2013 discharge: European Securities and Markets Authority (ESMA)

2014/2122(DEC) - 01/07/2014 - Court of Auditors: opinion, report

PURPOSE: presentation of the EU Court of Auditors' report on the annual accounts of the European Securities and Markets Authority (ESMA) for the financial year 2013, together with the Authority's replies.

CONTENT: in accordance with the tasks conferred on the Court of Auditors by the Treaty on the Functioning of the European Union, the Court presents to the European Parliament and to the Council, in the context of the discharge procedure, a Statement of Assurance as to the reliability of the annual accounts of each institution, body or agency of the EU, and the legality and regularity of the transactions underlying them, on the basis of an independent external audit.

This audit concerned, amongst others, the annual accounts of the ESMA Agency.

Statement of assurance: pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- the annual accounts of the Authority, which comprise the financial statements and the reports on the implementation of the budget for the financial year ended 31 December 2013;
- the legality and regularity of the transactions underlying those accounts.

Opinion on the reliability of the accounts: in the Court's opinion, the Authority's annual accounts present fairly, in all material respects, its financial position as at 31 December 2013 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

Opinion on the legality and regularity of the transactions underlying the accounts: in the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2013 are legal and regular in all material respects.

The report also makes a series of observations on the budgetary and financial management of the Authority, accompanied by the latter's response. The main observations may be summarised as follows:

The Court's observations:

- **budgetary management**: the Court noted that the level of committed appropriations carried over to 2014 was high for operational expenditure at 58%. This was caused by IT services received in 2013 but not yet paid for. In 2013 the Authority made 12 budget transfers amounting to EUR 5.1 million or 18% of the budget), which indicates continued weaknesses in budget planning;
- **financial management**: the Court noted that some 27% of payments made in 2013 for goods and services received were late. Where payments were late, they were overdue by an average of 32 days. Late interest paid in 2013 amounted to EUR 3 834. According to the Protocol on the privileges and immunities of the European Union and the EU VAT Directive, the Authority is exempt from indirect taxes. Total VAT charged to ESMA in the period 2011-2013 was EUR 3.3 million. Following lengthy discussions with the host Member State, the Authority started claiming VAT reimbursements in the last quarter of 2012, but only EUR 1.3 million had been claimed back by the end of 2013.

The Authority's replies:

- **budgetary management**: the Authority noted that it is further strengthening the procurement plan monitoring to reduce the level of carry-overs to the minimum level possible. Regarding the number of budget transfers, ESMA started in 2013 to set up periodic budget reviews to improve budget implementation;
- **financial management**: ESMA is aware of the issue related to late payments and took several initiatives in 2013 in order to address it. ESMA has streamlined at the end of 2013 the financial circuits and adapted the forms to improve the timeliness of the process. Due to the ongoing discussions on the headquarter agreement, ESMA's process to recover VAT from the French government was implemented only end 2012. In 2013, ESMA had therefore to process a back log of VAT claims for which the last batch was sent out in May 2014.

Lastly, the Court of Auditors' report contains **a summary of the Authority's activities in 2013**. This is focused on the following:

Budget: EUR 28.189 million including a EUR 8.6 million Union subsidy.

Activities:

- publication of periodic risk reports and trend summaries of financial markets;
- development of benchmark principles and recommendations together with EBA;
- carrying out in-depth analysis of innovative financial products and processes, notably crowdfunding;
- monitoring and analysing retail investor trends;
- work on investor education;
- issuing remuneration guidelines for investment firms. Guidelines covered governance, design and control of pay schemes;
- publication of three ESAs joint positions on principles for manufacturers' product oversight and governance processes;
- strengthening credit rating agencies (CRA) supervision. Twenty-two CRAs registered, two certified;
- advice to the Commission;
- conclusion of supervisory cooperation arrangements for alternative investment funds with 46 non-EU authorities.