

REPORT

on the annual accounts of the European Banking Authority for the financial year 2011, together with the Authority's replies

(2012/C 388/11)

INTRODUCTION

1. The European Banking Authority (hereinafter "the Authority"), 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⁾. The Authority was set up on 1 January 2011.

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, the Court has audited the annual accounts⁽³⁾ of the Authority, which comprise the "financial statements"⁽⁴⁾ and the "reports on the implementation of the budget"⁽⁵⁾ for the financial year ended 31 December 2011, and the legality and regularity of the transactions underlying those accounts.

The Management's responsibility

4. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the financial rules of the Authority, under his own responsibility and within the limits of the authorised appropriations⁽⁶⁾. The Director is responsible for putting

in place⁽⁷⁾ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts⁽⁸⁾ that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

The Auditor's responsibility

5. The Court's responsibility is to provide, on the basis of its audit, the European Parliament and the Council⁽⁹⁾ with a statement of assurance as to the reliability of the annual accounts of the Authority and the legality and regularity of the transactions underlying them.

6. The Court conducted 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 that the Court plans and performs the audit to obtain reasonable assurance as to whether the annual accounts of the Authority are free of material misstatement and the transactions underlying them are legal and regular.

7. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the transactions underlying them. The procedures are selected based 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 requirement of the legal framework of the European Union, whether due to fraud or error. In assessing those risks, the auditor considers internal controls relevant to the preparation and fair presentation of the accounts and supervisory and control systems implemented to ensure legality and regularity of underlying transactions, in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of accounting policies used and reasonableness of accounting estimates made, as well as evaluating the overall presentation of the accounts.

⁽¹⁾ OJ L 331, 15.12.2010, p. 12.

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

⁽³⁾ These accounts are accompanied by a report on the budgetary and financial management during the year which gives further information on budget implementation and management.

⁽⁴⁾ The financial statements 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.

⁽⁵⁾ The budget implementation reports comprise the budget outturn account and its annex.

⁽⁶⁾ Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72).

⁽⁷⁾ Article 38 of Regulation (EC, Euratom) No 2343/2002.

⁽⁸⁾ The rules concerning the presentation of the accounts and accounting by the Agencies are laid down in Chapters 1 and 2 of Title VII of Regulation (EC, Euratom) No 2343/2002, as last amended by Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.7.2008, p. 23), and are integrated as such in the Financial Regulation of the Authority.

⁽⁹⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

8. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

Opinion on the reliability of the accounts

9. In the Court's opinion, the Authority's Annual Accounts⁽¹⁰⁾ present fairly, in all material respects, its financial position as of 31 December 2011 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⁽¹¹⁾.

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

10. In the Court's opinion, the transactions underlying the annual accounts of the Authority for the financial year ended 31 December 2011 are legal and regular in all material respects.

11. The comments which follow do not call the Court's opinions into question. They should be considered in the context of the Authority's transition from the predecessor Committee of European Banking Supervisors.

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

12. The Authority's commitments amounted to 9 054 030 euro, or 71 % of the 2011 budget. The commitment rates were low especially for Title II "Administrative expenditure" (57 %) and Title III "Operational expenditure" (46 %). This impacted on the Authority's IT objectives, which were not entirely achieved. The low budget execution rates show difficulties in budget planning and implementation.

13. The Authority's budget for the financial year 2011 was 12,7 million euro. In accordance with its Founding Regulation⁽¹²⁾, 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.

14. Weaknesses were noted as regards three legal commitments made in advance of budget commitments (742 000 euro).

COMMENTS ON KEY CONTROLS OF THE AUTHORITY'S SUPERVISORY AND CONTROL SYSTEMS

15. The Authority's accounting system has still to be validated by the Accounting Officer, as required by the Financial Regulation.

OTHER COMMENTS

16. 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.

17. 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. In one selection procedure, the allocation of the grade was not in line with the vacancy notice.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 11 September 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

⁽¹⁰⁾ The Final Annual Accounts were drawn up on 28 June 2012 and received by the Court on 2 July 2012. The Final Annual Accounts, consolidated with those of the Commission, are published in the *Official Journal of the European Union* by 15 November of the following year. These can be found on the following website <http://eca.europa.eu> or <http://www.eba.europa.eu>.

