

REPORT

on the annual accounts of the European Banking Authority for the financial year 2012, together with the Authority's replies

(2013/C 365/12)

INTRODUCTION

1. The European Banking Authority (hereinafter 'the Authority', aka 'EBA'), which is located in London, was established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾. The Authority's task is to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, to contribute to the consistent application of legally binding Union acts, to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities, to monitor and assess market developments in the area of its competence and to foster depositor and investor protection ⁽²⁾.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

2. 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 (where relevant) and an analysis of management representations.

STATEMENT OF ASSURANCE

3. 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 statements ⁽³⁾ and the reports on the implementation of the budget ⁽⁴⁾ for the financial year ended 31 December 2012, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

4. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽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 transactions:

- (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 officer ⁽⁶⁾; making accounting estimates that are reasonable in the circumstances. The 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.
- (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

5. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council ⁽⁷⁾ with

⁽¹⁾ OJ L 331, 15.12.2010, p. 12.

⁽²⁾ *Annex II* summarises the Authority's competences and activities. It is presented for information purposes.

⁽³⁾ These include the balance sheet and the economic outturn account, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁽⁴⁾ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁽⁵⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁶⁾ 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.

⁽⁷⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

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.

6. 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.

7. 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

8. In the Court's opinion, the Authority's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 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

9. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2012 are legal and regular in all material respects.

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

COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

11. In order to cover higher school fees, the Authority grants staff whose children attend primary or secondary school an education contribution in addition to the education allowances provided for in the Staff Regulations ⁽⁸⁾. Total 2012 education contributions amounted to some 76 000 euro. They are not covered by the Staff Regulations and therefore irregular.

COMMENTS ON INTERNAL CONTROLS

12. In accordance with the Authority's IT strategy which was drawn up by its predecessor organisation ⁽⁹⁾, the EBA's IT core application systems were outsourced to an external IT provider ⁽¹⁰⁾ until December 2013. This poses risks related to the Authority's limited control and supervision over its IT systems.

COMMENTS ON BUDGETARY MANAGEMENT

13. The overall level of appropriations committed was 89 %, varying between 84 % for title I (staff expenditure), 86 % for title II (administrative expenditure) and 100 % for title III (operational expenditure) ⁽¹¹⁾. Carry-overs of committed appropriations were high for title II (45 %) mainly for reasons beyond the Authority's control, such as the unsuccessful attempt to find new premises and delays in the implementation of some IT projects for which it was difficult to obtain information needed from the predecessor organisation. For title III, carry-overs of committed appropriations were high (85 %), mainly due to the complexity and lengthy duration of two IT procurement procedures which however were carried out according to plan, delays in the launching and implementation of three other IT projects and the late invoicing for certain IT services by the suppliers.

OTHER COMMENTS

14. The Court identified the following weaknesses in the audited recruitment procedures affecting transparency and equal treatment: candidates were given a global score instead of one score for each of the selection criteria; there was no evidence that the questions for interviews and tests had been set before the date of the examinations.

⁽⁸⁾ Article 3 of Annex VII provides for twice the basic allowance of 252,81 euro = 505,62 euro.

⁽⁹⁾ Committee of European Banking Supervisors.

⁽¹⁰⁾ Banque de France.

⁽¹¹⁾ Following an analysis of needs for the remaining part of the year, the budget was revised and appropriations were reduced by 8,9 % in September 2012.

FOLLOW-UP OF PREVIOUS YEAR'S COMMENTS

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

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 15 July 2013.

For the Court of Auditors
Vitor Manuel da SILVA CALDEIRA
President

ANNEX I

Follow-up of previous year's comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	The low budget execution rates show difficulties in budget planning and implementation.	Ongoing
2011	The Authority's budget for the financial year 2011 was 12,7 million euro. In accordance with its Founding Regulation ⁽¹⁾ , 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, the Authority recorded a positive budget outturn of 3,6 million euro. In compliance with Articles 15(4) and 16(1) of its Financial Regulation the full amount was then recorded in the accounts as a liability towards the European Commission.	Ongoing
2011	Weaknesses were noted as regards three legal commitments made in advance of budget commitments (742 000 euro).	Completed
2011	The Authority's accounting system has still to be validated by the Accounting Officer, as required by the Financial Regulation.	Completed
2011	Not all the audited procurement procedures were fully consistent with the provisions of the general Financial Regulation. Contracts worth 299 182 euro had been launched under national rules, leading to payments in 2011 of 248 775 euro. The Authority should ensure that all new contracts are awarded in full compliance with the EU procurement rules.	Completed
2011	The Authority needs to improve the transparency of recruitment procedures: weightings for selection criteria and threshold scores for being invited to interviews or for inclusion in the list of suitable candidates were not set before the examination of applications.	Ongoing

⁽¹⁾ OJ L 331, 15.12.2010, p. 12, Article 62(1).

