



2024/2322

10.10.2024

RESOLUTION (EU) 2024/2322 OF THE EUROPEAN PARLIAMENT

of 11 April 2024

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 for the financial year 2022

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 2022,
- 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 (A9-0103/2024),
- 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 2022 was EUR 68 068 551, representing an increase of 12,32 % compared to 2021; whereas the Authority is financed by a contribution from the Union (EUR 17 301 544, representing 25,41 % of the total budget), contributions from national supervisory authorities of the Member States (EUR 27 293 765, or 40,10 %) and fees received from supervised entities (EUR 22 228 234, or 32,66 %);
- 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 2022 (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 2022 resulted in a budget implementation rate of 98,78 %, representing a small decrease of 1,17 % compared to 2021; notes that the execution rate of payment appropriations was 89,83 %, representing a slight decrease of 0,08 % compared to the previous year;
2. Notes from the Authority's opinion of 5 July 2023 with regard to the follow-up measures taken in light of the discharge in respect of the implementation of the budget of the Authority for the financial year 2021 (hereinafter 'The Authority's Opinion'), that given the growing complexity of its budget structure, the Authority considers it necessary to revise its fee-funding model to enable it to react both suitably and swiftly to significant financial market developments while being able to manage more efficiently the increasing number of fee sources derived from direct supervisory mandates;

Performance

3. Notes 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; commends the Authority for having completed 90 % of its 2022 work programme, with most of its key performance indicators having been achieved or exceeded;
4. Welcomes the Authority's response to geopolitical challenges in 2022; notes in that context that the Authority has intensified its risk monitoring and supervisory activities in response to Russia's unprovoked and illegal invasion of Ukraine, ensuring heightened vigilance in assessing potential impacts on Union's financial markets and taking necessary actions to safeguard market stability and investor protection; also notes that in the context of the energy crisis, the Authority made public its high-level assessment concerning the areas where the Commission requested input on measures to limit excessive volatility and to alleviate liquidity pressures on non-financial counterparties active on gas and electricity markets, and has adopted temporary emergency measures to address those liquidity constraints;

⁽¹⁾ OJ C 38, 31.1.2023, p. 84.

5. Notes that in 2022 the Authority's strategic priorities focused on three cross-cutting topics, namely supporting the development of sound capital markets, promoting sustainable finance and innovation, and fostering innovation and digitalisation; welcomes the fact that the Authority delivered on those priorities in 2022 through a range of actions, such as the delivery of technical input to the Commission on investor protection aspects of the MiFID II and MiFIR review and with regard to the Listing Act, the publication of the Authority's 2022–2024 sustainable finance roadmap, and the issuance of warnings to investors and national competent authorities (NCAs) about the risks of crypto-assets, among others;
6. Recognises the Authority's achievements in 2022, which was a significant year from the supervisory convergence perspective, with several common supervisory actions, three major peer reviews in addition to the mandatory annual peer review on central counterparties, including one detailing the actions undertaken by NCAs linked to relocations following the UK's withdrawal from Union, and the first recommendations issued by the Authority to an NCA under Art. 16 of its Founding Regulation, with the aim of structurally strengthening the supervisory approach and capacity of NCAs;
7. Notes the publication by the Authority in 2022 of a report on the European market for emission allowances and derivatives, which put forward a number of policy recommendations to improve market transparency and monitoring, as well as the coordination by the Authority of the first ever mystery shopping exercise among a number of NCAs, and the launch of the Authority's new strategy for 2023–2028;

Efficiency and gains

8. Observes that the Authority continues to pursue efficiency gains and synergies in its areas of activity; notes in that context that the Authority conducted an evaluation of its annual work programme to enhance efficiency by allocating resources effectively in response to external factors such as Russia's invasion of Ukraine, including with regard to the legislative proposals on the European Single Access Point, which were initially not envisaged in the Authority's 2022 annual work programme; commends the fact that, as part of its efficiency strategy, the Authority continues to share an accounting officer with the European Banking Authority;
9. Notes some of the internal measures implemented to achieve efficiency gains and synergies, such as a full internal redeployment that permitted the Authority to take over new mandates and tasks, without the need for additional resources, a further optimisation of procurement resources by joining more inter-institutional procedures and by leading major inter-agency procurements, a simplification of processes in the area of budgetary management and investments in audio, video conferencing, as well as voting tools made during the pandemic, which are allowing for remote work; notes furthermore that the Authority plans to have fewer missions for its staff and more remote meetings in the future, thereby increasing its flexibility and reducing costs;
10. Acknowledges that all of the Authority's administration and support functions, namely human resources, ethics, finance, procurement and facility management processes, have been digitalised for several years, thus pursuing a zero paper policy; notes that in 2022 the Authority had its information and communication technology infrastructure migrated to the public cloud, with savings expected when systems are scaled up; welcomes the fact that in the fourth quarter of 2022, the Authority started the process to onboard the public procurement management tool;

Staff policy

11. Notes that, on 31 December 2022, the establishment plan was 87,60 % implemented, with 219 temporary agents appointed out of 243 temporary agents authorised under the Union budget, compared to 250 authorised posts in 2021; notes that, in addition, 91 contract agents and 12 seconded national experts worked for the Authority in 2022;
12. Notes that in 2022, the total number of staff increased by 45 % compared to 2021; further notes that, with regard to geographical balance, at the end of 2022, the staff of the Authority, namely temporary agents, contractual agents and seconded national experts, included 24 different nationalities of the Union; recalls the importance of ensuring a balanced geographical representation among the Authority's management and overall staff;

