



NAJWYŻSZA IZBA KONTROLI



DRŽAVNI URED ZA
REVIZIJU

Peer Review Report
on the Ethical Framework
of the European Court of Auditors
Final Draft as of 2 May 2019

Preface

To: The President of the European Court of Auditors

On behalf of the peer review team, we are pleased to present the results of the peer review of the ECA's ethical framework. The purpose of this peer review was to provide an opinion on whether the ECA's ethical framework is well established, to identify areas for improvement, and to put forward specific recommendations.

To carry out the peer review, the ECA invited the SAI of Poland and the SAI of Croatia, both experienced in the subject field. The peer review is based on the International Standards of the Supreme Audit Institutions (ISSAIs), relevant EU legislation, recognised best practice and the internal rules of the ECA.

The specific terms and conditions of the peer review were laid down in the Memorandum of Understanding, according to which the assessment focused on answering the following questions: (i) Are there appropriate legal ethical requirements at the ECA?; (ii) Are there appropriate procedures for enforcing the ethical framework at the ECA?; (iii) Are the ECA's personnel aware of the applicable ethical framework?

The ethical framework was examined for all ECA personnel, i.e. at the level of both the ECA Members and staff.

The peer review report consists of four parts:

- An **Introduction**, which gives details of the peer review, including its scope, approach, methodology and criteria;
- **Ethical Framework of the ECA**, which provides a brief description of the ECA's ethical framework and its basic requirements;
- **Peer Review Outcomes**, which gives an overview of the key observations, findings and recommendations of the peer review and describes in which areas of the ECA's ethical framework there is scope for improvement;
- **Final Conclusions**, which point out in which areas the ECA may need to pay special attention to further improving the ethical framework.

We would like to thank the ECA for the opportunity to conduct the peer review and so contribute to the ECA's goal and ambition to further develop and improve its ethical framework. The task also provided a great opportunity for mutual learning and for strengthening the good professional relations between the institutions involved.

On behalf of the peer review team, we would like to express our highest appreciation to the ECA's Members and staff for their cooperation and support during the peer review, either through exchange of documentation and information, or through interviews and the survey.

Luxembourg, May 2019

On behalf of the SAI of Poland:

Krzysztof Kwiatkowski, President

On behalf of the SAI of Croatia:

Ivan Klešić, Auditor General

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Executive Summary

- 1 “Supreme Audit Institutions (SAIs) are held to high expectations and must earn the trust of stakeholders (citizens, legislative, and executive bodies, auditees and others). Therefore, they need to act as model organisations and inspire confidence and credibility.” Thus reads the INTOSAI Code of Ethics (paragraph 1). As the guardian of the European Union’s finances, the European Court of Auditors aspires, through its independent audits, to help EU citizens decide if they can trust the EU institutions. To this end, the ECA is expected to meet the highest standards possible – with regard to the professionalism of its activities and the conduct of its management and staff.
- 2 The Peers welcome the ambition of the ECA to continuously enhance its ethical culture and its commitment to further improving its ethical framework, as evidenced by its willingness to submit to this peer review exercise.
- 3 **The ECA’s ethical requirements are reflected in its legal framework and are generally compliant with the INTOSAI Code of Ethics. However, further fine-tuning could increase its comprehensiveness and consistency.**
- 4 The key areas where some improvements are recommended – identified on the basis of a comparison of the ECA’s ethical framework with the requirements of the INTOSAI Code of Ethics – include:
 - The ECA has issued ethical standards; however, focusing them on common ethical values aligned with those in the INTOSAI Code of Ethics could better support a homogeneous ethical culture.
 - The ECA could be more explicit about the importance of ethics by giving it a prominent place in its strategic documents.
 - The ECA could place more emphasis on its tone at the top by providing for greater consistency and clarity in its rules on ethics, providing appropriate advice and training and being more transparent.
 - The ECA requires all its personnel to comply with its ethical requirements; however, awareness-raising activities should be strengthened further.
 - The ECA’s ethics control system should be further improved by basing it on a more comprehensive assessment of ethics risks, with improved information and communication as well as monitoring activities.
- 5 In the opinion of the Peers, implementation of the recommendations presented in this report would contribute to a clear, coherent and ever-improving ethical framework.

Introduction

- 6 In order to respond to the needs of its stakeholders and to adapt to the changing institutional and audit context, in 2014 the European Court of Auditors (ECA) started a reform process. The reform was part of the ECA Strategy 2013-2017, and one of its objectives was to demonstrate independence, integrity and impartiality and to enhance professionalism.
- 7 In March 2018, the Administrative Committee took a decision that the impact of the reform should be independently assessed, with a focus on the ECA's ethical framework. The Supreme Audit Institutions of Poland and Croatia, both having all the necessary experience to ensure an independent and high quality assessment, were invited and agreed to conduct a peer review in the area.
- 8 The purpose of the assessment was to provide an opinion on whether the ECA's ethical framework is well established, to identify areas for improvement, and to put forward specific recommendations.
- 9 The Memorandum of Understanding for the independent assessment was signed between the European Court of Auditors (ECA), the Supreme Audit Office of Poland (NIK) and the State Audit Office of Croatia (SAO). The peer review was carried out in accordance with the *Peer Review Guide* (ISSAI 5600).
- 10 The entire peer review was carried out from June 2018 to May 2019, when the peer review report was completed and submitted to the ECA.
- 11 The report is structured in accordance with the overall responsibilities of Supreme Audit Institutions set out in the INTOSAI Code of Ethics¹ (paragraph 12). The successive requirements of the INTOSAI Code of Ethics are listed and followed by the Peers' observations, conclusions and, if areas for improvement were identified, specific recommendations.

