

OPINION

On 2018 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 14 May 2020 the EP voted in its Plenary meeting on the Report on discharge in respect of the implementation of the budget of ESMA for the financial year 2018 (2019/2092(DEC))², in short "2018 Discharge Report".
 4. The most recent revision of the ESMA Regulation, carried out in the context of the "ESAs review", introduced (with effect on 1 January 2020) a new Article 64(11) thereof, whereby 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 2018 Discharge Report of the EP.
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2 Opinion

6. ESMA welcomes 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 2018.
7. ESMA notes various observations of the EP in relation to its operations and activities as included in the 2018 Discharge Report, and takes a view as follows:
8. ESMA underlines that the differences observed in 2015-2018 between ESMA's expenditure for supervisory actions vis-à-vis credit ratings agencies (CRA) and trade repositories (TR) on the one hand, and the fees that the supervised entities were charged on the other hand, did not lead to any significant cross-financing recurrent within ESMA's budget (in 2019 the deviation between supervisory costs versus fees is only 2.8% for CRAs and 1.8% for TR). In this context ESMA underlines that it closely followed Commission guidance on the budgeting model for its fees and aims to continue limiting any cross-financing to the highest extend possible.

¹ Regulation 1095/2010

² EP Plenary reference A9-0059/2020

9. In relation to the EP's positive assessment of ESMA's work on investigating dividend arbitrage trading schemes such as cum-ex and cum-cum, and in particular the 2019 Preliminary Report, ESMA is pleased to announce that it aims to submit to the EP and publish its Final Report by the end of Q3 2020.
10. ESMA notes the EP's particular focus on the need for ESMA to respect the principle of proportionality and to comply with the fundamental principles of the internal market. In this context ESMA is pleased to announce the establishment in Q1 2020 of its Proportionality Advisory Committee, which will take on an important role in assessing the proportionality of ESMA's actions, including ESMA's Guidelines.
11. In relation to the EP's call on ESMA to carry out all of its assignments in full and within deadline, and to never attempt to go beyond its mandate, ESMA points to its ongoing efforts to ensure a diligent and transparent planning (and, where necessary, prioritisation) process in relation to all of its activities, which are linked to its mandate and key objectives, including those stemming from EU sectoral legislation. In addition, ESMA agrees with the EP's observation that in certain areas ESMA's workload increased while no new staff was allocated in the legislative process. In result, ESMA had to reallocate existing staff to be able to fulfil those new responsibilities, which in turn led to less resources available for remaining tasks.
12. Regarding the horizontal observation applicable across agencies on the use of external staff hired in IT consultancy roles, ESMA recalls that it put in place necessary processes and decisions in order to limit any relevant potential risks in this context. Moreover, ESMA adopted all necessary procedures in order to ensure avoiding in the contracts any possible confusion between the procurement of IT services and the assignment of interim workers.
13. ESMA confirms its efforts to seek efficiency gains through joining procurement procedures with other Agencies. In particular, in 2019 the Agency has signed a framework contract with the European Banking Authority ("EBA") on consultancy services in the field of facility management and now it is leading a procurement procedure for interim workers services together with the other three EU Agencies with headquarters in France (EBA, CPVO and ERA). Moreover, ESMA continues to use many framework contracts established by the European Commission. Overall, since 2018, ESMA has joined 44 procurement procedures.
14. ESMA takes note of the EP's observation that the traceability and documentation of the tender evaluation of the new offices in Paris could have been further detailed. Firstly, ESMA underlines that its procurement strategy aims to streamline the processes, while respecting all regulations, in terms of preparation of tender documents and evaluation methodology in order to maximise internal efficiency gains (for example, by fully and securely digitalising all internal procurements processed). Furthermore, ESMA is currently working on the definition of templates and guidance for streamlining and harmonising its procurement procedures; this work is undertaken through a benchmarking exercise considering the other Agencies' documentation and processes. Finally, ESMA notes that of all audited tenders by the ECA in 2018, only one remark was made on this particular tender, with no remarks on any of the others.
15. ESMA confirms its engagement in the implementation of the action plan agreed with the Commission's Internal Audit Service (IAS) following the audit on "Revenue and Activity Based Management (ABM)". In particular, ESMA has already executed the following measures: comprehensive communication to the Commission on the need to harmonise and simplify current and future delegated acts on ESMA's fees, assessment of best practices on the audit topic in other EU agencies and definition of

recommendations, analysis on the development of an automated IT system for ESMA's ABM and fee calculation, yearly reporting presentation on ABM and fee management.

16. ESMA, in pursuit of its aim of informing and remaining transparent towards its stakeholders and general public, consistently makes available on its website all material approved for public issuance by its Board of Supervisors. The material is actively promoted through ESMA's principle communications channels: ESMA's website www.esma.europa.eu (which received 1.1 million visits in 2019) and its Twitter and LinkedIn social media accounts (ESMA's content received 4.75 million views across both channels in 2019). Moreover, ESMA pursues an active policy of engagement with media across the EU, for example via the dissemination of published material in the form of press releases, news items and statements.
17. ESMA welcomes the EP's increasing interest in, and prioritisation of, the area of sustainable finance, and corresponding request to ESMA to dedicate sufficient resources to ensure appropriate implementation of the legislative acts in this regard. ESMA received an additional number of FTEs in its 2020 budget to cover its new mandate and tasks on sustainability. Having said that, and prior to the arrival of the new resources in 2020, ESMA had already been contributing to the European Commission's Sustainable Finance Action Plan in the past two years by submitting technical advice to the European Commission on the integration of sustainability risks and factors into the Markets in Financial Instruments Directive II (MiFID II), the Alternative Investment Fund Managers Directive (AIFMD), and the Undertakings in Collective Investment in Transferable Securities (UCITS) Directive (investment funds), as well as by issuing guidelines to the Credit Rating Agencies (CRAs). In addition, each of the European Supervisory Authorities has also submitted technical advice to the European Commission on undue short-term pressure on corporations from the financial sector. Finally, in 2020 ESMA published its [Sustainable Finance Strategy](#) setting out how ESMA will place sustainability at the core of its activities by embedding Environmental, Social, and Governance (ESG) factors in its work.