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## COVER NOTE

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From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	28 November 2017
To:	Mr Märt KIVINE, 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 2016 together with the Authority's reply

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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 2016.

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

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Encl.: Report on the annual accounts of the European Securities and Markets Authority for the financial year 2016 together with the Authority's reply.<sup>1</sup>

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<sup>1</sup> 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 2016  
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 Council<sup>1</sup>. 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 Authority<sup>2</sup>.

**TABLE 1: KEY FIGURES FOR THE AUTHORITY**

	<b>2015</b>	<b>2016</b>
Budget (million euro) <sup>3</sup>	36,8	39,4
Total staff as at 31 December <sup>4</sup>	202	204

*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.

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

<sup>2</sup> More information on the Authority’s competences and activities is available on its website: [www.esma.europa.eu](http://www.esma.europa.eu).

<sup>3</sup> Budget figures are based on payment appropriations.

<sup>4</sup> Staff includes officials, temporary and contract staff and seconded national experts.

**OPINION**

4. We have audited:

- (a) the accounts of the Authority which comprise the financial statements<sup>5</sup> and the reports on the implementation of the budget<sup>6</sup> for the financial year ended 31 December 2016, 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*

5. In our opinion, the accounts of the Authority for the year ended 31 December 2016 present fairly, in all material respects, the financial position of the Authority at 31 December 2016, 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.

***Legality and regularity of the transactions underlying the accounts*****Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

6. In our opinion, revenue underlying the accounts for the year ended 31 December 2016 is legal and regular in all material respects.

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<sup>5</sup> The financial statements comprise the balance sheet, the statement of financial performance, the cashflow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

<sup>6</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

**Payments***Opinion on the legality and regularity of payments underlying the accounts*

7. In our opinion, payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

***Responsibilities of management and those charged with governance***

8. In accordance with Articles 310 to 325 of the TFEU and the Authority's Financial Regulation, management is responsible for the preparation and presentation of the 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 responsibility 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. Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them. The Authority's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts.

9. In preparing the accounts, management is responsible for assessing the Authority's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

10. Those charged with governance are responsible for overseeing the entity's financial reporting process.

***Auditor's responsibilities for the audit of the accounts and underlying transactions***

11. 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 other respective discharge authorities with a statement of assurance as to the reliability of the 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.

12. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and the regularity of the transactions underlying them. The procedures selected depend on the auditor's judgment, including an assessment of 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. In making those risk assessments, internal controls relevant to the preparation and fair presentation of the accounts and legality and regularity of underlying transactions, are considered 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 internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the accounts.

13. For revenue, we verify the subsidy received from the Commission and assess the Authority's procedures for collecting fees and other income, if any.

14. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. 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.

15. In preparing this report and Statement of Assurance, we 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 Regulation<sup>7</sup>.

#### **Other matter**

16. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. An agreement setting out the arrangements for its withdrawal will be negotiated. The Authority's budget is financed by 26 % from European Union funds, by 47 % through direct

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<sup>7</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

contributions from EU Member States and by 27 % from and fees received from supervised entities (Credit Rating Agencies and Trade Repositories). The departure of the UK might affect the Authority's activities since the most significant supervised entities are currently located there. A future decrease of the Authority's revenue resulting from the UK's decision to leave the EU is possible.

#### **FOLLOW-UP OF PREVIOUS YEARS' COMMENTS**

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

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 12 September 2017.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

Follow-up of previous years' comments

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2011</b>	Weaknesses were noted as regards six legal commitments made in advance of budget commitments (483 845 euro).	<b>Completed</b>
<b>2012</b>	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.	<b>Completed</b>
<b>2012</b>	There is considerable room to improve the timeliness and documentation of procurement procedures.	<b>Completed</b>
<b>2014</b>	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.	<b>Completed</b>
<b>2015</b>	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.	<b>N/A</b>



Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2015</b>	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).	<b>N/A</b>

**THE AUTHORITY'S REPLY**

The Authority has taken note of the Court's report.