RESOLUTION (EU) 2021/1636 OF THE EUROPEAN PARLIAMENT

of 29 April 2021

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2019

THE EUROPEAN PARLIAMENT,

— having regard to its decision on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2019,

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

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

— having regard to the report of the Committee on Budgetary Control (A9-0091/2021),

A. whereas, according to its statement of revenue and expenditure [1], the final budget of the European Banking Authority (the 'Authority') for the financial year 2019 was EUR 45 326 900, representing an increase of 6,44 % compared to 2018; whereas the Authority is financed by a contribution from the Union (EUR 17 394 600, representing 38,38 %), and contributions from national supervisory authorities of the Member States and observers (EUR 27 160 689,50 representing 59,92 %);

B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the European Banking Authority for the financial year 2019 (the 'Court's report'), states that it has obtained reasonable assurance that the Authority's annual accounts are reliable and that the underlying transactions are legal and regular;

Budget and financial management

1. Notes with concern that the budget monitoring efforts during the financial year 2019 resulted in a budget implementation rate of 97,29 %, representing a decrease of 2,56 % compared to 2018; notes with concern that the rate of execution of payment appropriations was 85,88 %, representing a decrease of 2,35 % compared to the previous year;

2. Notes the emphasis of matter paragraph in the Court's report about a provision of EUR 10,1 million related to the lease agreement of the Authority's London office; notes that, in particular, part of the provision concerns the reinstatement costs of the London office in its original state, which amounts to EUR 3,4 million;

3. Notes with concern the Court's observation that the amended 2019 budget and the 2020 budget of the Authority do not contain adequate information on the new host Member State's contributions to the Authority's running costs; calls on the Authority to correct this omission or to diligently communicate the reasons for this omission to the discharge authority;

4. Is concerned that in contrast to the established budget, the contributions of EFTA Members' national competent authorities (NCAs) were not calculated according to the formula set out in that very same budget and thus reduced the payments of Union and EFTA NCAs by EUR 0,7 million; notes that the calculation of pension contributions needs further clarification; is aware that the calculation is an estimate and that it is subject to the composition of the staff during the year and to the possibility of making adjustments annually; calls on the Commission to ensure the receipt of missing payments;

[1] OJ C 107, 31.3.2020, p. 221.

Performance

5. Notes that the Authority uses certain measures as key performance indicators to assess the added value provided by its activities and also uses other measures to improve its budget management, such as percentage of completed yearly assessments of supervisory colleges, feedback on training from seminar participants and budget execution; welcomes the fact that the Authority's key performance indicators measure the entire scope of its activity and that they are adapted to following the performance of the annual and multi-annual objectives;

6. Notes that the administrative staff of the Authority, of the European Securities and Markets Authority and of the European Insurance and Occupational Pensions Authority hold regular meetings to discuss matters of shared interest that have resulted in the sharing of practices and templates, with resultant efficiency gains; strongly encourages the Authority to continue its efforts to increase cooperation and exchange of good practices among decentralised agencies to improve efficiency, in particular in the areas of human resources, building management, IT services and security;

7. Notes that in 2019 the Authority moved its seat from London to Paris and that associated activities, such as the migration to new data centres, the establishment of new relationships with providers and other tasks, were carried out throughout the year in addition to the obligations arising out of the Authority's mandate; acknowledges the challenges faced by the Authority in this process, such as loss of staff and know-how and the limited resources assigned to the relocation project;

8. Acknowledges that for the Authority, 2019 was also characterised by the fundamental review of the tasks, powers and governance of the European Supervisory Authorities, resulting in the amendment of the Authority's founding regulation and the strengthening of the Authority's role in the fields of anti-money laundering, countering the financing of terrorism, consumer protection and relations with third countries;

9. Acknowledges that the composition of the board of supervisors seems appropriate to deal with the Authority's rulemaking responsibilities, but less so for its supervisory roles; recalls, in this context, the Authority's new mandate in the fight against money laundering and terrorist financing;

10. Calls on the Authority to improve and intensify its communication with the Member States; urges the Authority to improve and intensify its cooperation with the Member States and the Member States' national banks and commercial banking bodies;

11. Regrets that the Authority delivered only 19 out of 30 activities from its 2019 work programme; notes that the overview of policy achievements of the Authority regarding its 2019 work programme as presented in its annual activity report does not give a complete overview of the activities performed by the Authority, as the results of ongoing activities are not described; notes with concern that, of the activities described in its annual activity report, 17 out of 21 activities reported were (partially) delivered and that the Authority carried out additional sub activities for nine activities, that seven sub activities were postponed, that five sub activities were delayed, that four sub activities were cancelled and that one is still pending; calls on the Authority to evaluate the shortcomings and causes of weak performance and adopt measures aimed at improving an efficient delivery of the work programme objectives;

12. Stresses the importance of increasing the digitalisation of the Authority's internal operations and management procedures; stresses the need for the Authority to continue to be proactive in this regard in order to avoid, at all costs, a digital gap between the agencies; draws attention, however, to the need to take all the necessary security measures to avoid any risk to the online security of the information processed;

