue in an interim phase until these future contracts are in place?

In response to the European Court of Auditors qualified opinion, ACER introduced a formal step in its procurement workflow to ensure that whenever it makes use of ‘out of price list’ services, the reasons for the use of ‘out of price list’ services and the market researches performed for the specific contracts are thoroughly documented. Overall, the use of ‘out of price list’ services has been limited to the minimum extent necessary.

In the period between receiving the European Court of Auditors’ preliminary observations in May and the current time of writing (ie. end October 2020), the Agency applied this approach a total of three times, involving total procurement of approx. € 1.1 mio (of which a total of € 57,000 was for items ‘out of price lists’). The Agency of course stands ready to collaborate further with the European Court of Auditors in upcoming audits to make sure our follow-up to the Court’s current opinion is deemed fully adequate.