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A7-0115/2013

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REPORT

on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011
(C7-0272/2012 – 2012/2209(DEC))

Committee on Budgetary Control

Rapporteur: Gerben-Jan Gerbrandy

CONTENTS

	Page
1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	5
3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	7
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS.....	13
RESULT OF FINAL VOTE IN COMMITTEE.....	16

1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011 (C7-0272/2012 – 2012/2209(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2011,
- having regard to the Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2011, together with the Authority's replies¹,
- having regard to the Council's recommendation of 12 February 2013 (05753/2013 – C7-0041/2013),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities², and in particular Article 185 thereof,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002³, and in particular Article 208 thereof,
- having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)⁴, and in particular Article 64 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁵, and in particular Article 94 thereof,
- having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A7-0115/2013),

¹ OJ C 388, 15.12.2012, p. 157.

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ OJ L 357, 31.12.2002, p. 72.

1. Grants the Executive Director of the European Securities and Markets Authority discharge in respect of the implementation of the Authority's budget for the financial year 2011;
2. Sets out its observations in the resolution below;
3. Instructs its President to forward this Decision and the resolution that forms an integral part of it to the Executive Director of the European Securities and Markets Authority, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the closure of the accounts of the European Securities and Markets Authority for the financial year 2011
(C7-0272/2012 – 2012/2209(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2011,
- having regard to the Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2011, together with the Authority's replies¹,
- having regard to the Council's recommendation of 12 February 2013 (05753/2013 – C7-0041/2013),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities², and in particular Article 185 thereof,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002³, and in particular Article 208 thereof,
- having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)⁴, and in particular Article 64 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁵, and in particular Article 94 thereof,
- having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A7-0115/2013),

¹ OJ C 388, 15.12.2012, p. 157.

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ OJ L 357, 31.12.2002, p. 72.

1. Approves the closure of the accounts of the European Securities and Markets Authority for the financial year 2011;
2. Instructs its President to forward this Decision to the Executive Director of the European Securities and Markets Authority, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the *Official Journal of the European Union* (L series).

3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011

(C7-0272/2012 – 2012/2209(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2011,
- having regard to the Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2011, together with the Authority's replies¹,
- having regard to the Council's recommendation of 12 February 2013 (05753/2013 – C7-0041/2013),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities², and in particular Article 185 thereof,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002³, and in particular Article 64 thereof,
- having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)⁴, and in particular Article 64 thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁵, and in particular Article 94 thereof,
- having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A7-0115/2013),

¹ OJ C 388, 15.12.2012, p. 157.

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ OJ L 357, 31.12.2002, p. 72.

- A. whereas the Court of Auditors stated that it has obtained reasonable assurances that the annual accounts of the European Securities and Markets Authority ("the Authority") for the financial year 2011 are reliable and that the underlying transactions are legal and regular,
- B. whereas the Authority, a newly created Agency which is located in Paris, was established by Regulation (EU) No 1095/2010 and officially started its operations on 1 January 2011 as an independent authority,
- C. whereas the Authority should be considered in the context of its legal transition from its predecessor, the Committee of European Securities Regulators (CESR), a French association, and as a result, apart from its new mandate, it has taken over all existing and ongoing tasks and responsibilities from the CESR (all assets, liabilities and all pending operation of CESR were automatically transferred to the newly created Authority),
- D. whereas the Authority is an integral part of the European System of Financial Supervisors and works in close cooperation with its sister authorities, the European Banking Authority and the European Insurance and Occupational Pensions Authority, within a Joint Committee, and with the European Systemic Risks Board,
- E. whereas the Authority's overall allocated budget for 2011 was EUR 16 964 913,92,
- F. whereas in accordance with its Founding Regulation¹, 60 % of the 2011 budget was financed by contributions from the Member States and the European Free Trade Association (EFTA) countries, and 40 % was financed by the Union budget,
- G. whereas, at the end of 2011, the Authority recorded a positive budget outturn of EUR 4 457 244,82², after deduction of exchange rate differences equal to EUR 4 645,56, which was then recorded in the accounts as a liability towards the Commission,

Budget and financial management

1. Takes note from the annual accounts that the initial Union contribution to the Authority's budget for 2011 was EUR 6 784 000; notes that this was the first year of the Authority's activities;
2. Acknowledges from the annual accounts that the Authority's overall budget for 2011 amounted to EUR 16 964 913,92 (including EUR 9 857 457,23 from Member States, EUR 257 288,76 as a contribution from observers and EUR 66 167,93 representing "Other revenue");
3. Calls on the Commission to explore all the options for a new long term sustainable financing of the Authority that safeguards its independence in the context of the next review of the agencies' work and financing arrangements by the Commission, which will be presented by 2 January 2014 at the latest;

¹ OJ L 331, 15.12.2010, p. 12, Article 62(1).

