European Parliament
2019-2024

TEXTS ADOPTED

P9_TA(2021)0200

2019 discharge: European Securities and Markets Authority

1. European Parliament decision of 28 April 2021 on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2019 (2020/2176(DEC))

The European Parliament,

– having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2019,

– having regard to the Court of Auditors' annual report on EU agencies for the financial year 2019, together with the agencies' replies[1],

– having regard to the statement of assurance[2] as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2019, pursuant to Article 287 of the Treaty on the Functioning of the European Union,

– having regard to the Council's recommendation of 1 March 2021 on discharge to be given to the Authority in respect of the implementation of the budget for the financial year 2019 (05793/2021 – C9-0073/2021),

– having regard to Article 319 of the Treaty on the Functioning of the European Union,

– having regard to 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[3], and in particular Article 70 thereof,

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[1] OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf.

[2] OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf.

[3] OJ L 193, 30.7.2018, p. 1.

– having regard to 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[1], and in particular Article 64 thereof,

– having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[2], and in particular Article 105 thereof,

– having regard to Articles 32 and 47 of Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[3],

– 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 (A9-0093/2021),

1. Grants the Executive Director of the European Securities and Markets Authority discharge in respect of the implementation of the Authority's budget for the financial year 2019;

2. Sets out its observations in the resolution below;

3. Instructs its President to forward this decision, and the resolution forming an integral part of it, to the Executive Director of the European Securities and Markets Authority, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

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[1] OJ L 331, 15.12.2010, p. 84.
[2] OJ L 122, 10.5.2019, p. 1.
[3] OJ L 328, 7.12.2013, p. 42.

2. European Parliament decision of 28 April 2021 on the closure of the accounts of the European Securities and Markets Authority for the financial year 2019 (2020/2176(DEC))

The European Parliament,

– having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2019,

– having regard to the Court of Auditors' annual report on EU agencies for the financial year 2019, together with the agencies' replies[1],

– having regard to the statement of assurance[2] as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2019, pursuant to Article 287 of the Treaty on the Functioning of the European Union,

– having regard to the Council's recommendation of 1 March 2021 on discharge to be given to the Authority in respect of the implementation of the budget for the financial year 2019 (05793/2021 – C9-0073/2021),

– having regard to Article 319 of the Treaty on the Functioning of the European Union,

– having regard to 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[3], and in particular Article 70 thereof,

– having regard to 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[4], and in particular Article 64 thereof,

– having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[5], and in particular Article 105 thereof,

– having regard to Articles 32 and 47 of Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies

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1 OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf.
2 OJ C 351, 21.10.2020, p. 7. ECA annual report on EU agencies for the 2019 financial year: https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2019/agencies_2019_EN.pdf.
3 OJ L 193, 30.7.2018, p. 1.
4 OJ L 331, 15.12.2010, p. 84.
5 OJ L 122, 10.5.2019, p. 1.

referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[1],

– 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 (A9-0093/2021),

1. Approves the closure of the accounts of the European Securities and Markets Authority for the financial year 2019;

2. Instructs its President to forward this decision to the Executive Director of the European Securities and Markets Authority, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the *Official Journal of the European Union* (L series).

[1] OJ L 328, 7.12.2013, p. 42.

3. European Parliament resolution 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 Securities and Markets Authority for the financial year 2019 (2020/2176(DEC))

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 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 (A9-0093/2021),

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 2019 was EUR 47 379 354, representing an increase of 7,21 % compared to 2018; whereas the Authority is financed by a contribution from the Union (28,73 %), contributions from national supervisory authorities of the Member States (45,76 %) and fees received from supervised entities (24,33 %);

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 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 satisfaction that the budget monitoring efforts during the financial year 2019 resulted in a budget implementation rate of 99,95 %, representing a slight decrease of 0,03 % compared to 2018; notes that the payment appropriations execution rate was at 88,77 %, representing a decrease of 0,11 % 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 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 expenditures, thus creating surpluses; 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 that, according to the Authority's reply, it did not lead to any significant recurrent cross-financing within the Authority's budget and that in 2019 the deviation between supervisory costs was 2,8 % for credit rating agencies and 1,8 % for trade repositories; calls on the Authority to continue limiting such cross-financing;

3. Notes that, according to the Court's report, the Authority's budget includes contributions made by national competent authorities (NCAs) in an amount of EUR 1 363 258 in 2019, which was based on estimated figures and never adjusted to match the actual figures;

[1] OJ C 107, 31.3.2020, p. 233.

notes from the Authority's reply that both the estimated and actual amounts were calculated but the Commission's instructions (Ares(2016)2772696) on pension contributions indicate that agencies should not adjust the NCAs' share of pension contributions to actual levels and that the difference between the actual versus estimated amounts of the NCAs' pension contributions in 2019 was immaterial, i.e., EUR 27 888;

