

Opinion

On the 2023 Discharge Report of the European Parliament

1 Background and legal basis

- Article 64 of the ESMA Regulation¹ sets out arrangements for the implementation and control of ESMA's budget.
- Pursuant to Article 64(10) of the ESMA Regulation, the European Parliament, 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.
- Against this background, the EP adopted on 7 May 2025 a resolution with observations forming an integral part of the decisions on discharge in respect of the implementation of the budget of the European Union Agencies for the financial year 2023 (2024/2030(DEC))² – the '2023 discharge report'.
- Article 64(11) of the ESMA Regulation foresees that ESMA shall provide a reasoned opinion on the position of the European Parliament and on any other observations made by the European Parliament provided in the discharge procedure.
- ESMA hereby issues this opinion on the 2023 discharge report, focusing, as requested by the Committee on Budgetary Control of the European Parliament, on the specific paragraphs of the resolution in which ESMA is explicitly mentioned and follow-up is expressly requested.

¹ [Regulation 1095/2010](#)

² [P10_TA\(2025\)0088](#)

2 Opinion

- ESMA welcomes the approval by the European Parliament of the closure of ESMA accounts for the financial year 2023 and the decision of the European Parliament to grant ESMA's Executive Director discharge in respect of the implementation of ESMA's budget for the financial year 2023.
- ESMA sets out below its comments on the observations specifically addressed to it by the European Parliament in the 2023 discharge report.

Budget and financial management

EP resolution paragraph	ESMA's comments	Status
24. Acknowledges, specifically, that [...] agencies partially co-financed by national public authorities include the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA) ;	While a significant share of ESMA's budget is funded by fees from supervised firms (31% in 2024), ESMA notes increasing challenges raised by many national competent authorities (NCAs) to continue contributing to ESMA's budget. ESMA has engaged with the NCAs to identify and recommend possible ways forward to the co-legislators with a view to ensuring (inter alia) that NCA contributions are based on a simple, predictable, fair and sustainable model.	[Ongoing]
27. Observes that the founding regulations for the three European supervisory authorities (EBA, EIOPA and ESMA – with the exception of activities financed by supervisory fees) set out that, initially, the contributions they receive from national competent authorities should account for 60 % of their budgets, with the remaining 40 % coming from the Union budget; notes that this arrangement reflects the mix of regulatory tasks, which are suitable for EU funding and supervisory convergence tasks, which are appropriate for contributions from national competent authorities, in the mandates of the three authorities; highlights that, due to the absence of a clear delineation between the	From a legal perspective, ESMA notes that while recital 68 of the Founding Regulation specifies that ' <i>at least initially, it [ESMA] should be financed 40 % from Union funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions</i> ', it does not provide reasons for the 40/60 split. Furthermore, the term 'initially' clearly shows the transitory nature of said budget split. Additionally, in the Founding Regulation the lack of any delineation between the activities related to the Union subsidy versus the national contributions has to be interpreted as the legislation intention not to distinguish and separately account on this basis ESMA's revenue streams, contrary to its fee funded activities.	[Ongoing]

activities funded by the two sources in the founding regulations, these authorities do not differentiate between the costs covered by the Union budget subsidy and those covered by national contributions;

28. Calls on EBA, EIOPA and ESMA to develop this capacity to identify and separately account for the costs of activities generating each of their own revenue streams in order to improve their decision-making and the quality of information they provide to stakeholders as regards the deficits or surpluses that such activities produce;

Finally, the EU Commission's initial proposal for ESMA's Founding Regulation outlines the main underlying assumptions for the financial model of the Authority in Annex 2 (2009/0144 (COD)):

'It is proposed that the Community budget funds 40% of the costs and Member States fund 60%.

The reasons for this proposal are the following:

- a well-balanced and mixed financing is the best way to ensure that the Authorities act (and are perceived to be doing so) independently from Member States and from the Community institutions. If one particular source of funding were to be overly dominant, this could cast a shadow on the credibility of the decisions made by the Authorities and thus undermine the new framework proposed to safeguard financial stability;*

- given that national supervisors will continue, in this new framework, to carry-out the bulk of supervisory activities on the ground, it seems appropriate to reflect this in a slightly higher contribution from Member States. In doing so, we would also allow for a smooth evolution from the present situation where the level 3 committees are almost exclusively funded by Member States;*

- however, it is of the essence that a significant part of the funding comes from the Community budget. Indeed, the new Authorities will serve objectives which have a clear Community dimension: preserving financial stability in the Internal Market as well as sustainable growth in the EU. Moreover, one of the Authorities' core tasks and powers is to ensure a consistent, efficient and effective application of Community rules in the sector. This justifies, at least, a 40% funding from the Community budget (as most of these entities are normally fully funded through the Community budget).*

Furthermore, one can doubt whether all Member States will be able to cope with the sharp increase in their contributions that would be required under the new framework, which will be much more costly than the present level 3 arrangements.

