RESOLUTION (EU) 2020/1942 OF THE EUROPEAN PARLIAMENT

of 14 May 2020

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Securities and Markets Authority (ESMA) for the financial year 2018

THE EUROPEAN PARLIAMENT,

— having regard to its decision on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2018,

— having regard to Rule 100 of and Annex V to its Rules of Procedure,

— having regard the opinion of the Committee on Economic and Monetary Affairs,

— having regard to the report of the Committee on Budgetary Control (A9-0059/2020),

A. whereas, according to its statement of revenue and expenditure [1], the final budget of the European Securities and Markets Authority (the 'Authority') for the financial year 2018 was EUR 44 191 067, representing an increase of 5,02 % compared to 2017; whereas the Authority is financed by a contribution from the Union (26,59 %), contributions from national supervisory authorities of the Member States (46,44 %) and fees received from supervised entities (25,78 %) [2];

B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the Authority for the financial year 2018 (the 'Court's report'), states that it has obtained reasonable assurances that the Authority's annual accounts are reliable and that the underlying transactions are legal and regular;

Budget and financial management

1. Notes with satisfaction that the budget monitoring efforts during the financial year 2018 resulted in a budget implementation rate of 99,99 %, representing a slight decrease of 0,01 % compared to 2017; notes that the payment appropriations execution rate was 88,87 %, representing a decrease of 0,89 % compared to the previous year;

2. Notes that, according to the Court's report, the Authority, in accordance with the related fees regulation, charges fees to credit rating agencies and that such fees should only cover the Authority's expenditure related to the registration, certification and supervision of credit rating agencies; notes that, in 2017, the fees that the Authority charged credit rating agencies exceeded that expenditure by EUR 853 950 and the Authority spent that surplus on other activities, while in 2018, that expenditure exceeded the fees charged to credit rating agencies by EUR 224 664; notes that the cumulated deviation for the period from 2015 to 2018 amounts to EUR 540 412; observes, furthermore, that the Authority charges fees to trade repositories in accordance with the related fees regulation, and that such fees should only cover expenditure related to the registration and supervision of trade repositories; notes that, in 2017, the Authority's expenditure related to the registration and supervision of trade repositories exceeded the related fees charged by EUR 452 466, and that, in 2018, the Authority's expenditure in that same field exceeded the related fees charged by EUR 30 882; notes that the cumulated deviation for the period from 2015 to 2018 amounts to EUR 545 735 (or 6 %); observes that, although the Authority followed the guidance provided by the Commission, surpluses and deficits can lead to an annual cross-financing of activities; notes the Authority's reply that in 2017, it had to reallocate resources to work on a particular risk related to trade repositories, resulting in a gap between the collected fees and the actual expenditure, while always using the Commission's guidance on the budgeting model for its fees, and that any short-term imbalance has to be offset in the long term; calls on the Authority to continue limiting such cross-financing as long as significant deviations are not recurrent in the Authority's budget;

3. Observes that the cumulated surpluses over the period 2015 to 2018 resulting from fees paid by credit rating agencies in relation to registration, certification and supervision of these entities amounts to EUR 0,5 million; is of the opinion that those surpluses should be temporary and should not be used to permanently cross-finance other activities;

[1] OJ C 19, 15.1.2019, p. 1.
[2] OJ C 19, 15.1.2019, p. 3.

Performance

4. Notes that the Authority completed 90 % of the activities included in its annual work programme;

5. Notes that the implementation of MiFID II was the biggest project the Authority delivered in 2018; notes furthermore that one of the Authority's main challenges and objectives was the preparation for an orderly process to deal with the withdrawal of the United Kingdom from the Union without a deal, where higher efforts were needed in the context of uncertainty;

6. Notes that the Authority's workload is constantly evolving and includes both regulatory tasks and the enforcement and application of Union law;

7. Notes that the Authority, together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), forms part of a joint committee which aims to ensure cross-sector consistency and joint positions in the area of supervision of financial conglomerates and on other cross-sector issues, and that it shares an accounting officer with the European Union Agency for Railways and has taken part in many joint procurements with other agencies, always seeking efficiencies through cooperation; strongly encourages the Authority to actively seek further and broader cooperation with all Union agencies;