² Annual accounts 2011, p. 27.

4. Calls on the Commission to evaluate the possibility of coming up with a proposal ensuring that the budgets of the three European Supervisory Authorities (ESAs) are fully funded by the Union budget;
5. Notes with concern that the provisions of the Financial Regulation are not fully adapted to the Authority's financing scheme as 60 % of its budget is financed by contributions of Member States and EFTA countries; believes that that issue should be addressed, at the latest, in the course of the next revision of the Financial Regulation as regards agencies, and calls on the Commission to evaluate this situation and to report on this issue to the discharge authority;
6. Notes from the annual accounts that the major focus of the Authority in 2011 was its establishment and further extension;
7. Stresses the importance of adequately matching the allocated budget and available posts on one hand and the tasks entrusted to the Authority on the other hand, as a mismatch may result in unbalanced staffing as regards the recruitment of the Authority's staff on one hand and the involvement of national experts on the other; expresses concern about the fact that the Commission has altered the establishment plan as proposed by the Authority without clearly indicating this; urges the Commission to be fully transparent on this and other issues;
8. Notes the concerns that were raised in the preliminary conclusions of the IMF financial sector assessment of December 2012 on the Union, in which it is recommended to increase the resources and powers of the ESAs in order to enable them to successfully fulfil their mandates, while enhancing their operational independence;
9. Acknowledges from the annual accounts that in the Authority's inauguration meeting on 11 January 2011, the Management Board adopted and approved the principal financial rules and the Authority's Financial Regulation in order to enable it to execute its powers as a European authority;

Transition from CESR

10. Acknowledges from the annual accounts that the political decision to transform CESR into the Authority in January 2011 was taken in September 2010, which allowed four months to set up the Authority, whereas the usual time for such tasks is estimated at two years;
11. Notes that the first quarter of 2011 was dedicated to the transfer of assets from CESR to the Authority and the implementation of, as well as training on, Union rules in terms of financial circuits, recruitments and procurements; takes note, furthermore, that the second quarter was marked by the Authority moving into its premises, following the signature of a new lease contract in December 2010; notes that works were being executed from March to June 2011 in the new premises;
12. Acknowledges from the annual accounts that in the third and fourth quarters, when the Authority's organigram and recruitment were revised, new managers were recruited (a new Chair in April 2011 and a new Executive Director in June 2011) and its operations

started to build up;

13. Takes note that according to the Authority, the above mentioned issues and the limited preparation time setting up its operations explain the budgetary under spending in 2011;

Accounting system

14. Takes note from the annual accounts that the standard and general budget structure adopted by the Authority at the beginning of 2011 needed to be adapted according to its real needs;
15. Notes from the annual accounts that in April 2011, the Authority introduced accrual based accounting (ABAC), the accounting system used by the Commission for budgetary accounting; notes, furthermore, that during the transition period, from January to April 2011, the Authority used a system based on spreadsheets and in April converted to the final ABAC/SAP system used by the Commission;
16. Acknowledges from the annual accounts that budget accounts are managed by the ABAC system and the general accounts are maintained by the SAP system, which has a direct interface with the General Accounting System of the Commission; also notes that the various budgetary and financial reports are produced using the Business Objects reporting tool;
17. Takes note that according to the Authority it has implemented the validation of its accounting system by a full control approach in 2011, and urges the Authority to provide the discharge authority with the 2012 follow-up report on the "Validation of accounting systems" compliant with the criteria specified by the Commission (DG Budget);