Scope and criteria of the peer review

- 12 The peer review takes into account the scope, approach and criteria used by the ECA for its audit of the ethical framework of the other EU institutions ("Is the ethical framework in the selected EU institutions well established?"²).
- 13 The peer review criteria were mainly based on the International Standards of Supreme Audit Institutions (ISSAIs), especially the INTOSAI Code of Ethics, as well as the EUROSAI Guidelines for Supreme Audit Institutions: How to implement ISSAI 30, internationally recognised guidelines of the Organisation for Economic Co-operation and Development (OECD), relevant EU legislation, the guidelines and procedures of the ECA, and the best practices of other SAIs and EU institutions.
- 14 The assessment was based on the following questions:
 - Are there appropriate legal ethical requirements at the ECA?
 - Are there appropriate procedures for enforcing the ethical framework at the ECA?
 - Are the ECA's personnel aware of the applicable ethical framework?
- 15 The ethical framework was examined at the level of both the ECA Members and staff.

¹ Currently numbered ISSAI 30.

² ECA audit task 18CH5002 (CH 341/17 FINAL).

Peer review approach and methodology

16 The peer review was split into three modules:

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| <p><u>Module 1</u></p> | <p>Inventory of the legal framework</p> | <p>The objective of this module was to gather information on the existing ethical framework at the ECA</p> | <p>The work comprised:</p> <ul style="list-style-type: none"> • Collection and examination of relevant documentation (legal framework, internal rules and procedures, related reports) • Interviews with ECA Members and staff at all levels, including ethics advisors and the Chair of the Ethics Committee |
| <p><u>Module 2</u></p> | <p>Inventory of the rules and procedures for enforcing the ethical framework at the ECA</p> | <p>The objective of this module was to gather information on the implementation of the existing ethical framework at the ECA</p> | <p>The work comprised:</p> <ul style="list-style-type: none"> • Collection and examination of relevant documentation (legal framework, internal rules and procedures, related reports) • Interviews with ECA Members and staff at all levels, including ethics advisors and the Chair of the Ethics Committee |
| <p><u>Module 3</u></p> | <p>Awareness of the ethical requirements at the ECA</p> | <p>The objective of this module was to get insight into the ECA personnel's awareness of the ethical framework and perception of the institution's ethical culture</p> | <p>The work comprised:</p> <ul style="list-style-type: none"> • Preparation and distribution of a survey of the ECA Members and staff at all levels, including ethics advisors and the Chair of the Ethics Committee • Analysis of responses to the survey – based on replies from 228 out of 904 ECA staff (25 percent) and 11 out of 28 (39 percent) Members |

Peer review team

17 The peer review was conducted by the following team members:

From the State Audit Office of Croatia:

Lidija Pernar

Nediljka Rogosic

Anita Materljan

Martina Jurjevic

From the Supreme Audit Office of Poland:

Jacek Jezierski

Elżbieta Matuszewska

Agnieszka Morawska

Kamila Żyndul

Ethical Framework of the ECA

- 18 The ethical framework of the ECA consists of fundamental and regulatory requirements that are prescribed in the *Treaty on the Functioning of the European Union* (Articles 285 and 286 for the Members, and Article 298 for staff), the *Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities* (hereafter referred to as *Staff Regulations*), and the International Standards of Supreme Audit Institutions (ISSAIs). The ECA has also issued a number of internal documents related to ethics: *Ethical Guidelines for the European Court of Auditors*, the *Code of Conduct for the Members of the Court* and others, including documents regulating conflicts of interest, gift policy, staff policy and training, whistleblowing and harassment. There are also specific rules and procedures at the ECA ensuring enforcement of the ethical requirements for the Members, and specific procedures which relate to staff.

Peer Review Outcomes

- 19 This section has been structured in accordance with the overall requirements for SAIs set out in the INTOSAI Code of Ethics. Each requirement is followed by a description of the Peers' findings, observations and recommendations.

The ECA has issued ethical standards

The INTOSAI Code of Ethics, paragraph 12(a), reads: *The SAI shall adopt and implement a code of ethics consistent with this standard and shall make it public.*

- 20 The ECA has issued two documents setting ethical standards: *Ethical Guidelines for the European Court of Auditors* (2011) addressed to all personnel of the ECA (Members, managers, auditors and staff in administrative functions), and the amended version of the *Code of Conduct for the Members of the Court* (2012)³, which contains additional ethical requirements for the Members. The ethical standards of the ECA have been made public. In addition, in 2016 the ECA launched a "Transparency Portal" on its website.
- 21 According to the decision establishing the Portal: "The ECA, by introducing a Transparency Portal, will enhance and complete its Ethical Framework, which will be then in accordance with high standards and best practices. The Court will lead by example, increase its reputation and be closer to the European citizens." The Portal contains, among other things, key information about the ethical framework of the ECA, an annual disclosure of information on senior ECA officials and the declaration of interests of each Member. Both the *Ethical Guidelines of the ECA* and the *Code of Conduct for the Members of the Court* are available on the Transparency Portal. A link to the INTOSAI Code of Ethics has also been included.
- 22 In the *Application guidance* section, the INTOSAI Code of Ethics (paragraph 16) reads: "[...] Elements to be considered [for a code of ethics] are: statements about the values that guide conduct, descriptions of the associated expected behaviours, specific examples of ethical dilemmas and sensitive situations, ethical conflict resolution, whistleblowing procedures, and provisions for dealing

³ The original document was issued in 2004.

with misconduct.” The ethical framework of the ECA comprises the above elements. The two documents setting ethical standards for the ECA contain statements about the values that guide conduct and descriptions of associated ethical behaviours. Additional supporting material has been placed on an ECA intranet page on *Ethics*, which contains i.a. examples of ethically sensitive situations and rules of procedure for providing information in the event of serious irregularities, including whistleblowing⁴. The provisions for dealing with misconduct by staff are delineated in the *Staff Regulations (Annex IX: Disciplinary proceedings)* and are the same as for the staff of other EU institutions. The provisions for dealing with misconduct by the ECA Members are included in the *Treaty on the Functioning of the European Union* (Article 286(6)).

