



European Securities and  
Markets Authority

# Annual Report 2021

**15 June 2022**

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European Securities and  
Markets Authority

# Annual Report 2021

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# Board of Supervisors' analysis and assessment of the annual report for 2021

The Board of Supervisors of the European Securities and Markets Authority (ESMA) takes note of the annual report for 2021 submitted by the Executive Director in accordance with Article 48(1) of ESMA's financial regulation.

Analysing and assessing the annual report, the Board makes the following observations.

- The report contains a comprehensive account of the activities carried out by ESMA in the implementation of its mandate and work programme in 2021. ESMA provides in the annual report a detailed account of the results achieved in relation to the objectives set in the work programme for 2021, as well as relevant financial and management information.

- The Board takes note of the reports of the European Court of Auditors and the European Commission's Internal Audit Service and ESMA's actions in response to these reports.
- The Board notes that the Executive Director has no reservations or critical issues to report that would affect the presentation of the annual accounts for the financial year 2021 to the discharge authority.

Paris, 3 June 2022

[Signed]

**Verena Ross**  
ESMA Chair  
For the Board of Supervisors



# VERENA ROSS

**CHAIR**

EUROPEAN SECURITIES AND MARKETS AUTHORITY

# Chair's foreword

The year 2021 was very much a transitional one for the European Securities and Markets Authority (ESMA).

When the clock struck midnight on 1 January 2021, ESMA turned 10 years old. With that, an important new chapter opened – that of a new decade for ESMA as an increasingly recognised and mature regulatory and supervisory authority.

This second decade has brought the renewal of ESMA's senior management. I would therefore like to introduce this annual report by thanking my predecessor, Steven Maijoor, whose 10-year term ended in March 2021. He provided the leadership that brought to our authority the strong reputation it enjoys today. Leading the authority forward, I am happy to do so together with Natasha Cazenave, who started as Executive Director in June 2021.

Recent years have seen new challenges: to investor protection, as growing interests in sustainable and digital finance are facing risks of greenwashing and scams; to effective and converged EU supervision, including ESMA taking up new supervisory mandates; and to stable and orderly European markets as there is a renewed focus on developing a true capital markets union.

The risks and opportunities arising from the digitalisation of markets were a central focus for ESMA in 2021. As the COVID-19 pandemic accelerated digitalisation across the spectrum, social media marketing and the use of trading applications by retail investors increased, along with corresponding investor protection concerns. In the context of the significant volatility in the trading of certain stocks following social media-driven trading activity in February 2021, ESMA published warnings reminding investors to be vigilant when making investment decisions. ESMA also reminded firms of their obligations, aimed at ensuring that firms act in their clients' best interests when executing their orders. The acceleration of digitalisation has also led to increased concerns regarding cybersecurity. The ongoing work on developing cross-sectorial regulations on digital operational resilience and crypto assets is aimed at addressing these risks.

Similarly, developing the regulatory framework on sustainable finance was very much a priority throughout the year. It is vital that ESMA make a strong contribution to enable the financial sector to play its role in the transition to a more sustainable EU

economy. An important part of this is tackling the lack of transparency and comparability of sustainability indicators in the context of the growing demand for environmental, social and governance investments and the fast-evolving but as yet incomplete regulatory framework. It is with this in mind that ESMA developed in 2021 a sustainable finance roadmap – a tool to ensure the coordinated implementation of ESMA's broad sustainable finance mandate for 2022–2024, and thus the development of a coherent framework to apply supervisory principles consistently across the EU.

Indeed, supervisory convergence is and remains at the heart of ESMA's mandate, as exemplified by 2021's common supervisory action on UCITS liquidity risk management, which showed that most UCITS managers have implemented and applied sound liquidity risk management processes, while also identifying key areas in need of further EU convergence.

The year was marked by significant volatility in the EU carbon market. From a macroeconomic perspective, commodities markets, and energy markets in particular, are of great importance to the real economy. In this context, and in response to a request from the European Commission, ESMA conducted work on the EU carbon market, presenting an overview of the financial regulatory environment for the carbon market, including an analysis of the price evolution and volatility of European emission allowances and derivatives on them and of the relevant tools available to securities supervisors. This work has provided useful insight into one part of the commodities markets, a topic that has become even more prominent in 2022.

In addition, ESMA's Central Counterparty (CCP) Supervisory Committee, put in place at the end of 2020 under the leadership of Klaus Löber, Nicoletta Giusto and Froukelien Wendt, had in 2021 its first full and active year of operation. In 2021, ESMA began conducting a comprehensive review of the recognition and tiering of third-country CCPs, as well as starting its monitoring and supervisory activity. This included assessing the systemic importance of Tier 2 CCPs in the United Kingdom, identifying measures to be taken to limit the risks caused by their systemic importance and strengthen the EU market infrastructure. The CCP recovery and resolution regulation entered into force in 2021, which has entailed the development of level 2 regulation aimed at ensuring the resilience of CCPs

and, where necessary in extreme scenarios, their resolvability.

