

## OPINION

### On 2020 Discharge Report of the European Parliament

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#### 1 Background and legal basis

1. Article 64 of the ESMA Regulation<sup>1</sup> sets out arrangements for the implementation and control of ESMA's budget.
  2. In relation to the budget control processes, notably pursuant to Article 64(10) of the ESMA Regulation, the European Parliament (EP), following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N+2, grant a discharge to the Authority for the implementation of the budget for the financial year N.
  3. Against that background, the EP adopted on 4 May 2022 the Report on discharge in respect of the implementation of the budget of ESMA for the financial year 2020 (2021/2138(DEC))<sup>2</sup>, in short the "[2020 Discharge Report](#)".
  4. Article 64(11) of the ESMA Regulation foresees that ESMA shall provide a reasoned Opinion on the position of the EP and on any other observations provided by the EP in the discharge procedure.
  5. ESMA therefore publishes this Opinion on the 2020 Discharge Report of the EP.
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#### 2 Opinion

6. ESMA welcomes the approval by the EP of the closure of ESMA accounts for the financial year 2020 and the decision of the EP to grant ESMA's Executive Director discharge in respect of the implementation of ESMA's budget for the financial year 2020.
7. In addition, ESMA wishes to share the following comments on the EP resolution of 4 May 2022, and in particular EP's observations, forming an integral part of the decision on discharge in respect of the implementation of ESMA's budget for the financial year 2020.

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<sup>1</sup> Regulation 1095/2010

<sup>2</sup> EP Plenary reference A9-0108/2022

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

8. ESMA welcomes the EP's content with ESMA's budget monitoring efforts led in 2020 and wishes to confirm its intent to maintain high budget implementation and payment appropriation rates in current and coming years.
9. With regards to its lack of application of the interest rate set out in the European Commission's Delegated Regulations on late payments made by a number of credit rating agencies and trade repositories in connection with their 2020 contributions, ESMA would like to stress the low materiality of corresponding amounts. ESMA also confirms that, following the European Court of Auditor's comments, it has upgraded its late payment management system, the new version being applied from 2021. ESMA has notably put in place i) regular internal automated reporting on accumulated late payments, ii) internal work instructions on the establishment of the receivable amounts and on the criteria for the assessment of the potential waivers per all revenue sources, and iii) a specific electronic workflow facilitating timely, substantiated, and formal decision-making with regards to the accrued interests.
10. ESMA wishes to recall that it strives to carry out its direct supervisory mandates applying a risk-based approach. This is aimed at supporting ESMA in directing its supervisory resources to areas where the greatest risks lie, and to adapt its supervisory efforts to the evolving nature of financial markets and the ultimate goal of ensuring investor protection and stable and orderly markets. The current fee funded model does not fully allow such a risk based approach. Therefore, when on an annual basis, ESMA needs to reallocate part of its resources to work on (a) particular risk(s) within specifics of supervised industries, it may naturally result in some cross-financing. However, ESMA aims to keep cross-financing limited, as it has been the case over the 2015-2020 period.
11. In light of the increasing complexity of its budget structure, which may hamper ESMA's ability to react to significant market events, we would see merit in having the fee-funding model revised. This would allow ESMA to manage more efficiently the growing number of fee sources derived from new direct supervisory mandates.
12. On the European Court of Auditors' request to adjust National Competent Authorities' estimation-based pension contributions for year N to actual figures, ESMA underlines that it will continue to comply with the European Commission's guidelines on "Employers' contribution from partially self-financed agencies to the pension scheme". These guidelines indeed state that "no ex-post revision of the share applied based on the actual level of other revenues or fees would be carried out. The absolute amounts concerned are not very significant and so the differences between budgeted and actual will be even less so. The administrative cost to the Commission and Agencies would outweigh the benefits of such an exercise." In addition, ESMA's yearly pension contribution is part of ESMA's budget, as approved by the EP, and therefore subject to the budgetary principle of universality. Accordingly, as stated in Article 22 of ESMA's Financial Regulation, "all revenue and expenditure shall be entered in full without any adjustment against each other". Therefore, ESMA is of the view that minor ex-post changes would likely be both against the European Commission's guidelines and also against this principle enshrined in EU Financial Regulation.