⁽¹¹⁾ The accounting rules adopted by the Commission's accounting officer are derived from International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, in their absence, International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

⁽¹²⁾ Article 62(1).

ANNEX

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>Article 26:</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>Article 114:</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>(Parliament and Council Regulation (EU) No 1093/2010)</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; and</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 2011	<p>2011 Budget</p> <p>12,7 million euro</p> <p>Including:</p> <p>European Union subsidy: 5,1 million euro</p> <p>Contributions from Member States: 7,4 million euro</p> <p>Contributions from observers: 0,2 million euro</p> <p>Staff as at 31 December 2011</p> <p>40 temporary staff</p> <p>6 contract staff</p> <p>5 Seconded National Experts</p>

Products and services in 2011	<ul style="list-style-type: none"> — EU-wide stress test of 90 banks across 21 countries with results published in July. — Bank recapitalization recommendation published in December. — Attended 54 Supervisory College meetings. — Informal technical advice to the EC on its proposal for a single rule book in relation to CRD ⁽⁶⁾/CRR ⁽⁷⁾ and other legislative proposals. — Guidelines on Internal Governance aiming at enhancing and consolidating supervisory expectations. — Guidelines on data collection on remuneration practices. — Implementation study on CEBS Guidelines on remuneration policies and practices that were published in December 2010. — Opinion providing technical remarks on various features in the consultation on possible EU framework for bank recovery and resolution. — Comments to a number of IASB ⁽⁸⁾ proposals regarding draft IFRS ⁽⁹⁾ in relation to accounting standards. — Comments to IAASB ⁽¹⁰⁾ proposals regarding draft International Standards on Auditing. — Established a new Standing Committee for Financial Innovation to assist the Authority in fulfilling its tasks and responsibilities related to consumer protection. — 7 road shows and 9 training sessions organised for national supervisory authorities. — Organised over 180 meetings with external participants.
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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.

⁽⁶⁾ Capital Requirements Directive.

⁽⁷⁾ Capital Requirements Regulation.

⁽⁸⁾ International Accounting Standards Board.

⁽⁹⁾ International Financial Reporting Standards.

⁽¹⁰⁾ International Auditing and Assurance Standards Board.

Source: Information supplied by the Authority.

THE AUTHORITY'S REPLIES

12. 2011 was the first year of activity for the EBA, whose Founding Regulation was published only on 15 December 2010. The late publication did not allow for the timely recruitment of the necessary staff, and thus for the full implementation of the EBA's work programme. Although not all of the EBA's internal IT objectives were achieved, the ones pertaining to the core mission of the EBA, including the development and maintenance of a central database, were implemented.

13. The EBA agrees with the comment that the EBA's Financial Regulation (which is fully in line with the Framework Financial Regulation applicable to EU Agencies) does not adequately reflect the EBA's financing structure. The three European Supervisory Authorities (ESAs) have undertaken joint action in order to find a sustainable solution with the European Commission. The three ESAs have expressed their request to the European Commission for a long term solution in the context of the 2014 ESAs' review and, therefore, of a potential change to the respective ESAs' regulations.

14. The EBA acknowledges those weaknesses experienced in the IT area in the very first months of the Authority's establishment. Any non-compliance was promptly addressed in the third quarter of 2011 following the strengthening of the IT team.

15. The validation, which has been delayed because of the exceptional workload in the first year of the EBA's activity, will be performed in 2012.

16. The EBA inherited the majority of its procurement arrangements from its predecessor, CEBS Secretariat Ltd. Due to the heavy workload and to the lack of resources during 2011, it was not possible to ensure full compliance with the EU procurement rules in the first year of the EBA's activity. The lack of full compliance with procurement rules in 2011 was acknowledged by the management, and appropriate exception notes were signed, where needed. A procurement plan setting priorities, has been drawn up, and the correction of the non compliance is a major objective for 2012.

17. The EBA agrees with the comments and has taken the necessary corrective measures by implementing weightings for the selection criteria and threshold scores for inclusion, in the list, of suitable candidates. These criteria are all set before the examination of the applications in every selection procedure.