13. Welcomes the Authority's efforts towards a more coordinated supervisory regime across the European financial system; underlines its role of ensuring a stable, well-integrated, efficient and safe financial market; highlights the importance of consumer protection in the Union by promoting fairness and transparency on the product and financial services market, and looks forward to receiving an update on future measures taken in this direction, including also responses to the challenges of the digitalisation of the economy and of sustainability measures;

14. Stresses that the supervision of the public financial sector positively contributes to combating tax fraud and money laundering;

15. Recalls the importance of the Authority in the prevention of money laundering and of the financing of terrorism, as well as the Authority's new mandate therein; looks forward to receiving the Authority's 10-point action plan for 2020/21 to enhance the future framework of prudential and anti-money laundering requirements covering dividend arbitrage trading schemes; stresses further that the Authority should make full use of the powers granted to it under Chapter II of Regulation (EU) No 1093/2010 to ensure that all assignments and tasks are carried out properly and on time, and to ensure attainment of the tasks and objectives set out in that same Chapter, particularly with regard to consumer protection in the fast-growing area of digital finance, including neobanks;

16. Underlines the duty of the financial system to respond appropriately to financial sustainability challenges, the European Green Deal, and the Paris Agreement; welcomes, therefore, the Authority's efforts to incorporate environmental, social, and governance factors fully into its work; is interested, in particular, in the Authority's intention to gather evidence over time on exposures related to assets of activities associated substantially with environmental and/or social objectives, and looks forward to an update on this work;

17. Notes that the Authority has conducted an inquiry into dividend arbitrage trading schemes such as cum-ex or cum-cum as requested by Parliament in its resolution of 29 November 2018 on the cum-ex scandal: financial crime and loopholes in the current legal framework ([2]); notes, however, the report's shortcomings in shedding light on those illegal practices and regrets that no date for a formal inquiry has been set;

18. Points out that the Authority, when carrying out its activities, needs to pay attention to ensuring compliance with Union law, to respecting the principle of proportionality as guiding principle where relevant, and to complying with the fundamental principles which govern the internal market; welcomes the establishment of an Advisory Proportionality Committee to oversee the principle of proportionality and looks forward to receiving the proposed methodology on how the Committee will provide input to the Authority's annual work programme;

19. Notes that, as the Authority's workload is increasingly shifting from regulatory tasks to enforcing and applying Union law, budgetary and personnel resources have to be reallocated internally; points out that a strict focus on the mandate assigned by the Union legislator will ensure a more effective and more efficient use of resources; stresses the urgency of allocating sufficient resources to the Authority to allow it to carry out its allocated tasks in an adequate and efficient manner; considers that the future responsibilities arising, inter alia, from the Digital Finance Strategy as well as the responsibilities inherent in the fight against money laundering require an adaptation of the Authority's financing; notes that budget increases should be gradual and continuous over time in line with the increase in competences;

20. Calls on the Authority to focus on disseminating the results of its research to the general public;

([2]) OJ C 363, 28.10.2020, p. 102.

Staff policy

21. Notes that, on 31 December 2019, the establishment plan was 99,31 % implemented, with 144 temporary agents appointed out of 145 temporary agents authorised under the Union budget (compared to 145 authorised posts in 2018); notes that, in addition, 42 contract agents (49 authorised) and 16 seconded national experts (17 authorised) worked for the Authority in 2019; notes that staff turnover amongst temporary agents, contract agents and seconded national experts decreased from 12,1 % to 9,0 %;

22. Notes that the Authority has undertaken changes in its top management following the appointment of the new chairperson in March 2019 and the resignation of its executive director in August 2019;

23. Notes with satisfaction that the Authority suffered fewer relocation-driven resignations than it had assumed and that the core business was able to continue almost as normal throughout the period of the relocation; acknowledges this extraordinary commitment of the Authority's staff;

24. Notes with satisfaction that the Authority reported that it employs staff of 28 nationalities, of whom the Authority reports that 50 % are female and 50 % are male; notes with concern that 83 % of senior management is male and 17 % is female; asks the Authority to ensure gender balance at the senior management level in the future;

25. Encourages the Authority to pursue the development of a long-term human resources policy framework which addresses work-life balance, lifelong guidance and career development, gender balance, teleworking, geographical balance among members of staff and the recruitment and integration of people with disabilities;

Procurement

26. Notes that the Authority ran four procurement procedures above the threshold laid down in Directive 2014/24/EU of the European Parliament and of the Council ([3]), and that the Authority also concluded 14 contracts arising from negotiated procedures above EUR 15 000;

27. Notes the observation of the Court that the Authority used a framework contract with an IT company for the provision of IT consultants and that the Authority issued work instructions to some of those IT consultants directly, potentially blurring the lines between the Authority's staff and the consultants; stresses the risks brought about by the use of external IT consultants; urges the Authority to pay special attention to ensuring operations security and data protection; notes the Authority's reply that this resulted from the implementation of a new IT-service model and related framework contract and that the Authority is working to mature its management of the third party service integration; calls on the Authority to keep the discharge authority informed about this process of maturation and entrenchment of service-based consumption of IT services;