• *the need for Community funding is also particularly important to ensure that the Authorities are truly independent from Member States. The choice has been made, in order to limit as much as possible interferences in the technical work of supervisors, to limit the Commission's participation to the minimum in the supervisory boards (with one non-voting member) and the management boards (with one voting member) of the Authorities. If there were to be in addition an excessive reliance on Member States' contributions, the credibility of the Authorities' independence would be seriously put at risk. A significant Community contribution is needed to compensate for the limited role which is being given to the Commission in the decision-making bodies of the Authorities;*

• *this approach is the most conducive to a stable funding, with no over reliance on one source or on contributions from big Member States who could threaten the continued operation of the Authorities by putting an end to their financial contributions. Finally, this approach is also fairer than a full or very large funding from Member States: national supervisors use a variety of funding models at national level - some from general taxation, some from levies on the industry. Were the Authority to be predominantly funded by Member States there would be a risk of an unlevel playing field across the EU.'*

From an operational standpoint, ESMA has been managing – already since 2015 – its human and financial resources according to an Activity-Based Management (ABM) methodology, which calculates revenues and expenditure by activity. This method aims:

- at aligning ESMA's resource planning with its strategic priorities via a yearly Activity-Based Budgeting exercise; and
- at ensuring full accountability and transparency of its actual cost allocation across activities via a yearly Activity-Based Costing exercise.

In 2017, the IAS duly audited ESMA's ABM and defined it as '*adequately designed and efficiently implemented*'.

	<p>From 2021, ESMA's adopted a new activity structure for its Activity Based Management methodology. The new structure took account of ESMA's new mandates, improved readability for an external audience and better reflected the internal organisation by technical areas.</p> <p>ESMA's new activity breakdown is not tracking the split between supervisory convergence and policy effort due to the interconnectivity of these two activities and the difficulty to identify a clear delineation between them. Guidelines are a clear example of a policy tool serving convergence purposes.</p> <p>Lastly, policy activities are by nature cyclical while both the EU budget (with the MFF) and national budgets need forward-planning, which is best done based on a stable EU/NCA ratio.</p>	
--	--	--

Overview of the audit results

EP resolution paragraph	ESMA's comments	Status
<p>50. Highlights that the Court issued 'emphasis of matter' paragraphs to underline a matter presented or disclosed in the accounts which is of such importance that it is fundamental to the understanding of the accounts or the underlying revenue or payments; further notes that, for the 2023 financial year, the Court used 'emphasis of matter' paragraphs for the following agencies that are part of this resolution: CdT, EBA, EIT, EMA, ERA, ESMA, Eurojust, EU-LISA and Frontex;</p> <p>53. Notes that the accounts of ESMA and the EBA include a disclosure of uncertainty regarding the outcome of a lawsuit [UniSystems Luxembourg and Unisystems systimata pliroforikis v ESMA – case T-750/22]; takes note that ESMA was formally notified of a legal case related to a joint procurement procedure where apart from ESMA, three other</p>	<p>The Court proceedings are ongoing; no judgment has been rendered so far. The written procedure is closed and the hearing before the General Court took place on 30 April 2025.</p>	<i>[Ongoing]</i>

<p>EU agencies participated (EBA, EIOPA and ERA); is aware that the procedure resulted in a framework contract worth EUR 40,2 million and by the end of 2023, ESMA and EBA had signed specific contracts totalling in ESMA EUR 2 185 226 and EUR 6 306 786 in the case of EBA;</p> <p>54. Is concerned that the applicant is seeking annulment of a tender decision and monetary compensation ranging from EUR 400 000 to EUR 3,5 million; notes that due to the early stage of the proceedings, the management of both ESMA and EBA are unable to provide a reliable estimate of potential costs resulting from the case;</p>		
<p>55. Draws attention to the disclosure in ESMA's accounts of an impairment of EUR 368 300, corresponding to outstanding fees from third-country supervised entities; notes that the impairment is linked to the fact that the European Market Infrastructure Regulation (EMIR) does not provide ESMA with an effective mechanism for enforcing the collection of outstanding fees from outside the Union; welcomes that the recent co-legislators' agreement to amend the regulation (EMIR 3) introduced the possibility for ESMA to withdraw recognition from third-country supervised entities that do not pay their fees;</p>	<p>ESMA welcomed the amendment of Regulation (EU) No 648/2012 ('EMIR') in a way that makes it possible to withdraw recognition of a third-country CCP due to non-payment of fees [Article 25p(1)(c): <i>ESMA [...] shall withdraw a recognition decision adopted in accordance with Article 25 where [...] the CCP concerned has seriously and systematically infringed any of the applicable requirements laid down in this Regulation</i>]. For the avoidance of doubt, in the cases at hand, ESMA already withdrew the recognition decisions of the concerned third-country CCPs. Last, ESMA would like to take this opportunity to underline the benefit of developing judicial cooperation agreements with third countries to facilitate the recovery of any unpaid fees from entities established outside of the EU.</p>	<p><i>[Ongoing]</i></p>

Procurement

EP resolution paragraph	ESMA's comments	Status
<p>97. Notes that, according to the Court, 13 of the observations on weaknesses leading to irregular payments in 2023 refer to irregularities detected and mentioned in previous audits; notes that for the remaining 25 observations, nine impacted payments and the other 16 did not lead to irregular payments in 2023; notes that the observations of the year that did not affect payments relate to the agencies ACER, EBA, EU-LISA, ESMA, EMSA, ENISA, ERA, EIGE, ECDC, EEA, EUDA, EUAA and CEPOL; takes note of the Agencies replies and calls on them to take measures to correct the weaknesses detected and report back to the discharge authority on the actions taken to address them;</p>	<p>ESMA confirms that the Court's observations regarding the nature of requests made to tenderers did not lead to the reporting of irregular payments for 2023. ESMA also highlights that it has strengthened its management and control systems in the area of procurement throughout 2023 and 2024 to address the Court's observations, notably by introducing an additional checklist to ensure the proper handling of clarification requests to tenderers.</p>	<p>[Closed]</p>