13. Welcomes the fact that the Authority is close to achieving gender balance at management and staff level; notes the gender distribution within the Authority's senior and middle management staff, with 16 out of 30 being women (53 %); notes the gender distribution within the Authority's Management Board, with 4 out of 7 being men (57 %); further notes the gender distribution within the Authority's overall staff, with 175 out of 322 being men (54 %);
14. Acknowledges that the Authority has a policy on protecting the dignity of the person and preventing psychological and sexual harassment; welcomes that in 2022 there were no harassment cases reported, investigated, concluded internally or taken before the court; further welcomes the Authority's engagement in developing a 'Diversity and Inclusion policy';

Procurement

15. Notes that the Authority managed, in 2022, 14 procurement procedures, out of which three were open tenders in the area of IT representing a total value of EUR 99,4 million;
16. Recalls from the Court's report on the annual accounts of the Authority for the financial year 2021 the observation with regard to the Authority's decision to launch a negotiated procedure without advertising it in breach of point 3.1 of Annex I to the Financial Regulation ⁽²⁾; notes from the Authority's Opinion that the omission of *ex ante* publicity was justified by the specific scope of the procurement and duly documented *ex post*, further underlying that all necessary measures to prevent a similar situation from happening in future were undertaken;
17. Draws attention to note IV.1 to the Authority's annual account for 2022, which describes an uncertainty related to the outcome of a lawsuit ('UniSystems Luxembourg and Unisystems systimata plioforikis v ESMA') in relation to the decision in a joint procurement procedure contested by an applicant at the Union's General Court;

Prevention and management of conflicts of interest and transparency

18. Notes that the Authority revised the conflict of interests policy for non-staff in 2022, which covers staff members, seconded national experts and trainees; commends the Authority for undertaking several actions to raise awareness of conflicts of interest and ethics rules, including by conducting induction sessions for newcomers, and for holding an all-staff session to brief staff about the main facts and figures in ethics, provide in-depth clarifications on dealing with financial instruments and share the priorities for 2022;
19. Notes that for the annual declarations of conflicts of interest examined by the Authority in 2022, no issues were raised relating to potential conflicts of interest; observes that, in addition to the annual declarations, the Authority reviewed and assessed in 2022 a considerable number of requests and declarations from staff, namely 54 declaration in selection procedures, 13 declarations on gainful employment of spouse, 41 requests for outside activity, 21 requests for publication or speech, 23 requests to deal in financial instruments, 10 requests for activity while on leave on personal grounds, and 10 declarations on intended activity after leaving the Authority; notes in that context that, while the majority of the declarations raised no conflict-of-interest concerns, in two instances a change in the composition of the selection board was recommended, and in one instance safeguards were imposed in respect of a manager leaving the Authority, such as a cut-off from confidential information and a 1-year ban on lobbying staff;
20. Welcomes the fact that the Authority publishes CVs and declarations of interest of its Management Board members and management staff; commends the transparent manner in which the Authority reports the meetings of its staff with external stakeholders and makes them available on its website;

⁽²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

21. Recalls from the Court's report on the annual accounts of the Authority for the financial year 2021 the Court's observation regarding the weaknesses found in the Authority's management and control systems relating to conflicts of interest; notes in that context that in 2022 the Authority's ethics team initiated a practice of systematically collecting declarations of interest from the reporting officers of senior managers, to ensure no conflict-of-interest risks arise during the process of appraisal of the Authority's senior managers; also recalls that the board of supervisors adopted an amended conflict of interest policy to introduce an explicit requirement for conflicted individuals, i.e., board members, alternates or NCA coordinators, to leave the room for the deliberations on the relevant item, and to abstain from voting in written procedures; commends the Agency for having addressed the Court's observation that is now deemed to be closed;

Internal control

22. Welcomes the annual assessment of the Authority's internal control system and the conclusion that it exists and functions well; notes that the Authority measured 77 internal control indicators, covering all internal control principles and identified 42 deficiencies, most of which were minor or moderate 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 control environment, control activities, and information and communication components;
23. Notes that the Authority was audited by the Internal Audit Service of the Commission (IAS) on data management in 2022, acknowledging the achievements made in setting up the data management framework, as well as the continued efforts to define a more coherent vision on the data management activities; notes nevertheless that the IAS identified weaknesses in both the design, and effective and efficient implementation of the internal control systems set up for the data management processes and issued five recommendations, two of them being very important; calls on the Authority to address those weaknesses and report to the discharge authority on the progress made in this regard;
24. Notes that following its annual organisational risk assessment, the Authority identified risks in 2022 such as fragile, more volatile markets that may affect financial stability, put investors at risk and increase supervisory risk for the Authority, the risk of inadequate resources or lack of expertise in certain areas to adapt to the new challenges and the risk of a cyberattack targeting the Authority and affecting the security of IT systems; calls on the Authority to take all the mitigation actions necessary to address those risks;

Other comments

25. Commends the Authority for being officially recognised for its environmental management system under EMAS (European Union's Eco-Management and Audit Scheme) and for obtaining the EMAS registration in 2022; commends further the Authority for its commitment to foster and integrate as much as possible green requirements in its procurement procedures; notes with satisfaction from the Court's report that the Authority is among the agencies that issue an annual environmental statement;
26. Notes that in 2022 the Authority, together with the other European Supervisory Authorities, issued warnings to consumers in relation to the high-risk and speculative activities associated with many crypto-assets;
27. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 11 April 2024 ⁽³⁾ on the performance, financial management and control of the agencies.

⁽³⁾ Texts adopted, P9_TA(2024)0280.