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## TEXTS ADOPTED

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### P8\_TA(2016)0181

#### **Discharge 2014 : European Securities and Markets Authority (ESMA)**

##### **1. European Parliament decision of 28 April 2016 on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2014 (2015/2190(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2014,
- having regard to the Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2014, together with the Authority's reply<sup>1</sup>,
- having regard to the statement of assurance<sup>2</sup> 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 2014, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 12 February 2016 on discharge to be given to the Authority in respect of the implementation of the budget for the financial year 2014 (05584/2016 – C8-0088/2016),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>3</sup>, and in particular Article 208 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

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<sup>1</sup> OJ C 409, 9.12.2015, p. 255.

<sup>2</sup> OJ C 409, 9.12.2015, p. 255.

<sup>3</sup> OJ L 298, 26.10.2012, p. 1.

Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>1</sup>, and in particular Article 64 thereof,

- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup>,
  - having regard to 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<sup>3</sup>, and in particular Article 108 thereof,
  - having regard to Rule 94 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A8-0096/2016),
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 2014;
  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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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

<sup>2</sup> OJ L 357, 31.12.2002, p. 72.

<sup>3</sup> OJ L 328, 7.12.2013, p. 42.

## **2. European Parliament decision of 28 April 2016 on the closure of the accounts of the European Securities and Markets Authority for the financial year 2014 (2015/2190(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2014,
- having regard to the Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2014, together with the Authority's reply<sup>1</sup>,
- having regard to the statement of assurance<sup>2</sup> 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 2014, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 12 February 2016 on discharge to be given to the Authority in respect of the implementation of the budget for the financial year 2014 (05584/2016 – C8-0088/2016),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>3</sup>, and in particular Article 208 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<sup>4</sup>, and in particular Article 64 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>5</sup>,
- having regard to 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<sup>6</sup>, and in particular Article 108 thereof,

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<sup>1</sup> OJ C 409, 9.12.2015, p. 255.

<sup>2</sup> OJ C 409, 9.12.2015, p. 255.

<sup>3</sup> OJ L 298, 26.10.2012, p. 1.

<sup>4</sup> OJ L 331, 15.12.2010, p. 84.

<sup>5</sup> OJ L 357, 31.12.2002, p. 72.

<sup>6</sup> OJ L 328, 7.12.2013, p. 42.

- having regard to Rule 94 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A8-0096/2016),
1. Notes that the final annual accounts of the European Securities and Markets Authority are as annexed to the Court of Auditors' report;
  2. Approves the closure of the accounts of the European Securities and Markets Authority for the financial year 2014;
  3. 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).

**3. European Parliament resolution of 28 April 2016 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 2014 (2015/2190(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 2014,
  - having regard to Rule 94 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A8-0096/2016),
- A. whereas, according to its financial statements, the final budget of the European Securities and Markets Authority (the ‘Authority’) for the financial year 2014 was EUR 33 267 143 representing an increase 18,02 % compared to 2013 due to the additional tasks entrusted to the Authority;
- 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 2014 (the ‘Court’s report’) states that it has obtained reasonable assurances that the Authority’s annual accounts for the financial year 2014 are reliable and that the underlying transactions are legal and regular;
1. Recalls that the Parliament was a key driver in the efforts to set up a new and comprehensive European System of Financial Supervision (ESFS) in the aftermath of the financial crisis, and in creating the Authority, as part of ESFS, in 2011;
  2. Underlines that the Authority’s role in promoting a common supervisory regime across the internal market is essential in order to ensure financial stability and a better integrated, more transparent, more efficient and safer financial market as well as a high degree of consumer protection in the Union;
  3. Stresses that the Authority’s work is of a purely technical nature and that key political decisions are the prerogative of the Union legislator;

***Comments on the reliability of the accounts***

4. Notes from the Court’s report that the fees the Authority charged to its supervised entities, appearing as revenue in the provisional statement of financial performance, were based on estimated rather than actual costs of realised supervisory activities; acknowledges that in 2014 the Authority developed an activity-based costing model which will allow accurate follow up of the expenditure of its supervision activities; acknowledges furthermore that the Authority is applying this model from 2015 resulting in the supervisory fees being calculated according to the actual cost;

