



Plenary sitting

A9-0137/2023

12.4.2023

REPORT

on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2021
(2022/2115(DEC))

Committee on Budgetary Control

Rapporteur: Gilles Boyer

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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 2021
(2022/2115(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2021,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2021, together with the agencies' replies¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2021, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 28 February 2023 on discharge to be given to the Authority in respect of the implementation of the budget for the financial year 2021 (06248/2023 – C9-0097/2023),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012³, and in particular Article 70 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC⁴, and in particular Article 64 thereof,
- having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵, and in particular Article 105 thereof,

¹ OJ C 412, 27.10.2022, p. 12.

² OJ C 412, 27.10.2022, p. 12.

³ OJ L 193, 30.7.2018, p. 1.

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ OJ L 122, 10.5.2019, p. 1.

- having regard to Rule 100 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A9-0137/2023),
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 2021;
 2. Sets out its observations in the resolution below;
 3. Instructs its President to forward this decision, and the resolution forming 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 2021
(2022/2115(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Securities and Markets Authority for the financial year 2021,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2021, together with the agencies' replies¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2021, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 28 February 2023 on discharge to be given to the Authority in respect of the implementation of the budget for the financial year 2021 (06248/2023 – C9-0097/2023),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012³, and in particular Article 70 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC⁴, and in particular Article 64 thereof,
- having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵, and in particular Article 105 thereof,
- having regard to Rule 100 of and Annex V to its Rules of Procedure,

¹ OJ C 412, 27.10.2022, p. 12.

² OJ C 412, 27.10.2022, p. 12.

³ OJ L 193, 30.7.2018, p. 1.

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ OJ L 122, 10.5.2019, p. 1.

- having regard to the report of the Committee on Budgetary Control (A9-0137/2023),
- 1. Approves the closure of the accounts of the European Securities and Markets Authority for the financial year 2021;
- 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 the decision on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2021
(2022/2115(DEC))**

The European Parliament,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2021,
 - having regard to Rule 100 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A9-0137/2023),
- A. whereas, according to its statement of revenue and expenditure¹, the final budget of the European Securities and Markets Authority (the ‘Authority’) for the financial year 2021 was EUR 60 600 822, representing an increase of 7,64 % compared to 2020; whereas the Authority is financed by a contribution from the Union (EUR 19 172 407, representing 30,59 % of the total budget), contributions from national supervisory authorities of the Member States (EUR 23 936 648, representing 38,20 %) and fees received from supervised entities (EUR 17 087 867, representing 27,27 %);
- B. whereas the Court of Auditors (the ‘Court’), in its report on the annual accounts of the Authority for the financial year 2021 (the ‘Court’s report’), states that it has obtained reasonable assurance that the Authority’s annual accounts are reliable and that the underlying transactions are legal and regular;

Budget and financial management

1. Notes with appreciation that the budget monitoring efforts during the financial year 2021 resulted in a budget implementation rate of 99,94 %, representing a slight increase of 0,92 % compared to 2020; notes that the execution rate of payment appropriations was at 89,91 %, representing an increase of 4,40 % compared to the previous year;
2. Notes that 2021 was the first full year in which the Authority collected fees from third-country central counterparties (CCPs) and the first year when it started collecting fees from securitisation repositories, in addition to fees from credit rating agencies and trade repositories under Regulations (EU) No 648/2012² and (EU) 2015/2365³;
3. Notes with appreciation that the Authority has upgraded its payment management system aimed at managing better the late payments made, for example, by credit rating

¹ OJ C 141, 29.3.2022, p. 152.

² Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

³ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

agencies or trade repositories, and the accrued interest in connection with those payments;

