



EUROPEAN
COURT
OF AUDITORS

**Report on the annual accounts of the
European Securities and Markets
Authority (ESMA)
for the financial year 2019,**

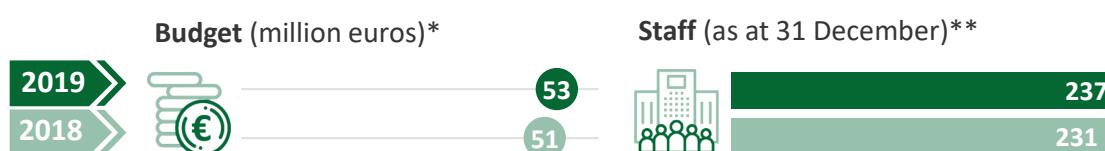
together with the Authority's reply

Introduction

01 The European Securities and Markets Authority (“the Authority”, or “ESMA”), which is located in Paris, was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹. The Authority’s task is to improve the functioning of the EU internal financial market by ensuring a high, effective and consistent level of regulation and supervision; promoting the integrity and stability of the financial systems and strengthening international supervisory coordination in order to ensure the stability and effectiveness of the financial system.

02 *Graph 1* presents key figures for the Authority².

Graph 1: Key figures for the Authority



* Budget figures are based on the total payment appropriations available during the financial year.

** “Staff” includes EU officials, EU temporary agents, EU contract staff and seconded national experts, but excludes interim workers and consultants.

Source: Consolidated annual accounts of the European Union for the financial year 2018 and Provisional consolidated annual accounts of the European Union Financial year 2019; Staff figures provided by the Authority.

Information in support of the statement of assurance

03 The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Authority’s supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of information provided by the Authority’s management.

¹ OJ L 331, 15.12.2010, p. 84.

² More information on the Authority’s competences and activities is available on its website: www.esma.europa.eu.

The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

Opinion

04 We have audited:

- (a) the accounts of the Authority which comprise the financial statements³ and the reports on the implementation of the budget⁴ for the financial year ended 31 December 2019 and
- (b) the legality and regularity of the transactions underlying those accounts

as required by Article 287 of the Treaty on the Functioning of the European Union (TFEU).

Reliability of the accounts

Opinion on the reliability of the accounts

05 In our opinion, the accounts of the Authority for the year ended 31 December 2019 present fairly, in all material respects, the financial position of the Authority at 31 December 2019, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector.

³ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁴ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

06 In our opinion, revenue underlying the accounts for the year ended 31 December 2019 is legal and regular in all material respects.

Other matter

07 The fees charged to credit rating agencies are based on their revenue as legal entities, but not as a group or group of related entities. This creates a quasi-legitimate opportunity to reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU. The likely financial effect of this loophole in the regulations is unknown. While the Authority has correctly applied the Regulation, it identified the risk and addressed it to the Commission. The Authority proposed to the Commission to make the necessary modifications.

08 Fees to trade repositories are calculated based on each individual trade repository's applicable turnover. The amount is equal to the sum of one third of each of the following: the revenue generated from the trade repository's core functions; the number of trades reported to the trade repository during the previous year; and the number of recorded outstanding trades on 31 December of the previous year. Although, the Regulation on fees does not provide for a comprehensive and consistent control framework to ensure the reliability of the information, all of the trade repositories were able to produce independent auditors' opinions stating that their 2018 financial statements (used for the fee calculations) gave a true and fair view. However, the information they submitted on the number of trades reported to the trade repository during 2018 and the number of recorded outstanding trades on 31 December 2018 were only subject to limited review by independent auditors. The Authority informed the Commission and suggested a revision of the Regulation.

Payments

Opinion on the legality and regularity of payments underlying the accounts

09 In our opinion, payments underlying the accounts for the year ended 31 December 2019 are legal and regular in all material respects.

Basis for opinions

10 We conducted our audit in accordance with the IFAC International Standards on Auditing (ISAs) and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions (ISSAIs). Our responsibilities under those standards are further described in the 'Auditor's responsibilities' section of our report. We are independent, in accordance with the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA Code) and with the ethical requirements that are relevant to our audit, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of management and those charged with governance

11 In accordance with Articles 310 to 325 of the TFEU and the Authority's Financial Regulation, management is responsible for preparing and presenting the Authority's accounts on the basis of internationally accepted accounting standards for the public sector, and for the legality and regularity of the transactions underlying them. This includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. The Authority's management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the official requirements which govern those statement. The Authority's management bear the ultimate responsibility for the legality and regularity of the transactions underlying the Authority's accounts.