***Comments on the legality and regularity of transactions***

5. Notes from the Court's report that the Authority inherited a number of IT framework contracts from its predecessor body, the Committee of European Securities Regulators (CESR); notes that those contracts were related to the hosting of the Authority's data centres as well as to the development and maintenance of its systems; notes with concern that the IT contracts were not replaced with timely calls for tender which led to two contracts being extended beyond their original duration; is concerned that this resulted in the Authority procuring IT services, furniture and stationery, using a French central purchasing body, Union de Groupements d'Achats Publics (UGAP), for the amount of EUR 956 000 for 2014; points out that the use of UGAP was not in compliance with the Financial Regulation; acknowledges that the Authority has ceased to procure using UGAP's framework contracts, and that it has replaced all CESR IT framework contracts with its own;

### ***Budget and financial management***

6. Notes that the budget monitoring efforts during the financial year 2014 resulted in a budget implementation rate of 98,89 %, representing an increase of 5,71 % compared to 2013 and indicating that commitments were made in a more timely manner; notes that the payment appropriations execution rate was 81,16 %;
7. Notes that the total cancellation rate for committed appropriations carried forward from 2013 was 19 %; acknowledges that those cancellations related mainly to delays in delivering requested services by the contractors, the cancelled purchase of licenses for a cancelled project, difficulties encountered in implementing a contract for interim staff as well as to a changeover to the new IT consultancy framework contract;

### ***Commitments and carryovers***

8. Ascertains from the Court's report that the that the level of committed appropriations carried over to 2015 was at 45 % for Title III (operational expenditure), showing a decrease of 13 % compared to 2013; acknowledges that those carryovers related mainly to IT and other services provided in 2014 and not paid at the year-end, to services expected to be delivered in 2015 as well as to the multi-annual nature of signed contracts;

### ***Transfers***

9. Notes with satisfaction that the Authority reduced the level of transfers in 2014 by implementing a thorough quarterly budget review, as well as monthly reporting to the Executive Director and quarterly reporting to the Management Board in order to ensure better and more transparent budget monitoring;

### ***Procurement and recruitment procedures***

10. Notes that at year-end, the Authority employed 167 staff members, compared to 139 staff in the previous year; acknowledges from the Authority that it aims for the best possible gender and geographical balance, resulting in 24 Union and European Economic Area nationalities being represented, with a ratio of 55 % male and 45 % female staff members;

### ***Prevention and management of conflicts of interests and transparency***

11. Acknowledges that the Authority developed, jointly with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), a policy on management of conflicts of interest for its staff; notes that this policy was

adopted in March 2015; notes furthermore that the Authority's Board of Supervisors adopted a policy on management of conflicts of interest for non-staff in September 2014; ascertains that the Authority is to annually collect and assess the declarations of interests from its staff, introduce awareness sessions for staff and newcomers, as well as to assess *ad hoc* declarations sent by its staff in order to raise awareness of the importance of avoiding conflicts of interests;

12. Notes that the CVs and declarations of interests of the Authority's senior management, voting members of its Board of Supervisors and members of the Securities and Market Stakeholder Group were made available on the Authority's website;
13. Acknowledges that in 2014 the Authority developed, in close cooperation with EBA and EIOPA, an anti-fraud strategy for the 2015-2017 period and that its implementation will enhance the Authority's capabilities in preventing, detecting, investigating and penalising potential fraud cases;
14. Calls on the Authority to follow EBA in greater transparency by disclosing all its meetings with third party stakeholders;

#### ***Internal audit***

15. Notes that the Commission's Internal Audit Service (IAS) performed an audit on "IT Governance and Project Management" and started an audit on "Stakeholder Management and External Communications"; notes that in June 2014 the IAS performed a follow up visit and reviewed the implementation of the Authority's Internal Control Standards; acknowledges that the IAS considered seven out of 14 recommendations were already implemented while some of the pending recommendations were sent for closure to the IAS and are pending a new review;

