Basic information

2012/2209(DEC) DEC - Discharge procedure	Procedure completed
2011 discharge: European Securities and Markets Authority (ESMA) **Subject** 8.70.03.07 Previous discharges	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CONT Budgetary Control	GERBRANDY Gerben-Jan (ALDE)	29/02/2012
	Shadow rapporteur SARVAMAA Petri (PPE) AYALA SENDER Inés (S&D) STAES Bart (Verts/ALE) BRADBOURN Philip (ECR) SØNDERGAARD Søren Bo (GUE/NGL) ANDREASEN Marta (EFD) EHRENHAUSER Martin (NI)	

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	LANGEN Werner (PPE)	26/10/2012

European Commission

Commission DG	Commissioner
Budget	ŠEMETA Algirdas

Key events

Date	Event	Reference	Summary
25/07/2012	Non-legislative basic document published	COM(2012)0436	Summary
13/09/2012	Committee referral announced in Parliament		

19/03/2013	Vote in committee		
25/03/2013	Committee report tabled for plenary	A7-0115/2013	Summary
16/04/2013	Debate in Parliament		
17/04/2013	Decision by Parliament	T7-0155/2013	Summary
17/04/2013	Results of vote in Parliament		
17/04/2013	End of procedure in Parliament		
16/11/2013	Final act published in Official Journal		

Technical information

Procedure reference	2012/2209(DEC)
Procedure type	DEC - Discharge procedure
Stage reached in procedure	Procedure completed
Committee dossier	CONT/7/10615

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE497.836	21/01/2013	
Amendments tabled in committee		PE497.885	27/02/2013	
Committee opinion	ECON	PE501.884	01/03/2013	
Committee report tabled for plenary, single reading		A7-0115/2013	25/03/2013	Summary
Text adopted by Parliament, single reading		T7-0155/2013	17/04/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	05753/2013	01/02/2013	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2012)0436	25/07/2012	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofA	Court of Auditors: opinion, report	N7-0027/2013 OJ C 388 15.12.2012, p. 0157	18/09/2012	Summary

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Decision 2013/0594 OJ L 308 16.11.2013, p. 0282	Summary

2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 25/07/2012 - Non-legislative basic document

PURPOSE: presentation by the Commission of the consolidated annual accounts of the European Union for the financial year 2011, as part of the 2011 discharge procedure.

Analysis of the accounts of the **European Securities and Markets Authority (ESMA)** – *new agency*.

CONTENT: this Commission document sets out the consolidated annual accounts of the European Union for the financial year 2011 as prepared on the basis of the information presented by the institutions, organisations and bodies of the EU, in accordance with Article 129 (2) of the Financial Regulation applicable to the EU's General Budget, including the European Securities and Markets Authority (ESMA).

In 2011, the tasks and budget of this agency were as follows:

- **description of ESMA's tasks**: ESMA, which is located in Frankfurt, was set up by Regulation (EU) No 1095/2010 of the European Parliament and of the Council with a view to protecting the public interest by contributing to the short, medium and long-term stability and efficiency of the financial system for the economy of the European Union, its citizens and its companies;
- **ESMA's budget for the 2011 financial year**: ESMA's budget for 2011, as presented in the Commission document on the consolidated annual accounts of the European Union, gives the following figures:
    - § forecasted income budget: EUR 17 million;
    - § entitlements established: EUR 17 million;
    - § amounts received: EUR 17 million;
    - § outstanding: EUR 0 million.

The complete version of ESMA's final accounts may be found at the following address: http://www.esma.europa.eu/page/Budget-and-work-programme

2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 18/09/2012 - Court of Auditors: opinion, report

PURPOSE: presentation of the EU 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 replies.

CONTENT: in accordance with the tasks conferred on the Court of Auditors by the Treaty on the Functioning of the European Union, the Court presents to the European Parliament and to the Council, in the context of the discharge procedure, a Statement of Assurance as to the reliability of the annual accounts of each institution, body or agency of the EU, and the legality and regularity of the transactions underlying them, on the basis of an independent external audit.

This audit concerned, amongst others, the annual accounts of the European Securities and Markets Authority (ESMA).