- 23 The values established in the *Ethical Guidelines* for all personnel of the European Court of Auditors are as follows: Trust, confidence and credibility; Integrity; Independence, objectivity and impartiality; Professional secrecy; Competence and further professional training; An excellent and efficient organisation; Good administrative conduct.
- 24 Meanwhile, the values listed in the *Code of Conduct for the Members of the Court* are as follows: Independence; Impartiality; Integrity; Commitment; Collegiality; Confidentiality; Responsibility.
- 25 The existence of two different sets of values – since those in the *Code of Conduct* are not consistent with those in the *Ethical Guidelines* – detracts from the clarity of the ECA's ethical standards. In the opinion of the Peers, such inconsistencies hamper the creation of an ethical culture. Both the *Guidelines* and the *Code* were issued before the new version of the INTOSAI Code of Ethics was adopted in 2016, so the above values do not coincide, either, with the values of the current INTOSAI Code of Ethics, namely: Integrity; Independence and objectivity; Competence; Professional behaviour; and Confidentiality and transparency (paragraph 9).

Recommendation 1. The ECA's ethical framework should be revised so as to refer to a single set of values and be more consistent with the Treaties and the current INTOSAI Code of Ethics.

The ECA could be more explicit on the importance of ethics

The INTOSAI Code of Ethics, paragraph 12(b), reads: “The SAI shall emphasise the importance of ethics and promote an ethical culture in the organisation”.

- 26 Additionally, in the *Application guidance* section, the INTOSAI Code of Ethics states that setting ethics as an explicit priority is part of building an ethical culture in SAIs (paragraph 18(a)). The importance of ethics is also stressed in the ISSAI *Quality Control for SAIs*⁵, Element 2, *Application guidance for SAIs*, which reads: “SAIs should emphasise the importance of meeting relevant ethical requirements in carrying out their work.”
- 27 In its Strategy for 2013-2017, the ECA committed itself to demonstrating its independence, integrity and impartiality and to enhancing its professionalism by, among other things, implementing a code

⁴ Whistleblowing – the framework under which staff are required to provide information about any serious irregularity of which they become aware in the course of their duties, with provisions for keeping their identity confidential.

⁵ Currently numbered ISSAI 40.

of conduct for its Members and staff and publishing a register of the financial interests of its Members. These things have been achieved.

- 28 The ECA Strategy for 2018-2020 contains only general references to ethical values (not to ethics as such).
- 29 The document on the ECA's mission, vision, values and strategic objectives (DEC 217/07, 10 January 2008) recalls a number of ethical values. However, these are not consistent and vary in different parts of the document, which also does not explicitly mention ethics.
- 30 In the section dedicated to *Mission*, the following values related to ethics are recalled: independence, accountability and transparency. In the section dedicated to *Vision*, reference is made to independence, integrity, impartiality and professionalism. Yet the *Values* section differs and refers to independence, integrity, impartiality, professionalism, adding value, excellency and efficiency – and the same list appears on the ECA Transparency Portal.
- 31 In the opinion of the Peers, these shortcomings blur the ethical message that should be a priority for the institution. What is more, none of the sets of values listed in the document is consistent with the *Ethical Guidelines* nor the *Code of Conduct*. Moreover, the lengthy formulation of the *Mission* and *Vision* sections means that they are not consistently presented in different ECA documents or sections of the ECA website. And finally, as has already been observed, the current ECA strategy (for 2018-2020) contains no reference to ethics.
- 32 Additionally, the results of the survey do not show that the Members consider ethics a priority in the ECA's work and management: of 11 who replied, six consider ethics a priority and five do not.

Recommendation 2. The ECA should present its mission, vision and values consistently, and include ethics as an explicit priority of its mission and vision, as well as in the ECA Strategy.

The tone at the top at the ECA needs to be further strengthened

The INTOSAI Code of Ethics, paragraph 12(c), reads: "*The SAI's leadership shall set the tone at the top by its actions and example, acting consistently with the ethical values.*"

- 33 The *Application guidance* section of the INTOSAI Code of Ethics emphasises that "Building an ethical culture in an organisation starts with its leadership" (paragraph 18). The role of the top management is crucial here – among other things, top management must lead by example and ensure that ethics, policies and procedures are applied consistently and fairly.
- 34 The ECA's leaders are the ECA Members, who come from twenty-eight different countries and have different backgrounds and different cultures. This diversity creates a number of opportunities and adds great value, yet some extra effort is needed to ensure homogeneous tone at the top and an ethical culture.
- 35 Out of eleven ECA Members who responded to the survey, two are completely satisfied with the tone at the top of the ECA. Seven believe that there is some room for improvement in this area, e.g. through ensuring that the ECA's ethical framework is applied consistently and fairly, or acting more in order to maintain high standards of professionalism, accountability and transparency in decision-making. Various aspects of the tone at the top were also raised by the staff who responded to the survey and pointed to the need for improvements.