This was also a busy year for engagement in international fora, with ESMA contributing to key work streams of the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB). In particular, ESMA contributed to critical business areas relating to important risks arising from non-banking financial intermediation and to the lessons to be learned from liquidity issues faced by money market funds and certain open-ended funds in March 2020.

The year 2021 was a challenging one for ESMA staff, who kept the authority running through an unexpectedly long senior management transition period. For that, I would like to express to them my heartfelt thanks. I would also like to thank my colleagues on the Board of Supervisors, the Management Board and the Joint

Committee of the European Supervisory Authorities (ESAs) for their cooperative and European spirit, which guided ESMA and the European financial markets safely through the year. In particular, I am hugely indebted to Anneli Tuominen for leading the authority in her position as Interim Chair for seven long months, alongside her work at the Finnish Financial Supervisory Authority.

Finally, I would like to thank the European Parliament, the European Commission and the Council of the EU for their continued trust and collaboration. As we began 2022 in troubled times, European unity is more important than ever.

**Verena Ross**

Chair





# NATASHA CAZENAVE

EXECUTIVE DIRECTOR  
EUROPEAN SECURITIES AND MARKETS AUTHORITY

# Executive Director's foreword

2021 marked the culmination of ESMA's first decade as a European Authority, providing an opportunity to reflect on the progress made since 2011 and get a head start on the work to be done in the years ahead.

And there is a lot to be proud of when looking back at what has been achieved already, both despite and in response to the challenges that affected ESMA and EU financial markets. With this in mind, I would like to commend the work done under Steven Maijoor's and Verena Ross' leadership to build ESMA's reputation as a respected and knowledgeable Authority.

I consider it a privilege to have been appointed Executive Director and am eager to drive, together with our Chair, Verena Ross, ESMA to its next stage, with the support of our excellent and committed staff.

Looking at the achievements of 2021, one key area of change for ESMA was the implementation of new mandates stemming from the 2019 ESAs review and the preparation for the new supervisory responsibilities: the supervision of securitisation repositories, which kicked off in mid-2021; and the supervision of data reporting service providers (DRSPs) and of critical benchmarks.

In the area of securitisation data, ESMA approved in 2021 the registrations of the first two securitisation repositories (SRs) under the securitisation regulation. In relation to DRSPs, ESMA advised the European Commission on the development of the regulatory framework, and particularly with regard to the criteria for derogation from EU supervision, fees and fines. ESMA actively engaged with the relevant stakeholders and particularly with the concerned national competent authorities to ensure a smooth handover.

In parallel, ESMA worked closely with the Belgian Financial Services and Markets Authority (FSMA) to prepare for the transfer to ESMA on 1 January 2022 of the supervisory responsibilities for the European Money Markets Institute (EMMI), which administers the only EU critical benchmark, Euribor. In addition, ESMA ensured it was prepared to take over the supervision of the seven third-country administrators recognised in the EU.

ESMA also maintained a strong focus on its existing supervisory mandates, in relation to credit rating agencies (CRAs) and trade repositories (TRs) with a view to strengthening its risk-based, data-driven and outcome-focused approach. In relation to its

enforcement activities, it is worth noting that, in 2021, ESMA imposed a significant fine on a group of CRAs for conflict-of-interest failures and sanctioned two TRs for failure to ensure the integrity of the data they make available and to provide regulatory access.

As financial regulation evolves to capture new risks arising from technological innovation and the shift to a more sustainable economy, ESMA has worked extensively to deepen its understanding of how these trends affect financial markets and investors and be prepared to take on potential new responsibilities. In the context of the risks arising from the digitalisation of financial markets and related cybersecurity concerns, for example, ESMA has put considerable effort into providing technical feedback to the EU institutions on, and preparing for, new mandates that may arise from the upcoming digital operational resilience act and the markets in crypto-asset regulation.

In addition, the project for the development of a European single access point, a key tenet of the development of a capital markets union, began to accelerate in 2021 with the adoption of the Commission proposal. The project aims to ensure that investors across the EU have easy access to clear, understandable and comparable data to assist in their decision-making. This, together with the development of a consolidated tape, is a key component of the EU capital markets union project. At ESMA, we look forward to working with colleagues across the EU institutions and national competent authorities to bring this objective to fruition.

In addition to the preparation for these new mandates, ESMA delivered on its ambitious work programme and made important progress in its priority areas: capital markets union (CMU), digitalisation and sustainable finance.

The array of new tasks under ESMA's responsibility entrusted by the ESA and EMIR review has meant that our organisation has grown rapidly, with the total number of staff increasing by 58 (23 %) in the space of a year as the authority caught up on recruitment originally planned for 2020.

This all took place while COVID-19 continued to cause much uncertainty. Much of our activity, including the hiring of new staff and stakeholder interactions and investigations, was conducted online, while we monitored the public health situation and guidelines closely to keep our staff and stakeholders safe. It is with this in mind that ESMA staff continued to operate

mostly on a virtual basis throughout the year, and that an online event for ESMA's 10th anniversary gathering together almost 700 people was successfully organised. Although some challenges related to remote working remained, ESMA navigated the situation successfully, and when we started to return to the office in September it was a pleasure to be able to meet ESMA colleagues in person.