In the Court's opinion, the **Authority's Annual Accounts fairly present, in all material respects, its financial position as of 31 December 2011** and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation.

The Court also considers that the **transactions underlying the annual accounts** of the Authority for the financial year ended 31 December 2011 are, in all material respects, **legal and regular**.

The report confirms that the Authority's 2011 budget amounted to EUR 16.9 million. The number of staff employed by the Authority at the end of the year was 57.

The report also makes a series of observations on the budgetary and financial management of the Authority, accompanied by the latter's response. The main observations may be summarised as follows:

Court's comments:

- implementation rate: the Court states that the low budget execution rates indicate difficulties in budget planning and implementation. At the end of 2011, ESMA recorded a positive budget outturn of EUR 4.3 million. The full amount was then recorded in the accounts as a liability towards the European Commission;
- OLAF: ESMA had not yet reached an interinstitutional agreement with the European Anti-Fraud Office (OLAF) on fraud investigations. The Authority should ensure that its Financial Regulation is fully implemented in this respect;
- recruitment: the Court considers that the Authority needs to improve the transparency of recruitment procedures. The number of years of experience required for a given position was not respected, applications received after the deadline were accepted, questions for oral and written tests were not set before the applications were examined by the selection board and there was no decision of the Appointing Authority to appoint the selection board.

Authority's replies:

- 2011 was ESMA's first year of operations, although its Founding Regulation had only been published on 15 December 2010. This late publication of the Regulation prevented ESMA from launching its recruitments on time, impacting directly its spending rate. Furthermore, most of ESMA's IT objectives/ projects were delayed due to delays in the legislation requiring the implementation of such systems;
- as regards OLAF, ESMA states that it sent a letter to OLAF containing its Management Board's approved anti-fraud rules in order to begin setting up this agreement. OLAF has not responded to date;
- on recruitment, following the first visit of the Court of Auditors in October 2011, ESMA revised its recruitment procedures to address the mentioned issues in February 2012.

Lastly, the Court of Auditors' report contains a summary of the **Authority's activities in 2011**. This is focused on the following:

- 15 credit rating agencies (CRAs) registered and first on-site inspections of CRAs including Fitch, Moody's and Standard & Poor's;
- assessed the compliance of three new proposals for Markets in Financial Instruments Directive (MiFID) pre-trade transparency waivers;
- continued work on commodities and on MiFID review;
- preparatory work for proposed technical standards for the regulation on OTC derivatives, Central Clearing Counterparties (CCPs) and Trade Repositories (European Market Infrastructure Regulation - EMIR);
- joint work with the other ESAs;
- enhanced financial consumer protection through additional rules and requirements for intermediaries and fund managers;
- first pan-European product warning on foreign exchange to investors;
- developed successful IT solution for the publication of CRA historical ratings;
- conducted two peer reviews on market abuse and prospectus.

2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 01/02/2013

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the European Securities and Markets Authority, as well as the Court of Auditors' report on the annual accounts of the Authority for the financial year 2011, accompanied by the Authority's replies to the Court's observations, the Council recommends the European Parliament to give a discharge to the Executive Director of the Authority in respect of the implementation of the budget for the financial year 2011.

The observations in the Court of Auditors' report in relation to the financial year 2011 call for some comments by the Council, which may be summarised as follows:

- the Council welcomes the Court's opinion that, in all material respects, the Authority's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Authority's Financial Regulation, and that the underlying transactions for that financial year are legal and regular;
- in line with the budgetary principle of annuality, the Council calls on the Authority to pay due attention to proper budget planning and implementation in order to **improve the low implementation rate of commitments in the future**. Furthermore, the Council notes with concern the irregular nature of some appropriations carried over to 2012 and urges the Authority to remedy this situation without delay;
- it also notes, however, that after one year of activity the Authority has not yet formalised all necessary supervisory and control systems in line with the provisions of the Financial Regulation. In this respect, it urges the Authority to remedy the weaknesses identified by **adopting internal control standards and by improving its management of fixed assets**;
- it also urges the Authority to conclude an interinstitutional agreement with the European Anti-Fraud Office, in full compliance with the Financial Regulation;
- lastly, the Council urges the Authority to adopt its Implementing Rules to the Staff Regulations and to address the weaknesses identified by the Court in its recruitment procedures.