- 36 The role of the ECA Members in promoting ethics becomes even more important in the context of reported unethical behaviour, especially that recently investigated by OLAF. The ECA has acted upon this report, demonstrating willingness to improve its ethical framework and strengthen its ethics control system.
- 37 The role of an ECA Member is governed by the Treaties. Ethical standards for the Members stem from two principal documents: the *Ethical Guidelines* applicable to all personnel of the ECA and the *Code of Conduct for the Members of the Court*, which define the values and how the Members should act in cases of unethical behaviour.
- 38 Apart from the above-mentioned documents, the Court has adopted various decisions and other procedures for the Members of the Court (e.g. on mission expenses, gifts and hospitality, representation and reception expenses, outside activities and obligations after ceasing to hold office, etc.). In these documents, the ECA recognises basic risks which can threaten the fundamental ethical values contained in the *Ethical Guidelines* and the *Code of Conduct*.

Declaration of Members' Interests needs to be improved

- 39 According to Article 2 (value of impartiality) and Article 4 (value of commitment) of the *Code of Conduct for the Members of the Court*, upon taking office all Members must sign a declaration stating their financial interests, assets, spouses' professional activities and outside activities. According to Article 2(4), this declaration must be submitted on the Member's taking office, while the *Rules for Implementing the Rules of Procedure of the Court of Auditors* read: "within a maximum of thirty working days of taking office" (Art. 6(1)). As provided for in the *Code of Conduct for the Members of the Court* (Article 2(4)), the declaration must be revised in the event of significant changes, with a new declaration to be submitted, and it must also be completed when a Member leaves office. The declarations are to be examined by the President of the Court and taken into account when proposing the Members' assignment to a Chamber of the Court. The ECA President sends all the Members an annual reminder of the relevant ethical requirements.
- 40 The Peers have identified the following issues regarding Declaration of Members' Interests:
- The deadline for submitting the declaration is not aligned within the above-mentioned documents.
 - Regular updates of declarations would increase their reliability. The Peers also consider that the President of the Court is provided only with limited information by the Members.
 - The part of the declaration with information on the professional activities of a Member's spouse or partner and their "outside activities" is not as detailed as the declaration by staff employed on the basis of the Staff Regulations.
 - It is not clear why the *Rules for Implementing the Rules of Procedure* (Article 6) require the President to forward only declarations regarding outside activities to the Ethics Committee, while it does not give the same obligation for other information included in Declaration of Members' Interests.
 - Different terms (occupation, professional activities, external activities) regarding the "outside activities" are used in different documents, or even within the same document (*Code of*

Conduct for the Members of the Court, Ethical Guidelines, Rules for Implementing the Rules of Procedure).

- 41 After leaving office, whenever they intend to engage in another occupation, the Members are obliged to inform the President of the Court. According to the *Code of Conduct*, if the Court considers that the intended occupation gives rise to a conflict of interest, the President can demand the former Member refrain from such an occupation. In the *Code of Conduct* (Article 8(1)), the period of this obligation for former Members is three years after they have ceased to hold office. This is not consistent with the *Rules for Implementing the Rules of Procedure of the Court of Auditors* (Article 6(2)), or with *Decision 14-2015 on establishing the Ethics Committee*, which reads that the Members have this obligation for one year after they leave the Court. In practice, in accordance with *Decision 14-2015*, it is the Ethics Committee, not the Court or the President, which considers such conflicts of interest.
- 42 The Peers observe an inconsistency, with regard to the deadline for the Members for engaging in an occupation after leaving office, between the *Code of Conduct* and the *Rules for Implementing the Rules of Procedure of the Court of Auditors*. It is also not clear under which conditions former Members can engage in a certain occupation connected to their professional work at the Court during the given timeframe after their mandate. The rules do not precisely define the relations between the President, the Court and the Ethics Committee with regard to deciding about such cases.

Internal rules concerning ethical values for the Members need to be amended

- 43 Under the value of integrity, the *Code of Conduct* (Article 3) specifies how Members should act when they are offered gifts, this being one of the threats to integrity. A limit of 150 EUR is specified – up to this value the Members can accept gifts. Gifts of a higher value are to be handed over to the Secretary-General who is in charge of keeping the register of gifts.
- 44 The *Code of Conduct* (Article 1) specifies, under the value of independence, that Members must act in accordance with the Treaties and the laws that derive from the Treaties. Their relations with organisations or interest groups must be compatible with the requirement to preserve their independence.
- 45 The INTOSAI Code of Ethics gives requirements at the level of SAIs and of staff in relation to the values of competence, professional behaviour and confidentiality and transparency, and provides guidelines for their implementation at both levels.
- 46 The Peers note that the values of integrity, independence, competence, professional behaviour and confidentiality and transparency are either not mentioned at all, are not well defined or are not aligned in the *Code of Conduct* and the *Ethical Guidelines*. Furthermore, threats that might jeopardise these values are also not clearly defined. Nor are these documents aligned with the INTOSAI Code of Ethics.
- 47 In response to the European Parliament's observation regarding absences of the ECA Members, in December 2018 the Court amended its *Rules for Implementing the Rules of Procedure* by introducing an attendance register where the presence or absence of the Members at meetings within the Court is recorded.