Of course, COVID-19 was not the only cause of uncertainty for ESMA in 2021. The authority went through an extended senior management transition period, and so it was under Anneli Tuominen's interim chairmanship that I and many others joined the organisation. Allow me here to reiterate our deepest gratitude to Anneli for her outstanding engagement to our organisation and strong leadership.

As I go into my first full year as ESMA's Executive Director – a year that has already brought external challenges of its own – I would like to express my sincere gratitude to the Board of Supervisors and Management Board for their trust and support, to my colleagues at the European Commission, the European Parliament and the Council of the European Union for their cooperation, and to ESMA staff for their remarkable dedication, high-quality work and inclusiveness. With all of the above, I am confident we will be able to face the challenges ahead.

**Natasha Cazenave**

Executive Director





# 1

## ESMA's mission and objectives



## 1.1. Mission, objectives and activities

ESMA is the EU's financial markets regulator. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets in the European Union.

- **Investor protection.** Serve the needs of financial consumers and reinforce their rights as investors while acknowledging their responsibilities.
- **Orderly markets.** Promote the integrity, transparency, efficiency and good functioning of financial markets and robust market infrastructures.
- **Financial stability.** Strengthen the financial system so that it can withstand shocks and the unravelling of financial imbalances while fostering economic growth.

ESMA strives to achieve its mission and objectives within the European System of Financial Supervision through active cooperation with national competent authorities (NCAs), and with other European institutions, for example, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB), and through the Joint Committee of the ESAs.

In 2021, ESMA's strategic priorities focused on three cross-cutting priorities.

- **Sound EU capital markets.** Contributing to the regulatory and supervisory framework supporting the development of efficient and orderly European capital markets.
- **Sustainable finance.** Promoting investor protection and financial stability across the investment chain while contributing to the EU's transition towards a more sustainable financial system.
- **Innovation and digitalisation.** Understanding market trends, risks, new players business models, investor protection risks and engagement with the co-legislators in anticipation of upcoming new legislations.

Furthermore, ESMA supervises specific financial entities such as CRAs, TRs and SRs, and monitors third-country CCPs and directly supervises those third-country CCPs representing a systemic risk to the financial stability of the EU (Tier 2 CCPs). As of

1 January 2022, ESMA started supervising DRSPs and administrators of EU critical benchmarks and of recognised third country benchmarks..

## 1.2. Governance and organisation

The second and final mandate of ESMA's first Chair, Steven Maijoor and ESMA's Executive Director, Verena Ross, ended in 2021. Their simultaneous departure and the on-boarding of a new management team constituted an important organisational challenge and the fact that the appointment of the new ESMA Chair, Verena Ross, was delayed by several months added further complexity to this process.

The Chair is responsible for preparing the work of the Board of Supervisors and chairing its meetings and those of the Management Board. The Chair also represents ESMA externally.

The Executive Director is responsible for the day-to-day running of ESMA, including dealing with staff matters, developing and implementing the annual work programme, developing the draft budget and preparing the work of the Management Board.

The mandate of Steven Maijoor as ESMA Chair came to an end on 31 March 2021. On 26 November 2020, ESMA submitted a list of three high-profile candidates to the Council of the EU and the European Parliament. After selecting Verena Ross as candidate in September 2021, and following confirmation from the European Parliament, the Council appointed her as ESMA Chair, starting on 1 November 2021. She will serve a 5-year mandate, which may be extended once.

In the period between the end of Steven Maijoor's term and the beginning of Verena Ross's mandate, Anneli Tuominen, ESMA's Vice-Chair and Director-General of the Finnish Financial Supervisory Authority, acted as Interim Chair of ESMA.

On 20 May 2021, ESMA's Board of Supervisors appointed Natasha Cazenave as Executive Director, following confirmation from the European Parliament. She started her 5-year term on 1 June 2022 as the successor to Ms Ross.

On 15 December 2021, ESMA appointed Erik Thedéen, Director-General of the Swedish Financial Supervisory Authority, as ESMA's Vice-Chair for 2.5 years following the end of Ms Tuominen's mandate.

### 1.1.1. Board of Supervisors

The Board has the ultimate decision-making responsibility and guides the work of ESMA. In addition to ESMA's Chair, the Board is composed of the heads of the NCAs in the EU and the European Economic Area (EEA) that are responsible for securities regulation and supervision. The Board's current members and summaries of its 2021 meetings can be found on ESMA's website <sup>(1)</sup>.

### 1.1.2. Management Board

In addition to the Chair, the Management Board is composed of six members selected from the Board of Supervisors. The Executive Director and a representative of the European Commission attend as non-voting members (except on budget matters, where the Commission representative has a vote), and the Vice-Chair attends as an observer.

The main role of the Management Board is to ensure that ESMA carries out its mission and performs the tasks assigned to it in accordance with the authority's founding regulation (known as the ESMA regulation). It focuses, in particular, on the management and supervisory aspects of the authority, such as the development and implementation of its multiannual work programme, as well as budget and staff resource matters.