Performance

4. Notes that the Authority uses certain measures such as key performance indicators to assess the added value provided by its activities and other measures to improve its budget management, such as the number of risk topics analysed, the rate of cancellation of payment appropriations and the staff turnover rate; commends the Authority for its 2021 work programme being 91 % completed, with most of its key performance indicators having been achieved or exceeded;
5. Commends the Authority for having grouped its outputs and deliverables for 2021 in three categories of priority: (i) ‘top priority’ for 128 outputs linked to strategic priorities; (ii) ‘lower priority’ for 75 outputs not linked to those priorities; and (iii) ‘deprioritised completely’ for 29 outputs regarding tasks to be done only if there is time;
6. Notes that in 2021 the Authority’s strategic priorities focused on three cross-cutting topics: sound Union capital markets, sustainable finance, and innovation and digitalisation; further notes the Authority’s deliverables and successes in 2021 in areas which are not directly linked to those priorities, such as, among others, the Union carbon market, enforcement activities, investment services, investment management or CCPs;
7. Commends the Authority for its achievements in 2021, such as, among others, the implementation of new mandates stemming from the 2019 review of the European Supervisory Authorities, the preparation for the new supervisory responsibilities (the supervision of securitisation repositories, data reporting service providers and critical benchmarks), the approval of the registrations of the first two securitisation repositories under Regulation (EU) 2017/2402⁴, the preparation for the transfer to the Authority of the supervisory responsibilities for the European Money Markets Institute and the taking over of the supervision of the seven third-country administrators of benchmarks recognised at Union level;
8. Commends the Authority, in the context of the risks arising from digitalisation of financial markets, for its efforts in 2021 to provide the Union institutions with technical feedback regarding the Commission’s proposals for a regulation on markets in crypto-assets and the digital operational resilience act; welcomes the development of the Authority’s sustainable finance roadmap 2022-2024, which will serve as a practical tool to ensure that the Authority delivers on a wide array of sustainable finance tasks across several sectors in a coordinated way;
9. Welcomes the cooperation between the Authority and the two other European Supervisory Authorities, European Insurance and Occupational Pensions Authority and the European Banking Authority, via the Joint Committee of the European Supervisory Authorities; notes with satisfaction that ESMA shares an accounting officer with the

⁴ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

European Banking Authority and that the majority of the procurement procedures which it leads are joint procurements with other agencies and the Commission; notes the Memorandum of Understanding of 2013 between the Authority and the Agency for the Cooperation of Energy Regulators establishing a framework for exchanging information when the regulatory responsibilities of both entities coincide in relation to wholesale energy markets; stresses that the current situation in the commodities markets will likely result in a need for strengthened cooperation on regulatory topics related to energy markets; encourages the Authority to perform steps to facilitate this enhanced cooperation;

Staff policy

10. Notes that, on 31 December 2021, the establishment plan was 85,20 % implemented, with 213 temporary agents appointed out of 250 temporary agents authorised under the Union budget (compared to 226 authorised posts in 2020); notes that, in addition, 85 contract agents and 10 seconded national experts worked for the Authority in 2021;
11. Notes that in 2021 the number of staff increased by 23 % compared to 2020, with 58 additional statutory members; commends the Authority for its efforts in recruiting 102 staff members, owing to 21 (internal and external) selection procedures launched, 2 075 CVs screened and 175 candidates interviewed in 2021;
12. Notes the gender distribution within the Authority's senior management members, with four out of five senior management members being women (80 %); notes the gender distribution within the Authority's management board, with three out of five members of the management board being women (60 %); further notes the gender distribution within the Authority's overall staff, with 162 out of 308 members of staff being men (53 %); recalls the importance of ensuring a balanced gender and geographical representation among the management and staff of the Authority and calls on the Authority to take those aspects into consideration with regard to future appointments; underlines the importance of candidates' skills, knowledge and experience when recruiting and promoting staff;
13. Notes that the Authority has a policy on protecting the dignity of the person and preventing psychological and sexual harassment; welcomes that the application of that policy is strengthened through communication measures and awareness sessions; welcomes that in 2021 there were no harassment cases reported, investigated, or taken before the court; further welcomes the Authority's plan to develop a 'Diversity and Inclusion policy';
14. Calls on the Authority to keep developing a long term HR policy on work-life balance, lifelong guidance and the offer of specific training possibilities for career development, gender balance at all staff levels, teleworking, the right to disconnect, the enhancement of a geographical balance to have an appropriate representation from all Member States, and the recruitment and integration of people with disabilities as well as ensuring that they are treated equally and that their opportunities are widely promoted;

Procurement

15. Notes that, in 2021, the Authority managed 15 procurement procedures, seven of which were completely finalised; commends the efforts made by the Authority to create

synergies through joint procurement procedures with other Union agencies and the Commission; encourages the Authority to continue developing synergies with other Union bodies;

16. Notes with concern the observation from the Court's report that in 2021 the Authority decided to launch a negotiated procedure without advertising it, thus being in breach of point 3.1 of Annex I to the Financial Regulation; further notes that the justification for that decision was not approved in centrally logged exceptions reports before action was taken; calls on the Authority to ensure in the future that all cases of deviation from established processes and procedures are treated in keeping with the legality and regularity principles;