#### ***Other comments***

16. Notes that the Authority has put in place different actions in order to tackle the issue of late payments, which in 2013 constituted 27 % of all payments for goods and services received; acknowledges that these actions resulted in the late payments rate being reduced to below 1 % in 2015;
17. States that the annual reports of the Authority could play an important role in compliance regarding transparency, accountability and integrity; calls on the Authority to include a standard chapter on these components in its annual report;
18. Notes that following its discussions with the host Member State, the Authority started claiming VAT reimbursements according to the Protocol No 7 on the privileges and immunities of the European Union and the Council "VAT Directive"<sup>1</sup>; acknowledges that a VAT claiming procedure was put in place in 2013 which involves the participation of financial actors early in the appropriate circuits; observes that as a result of this measure, a quarterly procedure for claiming and reimbursement of VAT is in place as from 2014, effectively resolving the VAT recovery issue;
19. Points out that the Authority, when carrying out its activities, needs to pay particular attention to upholding the safety and soundness of the financial sector, ensuring

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

compatibility with Union law, respecting the principle of proportionality and complying with the fundamental principles of the internal market for financial services; underlines that the Authority, on that basis, must strive to achieve outcomes that are unambiguous, consistent, coherent and free of superfluous complexity;

20. Points out that it is of particular importance that provisions drafted by the Authority are designed in a way that allows them to be equally applied by smaller entities;
21. Emphasises that, on all issues linked to the Authority's resources, it has to be ensured that the mandate can consistently be fulfilled and that the practical limits of independent, reliable and effective supervision are not set by budgetary constraints;
22. Acknowledges that the setting-up phase of ESFS has still not been completed and therefore notes that the tasks already entrusted to the Authority, as well as additional tasks envisaged in ongoing legislative work, require an adequate level of staff, in terms of both numbers and qualifications, and funding to allow for satisfactory supervision; underlines that, in order to uphold the quality of the supervisory work, it is very often the case that an expansion of tasks has to be matched by an expansion of resources; emphasises however that any potential increases in the Authority's means must be explained thoroughly and accompanied by rationalisation measures wherever possible;
23. Stresses that, while making sure that all assignments are carried out in full, the Authority must carefully stick to the tasks assigned to it by the Union legislator and must not seek to de facto broaden its mandate beyond those assignments; stresses that when carrying out its work and in particular when drafting technical standards and technical advice, the Authority needs to regularly and comprehensively inform the Parliament in a timely manner about its activities; regrets that this has in the past not always been done;
24. Stresses that when drafting implementing legislation, guidelines, questions and answers or similar measures the Authority must always respect the mandate attributed by the Union legislator and must not seek to set standards in areas where legislative processes are still pending;
25. Regrets to acknowledge that the Authority has not managed to keep the Union legislator informed in a sufficient and comprehensive manner about all details of its ongoing work;
26. Regrets several cases where information from the Authority was available to Member States or third party stakeholders that was not given to Parliament; calls on the Authority to take effective measures to end this maladministration and to treat Parliament and Member States equally both regarding the content and timing of disclosed information;
27. Concludes that the Authority's mixed financing arrangement, which relies heavily on contributions from national competent authorities, is inadequate, inflexible, burdensome and a potential threat to its independence; therefore calls on the Commission, in the White Paper planned for Q2 2016 and in a legislative proposal to be presented by 2017, to launch a different financing arrangement based on a separate budget line in the budget of the Union and on the complete replacement of the contributions from national authorities by fees paid by market participants;
28. Calls on the Authority to supplement communication with the Parliament on draft advice or technical standards relating to the calibration of prudential formulae with a full description of the data and methodology used in such calibrations;



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29. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 28 April 2016<sup>1</sup> on the performance, financial management and control of the agencies.

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<sup>1</sup> Texts adopted of that date, P8\_TA(2016)0159.