RESOLUTION (EU) 2022/1780 OF THE EUROPEAN PARLIAMENT

of 4 May 2022

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 2020

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 2020,

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

— having regard to the report of the Committee on Budgetary Control (A9-0108/2022),

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 2020 was EUR 56 246 722, representing an increase of 18,72 % compared to 2019; whereas the Authority is financed by a contribution from the Union (EUR 16 765 425, representing 29,81 % of the total budget), contributions from national supervisory authorities of the Member States (EUR 21 603 906, or 38,41 %) and fees received from supervised entities (EUR 15 561 159, or 27,67 %);

B. whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the European Securities and Markets Authority for the financial year 2020 (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 satisfaction that the budget monitoring efforts during the financial year 2020 resulted in a budget implementation rate of 99,03 %, representing a slight decrease of 0,92 % compared to 2019; notes that the execution rate of payment appropriations was at 85,51 %, representing a decrease of 3,26 % compared to the previous year;

2. Notes the Court's observation that in March 2020 the Authority signed a 'data services master agreement' with a Canadian company, for a maximum period of seven years; notes that the maximum amount of the contract was not clearly stated, which reduces the transparency of the signed agreement; notes that, subsequent to the audit, the Authority took corrective actions to address that serious internal control weakness by countersigning the framework contract;

3. Notes that the Court's report stated that the Authority did not apply the interest rate set out in the European Commission's Delegated Regulations on the late payments made by a number of credit rating agencies and trade repositories in connection with their 2020 contributions; notes that the authorising officer also did not establish the amounts receivable and did not take a formal decision to waive the recovery of the late payment interest (penalty) as required by Article 101 of the Financial Regulation; further notes that the amount of the accrued interest for 2020 is EUR 13 601 which is, according to the Authority, 0,1 % of the total fees in 2020; notes the corrective measures taken and calls on the Authority to report to the discharge authority on any relevant developments;

4. Notes that the Authority charges fees to credit rating agencies and trade repositories and that such fees should only cover the Authority's expenditure related to fees charged; notes, however, that the Court found that fees charged exceeded the associated expenditure, thus creating surpluses; notes that the Authority will follow the Commission's guidance on the budgeting model for its fees and aims to limit cross-financing where possible; notes, however, the complexity of the Authority's budget structure, which makes that increasingly difficult and limits the Authority's ability to adapt to market events as a supervisor, using a risk-based approach;

([1]) OJ C 114, 31.3.2021, p. 177.

5. Notes, with regard to the observations from the Court's report, that the surpluses and deficits from the fees charged to credit rating agencies and trade repositories can lead to an annual cross-financing of activities; notes that the Authority should find a means of avoiding such cross-financing; calls on the Authority to inform the discharge authority on the developments in that regard;

6. Notes, regarding the observations from the Court's report, that the Authority has never adjusted, or made plans to adjust, national competent authorities' estimation-based pension contributions for year N to actual figures; calls on the Authority to take action in that regard;

7. Notes that the Authority lacks the legal basis to request trade repositories to have their trade figures certified by independent auditors; notes the Authority's reply that the delegated regulation on fees for trade repositories should be amended to harmonise the calculation system, in line with the recommendations of the Commission's Internal Audit Service; further notes that in 2020 the Authority submitted proposals to the Commission and shared them with the Court in order to deal with this issue;

Performance

8. Notes with satisfaction that the Authority uses certain measures such as key performance indicators to assess the added value provided by its activities and other measures to improve its budget management, such as the number of risk topics analysed, the rate of cancellation of payment appropriations and the staff turnover rate;

9. Notes that the Authority reviewed its key performance indicators for its 2020 annual work programme, focussing on impact measurement; further notes that the Authority continues to review its work in a qualitative manner, by producing ad hoc internal reviews or 'lessons learned' of projects;

