2014 discharge: European Securities and Markets Authority (ESMA)

2015/2190(DEC) - 08/09/2015 - 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 for the financial year 2014, together with the Authority's reply.

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 European Securities and Markets Authority (ESMA).

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 2014; and
- 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 2014 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 2014 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 comments:

- **reliability of the accounts**: the amount of fees charged to supervised entities (Credit Rating Agencies and Trade Repositories) in 2014 appearing as revenue in the provisional statement of financial performance was based on estimated rather than actual costs of supervisory activities carried out. Fees levied on supervised entities should be as close as possible to the actual cost incurred in this area;
- **legality and regularity of transactions**: the Court recalled that when ESMA was established in 2010 it inherited a number of IT framework contracts from its predecessor body CESR (Committee of European Securities Regulators) for the hosting of its data centres as well as the development and maintenance of its IT systems. Failure to replace these framework contracts with timely calls for tender led to a situation where two of them were extended beyond their original duration. It also resulted in the Authority procuring some IT services using a French central purchasing body. However, this was not in compliance with the Financial Regulation;
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budgetary management: the overall level of committed appropriations increased from 93 % in 2013 to 99 % in 2014, indicating that commitments were made in a more timely manner. However, the level of committed appropriations carried over to 2015 was high for operational expenditure.

The Authority's reply:

- **reliability of the accounts**: ESMA developed in 2014 an Activity-Based-Costing model to allow accurate follow-up of the expenditures of its supervision activities. ESMA will apply this model in 2015. Therefore, from this year the fee revenue charged to supervised entities will be defined on the basis of the actual, rather than estimated, cost of the supervisory activities;
- **legality and regularity of transactions**: ESMA confirmed the closure of all contracts emanating from CESR (the last contract was closed on 20 August 2014) and that it has stopped using French central purchasing body both for service and supply purchases;
- **budgetary management**: ESMA is aware of the high cancellation rate for appropriations carried over from 2013 and took note of the Court's comment. The explanation related to the multiannual nature of the legally mandated IT projects is confirmed.

Lastly, the Court of Auditors' report contains a summary of the **Authority's activities in 2014**. This is focused on the following:

Budget: EUR 33.24 million, including a Union subsidy of EUR 11.07 million, EUR 15.55 million contributions from National Competent Authorities and EUR 6.62 million in fees from supervised entities.

Activities:

- publication of periodic risk reports and trend summaries of financial markets;
- monitored and analysed retail investor trends and issued good practices for structured retail product governance;
- call for an EU-common approach on crowdfunding;
- drafted Implementing Technical Standards on main indices and recognised exchanges under the Capital Requirements Regulation;
- strengthened its credit rating agencies (CRA) supervision;
- assessed CRA's compliance with the new requirements focusing on the disclosure aspects of sovereign ratings, pricing policies and procedures;
- discussed share classes of Undertakings for Collective Investments in Transferable Securities (UCITS);
- consulted on the implementing measures of the Regulations on European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF);
- drafted Regulatory Technical Standards on European Electronic Access Point (EEAP);
- contributed to International Financial Reporting Standards (IFRS) development in international for a such as the International Accounting Standards Board (IASB);
- reviewed MiFID's Conduct of Business rules on fair, clear and not misleading information.