2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 25/03/2013 - Committee report tabled for plenary, single reading

The Committee on Budgetary Control adopted the report by Gerben-Jan GERBRANDY (ADLE, NL) on discharge to be granted to the Director of the European Securities and Markets Authority in respect of the implementation of the budget for the financial year 2011.

Noting that the Court of Auditors stated that it has obtained reasonable assurances that the annual accounts of the Authority for the financial year 2011 are reliable and that the underlying transactions are legal and regular, Members approve the closure of the Authority's accounts. However, they make a number of recommendations that need to be taken into account when the discharge is granted, in addition to the general recommendations that appear in the draft resolution on performance, financial management and control of EU agencies:

- **Financing, budget and financial management**: in accordance with its Founding Regulation, 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. They note that at the end of 2011, the Authority recorded a positive budget outturn of EUR 4 457 244,822, which was then recorded in the accounts as a liability towards the Commission. The Commission is called upon to explore all the options for a new long term sustainable financing of the Authority that safeguards its independence. Given that 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, Members call 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**.
- **Implementation rate of appropriations**: Members recall that according to the Court, the Authority registered a budget execution ratio of 75.7% for commitments and 62.5% for payments at the end of 2011. Members call on the Authority to inform the discharge authority of the actions taken to improve that ratio, as the low execution ratio shows difficulties in budget planning and implementation. The report notes 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.

Lastly, Members made a series of observations as regards the accounting and control systems, procurement and recruitment procedures of this Agency.

2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 17/04/2013 - Text adopted by Parliament, single reading

The European Parliament adopted a decision on discharge to be granted to the Director of the European Securities and Markets Authority for the financial year 2011. The vote on the decision to grant discharge covers the closure of the accounts (in accordance with Annex VI, Article 5(1) of the European Parliament's Rules of Procedure).

Noting that the Court of Auditors stated that it has obtained reasonable assurances that the annual accounts of the Authority for the financial year 2011 are reliable and that the underlying transactions are legal and regular, Parliament adopted a resolution containing a number of recommendations that need to be taken into account when the discharge is granted, in addition to the general recommendations that appear in the draft resolution on performance, financial management and control of EU agencies.

- **Financing, budget and financial management:** in accordance with its Founding Regulation, 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. Parliament notes that at the end of 2011, the Authority recorded a positive budget outturn of EUR 4 457 244,822, which was then recorded in the accounts as a liability towards the Commission. The Commission is called upon to explore all the options for a new long term sustainable financing of the Authority that safeguards its independence. Given that 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, Parliament 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,** in the interests of safeguarding their independence.
- **Implementation rate of appropriations:** Parliament recalls that according to the Court, the Authority registered a budget execution ratio of 75.7% for commitments and 62.5% for payments at the end of 2011. Parliament calls on the Authority to inform the discharge authority of the actions taken to improve that ratio, as the low execution ratio shows difficulties in budget planning and implementation. Noting that the Authority was still in its launch period, Parliament highlights these problems of budgetary planning and the justification of certain expenses.
- **Recruitment procedures:** Parliament calls on the Authority to inform the discharge authority of which further actions it has taken to improve the recruitment procedures. It also encourages the Commission to allow for a certain degree of simplification of the Staff Regulations.

Lastly, Parliament makes a series of observations as regards the accounting and control systems of this Agency.

2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 17/04/2013 - Final act

PURPOSE: to grant discharge to the European Securities and Markets Authority for the financial year 2011.

NON-LEGISLATIVE ACT: Decision 2013/594/EU of the European Parliament on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011.

CONTENT: with the present decision, and in accordance with Article 319 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament grants discharge to the Executive Director of the European Securities and Markets Authority in respect of its budget for the financial year 2011.

This decision is in line with the European Parliament's resolution adopted on 17 April 2013 and comprises a series of observations that form an integral part of the discharge decision (please refer to the summary of the opinion of 17 April 2013).

A parallel decision, 2013/595/EU, adopted on the same day, approves the closure of the Authority’s accounts for the 2011 financial year.