Prevention and management of conflicts of interest, and transparency

17. Commends the Authority for the comprehensive measures and policies it has put in place, and for the diligence with which they are applied to ensure transparency, ethics, good administrative behaviour, as well as prevention and management of conflicts of interest regarding the Authority's members of staff, board of supervisors, management board and CCP Supervisory Committee; notes that, following an assessment made by the Authority's ethics officer on the occasion of an *ad hoc* check that was carried out in the context of a single procedure linked to the creation of three positions of team leader, a review of the guidelines on declarations of interests by selection board members was proposed in order to enhance transparency in those declarations; calls on the Authority to report to the discharge authority once that review has been finalised and approved;
18. Notes that in 2021 the Authority received 11 declarations regarding conflicts of interest ahead of meetings of the board of supervisors and two similar declarations ahead of meetings of the management board; further notes that in 2021 the Authority's ethics team checked, among others, 251 annual declarations by staff members, none of which raised conflict of interest issues, 16 declarations regarding gainful employment of spouses for review, with no issues requiring specific actions identified, and 38 requests for clearance to deal in financial instruments, with the majority of requests having been approved; notes furthermore that the ethics team assessed 94 requests for the prevention of conflicts of interest in the context of recruitment in 2021, following which the ethics team recommended to the Authority's executive director a change of composition of selection panels in nine instances; calls on the Authority to continue reporting to the discharge authority on the measures it has taken to ensure that no conflicts of interest occur;
19. Notes that the Authority established two joint committees, one for senior managers and one for staff members, which need to be involved in the event that conflicts of interest concerns arise in the context of intended future activity after leaving the Authority; further notes that in 2021 the Authority organised nine bilateral 'exit meetings' with staff members leaving the Authority in order to check declarations regarding activities and assess whether there are conflicts of interest between the duties of the concerned staff members at the Authority and their future activities; observes that no issues were raised in that regard;
20. Commends the fact that, in 2021, the Authority undertook several actions to raise awareness about the rules regarding conflicts of interest, ethics rules, the inquiry into

dealing in financial instruments, and post-employment rules and cooling off-periods; further commends the Authority for having put in place internal rules on conflicts of interest and ‘revolving door’ situations applicable to the members of its management board;

21. Welcomes the fact that the Authority publishes CVs and declarations of interest of the members of its management board and its management staff; commends the transparent manner in which the Authority reports the meetings of its staff with external stakeholders and makes them available on its website;
22. Welcomes the Authority’s commitment to the highest ethical standards regarding the prevention of conflicts of interest; recalls, following the Court’s observations, the requirement for the members of the Authority’s board of supervisors to abstain from participating in the discussion and voting on measures for which they have a conflict of interest; stresses that those members should also refrain from attending meetings where such discussions take place, in order to preserve the independence of the board of supervisors; welcomes the Authority’s reply that it has amended its policy to explicitly require that conflicted members leave the room;
23. Welcomes that, in accordance with its conflicts of interest and ethics policy, the Authority has made use of a temporary ban on trading in selected financial instruments by its staff to avoid any risk of insider dealing; calls upon the Authority to continue reporting to the discharge authority on measures taken on the prevention of conflicts of interest;
24. Welcomes the publishing of the revised joint guidelines on the assessment of the suitability of members of the management body and key function holders in July 2021 by ESMA and the EBA following the amendments to Directives 2013/36/EU⁵ and 2014/65/EU⁶, and their effect on assessing the suitability of members of the management body, in particular with regard to anti-money-laundering and terrorist financing risks and promoting gender diversity;
25. Recalls, following the Court’s findings, that conflicts of interest can arise within the process of appraisal of the Authority’s chairperson and executive director when the national competent authority of a member of the board of supervisors is, for example, subject to a breach of Union law procedure; welcomes therefore the Authority’s commitment to introduce an explicit cross-reference to conflicts of interest in its appraisal process;
26. Insists on the need to put into place systematic sets of rules on transparency, incompatibilities, conflict of interest and illegal lobbying; calls on the Authority to also set up internal anticorruption measures; calls on the Authority to report to the discharge authority on the progress made in this regard;

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁶ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

Internal control

27. Welcomes the annual assessment of the Authority's internal control system and the conclusion that such a system exists and functions well; notes that, the same as in a similar exercise of 2020, the Authority measured 78 internal control indicators, covering all internal control principles, and identified 22 deficiencies, most of which were minor and none of which called into question the existence and proper functioning of the internal control principles; notes that the observed opportunities for improvement are mainly related to the components 'control environment' and 'control activities';
28. Notes that the Internal Audit Service of the Commission (IAS) performed an audit on the Authority's HR management and ethics in 2021 concluding that the management and control systems put in place by the Authority in those areas are adequately designed, effectively implemented and support the Authority in achieving its business objectives; observes regarding that audit that the IAS issued four recommendations; calls on the Authority to report to the discharge authority on the progress made in this regard;
29. Recalls the importance to strengthen management and control systems to ensure the proper functioning of the Authority; strongly insists on the requirement of an effective management and control systems to avoid potential cases of conflict of interest, missing ex-ante or ex-post controls, inadequate management of budgetary and legal commitments, and failures to report issues in the register of exceptions;