The Management Board's current members and summaries of its 2021 meetings are available on ESMA's website <sup>(2)</sup>.

### 1.1.3. Central Counterparty Supervisory Committee

In line with the European market infrastructure regulation (EMIR), ESMA established a CCP Supervisory Committee. The committee is composed of a permanent Chair, Klaus Löber, and two independent members, Nicoletta Giusto and Froukelien Wendt, dedicated to promoting convergence in the supervision of EU CCPs, recognising third-country CCPs and supervising systemically important third-country CCPs.

### 1.1.4. Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. The members represent financial market participants and their employees, consumers and other users of financial services, academics, and small and medium-sized enterprises (SMEs). ESMA consults the SMSG on all its draft technical standards and guidelines to ensure that they are informed by input from stakeholders.

Professor Veerle Colaert is the Chair of the SMSG, supported by Vice-Chairs Christiane Hölz and Rainer Riess <sup>(3)</sup>. The full composition of the SMSG is detailed on ESMA's website <sup>(4)</sup>. The SMSG held seven meetings in 2021, two of which were held with the Board of Supervisors. A full list of the advice produced by the SMSG in 2021 is provided in Annex IX to this report and on ESMA's website <sup>(5)</sup>.

<sup>(1)</sup> <https://www.esma.europa.eu/about-esma/governance/board-supervisors-and-ncas>

<sup>(2)</sup> <https://www.esma.europa.eu/about-esma/governance/management-board>

<sup>(3)</sup> Ms Hölz's mandate ended on 31 December 2019; she was re-elected by the new group on 9 July 2020.

<sup>(4)</sup> <https://www.esma.europa.eu/about-esma/governance/securities-and-markets-stakeholders-group>

<sup>(5)</sup> <https://www.esma.europa.eu/about-esma/governance/smsg>



# 2 ESMA's achievements



## 2.1. Cross-cutting themes

This section details ESMA's achievements linked to its cross-sectoral strategic priorities and the EU's priorities.

### 2.1.1. Supporting the development of sound EU capital markets

#### Objective for 2021

Contribute to the regulatory and supervisory framework supporting the development of efficient and orderly capital markets.

Foster greater cross-border investment and ensure the protection of investors.

In 2021, ESMA continued to contribute to the EU's project to build a robust and efficient capital markets union (CMU). ESMA published several reports to support the European Commission in its assessment of the functioning of the CMU and delivered advice on a number of necessary changes to the EU's regulatory and supervisory framework.

#### Reports on the review of MiFID II/MiFIR

The markets in financial instruments directive (MiFID II) and the markets in financial instruments regulation (MiFIR) provide for several review reports requiring






the European Commission, after consulting ESMA, to report to the European Parliament and the Council of the EU on various provisions. ESMA delivered a comprehensive review of the key provisions of MiFID II/MiFIR between 2019 and 2021, assessing whether MiFID II/MiFIR achieved its objectives as well as making numerous recommendations to ensure the effective application of the provisions. The review was concluded in 2021 with the publication of remaining review reports on the functioning of the SME growth markets regime, the functioning of organised trading facilities (OTFs) and the requirements for algorithmic trading. Following the submission of the ESMA review reports, the European Commission published its proposal for the review of MiFIR in November 2021, following up on many of ESMA's recommendations, notably in the area of transparency and for the establishment of a consolidated tape.

#### Retail investor protection

In 2021, ESMA undertook a wide range of activities to improve conditions for retail investors.

ESMA released two public statements on social media investment recommendations aimed at safeguarding retail investors. The first, published in February 2021, highlighted the risks associated with making trading decisions based exclusively on informal recommendations and sharing trading intentions through social networks and unregulated online platforms. In October 2021, following a rise in

## HOW TO POST INVESTMENT RECOMMENDATIONS ON SOCIAL PLATFORMS?

-  Disclose your identity
-  Disclose your sources, distinguish facts, interpretations, and price targets
-  Indicate date and time
-  Disclose any interests or conflicts of interest
-  Summarise methodology, planned updates, previous recommendations etc.



You propose a particular investment decision



You frequently propose investment decisions and you appear to have financial expertise

the number of investment recommendations made on social media and owing to a concern that retail investors may not be aware of the risks associated with following such recommendations, ESMA clarified that investment recommendations must be produced and disseminated in an objective and transparent way so that investors can distinguish facts from opinions. ESMA stressed that investors must be able to easily identify the source of information and any conflicts of interest of those making the recommendations. ESMA also clarified the potential consequences of not adhering to the rules relating to investment recommendations and that disseminating false or misleading information may potentially be deemed market abuse.

In October 2021, ESMA, furthermore, published a call for evidence on several retail investor protection topics under the revised MiFID II, to feed into ESMA's technical advice for the Commission on the development of its strategy for retail investment. ESMA sought input from stakeholders on (i) disclosures that may confuse or hamper investors' decision making across investor protection legislation; (ii) digital disclosures, and how regulatory disclosures and communications can work best for consumers in the digital age; and (iii) risks and opportunities of digital tools and investment channels, for retail investors.