Budget execution

18. Establishes from the annual accounts that the Authority registered a budget execution ratio of 75,7 % for commitments and 62,5 % for payments at the end of 2011;
19. Acknowledges from the annual accounts¹ that EUR 1 901 218,61 of commitments were carried forward from 2011 to 2012, of which approximately EUR 250 000 may need to be decommitted later;
20. Notes that the commitment execution rate for Title I ("Staff expenditure") was 84,95 % and 82,46 % for Title II ("Administrative expenditure"); notes that 2011 was a transitional year from CESR to a European authority and a preparatory year for new procedures and requests; calls on the Authority to inform the discharge authority of the actions taken to improve the ratios, as the low execution ratio show difficulties in budget planning and implementation;
21. Takes note that the Authority is in its initial growth period; notes that the budget for salaries was, therefore, higher than needed as not all staff could be recruited at the

¹ Annual accounts 2011, p. 42.

beginning of the year; notes, furthermore, that having a smaller staff than originally budgeted for had a corresponding effect on the execution of Title II;

22. Acknowledges that all budget transfers were made within the same title, apart from a EUR 250 000 net transfer which was moved from Title I to Title II to help cover the costs of the renovation of the new premises;
23. Takes note from the annual accounts of the low commitment execution ratio of 46,92 % for Title III ("Operational expenditure"); notes that approximately EUR 1 000 000 of commitments for Title III was carried forward to cover information technology (IT) projects that were part of the 2011 work programme but due to delays in the legislative process, had their start dates delayed; calls on the Authority to inform the discharge authority of the actions taken to improve the ratio, as the low execution ratio shows difficulties in budget planning and implementation;
24. Notes that the commitments where it was particularly difficult to judge expenditure were related to taxes due to the French authorities, travel agent fees and training for supervisors not run by the Authority directly;
25. Acknowledges that the Authority has taken into account the expenditure pattern for 2011 and the fact that the 2012 budget has been reprofiled and that for the 2013 budget, for both Titles I and II, the Authority has taken account of the fact that during a growth period, not all posts on the establishment plan will be filled at the beginning of the year;
26. According to the Authority, due to technical difficulties and the late implementation of ABAC, the corresponding budget commitments were only registered in the accounts in late 2011;
27. Notes that the Court of Auditors identified a number of cases, with a total value of EUR 207 442, in which payment appropriations carried over to 2012 did not correspond to legal commitments made; calls on the Authority to inform the discharge authority of the actions taken to assess this deficiency, as these carryovers were irregular and should be cancelled;
28. Acknowledges that the Authority's management of fixed assets has been improved; notes, furthermore, that as far as intangible assets are concerned, the Authority implemented timesheets for internal staff working on IT projects as of 1 January 2012 and that it is in the process of improving the relevant procedures;

Control systems

29. Acknowledges that the Authority's internal control standards have been adopted in 2012 and that an Internal Control Coordinator has also been appointed in 2012;
30. Welcomes the Decision of the Management Board, adopted on 11 January 2011, concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and illegal activity detrimental to the Union's interests; stresses that this Decision follows closely the text of the model decision annexed to the Interinstitutional Agreement of 25 May 1999, and represents the accession of the

Authority to that agreement;

31. Acknowledges that the majority of the Authority's implementing rules to the Staff Regulation have been adopted, but some have yet to be confirmed or finalised;
32. Takes note of the current state of play, which is identical for the three ESAs:
 - 14 implementing rules were adopted in 2011,
 - five implementing rules were approved in 2012,
 - seven implementing rules are awaiting confirmation by the college of the Commission or DG HR;
 - four implementing rules that finally required the three ESAs to revise the rules based on new templates in line with the new Staff Regulation have not been approved by the Commission;

Recruitment procedures

33. Takes note that the Authority has brought its recruitment procedures in line with the Court of Auditors' recommendations; calls on the Authority to inform the discharge authority of which further actions it has taken to improve the recruitment procedures; considers that some of the provisions of the Staff Regulations may present a considerable administrative burden; therefore encourages the Commission to allow for a certain degree of simplification under Article 110 of the Staff Regulations in regard to the agencies;
34. Notes from the annual accounts¹ that 2011 was a crucial year for the Authority in setting up and extending the human resources team in order to adequately source its new functions and tasks; notes that on 31 December 2012, the Authority's staff was represented by 50 temporary agents, three staff members employed under French contracts taken over from the preceding organisation, five contractual agents, two seconded national experts and two trainees;

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35. Refers, in respect of the other observations accompanying its Decision on discharge, which are of a horizontal nature, to its resolution of.....2013² on the performance, financial management and control of the agencies.

¹ Annual accounts 2011, p. 46.