28. Notes with high concern the observation of the Court that the Authority runs legal and reputational risks by using an IT company not domiciled in the Authority's host country to provide IT consultants working at the Authority's premises that would qualify for posted worker status under the provisions of French law concerning the transposition of the Posting of Workers Directive ([4]) and the Enforcement Directive ([5]), and by not verifying the declaration of compliance with Union and national law of the contractor;

Prevention and management of conflicts of interest and transparency

29. Welcomes the further steps taken in order to enhance the transparency of the Authority's activities by reporting the meetings that the Authority's staff have with external stakeholders, and their availability, on the Authority's website;

([3]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

([4]) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

([5]) Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

30. Notes with satisfaction that the declarations of interest and the CVs of the senior management and of all members of the management board are published on the Authority's website; notes with concern that the annual declarations of interest published on the website are based on self-assessment by the members of the management board; calls on the Authority to evaluate independently the potential existence of conflicts of interest; welcomes the extension of the scope of conflicts of interest to non-staff beyond the board of supervisors and management board, to include the anti-money laundering standing committee, the resolution committee and independent panels, including panels investigating breaches of Union law;

31. Notes that the Authority established harassment prevention policies and related training frameworks;

32. Notes the adoption of the 2019 anti-fraud strategy by the Authority in January 2020, reflecting the update of the Commission's anti-fraud strategy to ensure full alignment; notes that the most recent fraud risk assessment, which is a central instrument for tailoring anti-fraud measures in accordance with the Commission's anti-fraud strategy, was not performed in 2019 due to the relocation of the Authority and the late conclusion of the previous assessment; calls on the Authority to resume the annual performance of a fraud risk assessment and, where necessary, adjust the Authority's anti-fraud strategy;

33. Recalls its resolution of 16 January 2020 on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest ([6]) and the decision of 18 November 2020 and the recommendation of 7 May 2020 of the European Ombudsman in case 2168/2019/KR; notes with concern the inquiry of the Ombudsman that took place following the Authority's decision not to forbid its former executive director from taking up a role in the Association for Financial Markets in Europe (AFME) and the inquiry's conclusion that there was maladministration by the Authority in not immediately withdrawing its executive director's access to confidential information; stresses that in this case, prohibition of a direct move to AFME might have been considered; notes the recommendations made by the Ombudsman and the Authority's reply that the new staff policy addresses the recommendations; welcomes the adoption by the Authority's Board of Supervisors of its policy 'Independence and Decision Making Processes for avoiding Conflicts of Interests' as a first step towards the prevention and proper management of conflicts of interest and transparency measures; calls on the Authority to ensure that its internal procedures for dealing with conflicts of interest are in line with the Ombudsman's recommendations, if they are not yet fully aligned; looks forward to a full update on the state of play of preventive and management measures taken and/or foreseen in order to avoid the repetition of such a situation; underlines that post-public employment and 'revolving door' conflict- of-interest situations are a problem common to many bodies and agencies across the Union; invites the Authority to prevent future 'revolving door' cases; calls on the Authority to draw inspiration from the publication by the European Central Bank's Ethics Committee of its opinions on cases of conflicts of interest and post-mandate gainful employment, in order to increase transparency on potential conflicts of interest and on post-mandate gainful employment; calls further on the Authority to enforce its Ethics Guide so as to protect the Authority's integrity and establish fair and responsible practices;

34. Calls on the Court to specifically scrutinise in its future audits of the Authority (i) whether senior members of staff have taken up certain positions in the financial industry after their term in office, and (ii) whether access to confidential information for members of staff is withdrawn in a timely manner, once it becomes known that they are moving to another job;

Internal controls

35. Notes the adoption and implementation of a revised internal control framework by the Authority in January 2020; regrets that no annual assessment of the internal control framework was performed in 2019; calls on the Authority to perform the annual assessment without delay and to report to the discharge authority of its results in the framework of the annual discharge procedure;

([6]) Texts adopted, P9_TA(2020)0017.

36. Notes that after the completed relocation from London to Paris following the UK's withdrawal from the Union, a provision of EUR 10,1 million is made for the lease of the Authority's London office; suggests that an audit be conducted once all the costs and consequences of the move are clear in order to identify best practices and areas for improvement;

Other comments

37. Welcomes the Authority's commitment to register its office space under the Union's eco-management and audit scheme; invites the Authority to strengthen its commitment to creating a sustainable work environment; encourages the Authority to follow closely EMAS guidelines;

38. Welcomes the efforts made to increase the Authority's cyber security and data protection, especially as regards the training campaign for the entire statutory staff;

39. Believes that the Authority should take account of new digital challenges and those related to sustainability; considers that the fulfilment of these established objectives and their integration into the regulatory and supervisory framework must always be in line with the strengthening of the market, without undermining its competitiveness and without placing an excessive burden on market actors, especially small and medium-sized ones; considers that the monitoring of the implementation of these objectives must be met with adequate resources;

40. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 29 April 2021 ([7]) on the performance, financial management and control of the agencies.

([7]) Texts adopted, P9_TA(2021)0215.