### European single access point

In December, following the publication of the European Commission's legislative proposals on the European single access point, ESMA assembled a multidisciplinary project team to start working on the development of this EU common database. The single access point is proposed to be established and operated by ESMA.

### Review on the functioning of the European supervisory authorities

In May 2021, ESMA responded to the Commission's targeted consultation on the functioning of the ESAs, highlighting some existing issues and limitations that should be addressed. In its response, ESMA recommended reinforcing ESMA's approach to supervisory convergence, considering the merits of EU-level direct supervision based on certain criteria, building ESMA's data management capabilities, ensuring that the EU single rulebook remains fit for purpose and alleviating funding issues. The recommendations aim to support the objectives of the CMU and further promote and facilitate supervisory convergence across Member States.

## 2.1.2. Sustainable finance

<b>Objective for 2021</b>	Produce a roadmap for sustainable finance activities, building on ESMA's 2020 strategy on sustainable finance.
	Support the implementation of the taxonomy regulation.
	Assist the European Commission with new initiatives resulting from the Commission's renewed sustainable finance strategy.

In 2021, in line with its strategy, ESMA maintained its focus on sustainable finance by incorporating environmental, social and governance (ESG) factors across its range of activities. The financial sector plays a key role in supporting the European Green Deal's aim of turning the EU into a climate-neutral economy, and ESMA acknowledges the important contribution it can make by helping investors to better understand the impact of ESG factors on their investments. ESMA continued to actively contribute to the development of the sustainable finance rulebook and to its consistent application and supervision as well as engaging in risk assessment and market monitoring focusing on potential financial stability risks stemming from ESG factors.

The following sections describe ESMA's main activities in 2021 related to its cross-cutting objectives on sustainable finance. In addition, ESMA produced several sectoral deliverables on sustainable finance, which are described in the sectoral chapters later in this report.

**Priorities**  
Sustainable Finance Roadmap 2022 - 2024

- PRIORITY 1**  
Tackling greenwashing and promoting transparency
- PRIORITY 2**  
Building NCAs' and ESMA's capacities
- PRIORITY 3**  
Monitoring, assessing and analysing ESG markets and risks



## ESMA roadmap for sustainable finance

ESMA developed its sustainable finance roadmap 2022–2024, which was published in February 2022. Building on ESMA's 2020 strategy on sustainable finance, the roadmap sets out ESMA's deliverables on sustainable finance and how they will be implemented over the next 3 years. ESMA's sustainable finance work is based on three priorities: (i) tackling greenwashing and promoting transparency; (ii) building NCAs' and ESMA's capacities; and (iii) monitoring, assessing and analysing ESG markets and risks. The roadmap will serve as a practical tool to ensure that ESMA delivers on a wide array of sustainable finance tasks across several sectors in a coordinated way.

## Taxonomy regulation and European Union Platform on Sustainable Finance

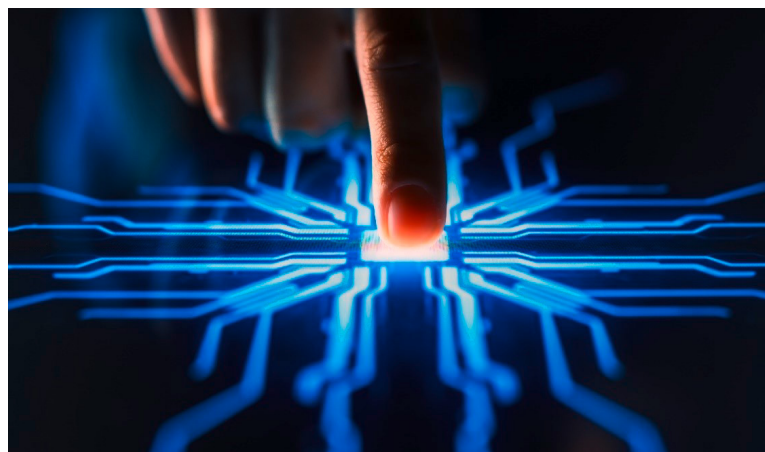
In March 2021, ESMA published its advice for the European Commission on the content and methodology of the disclosures pursuant to Article 8 of the taxonomy regulation, which the Commission considered when developing the related delegated act. The recommendations defined the key performance indicators (KPIs) disclosing how, and to what extent, the activities of businesses that fall within the scope of the non-financial reporting directive qualify as environmentally sustainable under the taxonomy regulation. The key recommendations gave the definitions to be used by non-financial undertakings to calculate their mandatory KPIs and the KPI that asset managers should disclose. In addition, ESMA contributed to important work on sustainability-related disclosures by financial market participants under the taxonomy regulation through the Joint Committee of the ESAs (see Section 2.8.3).

ESMA also actively contributed to the work of the Platform on Sustainable Finance, which was established by the taxonomy regulation as a permanent expert group to assist the Commission in developing its sustainable finance policies, notably the further development of the EU taxonomy. As part of its membership of the platform, ESMA focuses on (i) the potential extension of the EU taxonomy to significantly harmful activities and those with low environmental impact; (ii) the potential extension of the EU taxonomy to social objectives; and (iii) data availability and the usability of taxonomy criteria.