4. Notes that, according to the Court's report, the fees charged to credit rating agencies, in accordance with the related fees regulation, are based on their revenue as legal entities, but not as a group or group of related entities, thus, creating an opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under Union jurisdiction to their related entities outside the Union and the likely financial effect of this loophole in the regulations is unknown; notes that, according to the Court's report, while the Authority has correctly applied the related fees regulation, it identified the risk and addressed it to the Commission; notes that, according to the Authority's reply, it will actively participate in all initiatives aimed to avoid any loophole in the related fees regulation;

5. Notes that, according to the Court's report, for the fee calculations of trade repositories, the Authority provided independent auditors' opinions stating that their 2018 financial statements gave a true and fair view, but the information submitted on the number of trades reported to the trade repositories during 2018 and the number of recorded outstanding trades on 31 December 2018 were only subject to a limited review by independent auditors; notes that, according to the Authority's reply, it does not have a legal basis to request independent audit reviews from trade repositories on their numbers and the Authority has proposed to the Commission to amend the delegated regulation on fees for trade repositories in order to harmonise the calculation system in line with the Commission's Internal Audit Service's (IAS) recommendations; notes that, according to the Authority's reply, in 2019, the biggest trade repository provided the independent auditor's certification on a voluntary basis on all criteria used in the calculation;

Performance

6. 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 number of peer reviews conducted, number of risk topics analysed and rate of budget outturn;

7. Notes that the Authority completed 95 % of the activities included in its annual work programme in 2019, representing an increase of 5 % compared to 2018;

8. Notes that the Authority, along with the European Banking Authority and the European Insurance and Occupational Pensions Authority, 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;

9. 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 sustainability measures;

10. 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 additional number of full-time equivalents (FTEs) in its budget for 2020 in order to cover its new mandate on sustainability; looks forward to an update in the second half of 2021 on progress in this area;

11. Points out that the Authority has been given more powers in the area of direct supervision and strengthening of convergence; welcomes this assignment of responsibility but warns that, to be effective, this process must be gradual and continuous;

12. Underlines that in certain cases the mandates adopted at level 1 of the legislation do not take into account the minimum timeframes required for the Authority to carry out the necessary work to develop and adopt level 2 measures, thereby requiring reallocations of resources and causing delays in the implementation of certain measures;

13. Recognises that the composition of the Authority's board of supervisors seems appropriate to address the Authority's regulatory powers, but less so with regard to its supervisory functions; considers that the Authority's ability to obtain accurate information from financial institutions is not sufficient to allow it to exercise its various responsibilities;

14. 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 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; points out that the principle of proportionality should be a guiding principle for the Authority's work, where relevant;

15. 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; warns that in order to achieve effective supervision it is essential that the Authority has the capacity to adopt measures to adjust to risks or problems that may arise on the market; notes that budget increases should be gradual and continuous over time in line with the increase in competences; 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; stresses the urgency to allocate sufficient resources to the Authority to allow it to carry out its allocated tasks in an adequate and efficient manner;

16. Welcomes the Authority's Fast Track Peer Review Report of 3 November 2020 on the application of the guidelines on the enforcement of financial information (ESMA/2014/1293) by BaFin and FREP in the context of Wirecard, revealing major weaknesses in market and institutional oversight, especially with respect to investor

protection and market integrity; suggests that the Authority reflect the lessons learned from this scandal in its guidelines and in its peer reviews of the implementation of those guidelines; calls on the Commission to propose measures to further harmonise Union rules regarding financial supervision;

17. Acknowledges the 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[1]; expresses its satisfaction with the thoroughness of this investigation into the integrity of a specific area of financial markets activity;

18. 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;

Staff policy

19. Notes that, on 31 December 2019, the establishment plan was 73,81 % implemented, with 155 temporary agents appointed out of 210 temporary agents authorised under the Union budget (compared to 156 authorised posts in 2018); notes that the relatively low execution of the establishment plan can be explained by the later than expected adoption of the European Supervisory Authority Review and Regulation (EU) No 648/2012 of the European Parliament and of the Council[2] (the European Market Infrastructure Regulation) which would have authorised recruitment of additional staff for the Authority; notes that, in addition, 68 contract agents and 10 seconded national experts worked for the Authority in 2019;

20. Welcomes the news that the Authority is close to achieving gender balance on its management board (6 men and 5 women) and at staff level (52 % male and 48 % female); notes with satisfaction the reported gender balance with regard to the senior management (1 man and 1 woman); welcomes the Authority's intention to publish a shortlist consisting of at least one woman and one man for nomination as its Chair, and calls on the Authority to do the same with respect to the nomination of its Executive Director; calls on the Authority to draw inspiration from the European Central Bank's initiatives that propose internal programmes for the promotion of women and for greater diversity among its staff;

21. Notes that the staff turnover rate of the Authority was 5 % in 2019, meeting the Authority's target of less than 10 %;

22. Notes that the Authority has adopted the policy on protecting the dignity of the person and preventing harassment; notes that every year, the Authority's human resources department prepares a report on the activities carried out by the Authority to prevent harassment in the

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[1] OJ C 363, 28.10.2020, p. 102.