Training on ethics for the Members should be emphasised more within the ECA's ethical framework

- 48 The Training Unit prepares annual and multiannual plans to be adopted by the Court and organises training events that cover, among other things, ethical issues. According to information provided by the Training Unit on 12 September 2018, new ECA Members are introduced to the *Code of Conduct* through the “welcome package”, which is a set of documents that they receive upon taking office. Besides, new Members receive introductory information on ethical issues from the Secretary-General, and one of the ethics trainers (who is also an ethics advisor) presents the ECA's ethical framework and the relevant provisions. In 2014, an ad hoc event called “Leadership & Ethics: recent changes and future trends” was organised as a seminar for the ECA Members. In 2018, another ad hoc event, entitled “New INTOSAI Code of Ethics” and addressing the ECA Members and all staff, comprised a discussion on new responsibilities and greater accountability. The event was organised in two parts: a workshop on ethics for members of the Ethics Committee, ethics advisors and auditors, relating to specific audit tasks, and a conference on ethics followed by a meeting with the Members.
- 49 After examining all the documents and procedures relating to the Members of the Court, and after holding interviews, the Peers are of the opinion that these documents do not contain provisions on training for new Members or for Members who continue their mandate. The Peers observe that regular training is organised for new Members only, while Members already in office can attend ad hoc training events on a voluntary basis.
- 50 In order to assess whether the Members are satisfied with the available training and whether there is a need for more training, the Peers interviewed five Members and conducted and analysed a survey. During the interviews, the Members stated that they participated in some kinds of training on ethics, and they did not express the need for more training in this area. However, the results of the survey indicate that training could be strengthened.

Transparency about Members needs to be strengthened

- 51 The role of the ECA Members in promoting ethics is crucial, as any unethical behaviour has a huge impact on the ethical culture of the ECA and on its reputation. At present, the Transparency Portal on the ECA website contains Members' declarations of interests and information on the professional activities of former senior officials. In July 2018, the ECA also introduced the following obligation: “The Court shall publish an overview of mission expenses per Member every quarter covering all missions” (Decision 17-2018). That information was made available during the peer review.
- 52 Taking into account the responsibilities of the Members, their decisive role in audits and the fact that they represent the institution outside (e.g. contacts with private beneficiaries, speakers at conferences), clear rules with criteria are needed.
- 53 Furthermore, the perception of the ECA's transparency as regards the Members could be increased if more information were publicly available. Good practice in this area is provided by the Commission, which e.g. publishes the schedules of the Commissioners.

Recommendation 3. The ECA should further strengthen its tone at the top. To this end, all procedures, decisions and provisions which apply to the Members should be made clear and consistent, including the following:

- The rules on and content of the Members' declaration of interests should be revised in line with other internal rules.
- The internal rules of the ECA should be consistent as regards the period before Members can engage in another occupation after leaving office.
- The *Code of Conduct for the Members of the Court* and the *Rules for Implementing the Rules of Procedure* should explicitly define the criteria on the basis of which the President, the Court or the Ethics Committee must give a formal opinion on a former Member's engagement in an occupation connected to their previous professional work during the period to which this obligation applies.
- The ethical values in the internal ethical requirements (*Ethical Guidelines* and *Code of Conduct*) should be aligned with each other and with the INTOSAI Code of Ethics. Threats to these values should also be clearly defined, given that the values should be the same for all personnel but threats may differ.
- Transparency about Members should be improved by including in the ECA Transparency Portal the register of gifts maintained by the Court Secretariat (which now can be made publicly available upon request only), information about the number of opinions issued by the Ethics Committee and the topics they most frequently concern.
- Formal training on ethics should be organised for all ECA Members, including training on the *Code of Conduct*, in accordance with the new provisions of the ethical framework. Dedicated training should also be provided for the staff of Members' private offices.

The ECA requires all personnel to comply with its ethical requirements

The INTOSAI Code of Ethics, paragraphs 12(d) and 12(f), read: "The SAI shall require all staff to always engage in conduct consistent with the values and principles expressed in the code of ethics, and shall provide guidance and support to facilitate their understanding. The SAI shall require that any party it contracts to carry out work on its behalf commit to the SAI's ethical requirements. (...) The SAI shall establish procedures to address identified conflicts between its ethical requirements and the standards of professional bodies that the SAI staff may be a member of."

The ECA's ethical requirements apply to all personnel

- 54 The fundamental document which governs ethical requirements for the staff, whether permanent, temporary or on contract, is the *Staff Regulations*. The document outlines requirements relating to the ethical principles that should be respected by staff in their capacity as public officials. These principles include impartiality, integrity, independence, loyalty and objectivity. The *Staff Regulations* also deal with areas of potential ethical concern, and attach special importance to the outside activities of staff.
- 55 In addition to the *Staff Regulations*, in October 2011 the Court adopted the *Ethical Guidelines* – which were in accordance with the previous INTOSAI Code of Ethics (1998). These guidelines apply to all ECA personnel: Members, managers, auditors and staff in administrative functions.

- 56 Apart from the documents mentioned above, the Court has issued various administrative decisions and staff notices relating to, among other things: whistleblowing, promotion, disciplinary procedures, psychological and sexual harassment, and outside activities.
- 57 The results of the survey show that all the Members and as many as 80 percent of the staff who responded have very good or good knowledge of the ethical framework applied in the ECA.
- 58 With regard to the external parties it contracts to work on its behalf, the ECA requires them to follow the highest ethical standards of their professions, and they are obliged to be acquainted with and follow the ECA's ethical requirements.

All ECA personnel are regularly reminded about its ethical requirements

- 59 Decision 36-2011, which sets out a procedure for providing reasonable assurance that the ECA complies with the relevant ethical requirements, introduces an obligation for the Secretary-General to send, by 15 January of each year, to the President, the Members and all staff engaged in performing an audit task, at any stage (planning, executing, reviewing, reporting), information on the ethical requirements of the Court. This is to remind them to take appropriate measures to comply with the Court's ethical requirements.