## The Commission's sustainable finance strategy

Following ESMA's response to the Commission's consultation on the renewed sustainable finance strategy, ESMA shared its views on the main challenges in the area of ESG ratings and assessment tools. ESMA highlighted the need to match the growth in demand for these products with appropriate regulatory requirements to ensure their quality and reliability.

Moreover, ESMA co-chaired the work stream on ESG ratings and data providers of IOSCO's Sustainable Finance Taskforce, where it made an important contribution to the associated report published in November 2021.



### 2.1.3. Innovation and digitalisation

#### Objective for 2021

Achieve a coordinated approach to the regulation and supervisory treatment of new or innovative financial activities and technological innovation and provide advice to EU institutions, market participants and consumers.

### New legislation on digital finance and digital operational resilience

In February 2021, the Commission requested technical advice from the ESAs on three main issues in relation to the digital finance package namely (i) the growing fragmentation of value chains in finance; (ii) digital platforms; and (iii) groups combining financial and non-financial activities. In particular, the ESAs were requested to assess the regulatory and supervisory challenges brought by these developments and how to address them. Following public consultation, the final

report was published by the three ESAs in February 2022.

In February 2021, the chairs of the ESAs also sent a letter to the co-legislators confirming their full support of the main principles of the digital operational resilience act (DORA), including the aim of establishing a comprehensive framework on digital operational resilience for EU financial entities by streamlining and strengthening the existing patchwork of relevant provisions across EU financial services legislation and a call for enhanced collaboration and cooperation among authorities within the EU and internationally. In the letter, the chairs of the ESAs expressed their views on how to take forward the governance and operational processes of the oversight framework most efficiently for critical third-party providers and the application of the proportionality principle in DORA.

### European Forum for Innovation Facilitators

The European Forum for Innovation Facilitators (EFIF) is an important forum allowing authorities across the financial sector to exchange views on the design and development of innovation facilitators, innovation trends and the application of specific technologies in the financial sector. Together with the other ESAs, ESMA continued to contribute to the work of the EFIF, which, in 2021, focused on the delivery and publication of a procedural framework to facilitate cross-border testing in accordance with its mandate.

In September 2021, EIOPA handed the responsibility for chairing this forum over to ESMA, and the first ESMA-chaired meeting took place in October 2021. Chaired by EIOPA, the EFIF finalised the procedural framework to facilitate cross-border testing in accordance with the mandate set out in the digital finance strategy.

### Distributed ledger technology pilot regime

The regulation on a distributed ledger technology (DLT) pilot regime is expected to apply from early 2023 and envisages various tasks for ESMA, including providing opinions on the permissions for DLT market infrastructures granted by NCAs and guidelines on compensatory measures for the exemptions granted by NCAs. In the second half of 2021, ESMA started preparing for the upcoming tasks, notably by engaging with NCAs to build a common understanding on DLT and the existing market initiatives in this area; by providing technical input to the EU co-legislators; and by launching a call for evidence on the potential review of the regulatory technical standards (RTS) under MiFIR.

Furthermore, in its report on the use of FinTech by central securities depositories (CSDs), ESMA presented the views of NCAs and relevant market participants on their experience with and planned future use of FinTech and DLT, and on whether or not the current regulatory framework represents a barrier to their implementation of projects involving DLT. The report suggests targeted amendments to the central securities depositories regulation (CSDR) and identifies areas where further guidance could help CSDs in the deployment of DLT.

## 2.2. ESMA's key deliverables and successes in 2021

This section details ESMA's deliverables and successes in 2021 which are not directly linked to any of the three above-mentioned strategic priorities.



### **2.2.1. Comprehensive assessment of Tier 2 central counterparties**

ESMA conducted a comprehensive assessment of systemically important third-country CCPs (Tier 2 CCPs) established in the United Kingdom, and of the risks they may pose to the financial stability of the EU or its Member States. The report identified three clearing services, one provided by LCH Ltd and two provided by ICE Clear Europe Ltd, as of substantial systemic importance to the EU's financial stability and posing risks that may not be fully mitigated under the current EMIR.

Based on a comprehensive analysis, ESMA concluded that the costs and risks of derecognising these services would outweigh the benefits to the EU at that time and therefore did not recommend that the European Commission derecognise the Tier 2 CCPs or one of their services. Instead, ESMA proposed that measures be considered by the relevant EU institutions and authorities to mitigate risks related to the Tier 2 CCP clearing services that have been identified as being of substantial systemic importance to the EU.

### **2.2.2. Preliminary report on the European Union carbon market**

In November, ESMA published its preliminary report on European emission allowances (EUAs) and derivatives on EUAs to respond to a request made by the Commission to ESMA in its October communication on energy prices. The report presents an overview of the financial regulatory environment for the carbon market under the market abuse regulation (MAR), MiFID II and EMIR, and the tools available to securities supervisors to fulfil their responsibilities. The report also provides an analysis based on commercial data of price evolution and volatility in EUAs and derivatives on EUAs while weekly position reports in respect of derivatives on EUAs were used for the initial assessment of active counterparties. A more in-depth analysis of the EU carbon market was published in March 2022.