[2] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

workplace; notes further that the Authority's human resources department and confidential counsellors organise regular awareness sessions;

23. Is of the opinion that the combination of public-private experience that its staff brings is beneficial to the Authority; considers that systems should be explored to attract talent from the private sector to the public sector and vice versa, with minimum safeguards in place to promote the independence of both sectors; believes that the implementation of the rules in this area should be monitored by common bodies of the Union and should take into account the specific circumstances of each case;

24. Shares with concern the Court's observation that to compensate for a shortage of posts the Authority relies increasingly on consultants and interim staff, which may pose risks of inadequate supervision of complex work by external contractors and of contractual litigation issues because of blurred responsibilities; notes, as follow-up from previous years' Court findings, that 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; 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; notes that, according to the Authority's reply, any potential risks in this context were limited and it has adopted all necessary procedures to avoid any possible confusion between the procurement of IT services and the assignment of interim workers in the contracts; urges the Authority to ensure that contracts avoid any confusion between the procurement of services and that of interim workers;

Procurement

25. Notes the Authority's efforts to seek efficiency gains through joining procurement procedures with other agencies; notes that in 2019 the Authority signed a framework contract, together with the European Banking Authority, on consultancy services in the field of facility management and now it is leading a procurement procedure for interim workers' services together with the three other agencies with headquarters in France;

Prevention and management of conflicts of interest and transparency

26. Notes that 25,41 % 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 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 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;

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

28. Welcomes the fact that the Authority publishes CVs and declarations of interest of its senior management;

29. Recalls the comments and observations from the discharge authority in the resolution accompanying the decision on discharge for the Authority for the financial year 2018 related to the problem of conflicts of interest arising from ‘revolving door’ situations and stresses the need for a unified approach among the agencies; calls on the Authority to report to the discharge authority on the progress made;

30. Underlines the importance of an open, efficient and independent administration for all Union agencies and the Union as a whole; recalls its resolution of 16 January 2020 on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest[1], and the decision of 18 November 2020 and the recommendation of 7 May 2020 of the European Ombudsman in case 2168/2019/KR; stresses the need for a unified legal framework to address these issues; calls on the Authority to implement the recommendations of the European Ombudsman in case 2168/2019/KR, in particular, where necessary, by invoking the option of forbidding its senior staff from taking up certain positions after the end of their term in office, setting out criteria for the possibility for staff to move to the private sector, informing applicants for senior posts of the Authority of the criteria when they apply, and putting in place internal procedures to ensure that when a member of its staff moves to another job, his or her access to the confidential information is withdrawn with immediate effect; further calls on the Authority to consider extending the 12-month mandatory cooling-off period for senior members of staff that contemplate a move that may give rise to post-public employment conflicts of interest; calls on the Authority to draw inspiration from the publication by the European Central Bank’s Ethics Committee of its opinions on cases of conflict of interest and post-mandate gainful employment, in order to increase transparency on potential conflicts of interest and on post-mandate gainful employment;

Internal Controls

31. Notes, in light of comments and observations from the discharge authority related to the report of the IAS on ‘Revenues and Activity Based Management in the European Securities and Market Authority’, that related actions agreed upon have been taken;

32. Notes that the IAS in 2019 issued an audit report on ‘IT security and related governance processes’ 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 this regard;

33. Notes that the Authority’s management board adopted the new internal control framework in November 2018; notes that the Authority performed the first annual assessment of the effectiveness of the implementation of the internal control principles in Q1 2020 and concluded that the internal control system is functioning well; notes that 24 deficiencies were identified most of which were minor and none of which called into question the presence and proper functioning of the principles and were mainly related to the control environment and control activities components, as well as information and communication components;

Other comments

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

34. Notes that, with the continuing uncertainty around the UK's withdrawal from the Union, the Authority continued to take practical preparatory measures for a no-deal scenario by publishing updated statements and measures for IT-applications and databases;

35. Notes the efforts made to increase the Authority's cyber security and data protection;

36. Notes that in November 2019 the Authority moved to new premises in Paris in the building known as 'iBox', which has high quality environmental certification and is less expensive per square metre compared to the old premises;

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

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38. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 29 April 2021[1] on the performance, financial management and control of the agencies.

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