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COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	4 November 2016
To:	Mr Peter KAZIMIR, President of the Council of the European Union
Subject:	Report on the annual accounts of the European Securities and Markets Authority for the financial year 2015 together with the Authority's reply

Delegations will find attached the European Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2015.

This report is accompanied by the Authority's reply and will shortly be published in the *Official Journal of the European Union*.

Encl.: Report on the annual accounts of the European Securities and Markets Authority for the financial year 2015 together with the Authority's reply.¹

¹ In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.



EUROPEAN
COURT
OF AUDITORS

Report on the annual accounts
of the European Securities and Markets Authority
for the financial year 2015

together with the Authority's reply

INTRODUCTION

1. The European Securities and Markets Authority (hereinafter “the Authority”, aka “ESMA”), which is located in Paris, was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council². 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.

2. **Table 1** presents key figures for the Authority³.

TABLE 1: KEY FIGURES FOR THE AUTHORITY

	2014	2015
Budget (million euro) ⁴	33,3	36,7
Total staff as at 31 December ⁵	168	186

Source: data provided by the Authority.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

3. 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 management representations.

² OJ L 331, 15.12.2010, p. 84.

³ More information on the Authority’s competences and activities is available on its website: www.esma.europa.eu.

⁴ Budget figures are based on payment appropriations.

⁵ Staff includes officials, temporary and contract staff and seconded national experts.

STATEMENT OF ASSURANCE

4. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- (a) the annual accounts of the Authority, which comprise the financial statements⁶ and the reports on the implementation of the budget⁷ for the financial year ended 31 December 2015, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

5. The management is responsible for the preparation and fair presentation of the annual accounts of the Authority and the legality and regularity of the underlying transactions⁸:

- (a) The management's responsibilities in respect of the Authority's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer⁹; making accounting estimates that are reasonable in the circumstances. The Executive Director approves the annual accounts of the Authority after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, inter alia, that he has reasonable assurance that they present a true and fair view of the financial position of the Authority in all material respects.

⁶ These include the balance sheet and the statement of financial performance, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁷ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁸ Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

⁹ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

6. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council¹⁰ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Authority are free from material misstatement and the transactions underlying them are legal and regular.

7. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts. In preparing this report and Statement of Assurance, the Court considered the audit work of the independent external auditor performed on the Authority's accounts as stipulated in Article 208(4) of the EU Financial Regulation¹¹.

¹⁰ Article 107 of Regulation (EU) No 1271/2013.

¹¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

8. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Opinion on the reliability of the accounts

9. In the Court's opinion, the Authority's annual accounts present fairly, in all material respects, its financial position as at 31 December 2015 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

Opinion on the legality and regularity of the transactions underlying the accounts

10. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2015 are legal and regular in all material respects.

11. The comments which follow do not call the Court's opinions into question.

COMMENTS ON BUDGETARY MANAGEMENT

12. The level of committed appropriations carried over was high for Title II (administrative expenditure) at 2,2 million euro, i.e. 26 % (2014: 1,4 million euro, i.e. 19 %). These carry-overs mainly relate to IT projects for which services had not yet been delivered or invoices will only be received in 2016.

13. The level of committed appropriations carried over was also high for Title III (operational expenditure) at 2,3 million euro, i.e. 33 % (2014: 4,1 million euro, i.e. 45 %). These carry-overs mainly relate to IT projects for which services had not yet been delivered or invoices will only be received in 2016 (1,7 million euro) as well as mission expenses that will only be reimbursed in 2016 (0,1 million euro).

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

14. An overview of the corrective actions taken in response to the Court's comments from previous years is provided in **Annex I**.

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA,
Member of the Court of Auditors, in Luxembourg at its meeting of 13 September 2016.

For the Court of Auditors

(s) Vítor Manuel da SILVA CALDEIRA

President

Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	The Authority's budget for the financial year 2011 amounted to 16,9 million euro. In accordance with Article 62(1) of its Founding Regulation, 60 % of the 2011 budget was financed from Member States' and EFTA countries' contributions and 40 % from the Union budget. At the end of 2011, ESMA recorded a positive budget outturn of 4,3 million euro. In compliance with its Financial Regulation, the full amount was then recorded in the accounts as a liability towards the European Commission.	Completed
2011	Weaknesses were noted as regards six legal commitments made in advance of budget commitments (483 845 euro).	Ongoing ¹
2012	During its second year of activity, the Authority took an important step with the adoption and implementation of the baseline requirements for all internal control standards. However, full implementation of the standards has not been achieved.	Ongoing
2012	There is considerable room to improve the timeliness and documentation of procurement procedures.	Ongoing

¹ In 2015 the ex-post commitments amounted to 165 000 euro.

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	Some 27 % of payments made in 2013 for goods and services received were late. Where payments were late, they were overdue by an average of 32 days. Late interest paid in 2013 amounted to 3 834 euro.	Completed
2014	The amount of fees charged to supervised entities (Credit Rating Agencies and Trade Repositories) in 2014 (6 623 000 euro) appearing as revenue in the final statement of financial performance was based on estimated rather than actual costs of supervisory activities carried out . Fees levied on supervised entities should be as close as possible to the actual cost incurred in this area. An Activity Based Cost modelling exercise is currently being carried out by ESMA in order to achieve this.	Ongoing²
2014	When ESMA was established in 2010 it inherited a number of IT framework contracts from its predecessor body CESR (Committee of European Securities Regulators) for the hosting of its data centres as well as the development and maintenance of its IT systems. Failure to replace these framework contracts with timely calls for tender led to a situation where two of them were extended beyond their original duration. It also resulted in the Authority procuring some IT services using a French central purchasing body (Union de Groupements d'Achats Publics - UGAP). The Authority also made use of UGAP to buy furniture and stationery during the year. Total payments in 2014 amounted to 956 000 euro. The Court informed the Authority that the use of UGAP was not in compliance with the Financial Regulation and it has since ceased to do so. The Authority has now also replaced all CESR IT framework contracts with its own.	Completed

² The Authority needs to put in place a methodology in this area.

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	<p>The total cancellation rate for appropriations carried over from 2013 was high at 19 % i.e. 940 054 euro. This mainly stems from delays on the part of contractors in delivering requested services, but also the cancelled purchase of licenses for a cancelled project, difficulties encountered in implementing a contract for interim staff and in making the changeover from the previous to the new IT consultancy framework contract.</p>	N/A
2014	<p>The overall level of committed appropriations increased from 93 % in 2013 to 99 % in 2014, indicating that commitments were made in a more timely manner. However, the level of committed appropriations carried over to 2015 was high for title III (operational expenditure) at 4 063 580 euro, i.e. 45 % (2013: 3 688 487 euro, i.e. 58 %). Of this amount approximately 2 million euro relate to IT and other services provided in 2014 that had not been paid for by the Authority by the year-end. Another 1,3 million euro worth of contracts had been contracted towards the year-end and related services were expected to be delivered in 2015. The remaining amount of carry-overs is explained by the multi-annual nature of the contracts signed.</p>	N/A

THE AGENCY'S REPLY

13. ESMA acknowledges the reported level of committed appropriations carried over in Title II and Title III. The comment of the Court is noted and the explanation related to the multi-annual nature of the ESMA's large EU IT projects is confirmed.