ANNEX II

European Banking Authority (London)**Competences and activities**

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Articles 26 and 114 of the Treaty on the Functioning of the European Union)</i></p>	<p><i>Article 26</i></p> <p>'1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.</p> <p>2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.</p> <p>3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.'</p> <p><i>Article 114</i></p> <p>'1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.'</p>
<p>Competences of the Authority</p> <p><i>(Regulation (EU) No 1093/2010 of the European Parliament and of the Council)</i></p>	<p>Objectives</p> <p>(a) Improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision;</p> <p>(b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets;</p> <p>(c) strengthening international supervisory coordination;</p> <p>(d) preventing regulatory arbitrage and promoting equal conditions of competition;</p> <p>(e) ensuring the taking of credit and other risks are appropriately regulated and supervised;</p> <p>(f) enhancing customer protection.</p> <p>Tasks</p> <p>(a) To contribute to the establishment of high-quality common regulatory and supervisory standards and practices;</p> <p>(b) to contribute to the consistent application of legally binding Union acts;</p> <p>(c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;</p> <p>(d) to cooperate closely with the ESRB ⁽¹⁾;</p> <p>(e) to organise and conduct peer review analyses of competent authorities;</p> <p>(f) to monitor and assess market developments in the area of its competence;</p> <p>(g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;</p> <p>(h) to foster depositor and investor protection;</p>

	<p>(i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to depositors and investors throughout the Union and developing methods for the resolution of failing financial institutions and an assessment of the need for appropriate financing instruments;</p> <p>(j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;</p> <p>(k) to publish on its website, and to update regularly, information relating to its field of activities;</p> <p>(l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Banking Supervisors (CEBS).</p>
Governance	<p>Board of Supervisors</p> <p>Composed of the Chairperson, one representative per Member State (head of NSA ⁽²⁾), Commission, ECB ⁽³⁾, ESRB, EIOPA ⁽⁴⁾ and ESMA ⁽⁵⁾.</p> <p>Management Board</p> <p>Composed of the Chairperson and six other members of the Board of Supervisors.</p> <p>Chairperson</p> <p>Appointed by Board of Supervisors.</p> <p>Executive Director</p> <p>Appointed by Board of Supervisors.</p> <p>Board of Appeal</p> <p>Joint body of the three ESAs.</p> <p>External audit</p> <p>European Court of Auditors.</p> <p>Discharge authority</p> <p>European Parliament.</p>
Resources made available to the Authority in 2012 (2011)	<p>2012 Budget</p> <p>20,7 (12,7) million euro</p> <p>Including:</p> <p>European Union subsidy: 8,3 (5,1) million euro</p> <p>Contributions from Member States: 12,1 (7,4) million euro</p> <p>Contributions from observers: 0,3 (0,2) million euro</p> <p>Staff as at 31 December 2012</p> <p>68 temporary staff (40)</p> <p>12 contract staff (6)</p> <p>14 Seconded National Experts (5)</p>