Digitalisation and green transition

30. Notes with appreciation that in 2021 the Authority successfully migrated its activity-based management model from an Excel-based system to a new cloud-based environment, which is expected, according to the Authority, to improve its planning and reporting capabilities, in the context of increasing complexity of its budgeting and costing models;
31. Welcomes that the Authority aimed at strengthening its cybersecurity defences by reviewing its security detection strategy with more sophisticated and automated tools, increasing the security skills among the Authority's ICT unit and by hiring a new information security officer and a document management officer;
32. Recalls the importance of investing in ICT staff with long-term contracts, to avoid brain drain, inefficiencies and potentially increased risks and weakness to cyber-attacks;
33. Encourages the Authority to work in close cooperation with ENISA (the European Union Agency for Cybersecurity) and CERT-EU (Computer Emergency Response Team for the EU Institutions, bodies and agencies) and to carry out regular risk assessments of its IT infrastructure and to ensure regular audits and tests are carried out on its cyber defences; suggests to offer regularly updated cybersecurity-related training programmes to all staff members within the Authority; calls on the Authority to keep developing its cybersecurity policy further, and to report to the discharge authority on the progress made in this regard;
34. Commends the Authority for its ambitious environmental policy, which in 2021 led to improvements in several key environmental indicators such as, among others, waste

reduction, paper recycling and decrease in travel; notes that impacts of or progress towards the achievement of sustainability goals are measured and monitored through a control panel for key performance indicators set by the Authority's management;

35. Commends the Authority for the progress made in order to become registered with the EU Eco-Management and Audit Scheme (EMAS) by 2022; notes the Authority's plan to become fully paperless by 2025;

Business continuity along crisis

36. Notes that the Authority continued to successfully tackle the challenges posed by the COVID-19 pandemic, for example by continuously adapting the premises and its processes to the changing protective measures adopted by the French government and the Commission;
37. Notes that the Authority has continued to work smoothly in 2021 owing to its prior investments in audio- and videoconferencing and a voting tool; further notes that the Authority installed a new desk management and booking tool to better ensure public health guidance in the office, increase flexibility and prepare for the post-pandemic reality;

Other comments

38. Notes that the Authority identified risks in 2021 such as, among others, a limited capacity to deliver on its mandates, inadequate resources and lack of expertise to manage the extensive legislative agenda (namely as regards the capital markets union and CCPs), the consequences of the withdrawal of the United Kingdom from the Union, potential new mandates for the Authority in certain areas (such as in relation to central securities depositories), more volatile financial markets, and a limited supervisory convergence and supervision of third-country CCPs; calls on the Commission to take these issues into account and allocate the resources necessary for the Authority to deliver on new or extended mandates;
39. Notes that the issues stemming from the Authority's follow-up to the Court's observations from previous years, such as the Authority's 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 Authority's scope of action; calls on the Commission to revise the delegated acts and amend the regulations relating to such issues, as proposed by the Authority;
40. Calls on the Authority to aim its focus on disseminating the results of its operations to the public, and to reach out to public via the social media and other media outlets;

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41. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of [...] May 2023⁷ on the performance, financial management

⁷ Texts adopted, P9_TA(2023)0000.

and control of the agencies.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	22.3.2023
Result of final vote	+ : 20 - : 0 0 : 1
Members present for the final vote	Gilles Boyer, Olivier Chastel, Caterina Chinnici, Ilana Cicurel, Corina Crețu, José Manuel Fernandes, Luke Ming Flanagan, Daniel Freund, Isabel García Muñoz, Monika Hohlmeier, Jean-François Jalkh, Alin Mituța, Markus Pieper, Petri Sarvamaa, Eleni Stavrou, Angelika Winzig, Lara Wolters, Tomáš Zdechovský
Substitutes present for the final vote	Maria Grapini, Mikuláš Peksa
Substitutes under Rule 209(7) present for the final vote	Anne-Sophie Pelletier

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

20	+
PPE	José Manuel Fernandes, Monika Hohlmeier, Markus Pieper, Petri Sarvamaa, Eleni Stavrou, Angelika Winzig, Tomáš Zdechovský
Renew	Gilles Boyer, Olivier Chastel, Ilana Cicurel, Alin Mîtuța
S&D	Caterina Chinnici, Corina Crețu, Isabel García Muñoz, Maria Grapini, Lara Wolters
The Left	Luke Ming Flanagan, Anne-Sophie Pelletier
Verts/ALE	Daniel Freund, Mikuláš Peksa

0	-

1	0
ID	Jean-François Jalkh

Key to symbols:

+ : in favour

- : against

0 : abstention