## **Performance**

13. ESMA welcomes the EP's positive appraisal of the comprehensive set of measures that ESMA has taken to improve its budgeting and performance management, including, for instance, the use of key performance indicators to assess the added value of its activities, or the delivery of ad hoc internal reviews or "lessons learned" projects in order to review its work in a qualitative manner.
14. ESMA notes the EP's recognition of its joint and recurring work with the two other European Supervisory Authorities (ESAs), foreseen by their respective founding Regulations, and with the Agency for the Cooperation of Energy Regulators (ACER), in line with the Memorandum of Understanding it has signed with this EU Agency. ESMA stresses that the current situation in commodities markets will likely result in a need for strengthened cooperation on regulatory topics related to energy markets.
15. In light notably of the financial market impact of the Russian invasion of Ukraine, which has affected ESMA's workload since the publication of its 2022 Annual Work Program, ESMA would like to draw the attention of the EP to the reprioritisation exercise it has conducted to ensure that its resources are appropriately allocated. As part of a wider effort to continually improve transparency and accountability, ESMA has sent a [letter](#) to the European Commission identifying the set of deliverables which could be deprioritised or postponed. These deliverables mainly consist of reports from ESMA to the European Commission under various sectoral legislations, as well as one mandated peer review which would be delayed.
16. ESMA acknowledges that, as a consequence of the impact of the COVID-19 pandemic, it has completed only 81,5 % of the activities included in its annual work programme in 2020. ESMA stresses, however, that the set of decisions it made and the series of actions it undertook in 2020 in close coordination with national, European, and international authorities at the time of market stress caused by COVID-19 allowed to avoid severe damage to financial stability and detriment to investors, while maintaining high working standards and high quality outputs in the remaining planned activities.
17. ESMA wishes to reiterate that it continues to pursue a comprehensive agenda in the field of sustainable finance, including through its contributions at international level, and in accordance with its own [Sustainable Finance Strategy](#). In this context, ESMA wishes to recall that it should be granted sufficient resources to be able to conduct its work effectively and respond to the European Commission requests and market needs in this high priority area.

## **Staff policy, prevention & management of conflicts of interest, and transparency**

18. ESMA notes with satisfaction the renewed EP's acknowledgment of ESMA's track record with regards to gender balance both at management and staff levels. While, as recommended by the EP, ESMA will continue to duly consider, in the recruitment of new staff and in connection with promotions, the candidates' skills, knowledge, and experience, it also intends to develop a "Diversity and Inclusion Policy", which ESMA subsequently aims to include in its HR Strategy and Roadmap for the coming years. This intended "Diversity and Inclusion Policy" is expected to encompass topics beyond gender balance.

19. ESMA welcomes the positive assessment of the EP on ESMA practices to prevent & manage conflicts of interest, and to improve transparency. ESMA commits to continue reporting to the Discharge Authority on measures it takes in these areas. In this respect, ESMA points out that, in accordance with its Conflict of interests and ethics Policy, it has already made use, in light of serious financial market developments, of a temporary ban on trading in selected financial instruments by its staff so as to avoid any risk of insider dealing.

### ***Internal control***

20. ESMA stresses that, following the findings of the European Court of Auditors, it has adopted several preventive actions in order to strengthen the internal controls with regards to consultancy services under its framework contracts. ESMA has notably developed internal guidance on ICT contract management, which contains a clear description of the different types of contracts – including “time and means” type – and relevant monitoring requirements. Furthermore, ESMA has launched a contract management training for project managers and other relevant staff. The first two trainings have been delivered in the course of 2021.

21. ESMA wishes to inform that, based on the conclusions of the Internal Audit Service of the European Commission (IAS), ESMA has successfully migrated its Activity-Based Management model from an Excel-based system to a new cloud-based environment called Anaplan. ESMA considers that this achievement marks a significant step forward in its planning and reporting capabilities, especially in the context of the increasing complexity of its budgeting and costing model.