Products and services in 2012

- Public consultations on 23 draft Regulatory and Implementing Technical Standards, of which 16 on capital/own funds.
- Submission to the Commission of the first draft Regulatory Technical Standards on capital requirements for central counterparties under European Market Infrastructure Regulation.
- Issuance of six Guidelines, four Discussion Papers and 14 Consultation Papers.
- Provision of seven Opinions addressed to the Commission, European Parliament and Council, three comment letters on accounting issues to the IASB/IFRS Foundation and one comment letter on auditing issues to the IAASB.
- Follow-up to the EBA'S July 2011 EU-wide stress test Recommendation and EBA's December 2011 Recapitalisation Recommendation with implementation to be done by 30 June 2012 (monitoring of banks' capital plans, publication of individual data on capital positions of 61 banks).
- Work in relation to the colleges of supervisors focusing on improving the consistency of supervisory practices, better coordination of activities, and the articulation of joint decisions on institution-specific prudential requirements, with specific focus on the 40 largest EU cross-border banks.
- Participation in 116 meetings and activities of colleges.
- Development of the EBA Crisis Management Manual for managing emergency situations, addressing information exchange within the colleges and with the EBA in emergency situations.
- Development of the Good Practices paper on consistency in the content and articulation of joint decisions.
- Issuance of a number of expert reports (e.g. report on a review of the prudential framework for SME lending, report on Basel III/CRDIV monitoring exercise, report on the follow-up review aimed at assessing the disclosures banks made in response to the Pillar 3 requirements set out in the Capital Requirements Directive, report on the functioning of colleges and fulfilment of action plans for colleges, etc.).
- Performance of risk analysis, assessment and monitoring, and presenting risk reports to a wide range of stakeholders (including annual report to the EU parliament, semi-annual and quarterly updates and reports, and weekly overview reporting on liquidity and funding conditions for European banks), strengthening risk assessment and analysis infrastructure, including exploration of internal and external data.
- Providing input and contribution to the process of the review of the European System of Financial Supervision in the context of the Article 81 of the EBA Regulation, jointly with ESMA and EIOPA (provision of quantitative and qualitative data and self-assessment report to the Commission).
- Contribution to the EU Financial Sector Assessment Program of the International Monetary Fund.
- Work related to EURIBOR and benchmark-related issues, performed jointly with ESMA, including issuance of recommendations to the Euribor-EBF and national authorities and work on principles for benchmark setting processes.
- Conduct of surveys of national competent authorities with regard to national regulations on professional indemnity insurance, and with regard to responsible lending and treatment of borrowers in payment difficulties, publication of the Consumer Trends Report 2012.
- Organisation of the EBA Consumer Protection Day in October 2012.

	<ul style="list-style-type: none">— Creation of the Standing Committee on Consumer Protection and Financial Innovation (SCConFin) and its subgroups working on responsible lending and arrears handling; exchange traded funds; and contracts for difference.— Provision and coordination of 13 seminars to staff from EBA and national supervisory authorities.— Establishment of a set of key performance indicators for the finance area, reported to the EBA's Management Board on a regular basis.— Further extension of an integrated e-HR system (Allegro) to facilitate an efficient and transparent working environment.— 11 meetings of Board of Supervisors (seven physical meetings, four teleconferences), eight meetings of Management Board (six physical meetings, two teleconferences).— Approximately 180 meetings held by EBA Internal Committees/Groups/Task forces/Panels.
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⁽¹⁾ European Systemic Risk Board.

⁽²⁾ National Supervisory Authority.

⁽³⁾ European Central Bank.

⁽⁴⁾ European Insurance and Occupational Pensions Authority.

⁽⁵⁾ European Securities and Markets Authority.

Source: Information supplied by the Authority.

THE AUTHORITY'S REPLIES

11. The high level of schooling fees and the absence of a European School in London is a major obstacle to attract and retain highly qualified staff with sufficient experience to fulfil the EBA's mandate.

Following unsuccessful negotiations with the UK authorities, the EBA has adopted an internal policy in order to avoid discrimination and promote equal opportunities in the framework of the staff policy, thus reflecting the spirit of the Staff Regulations. Agency staff at the EBA ought to receive the same social support for educational costs as staff employed under the Staff Regulations in other locations.

The background and reasons for this approach have always been included in detail in the EBA's Budget (Staff Policy Plan) in the annual budgetary procedure.

12. The EBA agrees with the Court's comment. The new IT strategy, approved by the Management Board in 2012 and implemented in 2013, will return to the Authority an extended control over its IT systems on 1 January 2014 when the contract with the current IT provider is ended.

13. The EBA takes note of the European Court of Auditors' finding.

In case of IT related carry-overs in title III, this can be attributed to the start up stage of the agency and the implementation of a new IT strategy which is aiming to phase out legacy solutions and establish a robust IT platform in line with the long term mandate of the EBA. Once the start up phase is completed, the IT spending will be more evenly spread throughout the fiscal year, which will significantly reduce a risk of carry-overs.

14. The EBA acknowledges the weaknesses identified by the Court and has promptly implemented the corrective measures. Since January 2013, candidates are given a score for each of the selection criteria and evidence that the questions and tests have been set before the date of the examinations is systematically included in the recruitment files.
