

Opinion

On 2021 Discharge Report of the European Parliament

1 Background and legal basis

1. Article 64 of the ESMA Regulation¹ 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, on 10 May 2023 the EP adopted in its plenary meeting the Report on discharge in respect of the implementation of the budget of ESMA for the financial year 2021 (2022/2115(DEC))², in short "2021 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 thus issues this Opinion on the 2021 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 2021 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 2021.
7. ESMA takes the following views on the observations made by the EP in the 2021 Discharge Report in relation to its operations and activities.

Budget and financial management

8. ESMA welcomes the EP's overall positive appraisal of ESMA's budgetary monitoring efforts during the financial year 2021 and commits, as demonstrated in recent years, to maintain high budget implementation and payment appropriation rates in future.

¹ [Regulation 1095/2010](#)

² [P9_TA\(2023\)0174](#)

9. ESMA however reiterates that, given the growing complexity of its budget structure, it deems the revision of its fee-funding model necessary to be able to react both suitably and swiftly to significant financial market developments while being able to manage more efficiently the high number of fee sources derived from direct supervisory mandates.
10. ESMA stresses that it has engaged in an active and constructive dialogue with the European Commission services on this important matter and, more broadly, on the allocation of appropriate resources to keep with the Union's ambitions, which led to new and extended tasks and mandates for the Authority regarding notably the Capital Markets Union, sustainable finance, and the digitalisation of the financial sector.
11. ESMA supports the EP's assessment that further actions pertaining to the risk of annual cross-financing of activities, the harmonisation of the fee calculation system and the scope of circumvention for the fee-charging mechanism do not fall under ESMA's remit. ESMA however stands ready to provide assistance where needed should the Commission take the initiative to revise the delegated acts and amend the regulations to address these issues.

Performance

12. ESMA notes the EP's recognition of ESMA's achievements in 2021 and confirms its efforts to focus on missions with clear European added value, to optimise systems and processes in the best interests of the Union taxpayer, and to keep on prioritising its work based on its strategy³ that focuses on fostering effective markets and financial stability, strengthening the supervision of EU financial markets, and enhancing the protection of retail investors. ESMA stresses that by enabling sustainable finance and facilitating technological innovation, the two thematic drivers of its strategy, it also aims at supporting the wider objectives of the Union reflected in the EU Green deal and the EU digital strategy.
13. ESMA remains committed to use sound key performance indicators (KPIs) to measure and monitor progress and wishes to inform the discharge authority that it intends to review and improve its set of KPIs to align them both with its strategy and with wider EU common policy objectives.
14. ESMA stresses the importance of the work conducted jointly with the two other European Supervisory Authorities (ESAs), which will be of even greater prominence in light of the implementation of new EU legislation, such as the Digital Operational Resilience Act (DORA), the Regulation on Markets in Crypto-Assets (MiCA) and the European Single Access Point package (ESAP).

Staff policy

15. ESMA concurs with the view expressed by the EP on the importance of ensuring a balanced gender and geographical representation among the management and staff,

³ [ESMA strategy, 2023-2028](#)

recalls its solid track record in this respect, and is determined to take due consideration of these aspects to promote talents.

16. ESMA reasserts its engagement to develop a 'Diversity and Inclusion policy', which will notably aim at shaping an organisation that reflects EU society and providing equality of opportunity through fairness and transparency.

Procurement

17. With regards to the statement that, in 2021, ESMA decided to launch a negotiated procedure without advertising it, ESMA points out that the omission of ex-ante publicity was justified by the specific scope of the procurement and duly documented ex-post. ESMA further underlines that it undertook all necessary measures to prevent a similar situation from happening in future.

Prevention and management of conflicts of interest, and transparency

18. ESMA welcomes the EP's acknowledgment of ESMA's comprehensive set of policies established to prevent and manage conflicts of interest (Col) and of ESMA's diligence to apply them to also ensure transparency, ethics, and good administrative behaviour.
19. ESMA stresses that it has launched the revision of its internal guidelines on declarations of interests by selection board members, notably to clarify situations that may cause Col concerns and emphasise the issues raised by perceived Col. ESMA intends to finalise these guidelines in the second half of 2023.
20. ESMA wishes to report to the discharge authority that it has adjusted its Col Policy for ESMA's governing bodies to require conflicted individuals in relation to any item of a meeting agenda not to be present during the discussion of and voting upon this item.

Internal control

21. ESMA notes with satisfaction that the audit performed by Internal Audit Service of the Commission (IAS) on the ESMA HR management and ethics in 2021 concluded that the management and control systems in place in those areas are adequately designed, effectively implemented and support ESMA in achieving its business objectives.

Other comment

22. With regards to the observations of a cross-cutting nature laid out in the EP resolution of 10 May 2023 on the performance, financial management and control of the agencies⁴, ESMA wishes to underline that the concept of 'in-house' and 'external' experts does not apply to its organisation, which explains why it cannot publish related curriculum vitae.

⁴ [P9_TA\(2023\)0190](#)