8. Notes, in light of the comments made by the discharge authority related to the external evaluation of the three European Supervisory Authorities (ESAs) carried out in 2017, the successful conclusion of the legislative process on the ESAs review in the spring of 2019, and notes that the changes to both Regulation (EU) No 1095/2010 of the European Parliament and of the Council [3] and the relevant sectoral legislation of the Union are now being implemented accordingly;

9. Welcomes the Authority's inquiry into dividend arbitrage trading schemes such as cum-ex and cum-cum; encourages the Authority to draw concrete conclusions from that inquiry in order to stop ongoing and prevent future practices threatening the integrity of Union financial markets;

10. Welcomes the Authority's Report of July 2019 on Preliminary findings on multiple withholding tax reclaim schemes to respond to the European Parliament resolution of 29 November 2018 on the cum-ex scandal: financial crime and loopholes in the current legal framework (2018/2900(RSP)), whereby Parliament requested the Authority to conduct an inquiry into schemes such as cum-ex and cum-cum; welcomes further that the Authority's board of supervisors has approved the launch of a formal inquiry under Article 22(4) of Regulation (EU) No 1095/2010; encourages the Authority to draw concrete conclusions from that inquiry in order to stop ongoing and prevent future practices threatening the integrity of Union financial markets;

11. Emphasises that the Authority's role in promoting a common supervisory and regulatory regime across the European financial system is essential in order to ensure financial stability, a better integrated, more efficient and safer financial market, as well as a high degree of consumer protection in the Union by promoting fairness and transparency on the product and financial services market;

12. Underlines that the Authority, when carrying out its activities, needs to pay particular attention to ensuring compatibility with Union law, to respecting the principle of proportionality and to complying with the fundamental principles of the internal market;

13. Is concerned that the implementation of supervisory provisions of Regulation (EC) No 1060/2009 of the European Parliament and of the Council [4] in the form of guidelines and questions and answers might overburden smaller actors and thereby reduce competition in the market [5];

---

[3] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

[4] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

[5] Based on feedback received by Creditreform Rating AG.

14. Stresses that, while making sure that all assignments are carried out in full and within deadline, the Authority should adhere to and make full use of the tasks and the mandate assigned to it by Parliament and the Council and that the Authority must never attempt to go beyond its mandate; points out that focussing on the mandate assigned by Parliament and the Council will lead to a more effective and efficient use of resources;

Staff policy

15. Notes that, on 31 December 2018, the establishment plan was 95,51 % executed, with 149 temporary agents appointed out of 156 temporary agents authorised under the Union budget (compared with 150 authorised posts in 2017); notes that, in addition, 68 contract agents and 14 seconded national experts worked for the Authority in 2018;

16. Questions whether the resources allocated to the Authority are sufficient to enable it to fulfil its increasing tasks, for example in the fields of securitisation, Prospectus 3 and money market funds where the workload has increased but no new staff have been allocated;

17. Notes with satisfaction the even gender balance reported by the Authority with regard to senior management (one man and one woman) and the management board (three men and three women);

18. Notes that the staff turnover rate of the Authority was 6,9 %, meeting the Authority's target of less than 10 %;

19. Notes that the Authority adopted a policy on protecting the dignity of the person and preventing harassment and has updated its previous rules by means of a decision adopted by the management board in December 2018, in line with the Commission model; notes that the Authority appoints confidential counsellors and organises regular awareness sessions;

20. Questions whether the use of temporary workers and external consultancies rather than increasing the number of its own staff is the best use of resources in the long-term;

21. Notes that the Court has identified a horizontal trend across agencies in the use of external staff hired in IT consultancy roles; calls for the dependency on external recruitment in that important and sensitive area to be reduced as much as possible to limit any potential risks;