12 In preparing the accounts, the Authority's management is responsible for assessing the Authority's ability to continue as a going concern. It must disclose, as applicable, any matters affecting the Authority's status as a going concern, and use the going concern basis of accounting, unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

13 Those charged with governance are responsible for overseeing the Authority's financial reporting process.

The auditor's responsibilities for the audit of the accounts and underlying transactions

14 Our objectives are to obtain reasonable assurance about whether the accounts of the Authority are free from material misstatement and the transactions underlying them are legal and regular, and to provide, on the basis of our audit, the European Parliament and the Council or the other respective discharge authorities with statements of assurance as to the reliability of the Authority's accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

15 For revenue, we verify subsidies received from the Commission or cooperating countries and assess the Authority's procedures for collecting fees and other income, if any.

16 For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments (including those made for the purchase of assets) other than advances at the point they are made. Advance payments are examined when the recipient of funds provides justification for their proper use and the Authority accepts the justification by clearing the advance payment, whether in the same year or later.

17 In accordance with the ISAs and ISSAIs, we exercise our professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement or non-compliance resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the overriding of internal controls.
- Obtain an understanding of internal controls relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not

for the purpose of expressing an opinion on the effectiveness of the internal controls.

- Evaluate the appropriateness of the accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the accounts or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause an entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the accounts, including the disclosures, and whether the accounts represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the Authority to express an opinion on the accounts and transactions underlying them. We are responsible for the direction, supervision and performance of the audit. We remain solely responsible for our audit opinion.
- Considered the audit work of the independent external auditor performed on the Authority's accounts as stipulated in Article 70(6) of the EU Financial Regulation, where applicable.

We communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that we identify during our audit. From the matters on which we communicated with the Authority, we determine those matters that were of most significance in the audit of the accounts of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

18 The observations which follow do not call the Court's opinion into question.

Observations on budgetary management

19 The ESMA's budget includes contributions made by National Competent Authorities (NCAs), the European Commission, and EFTA Member's National Competent Authorities. In 2019, NCAs contributed 1 363 258 euros for pensions contributions to be paid by the employer (ESMA). This amount was based on estimated figures. The NCAs' contributions were never adjusted to match the actual figures. Nor did we see any evidence that plans had been made to make such an adjustment.

Follow-up of previous years' observations

20 An overview of the action taken in response to the Court's observations from previous years is provided in the **Annex**.

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg on 22 September 2020.

For the Court of Auditors



Klaus-Heiner Lehne

President

Annex - Follow-up of previous years' observations

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2018	The use of IT service contracts for the provision of labour circumvented the application of EU social and employment rules and exposes the Authority to legal and reputational risks. The Authority should make sure that contracts avoid any confusion between the procurement of IT services and of interim workers.	Ongoing
2018	The surpluses and deficits from the fees charged to credit rating agencies and trade repositories can lead to an annual cross-financing of activities. The Authority should find a means of avoiding such cross-financing.	Ongoing
2018	The joint procurement procedure for the rental of office space in Paris between ESMA and EBA failed, creating a missed opportunity for economies of scale and efficiency gains. The authorities should cooperate better and use joint procurement procedures wherever possible. The Authority needs to improve the documentation and traceability of tender evaluations.	N/A

The Agency's reply

07. ESMA welcomes ECA's comment and reiterates this comment is beyond ESMA's control and powers. ESMA operates within the framework of the current legislation and would welcome and will actively participate in all initiatives aimed at avoiding any loophole in the current Regulation.

08. ESMA welcomes this comment and reiterates it is beyond ESMA's control and power. ESMA considers it is providing the maximum assurance possible within the current regulatory framework. The delegated regulation on fees does not require Trade Repositories (TRs) to audit neither the number of trades reported to them nor the number of outstanding trades recorded, while it contains an explicit requirement for the revenues to be audited. In such context, ESMA does not have any legal basis to request independent audit reviews from TRs on their numbers. ESMA addressed at various times the Commission, proposing to amend the delegated regulation on fees for TRs in order to harmonise and simplify the calculation system, in line with IAS recommendations. In 2019, the biggest TR (making up around 50% of market share across all TRs and paying nearly half of total supervisory fees) provided ESMA (on a voluntary basis) with the independent auditor's certification regarding the number of trades reported to the TR in 2018 and the number of outstanding trades recorded on 31 December 2018.

19. ESMA performed both the estimated and actual NCAs pension contribution calculations for 2019. However, 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. This is why ESMA does not make this adjustment. Finally, ESMA highlights the immateriality of the difference between the actual versus estimated amounts of the NCAs' pension contribution in 2019 i.e. €27,888.

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