The ECA should ensure regular awareness-raising about ethical issues

- 60 The INTOSAI Code of Ethics, *Application guidance* section, paragraph 19, reads: "Clear communication is necessary to increase staff's awareness and understanding of the code of ethics. This can include educating staff on promoting the SAI's values and addressing ethical dilemmas, by offering workshops and training, leadership engagement, and disseminating ethics topics and good practices."
- 61 In the survey, the majority of staff confirmed that the ECA's ethical framework is sufficiently communicated. At the ECA, two types of training for staff are provided: ad hoc training and regular training. Ad hoc training can be organised at any time of the year, with the participation of external speakers, and can cover various topics. These are big events to which all staff are invited. The other type of training is organised on a regular basis (twice a year), and is a one-day compulsory event intended for all newcomers, but other staff can attend too. This one-day course is called "Public Ethics" and focuses entirely on ethics and integrity. At the end of every training event the participants are asked for their feedback.
- 62 The Court adopts multiannual (three-year) training plans that include issues relating to ethics. The Training Unit organises conferences and workshops (e.g. ethics from various perspectives). Some training events are organised for all staff, others for managers only, and special training events are also provided to ethics advisors and, where relevant, to contact persons (e.g. on issues relating to harassment). The Training Unit has developed performance indicators according to which each auditor should receive five days and non-audit staff two days of training a year.
- 63 Apart from the above-mentioned training, a separate section on the intranet (ECANet) contains information on the ECA's ethical requirements, including examples of ethical dilemmas. This practice is aimed at raising awareness of ethical issues among ECA personnel.
- 64 The majority of respondents to the survey have attended at least one training event on ethics. The content of training on the ECA's ethical framework is generally assessed very well. However, some

respondents gave proposals for improvement, such as regular compulsory refresher training or periodical updates on ethics at the EU institutions.

Recommendation 4. The ECA should organise regular training and awareness-raising on ethical issues, ensuring that all personnel are periodically updated on ethical matters.

The ECA's ethics control system should be further strengthened

The INTOSAI Code of Ethics, paragraph 12(e), reads: "The SAI shall implement an ethics control system to identify and analyse ethical risks, to mitigate them, to support ethical behaviour, and to address any breach of ethical values, including protection of those who report suspected wrongdoing."

- 65 The Peers have analysed the elements of the ECA's ethical framework so as to see whether these fit in with the application guidance set out in the INTOSAI Code of Ethics, paragraph 14: "The main components of the ethics control system are: code of ethics, leadership and tone at the top, ethics guidance, and ethics management and monitoring."
- 66 Issues relating to the code of ethics, leadership and tone at the top and ethics guidance have already been discussed in this report.
- 67 Within the ethics management and monitoring component, the Peers have analysed the following elements: ethics risk assessment, key controls – as regards the values listed in the INTOSAI Code of Ethics, information and communication, and monitoring (both ongoing and separate evaluations).
- 68 In the Peers' opinion the ECA's ethics control system is generally compliant with the INTOSAI Code of Ethics. However, some of its elements require strengthening.

Ethics risk assessment needs to be strengthened

- 69 According to paragraph 11 of the INTOSAI Code of Ethics: "Where risks are identified that threaten any of the five fundamental values, the significance of such threats is evaluated and appropriate controls (often also referred to as 'safeguards') need to be put in place to reduce the risk of unethical behaviour to an acceptable level. These controls can be put in place by legislation, regulation or a SAI." The ECA's risk assessment for 2019 includes, among its strategic risks, two risks for which ethical aspects are particularly relevant. These are the risk concerning the loss of confidence by the main stakeholders and the public in the Court's independence, integrity and impartiality, and the risk that the Court does not maintain the quality standards for professionalism of work. However, for these risks ethical factors have not been sufficiently considered. The approach adopted to constructing the risk assessment – with risks being analysed in relation to strategic objectives – in the ECA Strategy makes no reference to ethics, which reduces the opportunity for programming relevant measures. Specifically, the ECA did not assess the risks of non-compliance with the fundamental ethical values by identifying possible threats and vulnerabilities (e.g. political influence, external pressures, conflict of interest) affecting all core values at the level of both staff and the Members. The results of the survey confirmed this.

The ECA's ethics support structures for its personnel should be enhanced

- 70 The INTOSAI Code of Ethics, *Application guidance* section, paragraph 20, reads: "Although ethical behaviour is primarily the responsibility of staff, SAs can support staff by assigning responsibilities to ethics advisors (in some cases operating as ethics committees, integrity coordinators, ethics officers or counsellors) to give advice on specific issues. Confidentiality and a defined due process are critical elements for the effective use of this assistance."

Ethics Committee

- 71 The Ethics Committee is referred to in Article 4(5) of the *Code of Conduct for the Members of the Court*. The Court issued and adopted a decision establishing the Ethics Committee in April 2015. The tasks of the Committee include considering all matters relating to ethics with relevance to the standards and reputation of the Court, advising the President and the Members of the Court on ethical matters, interpreting the *Code of Conduct*, assessing Members' outside activities, and assessing the professional activities of former Members. Its role is also to discuss any ethical issues that might influence the ECA's standards and reputation. The Committee is composed of three persons: two ECA Members who do not engage in any outside activities, and one leading figure from outside the ECA, proposed by the President for a term of three years, with the possibility of one renewal. Three alternate members are also appointed in case any of the permanent members are unable to perform their duties. The Chair of the Committee is appointed from among its members and can convene a Committee when there is a need to resolve an ethical issue. The Committee can also meet at the request of the President or a Member of the Court. The Committee's opinions should be issued within 30 days and adopted by majority vote. The Committee keeps a record of the number of cases it deals with every year, as well as written evidence regarding its activities. No formal annual reports are produced. To get an insight into the work of the Ethics Committee, the Peers carried out an interview with its Chair and conducted research through the survey.
- 72 Based on the reviewed documentation as well as interviews and the survey results, the Peers are of the opinion that the Ethics Committee mainly deals with outside activities of the Members. This means that the Committee generally has no information about, and does not perform tasks relating to, the other details (financial situation, spouse's/partner's occupation) included in the Declarations of Members' Interests, which are examined by the ECA President. Under the current rules, the Committee acts only upon the initiative of the ECA President or an ECA Member, and not on its own initiative.
- 73 It is not stated on which external documents the Ethics Committee can rely when drafting its opinions.

