

SUMMARY

Summary of Report 5/2021, relating to the University of Barcelona's Institute for Lifelong Learning Foundation (IL3-UB), year 2018

Barcelona, 9 June 2021

The Public Audit Office for Catalonia has issued Report 5/2021, relating to the University of Barcelona's Institute for Lifelong Learning Foundation (IL3-UB), hereafter IL3, financial year 2018, in accordance with its Annual Programme of Activities.

The report, which was presented by Board Member Mr Jordi Pons i Novell, was approved by the Audit Office Board at its meeting on 18 May 2021.

The work undertaken for this limited scope audit included auditing IL3's Operating Statement, reviewing compliance with basic legislation applying to it in the areas of accounting and staffing, and auditing how it managed its courses.

The aim of IL3 is to develop an avenue for relations between the University of Barcelona (UB) and the general public in order to provide a response to citizens' learning needs throughout their lifetime in all areas of the UB.

In 2018 IL3, according to its Operating Statement, had operating revenues of €18.65m and operating expenditures of €17.59m.

The Conclusions section of the report presents the most significant findings arising from the audit carried out, of which the following can be highlighted:

- Article 129 of the Public Sector Legal Regime Act (Act 40/2015, of 1 October) stipulated that foundations had to modify their statutes to specify which government administration they were attached to. The IL3 Statutes in force in November 2020 did not include this information.
- According to its Statutes, IL3 has the status of an in-house service provider for the UB and for those entities in the UB Group which envisage this in *their* statutes. However, according to the status of an in-house service provider in an organisation's statutes, a formal requirement which must be adhered to, is not of itself sufficient for it to be an in-house provider for a contracting authority. Rather, the requirements laid down in the public procurement legislation in force at any particular time must be effectively and cumulatively met. From the analysis carried out, bearing in mind jurisprudence from the Court of Justice of the European Union, the Audit Office considers that the presence of two private for-profit entities (the Santander Group and BBVA) could bring into doubt the status of IL3 as an

in-house service provider for the UB and entities within the UB Group and, therefore, also bring into doubt the commissions arranged between the UB and IL3.

- In year 2018 IL3 did not have its own collective bargaining agreement and applied one which it was expressly excluded from.
- In the Audit Office's opinion, in relation to the commissioning agreements between the UB and IL3, employment tribunals could rule that an unlawful loan of employees was in place, one banned by article 43.2 of Spain's Royal Legislative Decree 2/2015, of 23 October, which passed the Consolidated Workers' Statute Act, for the following reasons: because the UB effectively took on the wage payments to IL3 employees covered by the agreements and also any expenditures arising from dismissals and claims relating to the labour contracts signed; because IL3 was rendered exempt of all liability for the consequences deriving from any type of work accident involving the employees hired; because the UB shouldered a very considerable part of the responsibility for organising the work commissioned to IL3; and because IL3 did not exercise the management powers it would be expected to have – these were actually wielded by the UB.
- The Audit Office found breaches of the regulations established by the UB for postgraduate and further education courses leading to UB-specific qualifications, and breaches of the financial regulations, for the courses run by IL3, approved by its Board of Trustees. These related to how course operating surpluses were retained and distributed, to how discounts to student fees were approved, to how changes to the project as initially submitted to the Postgraduate Agency were authorised, and to the limits on wage payments for management functions.
- IL3 had not signed any contracts or commissioning agreements with the professionals taking part as directors, lecturers, coordinators or tutors for the different courses. In addition, in many of the invoices reviewed there was no breakdown showing lecturers, their hours, the hourly rate or the days tuition was given.
- IL3 did not inform the UB of wages paid to UB lecturers, in order to monitor compliance with the wage ceiling for lecturers established by Royal Decree 1450/1989, of 24 November, governing maximum salary limits for university teaching staff.
- IL3 recorded purchases of fixed asset items as general expenditures and did not include the items purchased in its inventory of fixed assets in the courses promoted through a party taking a commission. This meant there was no control over these items.

Finally, in the Conclusions section of the report various recommendations are made which, in the view of the Audit Office, would help to resolve some of the issues mentioned in the Findings section.

This summary is solely for information purposes. The audit report (in Catalan and Spanish) can be consulted at www.sindicatura.cat.