### **2.2.3. RTS for commodity derivatives under the MiFID II recovery package**

As part of the post-COVID-19 MiFID II recovery package, ESMA published its final report on draft RTS for commodity derivatives under the MiFID II recovery package in November. The report includes proposals on the application procedure for position limit exemptions, a methodology for determining position limits and

position management tools for trading venues, all of which are intended to contribute to stable and orderly commodity derivative markets at a time when they are under heightened scrutiny.

Responding to the pending legislative change introduced by the MiFID II recovery package for commodity derivatives due to apply from early 2022, ESMA issued a public statement in March on the supervisory approach to position limits for commodity derivatives. The purpose of the statement was to clarify the application of position limits and coordinate the supervisory actions of NCAs.

### **2.2.4. Enforcement**

#### **Fines imposed**

In March 2021, ESMA fined five entities in the Moody's group a total of EUR 3 703 000 and issued public notices for breaches of the CRA regulation regarding independence and the avoidance of shareholder conflicts of interests. The breaches were related to (i) the issuance of credit ratings in violation of the ban on issuing new ratings on entities where a CRA shareholder exceeds the 10 % ownership threshold and/or is a board member of the rated entity; (ii) failure to disclose conflicts of interest related to the 5 % ownership threshold; and (iii) inadequate internal policies and procedures to manage shareholder conflicts of interest. All the breaches were found to have resulted from negligence on the part of Moody's.

In July 2021, ESMA also fined DTCC Derivatives Repository Plc a total of EUR 408 000 for seven infringements of EMIR regarding data confidentiality, data integrity, and direct and immediate access to data. Later, in September, ESMA also fined UnaVista EUR 238 500 for breaches committed between 2016 and 2018 relating to failures in ensuring the integrity of data and providing direct and immediate access to regulators.

#### **Letter to the European Commission on improving the transparency directive following the Wirecard case**

In November 2020, ESMA conducted a fast-track peer review of the application of the guidelines on the enforcement of financial information in the context of Wirecard by the German authorities. Drawing on this review and ESMA's broader experience in coordinating the enforcement of financial information in the EU, in March 2021, ESMA urged the Commission to improve

the transparency directive by providing for enhanced coordination between authorities across the EU, enhancing coordination and governance at national level, strengthening the independence of NCAs and strengthening the harmonised supervision of financial information across the EU, notably through further harmonising NCAs' powers.

### 2.2.5. Statement on special purpose acquisition companies

In view of the increased activity of special purpose acquisition companies (SPACs) in the EU in the first half of 2021, in July 2021 ESMA published a statement setting out ESMA's expectations on how issuers should satisfy the specific disclosure requirements of the prospectus regulation to enhance the comprehensibility and comparability of SPAC prospectuses. In addition, ESMA highlighted that SPAC transactions may not be appropriate investments for all investors owing to risks related to dilution, conflicts of interest in relation to sponsors' incentives and the uncertainty around the identification and evaluation of the target company.

### 2.2.6. Undertakings for collective investment in transferable securities liquidity risk management

In 2021, ESMA published the results of a common supervisory action (CSA) <sup>(6)</sup> on undertakings for collective investment in transferable securities (UCITS) liquidity risk management. The CSA aimed to obtain a comprehensive market overview, including detailed insights into the practical implementation and quality of liquidity risk management processes. Overall, NCAs reported that most UCITS managers have demonstrated that they have implemented and applied sufficiently sound liquidity risk management (LRM) processes. However, the exercise also identified the need for improvements in certain key areas such as: (i) documentation of liquidity risk management arrangements, processes and techniques, (ii) liquidity risk management procedures, (iii) quality of liquidity risk management mechanisms and methodology, (iv) overreliance on liquidity presumption with regard to listed securities, (v) application of liquidity presumption to financial instruments that are not admitted to or dealt in on a regulated market, (vi) delegation, (vii) data

<sup>(6)</sup> A CSA is an instrument that ESMA uses to promote convergence. This is achieved through the development of a common assessment framework and ongoing exchanges on operational questions in a priority area among national supervisors.

reliability, (viii) disclosures, (ix) governance, (x) internal control framework and (xi) external controls.

## 2.3. Investors and issuers

### 2.3.1. Investment services

<b>Objective for 2021</b>	Ensure the consistent application of MiFID II and MiFIR requirements and coordination between NCAs in the area of investor protection and intermediaries (including cross-border activities), in line with the identification of supervisory convergence as a continued priority for ESMA's activities in the area of investor protection.
	Contribute to the development of a single rulebook in the areas of investment firms, the provision of investment services and the application of the third-country firms regime by ensuring that the relevant technical standards and other relevant documents are delivered to the Commission by the deadline.
	Continue to contribute to the review of MiFID II, including by reviewing technical standards (if needed).
	Contribute to the development of a single rulebook in the area of crowdfunding.

### Consistent application of MiFID II and MiFIR

In 2021, ESMA undertook a variety of actions to support the convergence of supervisory practices in the area of investor protection and intermediaries.