² Texts adopted, P7_TA-PROV(2013)...

1.3.2013

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Budgetary Control

on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011
(C7-0272/2012 - 2012/2209(DEC))

Rapporteur: Werner Langen

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Acknowledges that the European Parliament has been strongly in favour of the creation of ESMA and believes that the Authority is a key actor in order to create more stable and safer financial markets. The European Union needs stronger and better coordinated supervision at Union level;
2. Welcomes the opinion of the Court of Auditors on the reliability of the accounts (which have been deemed to present the financial position ‘fairly, in all material respects’) and regarding the legality and regularity of the underlying transactions (‘legal and regular in all material respects’);
3. Notes that the low rates of budgetary implementation, particularly in respect of administrative expenditure, are attributable to problems with budget planning and implementation, which have made it harder to achieve all organisational objectives of the Authority and resulted in a budget surplus;
4. Calls on the Authority to ensure that in future no legal commitments are entered into in advance of budget commitments;
5. Trusts that the payment appropriations exceeding 200 000 EUR carried over to 2012, which did not correspond to any legal commitments, will be cancelled and that this will not be repeated in future;

6. Takes the view that, even if ESMA is still being developed, internal audit and fixed asset management procedures must not be lacking; for intangible assets developed by the Authority, accounting procedures and information on costs must be clear and reliable;
7. Agrees with the Court of Auditors that the measures implementing the Staff Regulations applicable to ESMA and an interinstitutional agreement with the European Anti-Fraud Office must be adopted as soon as possible;
8. Takes the view that the transparency of the recruitment procedure and the appointment of a selection board are matters that must be dealt with as soon as possible to ensure diversity and a high level of competence of its staff, even if ESMA, as the legal successor to CESR, has assumed legal commitments not based on the EU Financial Regulation;
9. Calls on the Court of Auditors to examine in detail the measures taken to remedy the objections made during the early stages of the Authority's operation;
10. Recalls the key role of the Authority in the implementation of the financial regulation and the new tasks allocated to it; considers that the new tasks entrusted to the European Supervisory Authorities should be accompanied by new resources and a more efficient system of spending;
11. Concludes that the current financing of ESMA, with a mixed-financing arrangement, is inflexible, creates administrative burden, and poses a threat to the Agencies' independence;
12. Calls for the Commission to explore options for a new long term sustainable financing of ESMA, which safeguards its independence in the next review of the Agencies' work and financing arrangements; the Commission shall present the review of the Agencies by 2 January 2014 at the latest ;
13. Calls on the Commission to evaluate the possibility to come up with a proposal entailing ESAs' budgets to be fully funded by the Union budget.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.2.2013
Result of final vote	+: 43 -: 0 0: 1
Members present for the final vote	Burkhard Balz, Elena Băsescu, Sharon Bowles, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Syed Kamall, Othmar Karas, Wolf Klinz, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Sławomir Nitrás, Ivari Padar, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Peter Simon, Theodor Dumitru Stolojan, Ivo Strejček, Sampo Terho, Marianne Thyssen, Corien Wortmann-Kool, Pablo Zalba Bidegain
Substitute(s) present for the final vote	Pervenche Berès, Sari Essayah, Sophia in 't Veld, Olle Ludvigsson, Thomas Mann, Nils Torvalds, Roberts Zile
Substitute(s) under Rule 187(2) present for the final vote	Alejandro Cercas

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	19.3.2013
Result of final vote	+: 24 -: 3 0: 0
Members present for the final vote	Inés Ayala Sender, Zuzana Brzobohatá, Andrea Češková, Ryszard Czarnecki, Tamás Deutsch, Martin Ehrenhauser, Jens Geier, Gerben-Jan Gerbrandy, Ingeborg Gräßle, Cătălin Sorin Ivan, Bogusław Liberadzki, Jan Mulder, Eva Ortiz Vilella, Monika Panayotova, Aldo Patriciello, Crescenzo Rivellini, Paul Rübig, Petri Sarvamaa, Bogusław Sonik, Bart Staes, Georgios Stavrakakis, Michael Theurer
Substitute(s) present for the final vote	Chris Davies, Derk Jan Eppink, Edit Herczog, Monika Hohlmeier, Ivailo Kalfin, Agnès Le Brun, Véronique Mathieu Houillon, Derek Vaughan