10. Notes that the Authority works with the two other European Supervisory Authorities (ESAs), the European Insurance and Occupational Pensions Authority and the European Banking Authority (EBA), via the Joint Committee of the ESAs; notes that the Joint Committee works in the areas of micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability, supervision of financial conglomerates, accounting and auditing, retail investment products and consumer and investor protection issues; notes that the Joint Committee also plays an important role in the exchange of information with the European Systemic Risk Board (ESRB) and in developing the relationship between the ESRB and the ESAs; notes that in 2013 the Authority and the Agency for the Cooperation of Energy Regulators also signed a Memorandum of Understanding which established a framework for exchanging information when the regulatory responsibilities of both Union bodies coincides in relation to wholesale energy markets, which encompasses trading in commodity and derivative contracts; notes that the Authority shares the accounting officer function with the EBA, and the majority of its procurements are joint procurements with other agencies and the Commission; further notes that the Authority has implemented its administrative digitalisation programme based on joint IT software shared by six Union agencies, which together cooperate to communicate on best user practices and new releases;

11. Notes that, as a consequence of the impact of the COVID-19 pandemic, the Authority completed 81,5 % of the activities included in its annual work programme in 2020, representing a decrease of 13,5 % compared to 2019;

12. Notes that the Authority welcomes Parliament's positive appraisal of the Authority's involvement in the area of sustainable finance, to ensure transparency about the sustainability impacts and risks for financial products and markets; notes with satisfaction that the Authority continues to contribute actively to the development of the Union regulatory and practical framework for sustainability that is required to meet the political ambition and pressing timetable of the European Green Deal, especially in relation to the Directive 2014/95/EU of the European Parliament and of the Council ([2]), Regulation (EU) 2019/2088 of the European Parliament and of the Council ([3])

([2]) Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

([3]) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

and Regulation (EU) 2020/852 of the European Parliament and of the Council ([4]); welcomes in that regard the Authority's Sustainable Finance Strategy that was published on 6 February 2020, that, among other things, prioritised the integration of sustainability into the single rulebook;

Staff policy

13. Notes that, on 31 December 2020, the establishment plan was 76,11 % implemented, with 172 temporary agents appointed out of 226 temporary agents authorised under the Union budget (compared to 210 authorised posts in 2019); notes that, in addition, 68 contract agents and 10 seconded national experts worked for the Authority in 2020;

14. Notes the gender distribution within the Authority's senior management members, with 3 out of 5 being women; notes the gender distribution within the Authority's management board, with 3 out of 6 being of the same gender; further notes the gender distribution within the Authority's overall staff, with 134 out of 250 being men; points out, however, that, in the recruitment of new staff and in connection with promotions, the Authority should bear in mind that candidates' skills, knowledge and experience are the most important factors; points out that the need for a geographical balance among members of staff should also be borne in mind;

15. Notes that the Authority experienced a planned increase in its workload in 2020, for which it received 16 new posts that had been foreseen in the Multiannual Financial Framework for 2020; notes that the Authority also reallocated posts internally to continue to provide input in the Capital Markets Union agenda and to manage the pressure on the Authority's activities as a result of the UK's withdrawal from the Union; further notes that in 2020 the Authority was required to revise its work programme, delaying certain planned tasks and conducting another internal reallocation of staff, in order to respond to the crisis caused by the COVID-19 pandemic;

16. Notes with satisfaction that when teleworking arrangements were introduced as a result of the COVID-19 pandemic, the Authority organised online sessions following its policy on protecting the dignity of the person and preventing psychological and sexual harassment; welcomes that in 2020 there were no harassment cases reported, investigated, or taken to court;

Procurement

17. Notes the efforts made by the Authority to create synergies through joint procurement procedures with other Union agencies; notes that in 2020 the Authority was part of 20 new inter-institutional procurement procedures with other agencies, the Commission, and the European Parliament, including one procedure led by the Authority itself; encourages the Authority to continue developing synergies with other Union bodies;

18. Notes that in 2020 the Authority benefited more than ever from the full digitalisation of all its financial and procurement processes, because of the introduction of a paperless system; notes that the Authority continued its administrative processes during the pandemic and improved its efficiency as a result of the addition of digital signatures practices;