#### *Common supervisory actions*

In 2021, ESMA launched a new CSA focusing on the area of product governance, including the assessment of costs and charges in the context of the product governance assessment, in line with the ESMA heatmap.

In July 2021, ESMA published the results of a CSA that was carried out the previous year to assess the application of MiFID II suitability rules across the EU. It was found that firms comply overall with key elements of the suitability requirements already regulated under



MiFID II, such as the understanding of products and clients and their processes and procedures to ensure the suitability of investments. However, shortcomings and areas for improvement emerged in some of the new requirements introduced by MiFID II, notably the requirement to consider the cost and complexity of equivalent products, the costs and benefits of switching investments, and suitability reports.

#### *ESMA warnings and statements*

ESMA issued two investor warnings. In the first statement, which followed episodes of high volatility in the trading of certain stocks, ESMA reminded clients of the risk of taking investment decisions based exclusively on information from social media and unregulated online platforms if they cannot verify the reliability and quality of the information. ESMA published its second statement in the summer, warning firms and investors about risks arising from ‘payment for order flow’ and certain practices adopted by ‘zero-commission brokers’.

In addition, ESMA announced regulatory measures on two occasions. In March 2021, ESMA published a statement on the temporary suspension of execution venues’ obligation to make data relating to the quality of execution of transactions on their venues available to the public, as ESMA and NCAs had observed a lack of clarity among market participants on the application date of this suspension. Three months later, ESMA issued an opinion on product intervention measures communicated by the Dutch Authority for the Financial Markets. These measures concerned turbos, which are high-risk leveraged products in which investors

speculate that the prices of the underlying asset, such as a share, an index or a currency, will rise or fall. ESMA’s opinion concluded that the proposed measures were justified and proportionate.

#### *Annual sanctions report under MiFID II*

In July 2021, ESMA published its third annual report on NCAs’ use of sanctions and measures under MiFID II. NCAs’ activity in this area increased in 2020 compared with 2018 and 2019, both in terms of the total number of sanctions and measures and in terms of the level of fines. Overall, in 2020, in 23 (out of 30) EU/EEA Member States, NCAs imposed a total of 613 sanctions and measures with an aggregate value of about EUR 8.4 million, compared with the 371 sanctions and measures with a value of about EUR 1.8 million issued by NCAs of 15 EU/EEA Member States in 2019.

#### **Advice on MiFID II/MiFIR review**

ESMA assisted the Commission in the ongoing work to revise MiFID II and MiFIR. ESMA published a report assessing ESMA’s staffing and resource needs arising from the assumption of powers and duties in accordance with the new MiFIR regime for third-country firms. ESMA also launched a consultation on proposals for improvements to the MiFID II framework on best execution reports. Those proposals also accounted for potential future legislation to establish a consolidated tape under MiFID II. Finally, ESMA published its advice to the Commission on the application of administrative and criminal sanctions under MiFID II/MiFIR and in particular the need to further harmonise

the administrative sanctions set out for infringements of MiFID II/MiFIR requirements.

### Guidelines in relation to investment firms and advice

In 2021, ESMA consulted and finalised its work on a new set of guidelines on investment firms providing non-advised services. These firms are required to request information on the knowledge and experience of clients or potential clients to assess whether or not the investment service or product envisaged is appropriate. The execution-only framework allows for exemptions from this assessment under certain conditions, including that the firm issues a warning to the client.

In July 2021, ESMA and the EBA published the revised joint guidelines on the assessment of the suitability of members of the management body and key function holders following the amendments introduced by the revised capital requirements directive and the investment firms directive, 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.

### Crowdfunding

In November 2021, ESMA published its final report on the technical standards required under the European crowdfunding service providers regulation. The report covered 12 mandates of ESMA in this area. ESMA also started supervisory convergence work in the area of crowdfunding through questions and answers (Q&As) and through publishing information received from NCAs on several topics, including the scope, the

languages to be used, the interactions with national rules and the complaints procedures.

### 2.3.2. Investment management

#### Objective for 2021

Achieve greater convergence and consistency in NCAs' supervisory approaches and practices in relation to the EU legislation on investment management, with a particular focus on improving investor protection and financial stability through ESMA's work on the liquidity of funds.

Contribute to the development of the single rulebook following the upcoming alternative investment fund managers directive (AIFMD) review (if required).

Facilitate the growth of the cross-border distribution of investment funds by ensuring that the relevant technical standards are delivered by the deadline and the relevant information technology (IT) tools (including central databases) are developed.

### Alternative investment funds (AIFs) and undertakings for collective investment in transferable securities (UCITS)

In 2021, ESMA undertook several actions to monitor and enhance the convergence of supervisory practices in the area of UCITS and alternative investment funds supervision.



In July 2021, ESMA published its annual report on NCAs' use of sanctions under the AIFMD and the UCITS directive. In 2020, 17 national authorities imposed a total of 131 penalties and/or measures amounting to EUR 3.3 million under the AIFMD, whereas a total of 100 sanctions under the UCITS Directive were issued in 2020, amounting to EUR 1.1 million. