

OPINION

On 2019 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 28 April 2021 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 2019 (2020/2176(DEC))², in short "[2019 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 2019 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 2019 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 2019.
7. ESMA expresses the following views on the observations made by the EP in the 2019 Discharge Report in relation to its operations and activities.

Budget and financial management

8. ESMA will continue to follow Commission guidance on the budgeting model for its fees and aims to limit cross-financing when possible. ESMA notes that the complexity of its budget structure makes this increasingly difficult and limits ESMA's ability to adapt to market events as a supervisor, using a risk-based approach.

¹ Regulation 1095/2010

² EP Plenary reference A9-0093/2021

9. Since ESMA lacks the legal basis to request Trade Repositories (TRs) to have their trade figures certified by independent auditors, the delegated regulation on fees for TRs should be amended to harmonise the calculation system, in line with the recommendations of the Commission's Internal Audit Service's (IAS). To that end, in 2020 ESMA submitted proposals to the Commission and shared them with the European Courts of Auditors (ECA).

Performance

10. ESMA welcomes the EP's positive appraisal of ESMA's involvement in the area of sustainable finance. In line with its [Sustainable Finance Strategy](#), ESMA continues to contribute actively to the development of EU sustainability regulatory framework that is required to meet the political ambition and pressing timetable of the European Green Deal, especially in relation to the Non-Financial Reporting Directive (NFRD), the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation. In line with its mandate, ESMA is looking forward to playing a prominent role in relation to the Corporate Sustainability Reporting Directive (CSRD), with the aim of ensuring that the forthcoming sustainability reporting requirements are conducive to investor protection and developed in the public interest.
11. ESMA concurs with the view expressed by the EP that sufficient resources shall be allocated to ESMA to be able to carry out in an adequate and efficient manner its current and future tasks, notably in the fields of sustainable finance and digital finance. ESMA also fully agrees with the EP's assessment that mandates adopted at level 1 of the legislation should consider the minimum timeframes required for ESMA to develop level 2 measures and that ESMA's duties foreseen in legislative proposals should be mirrored by appropriate financial and human resources in the accompanying Legislative Financial Statements.
12. ESMA acknowledges that the principle of proportionality constitutes a guiding principle for its work. ESMA recalls that it established in Q1 2020 its Advisory Committee on Proportionality (ACP). The ESMA Board of Supervisors approved in December 2020 the ACP iterative approach for defining key principles to select topics to address, and sound assessment criteria for testing, whether proportionality is adequately embedded in ESMA's deliverables. In this context, the ACP is currently focusing its work on the Guidelines on MiFID II Product Governance.
13. ESMA notes the EP's observations regarding the appropriateness and effectiveness of its governance structure, especially as regards its supervisory powers. In that respect, ESMA underlines that it completed in Q3 2020 the establishment of its CCP Supervisory Committee. The organisational set-up of the CCP Supervisory Committee, which relies on a Chair and two Independent Members, will help ensure consistent and effective supervision of EU and global clearing infrastructures.
14. Moreover, ESMA points out that the governance improvements brought by the ESAs' review contributed to the successful delivery of the Fast Track Peer Review (FTPR) on the application of the guidelines on the enforcement of financial information (GLEFI) by BaFin and FREP in the context of Wirecard, which the EP welcomed. As a follow up to the FTPR, ESMA highlights its work on detailed recommendations to improve the Transparency Directive, which it submitted to the Commission in a [letter](#) sent on 26 February 2021.

Staff policy

15. ESMA reiterates that it has implemented all necessary processes and decisions to ensure that contracts differentiate between the procurement of IT services and that of interim workers, thereby ESMA is complying with Union labour law and limiting its exposure to legal and reputational harm.
16. ESMA notes the EP's recognition of ESMA's solid track record with regards to gender balance both at management and staff levels. ESMA confirms that it published a [shortlist](#) consisting of two women and one man for nomination as its Chair. ESMA points out that the candidate for the role of Executive Director approved by the ECON committee on 22 April 2021 is a woman.

Procurement

17. ESMA confirms its efforts to create synergies through joining procurement procedures with other EU agencies. In 2020, ESMA was part of 20 new inter-institutional procurement procedures with other Agencies, the European Commission, and the European Parliament, including one procedure led by ESMA itself. Moreover, ESMA systematically uses framework contracts established by the European Commission and other EU institutions when possible. ESMA points out that it continued in 2019 to share the accounting officer with the European Union Agency for Railways (ERA).

Prevention and management of conflicts of interest

18. ESMA underlines that the main recommendations of the European Ombudsman in case 2168/2019/KR have been incorporated into its revised [Conflict of interests and ethics policy](#) approved in December 2020. Besides, the requirement to inform senior position applicants of post-service obligations was complied with through practical implementation at the time of publishing the vacancy notices for ESMA Chair and the Executive Director.

Internal control

19. ESMA notes that the audit on revenues and activity-based management performed in 2018 by the Internal Audit Service of the Commission (IAS) concluded that ESMA's management and control systems put in place for the activity-based management and fees collection are adequately designed and effectively implemented. Out of the 5 recommendations provided in the IAS report, 4 are already closed. The last one will be implemented by the end of 2021, together with the implementation of a new IT tool for activity-based management.
20. ESMA also notes that the audit on IT security and related governance processes performed in 2019 by the IAS concluded that ESMA has put in place controls that are adequately designed and effective in managing the implementation of the governance, management and control processes for its information security. ESMA notes that the IAS issued no critical recommendation. Out of the 6 provided in their report, 2 are already closed and the remaining 4 are scheduled to be implemented by the end of 2021.
21. ESMA points out that it has run in Q1 2021 the assessment of the effectiveness of implementation of its internal control system as of 2020. The assessment concluded that all the principles in the internal control system are functioning well. Most of the deficiencies identified were found to be minor and none of them called into question the presence and proper functioning of the principles.

Research dissemination to the public

22. ESMA underlines that it has established a comprehensive publication framework for its risk analytical activities that ensures wide dissemination to the general public. All publications are available for free on its website.³
23. ESMA stresses that it monitors market developments and risks on a regular basis. In this respect, ESMA publishes Trends, Risks and Vulnerabilities Reports ([TRVs](#)), Risk Dashboards ([RDs](#)) and Annual Statistical Reports ([ASRs](#)). Issued in September and in March, TRVs track key developments and identify risks in securities markets, financial infrastructures, investment fund markets, retail investors, financial innovation and sustainable finance in ESMA's remit. Risk Dashboards are published in May and in November with a view to give a market development and risk update across ESMA remit. Using a wide range of proprietary datasets hosted by ESMA, Annual Statistical Reports focus on structural market developments in EU derivatives markets (EMIR), securities markets (MiFID/MiFIR), Alternative Investment Fund markets (AIFMD), and cost and performance of retail investment products (UCITS, AIFMD, structured retail markets).
24. Moreover, ESMA provides in-depth analysis and research on topical market developments and issues of supervisory and regulatory interest. Each TRV edition notably features a range of articles, offering analytical deep dives into topical financial developments. ESMA research activities also include bespoke, academic level analysis of investor protection, market order and financial stability questions around issues of supervisory and regulatory interest, published in ESMA's [working papers](#) and [economic reports](#) series.
25. ESMA finally points out that interested readers can [subscribe](#) to ensure they receive ESMA risk publications. The publication of ESMA reports is advertised through ESMA's social media channels and dedicated press calls. ESMA interacts with stakeholders by offering dedicated webinars around the publication dates, accessible to the general public.

³ See <https://www.esma.europa.eu/market-analysis/financial-stability> and <https://www.esma.europa.eu/market-analysis/financial-innovation>