

Press release

Court of Audit

Report to the Federal Parliament: Building and investment costs of the Antwerp and Ghent new law courts

The Court of Audit investigated into the cost of Antwerp and Ghent new law court buildings. As a result of its findings, it made a set of recommendations designed for the Belgian Public Buildings Agency (*Régie des bâtiments/Regie der Gebouwen*) in its capacity of contracting authority.

In 1996, the government decided, under the multi-year plans for justice, to entrust the Belgian Public Buildings Agency with the construction of two new courthouses in the cities of Antwerp and Ghent. Around a decade later, the construction work has been brought to an end via an alternative financing mechanism as part of a promotion contract, and both courthouses are now operational.

The investment cost required to build the Antwerp courthouse (258,8 millions euros) is at least three times higher than the initial estimate (76,8 millions euros). As far as the Ghent courthouse is concerned, the difference between the initial estimate (49,6 millions euros) and the final investment cost (which provisionally amounts to 135,4 millions euros) is smaller.

As a matter of fact, these investment costs do not cover all expenses because some of them were directly charged against the Agency's budget. The Antwerp and Ghent courthouses' total costs respectively amount to 280,3 millions euros (plus 2,2 millions euros extra due to a damages claim) and to (provisionally) 154,8 millions euros. It is also important to take account of the additional charges related to the alternative financing mechanism implemented as part of the promotion contracts as well as to the sale of the Agency's rights and obligations to a third-party investor, as they were provided for in these contracts. These costs are charged once a year against the Agency's budget through the rental expenditure. In its 163rd and 164th Books of Remarks, the Court of Audit already informed the House of Representatives about the additional costs arising from transactions with third-party investors.

In addition, both projects are not financially completed. Investment costs mentioned in the Ghent courthouse's promotion contract (140,1 millions euros) were overestimated in comparison with the actual investment costs (which provisionally amount to 135,4 millions euros). As a result, the Agency's amount to be recovered from the third-party investor (provisionally) adds up to 4,7 millions euros. The Agency also filed a damages claim for groundwater pollution amounting to 5,4 millions euros against the City of Ghent and a private company. Lastly, some minor amounts have to be recovered from the City of Ghent, the Federal Department of Justice and a bank institution. As far as the Antwerp courthouse is concerned, the Agency and the Flemish Region still have to perform the final calculation related to the Amam tunnel, which was integrated into the construction project at the Region's request. Moreover, the Agency should recover the installation costs of a rainwater collector (up to 0,26 millions euros) from the Flemish Region.

The initial amount as it was estimated in 1996 can not be compared with the cost of the buildings, not just because of changes in prices and wages, but also because of the incomplete information on which these estimates were based. Consequently, it was not possible in 1996 to correctly assess the scope of the project, at least in Antwerp. On the

other hand, it would seem that the hypotheses on which the Agency and the Federal Department of Justice based their estimates were wrong.

In Ghent, the rising construction costs are mainly due to the groundwater pollution damage, which resulted in various extensions of time. In Antwerp, the complexity of the monumental building work accounts in particular for the high cost. The design methodology used by the world-famous architect is characterized by a “*design as build*” approach, with which the Agency was quite unacquainted, what brought about some problems on the building site.

The Agency was responsible for controlling and supervising the promoter and the construction works in progress. As the “*design as build*” approach required a more active contribution from the contractors in the construction project of the Antwerp courthouse, it was not possible to identify the individual responsibilities of the parties concerned, so that the contractual penalty clauses could not be applied.

In practice, the new calculations for extra works and costs were mainly checked by the promoter himself, what (theoretically) entailed some risks. As the remuneration paid to the promoter was based on the cost of the building works, it did not necessarily encourage him to minimize it. However, there is no indication that he would have raised his amount without due cause.

The Agency’s approach, which consists in assigning the responsibility for the practical implementation of the project to a single high civil servant, proved to be unsuitable for such complex activities. While preparing and implementing the project, the authorities (namely the policymakers and the Agency acting as executing entity) could not rely on a framework which would have allowed them to use the available (financial, legal, technical, controlling and reporting) instruments and know-how in an optimal way. Such a framework would have made it possible to put the subcontracted projects back on track while keeping within a realistic and a priori acceptable budget margin and schedule, and to make all the parties concerned aware of their responsibilities at the appropriate time.

Following these findings, the Court of Audit made several recommendations to the Agency with a view to better managing its future construction projects.

The Agency intends to initiate a consultation process with the parties concerned in order to implement the Court’s recommendations. The Minister of Finance, who is responsible for the Agency, concurs in the Court’s findings and will consult the Agency to assess to what extent the recommendations will be followed up. The Minister also asked the Agency to keep the Court informed of the subsequent calculations and processing of damages claims, as far as the Ghent courthouse is concerned, as well as of the final amount relating to the Amam tunnel in Antwerp.

Information for the press

The Court of Audit exerts an external control on the financial operations of the Federal State, the Communities, the Regions and the provinces. It contributes to improving public governance by transmitting to the parliamentary assemblies, to the managers and to the audited services any useful and reliable information resulting from a contradictory examination. As a collateral body of the Parliament, the Court performs its missions independently of the authorities it controls.

The report « **Building and investment costs of the Antwerp and Ghent new law courts** » was transmitted to the Federal Parliament. The full report (68 p.), its summary (2 p.) and this

press release are available on the homepage of the Court of Audit's website (www.courdescomptes.be).