Procurement

22. Notes that, according to the Court's report, the Authority uses contracts with IT companies that are formulated in a way that could imply the assignment of interim workers instead of the provision of clearly defined IT services or products, while specific rules should apply in accordance with Directive 2008/104/EC of the European Parliament and of the Council ([6]), and the provision of interim workers can only be done through contracts with authorised temporary work agencies; notes that the use of IT service contracts for the provision of labour would not be compliant with the Union social and employment rules and would expose the Authority to legal and reputational risks; calls on the Authority to ensure that contracts avoid any confusion between the procurement of IT services and the assignment of interim workers;

23. Notes that, according to the Court's report, in 2018, the Authority launched the procurement procedure for the renting of new office space in Paris; notes that initially the Authority had planned a joint procurement procedure with other Union bodies, such as EBA, which was, at the time, preparing for its relocation from London to Paris; notes that the Authority and EBA came to the conclusion that the envisaged advantages of a joint procurement procedure would not materialise and that the Authority and EBA carried out separate procurement procedures for the renting of their office space and other related services, missing the opportunity for economies of scale and efficiency; calls on the Authority to strengthen its cooperation with the other agencies and use joint procurement procedures wherever possible, in order not to miss opportunities for economies of scale and efficiency gains;

24. Notes that while the Authority has made significant efforts as regards the preparation of tender documents for the renting of new office space and as regards its tender evaluation methodology, it still needs to improve the documentation and traceability of tender evaluations; in particular, as evaluation reports serve as the main reference for the different stages of procurement procedures, their content should be exhaustive and provide all the relevant details;

([6]) Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

Prevention and management of conflicts of interests and transparency

25. Notes that 28 % of the Authority's budget came from fees charged to the entities it supervises; notes that measures have been implemented in order to mitigate any conflicts of interests and that those measures have been audited; calls on the Authority to continue reporting to the discharge authority on the measures it has taken to ensure that no conflict of interests occurs; furthermore notes that the Authority believes that if the Commission collected the fees, inefficiencies would arise and the risks of inaccuracy and miscalculation, with consequent reputational damage, would increase;

26. Welcomes the publication of records on stakeholder meetings, as requested by the European Ombudsman; calls on the Authority to follow the European Ombudsman's suggestion to include in its information for the public an indication of whether detailed records of a specific meeting with stakeholders exist and could therefore be subject to a request for public access to documents, provided that the contents of those records are not commercially sensitive;

27. Underlines the importance of an open, efficient and independent administration for all Union agencies and the Union as a whole; recalls the problem of conflicts of interest arising from 'revolving door' situations and stresses the need for a unified legal framework to address such issues;

Internal controls

28. Notes, in light of comments and observations from the discharge authority related to the audit of the Commission's Internal Audit Service (IAS) on Peer Reviews of National Competent Authorities, that related actions have all been closed;

29. Notes that, according to the Court's report, in 2018 the IAS issued an audit report on 'Revenues and Activity Based Management in the European Securities and Markets Authority' and that the Authority has prepared an action plan to address the areas for improvement; calls on the Authority to report to the discharge authority on the measures taken in that regard;

Other comments

30. Notes that during 2018, the expected withdrawal of the United Kingdom from the Union had a significant impact on the Authority's planned work and deliverables, and generated a lot of preparatory work, particularly in the areas of supervisory convergence, prevention of fragmentation and regulatory arbitrage and direct supervision and risk assessment; notes that the Authority analysed in detail what operational impact the expected withdrawal of the United Kingdom from the Union would have on its organisation, and that it has allocated dedicated staff to provide advice and regularly report on those issues;

31. Calls on the Authority to focus on disseminating the results of its research to the public, and to reach out to the public via social media and other media outlets;

32. Underlines the responsibility of the financial system in meeting sustainability challenges and ensuring that the Union meets its obligations undertaken in the framework of the Paris Agreement under the United Nations Framework Convention on Climate Change; highlights the crucial role of the Authority in integrating environmental, social and governance related factors into the regulatory and supervisory framework and in mobilising and guiding private capital flows towards sustainable investments; therefore stresses the need for sufficient resources to monitor the implementation of that framework by financial institutions and national competent authorities;

33. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 14 May 2020 ([7]) on the performance, financial management and control of the agencies.

([7]) Texts adopted, P9_TA(2020)0121.