Prevention and management of conflicts of interest, and transparency

19. Notes that 27,66 % 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 interest, and that those structures and processes have been audited by Union bodies and external auditors; calls on the Authority to continue reporting to the discharge authority on the measures it has taken to ensure that no conflict of interest occurs;

([4]) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

20. Notes that, given the impact of the COVID-19 pandemic and the severe turbulence in the markets in the spring of 2020, the Authority's management board amended the ethics policy for staff in order to introduce the possibility of a temporary general ban on trading in financial instruments, under certain conditions, to prevent any risk of insider dealing; welcomes that the Authority diligently took on board the European Ombudsman's recommendations to EBA on prevention of conflicts of interest in the context of post-employment activities of leaving senior managers, and incorporated them in its ethics policy for staff in December 2020;

21. Welcomes the steps taken to enhance the transparency of the Authority's activities by reporting the meetings of the Authority's staff with external stakeholders and making them available on the Authority's website;

22. Welcomes the fact that the Authority publishes CVs and declarations of interest of its management board members and management staff;

Internal control

23. Welcomes the annual assessment of the Authority's internal control system and the conclusion that it exists and functions well; notes that, in total, the Authority identified 22 deficiencies, most of which were minor and none of which called into question the existence and proper functioning of the internal control principles; notes, that the observed opportunities for improvement are mainly related to the components 'control environment' and 'control activities'; calls on the Authority to evaluate explicitly the Court's observations, many of which have a bearing on the internal control system, in its annual assessment;

24. Notes that the Court found weak internal controls in monitoring the time charged to the Authority in a 'time and means' contract under a framework contract for IT consultancy services; notes that the Court found that the checks performed by the Authority to verify the actual number of days worked off-site for that contract were inadequate; further notes that the Authority did not regularly keep track of the time charged by the contractor, even though the framework contract specified that it should; notes that the Authority had therefore weak controls in place to confirm that the payments made to the contractor were based on valid timesheets submitted at the proper time, which constitutes a significant internal control deficiency; calls on the Authority to take measures in this regard;

25. Notes that the Internal Audit Service of the Commission (IAS) concluded that the Authority's management and control systems put in place for activity-based management and fee collection were adequately designed and effectively implemented; notes that out of the five recommendations provided in the IAS report, four have already been closed; further notes that the Authority will implement the last one by the end of 2021, together with the implementation of a new IT tool for activity-based management; calls on the Authority to report to the discharge authority on the developments in this regard;

COVID-19 response and business continuity

26. Notes that the Authority launched its business continuity plan and set up a business continuity management team in February 2020; notes that, overall, the pandemic had several key impacts on the Authority, including more frequent meetings of the board of supervisors and other group meetings of the Authority, an increase in the digitalisation and use of audio and video conferencing and voting tools, an increase in the importance of having an online presence on social media and attending online conferences, and a reduced carbon footprint as a result of less printing and less travelling;

27. Notes that, in response to the COVID-19 crisis, the Authority reinforced its coordination role regarding the supervision of investment funds through the organisation of frequent exchanges with national competent authorities on market developments and supervisory risks, in particular on liquidity issues;

Other comments

28. Notes that the Authority continued to prepare for the end of the transition period of the UK's withdrawal from the Union, in line with its mission to enhance investor protection and promote stable and orderly financial markets; notes that the Authority resumed to conduct a systematic analysis of the potential impact of the UK's withdrawal across Union securities markets and for financial market participants, and worked closely with the competent authorities, the Commission and the UK's Financial Conduct Authority to mitigate any issues that arose;

29. Notes that, throughout 2020, the Authority worked on how to continue the use of remote meetings past the pandemic to maintain the related reduction in travel and the associated environmental benefits; encourages the Authority to do so and calls on the Authority to report on any developments in this regard;

30. Calls for buildings to be modernised in order to meet zero-emission standards, in particular by installing solar panels on all buildings belonging to the Authority;

31. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 4 May 2022 ([5]) on the performance, financial management and control of the agencies.

([5]) Texts adopted, P9_TA(2022)0196.