Ethics advisors

- 74 Ethics advisors are appointed by the Secretary-General from among the ECA staff. Their role is to help staff by giving confidential and impartial advice regarding the values and principles that they should respect on specific sensitive matters, e.g. relating to conflicts of interest, acceptance of gifts and hospitality, and to provide information and advice on how to deal with serious irregularities, e.g. on the whistleblowing procedure. There are six ethics advisors at the Court. The most recent decision on the appointment of ethics advisors dates to November 2014.
- 75 There is no clear procedure for appointing ethics advisors, and therefore it is not clear what the criteria for their selection are, nor for what term they are appointed.

- 76 On the basis of the available documentation, and having conducted interviews, the Peers conclude that ethics advisors are familiar with their role and obligations, and they are at the disposal of staff in case of any ethical doubt.
- 77 The survey also shows that more than one half of staff respondents do not know who the ethics advisors are. When they need advice on ethical issues they first turn to their supervisors. Only if this does not suffice to resolve the problem do they approach an ethics advisor. This was both observed during interviews and confirmed by the results of the survey.
- 78 In the opinion of the Peers, it would be good to keep a record of the number and type of dilemmas addressed and advice given. Ethics advisors could have a formal responsibility to report annually on their activities (e.g. to the Secretary-General) so that management can be informed and recognise which types of dilemmas and unethical behaviour are most frequent and in which areas, and so that proper action can be taken (e.g. changes of procedures).
- 79 Cooperation among ethics advisors is based on joint annual training events; similar events should be organised jointly with the Ethics Committee.

The ECA could further improve on incorporating ethics into staff management

- 80 The INTOSAI Code of Ethics, *Application guidance* section, paragraph 21, reads: "Incorporating ethics in daily management is essential to reinforce values. This includes recognising ethics as a criterion in recruitment, performance appraisal and professional development. [...]".
- 81 Ethical values, such as independence, impartiality, integrity and competence, are included as criteria in the recruitment process for both the ECA Members (Treaty) and Staff (*Staff Regulations, ECA Decisions 19-2014 and 34-2014*).
- 82 The ECA's procedure for the annual appraisal of staff (*Decision 39-2014*) does not explicitly mention ethics. It is understood that appraisal of conduct in the service, which is included in the procedure, normally covers the requirement for ethical behaviour. However, the Decision includes no specific criteria or guidance in this respect. Such criteria have been drafted only for the purpose of promotions policy (*Decision 53-2014, Staff Notice 44/2015*). In the opinion of the Peers, criteria for the annual appraisal of staff could be useful, although 80 percent of survey respondents declare that ethical values and principles are applied appropriately.

Information and communication on ethics management need to be improved

- 83 The INTOSAI Code of Ethics, *Application guidance* section, paragraph 23, reads: "Information gathered from the procedures [...] can be used to regularly evaluate, update and improve ethics policies. [...]".
- 84 Information and communication are necessary at all levels of an organisation in order to have an effective management system. As the quality of information has an impact on management's ability to make appropriate decisions, information should be relevant, timely, current, accurate and accessible.
- 85 Documents presenting the ECA's ethical framework and ethical requirements are available for all ECA personnel from ECANet, together with guidelines for their practical application. Another important

information and communication tool is the ECA Transparency Portal. The Peers observe that the "Ethics" section on ECANet and the Transparency Portal have been updated.

- 86 The ECA's ethics management system involves many actors. The Peers observe that information-sharing among them is not sufficient, as they do not exchange on the issues they deal with or opinions, or consult each other's decisions. Moreover, due to the inconsistencies among the various documents governing ethics, as discussed earlier in this report, communication is blurred. It also transpires from the survey that almost one half of ECA staff think that ethics is not sufficiently communicated within the organisation, and eleven respondents presented proposals for improvements. These include regular campaigns on ethical issues, better visibility and functionality of the ECA's intranet, and a different approach to communication: "more drip-feed rather than 'once and for all' actions are required".

Monitoring in the ethics control system needs to be strengthened

- 87 The INTOSAI Code of Ethics, *Application guidance* section, paragraph 22, reads: "Monitoring controls help the SAI mitigate ethics risks. The SAI may apply the following monitoring controls: (...) maintaining registers to track interests, gifts and hospitality; (...) conducting self-assessment, internal and external reviews that can be used regularly, as monitoring tools, as a way to identify and analyse vulnerabilities and recommend measures for improving ethics management, and/or as a routine to ensure accountability. Evaluations will have to consider that many ethical requirements refer to soft controls, which require the use of specific appropriate assessment methods. Tools available for these assessments include IntoSAINT, peer review guidelines, surveys, interviews and feedback questionnaires; (...) establishing and implementing policies on ethical misconduct and whistleblowing – these include procedures for reporting cases of misconduct and for timely and adequate response, investigation and sanctioning."
- 88 In an ethics control system, monitoring is essential to ensure that controls operate appropriately, and that they are adjusted if conditions change.

Ongoing monitoring⁶

- 89 The whistleblowing procedure, introduced in a *decision by the Secretary-General of October 2014*, covers the necessary elements, including conditions and channels for providing information, handling of information and protection for the whistleblower. The decision requires staff to provide information about any serious irregularity of which they become aware in the course of their duties. Information must be in writing, preferably using the specimen formal statement provided for this purpose (available on the intranet), and with the whistleblower's identity. Confidentiality is guaranteed unless the whistleblower allows their identity to be disclosed, or unless disclosure is required as a result of legal proceedings that could be initiated in the light of the serious irregularities reported. Nevertheless, as the survey and interviews reveal, the ECA should do more to reassure staff about their protection. In the opinion of the staff, both interviewed and surveyed, there is also a need for transparency about the functioning of this system, such as periodic reports on the activity and results of whistleblowing. At the same time, fewer than 40 percent of responding staff declared

⁶ Ongoing monitoring activities cover each of the internal control components and involve action against irregular, unethical, uneconomical, inefficient and ineffective internal control systems. (INTOSAI GOV 9100)

they had good or in-depth knowledge of the ways in which unethical conduct can be reported. The ECA reports on the number of whistleblowing cases both in its annual discharge procedure for the European Parliament and internally (two cases in 2016, and none in both 2017 and 2018).

- 90 The ECA has introduced an anti-harassment policy which has been highly praised by the European Parliament. The policy contains strong disciplinary measures for offending Members, such as compulsory retirement or denial of pension rights. This has been recognised as a good practice by the European Ombudsman in its report on dignity at work in the EU institutions.
- 91 Ethical issues at the ECA are also monitored as part of occasional staff satisfaction surveys.
- 92 Disciplinary proceedings at the ECA are based on Annex IX to the Staff Regulations. The ECA also provides a mediation procedure, which is aimed at limiting litigation if cases come to court. No information is made available to ECA staff on how ethical misconduct is tackled or what disciplinary measures are taken.

Separate evaluations⁷

- 93 To date, the ECA's internal auditor has not carried out specific evaluations concerning ethics.
- 94 In 2013 the ECA carried out an assessment of its ethics management system using IntoSAINT. The results of this evaluation, as well as other observations of the ECA, have been used to implement a number of activities aimed at improving ethics management. These include setting up the Ethics Committee, appointing the ethics advisors and introducing ethics as a part of professional training.
- 95 The ECA also asked for an external independent assessment on whether its ethical framework is well established (5 March 2018). In the opinion of the Peers this was a good step forward. The results are discussed in this report.

Recommendation 5. The ECA should further strengthen its ethics control system:

- The ECA's risk assessment should adequately cover risks related to basic ethical values, taking into account the differences between risks for the Members and those for staff.
- The ECA should supplement its ethical framework with a provision requiring Declarations of Members' Interest to be sent to the Ethics Committee for an opinion. This is especially important where there are potential conflicts of interest that may threaten the reputation of the ECA. Furthermore, it is necessary to supplement the ethical framework with provisions that would mandate the Ethics Committee to take its own initiatives as regards ethical issues, rather than issuing opinions only.
- The Ethics Committee, when drafting its opinions, should also be enabled to rely on ethical guidelines developed by recognised international institutions, such as the OECD or INTOSAI.
- The Court should ensure that the functioning of ethics advisors is enhanced, e.g. by better promoting their role and establishing a more formal and transparent mechanism for their appointment.
- The ECA should improve communication and cooperation among the ethics advisors, as well

⁷ Specific separate evaluations cover the evaluation of the effectiveness of the internal control system and ensure that internal control achieves the desired results based on predefined methods and procedures. (INTOSAI GOV 9100)

as between the ethics advisors and the Ethics Committee.

- Additional criteria should be introduced which would help to assess ethical behaviour as part of conduct in the service during staff appraisals.
- The ECA should increase the effectiveness of its information and communication system concerning ethics management. This could be achieved, in particular, by stimulating the flow of information on ethical problems to allow for diagnosing systemic ethical problems and addressing them in a consistent manner.
- The ECA should consider introducing some measures to further strengthen the monitoring of its ethics management system, such as: reassuring staff about the effectiveness of whistleblower protection; regular analysis of disciplinary and mediation proceedings in order to identify weaknesses in the ethics management system; improving the transparency of the process for handling ethical misconduct; and ensuring that the overall ethics control system is regularly reviewed and updated as necessary.

Final Conclusions

- 96 The purpose of this peer review was to provide an opinion on whether the ECA's ethical framework is well established, to identify areas for improvement and to put forward specific recommendations. For that purpose, three questions were set:
1. Are there appropriate legal ethical requirements at the ECA?
 2. Are there appropriate procedures for enforcing the ethical framework at the ECA?
 3. Are the ECA's personnel aware of the applicable ethical framework?
- 97 After reviewing and analysing the existing documentation and practices relating to ethics at the ECA, and analysing the results of the survey and interviews, the peer review team concludes that:
- An ethical framework has been established at the ECA, but further improvement is needed in terms of alignment with the new INTOSAI Code of Ethics and the revision of internal documentation to ensure full consistency and comprehensiveness.
 - The ECA has developed appropriate procedures for enforcing the ethical framework; however, more effort is needed to ensure they are fully effective.
 - Generally, the personnel are aware of the applicable ethical framework, but further awareness-raising is advised.
- 98 These conclusions are based on the facts and observations in the report, which are followed by recommendations on how to make improvements in the areas identified. The Peers are of the opinion that implementation of their recommendations will contribute to the sustainability of an ethical culture at the ECA.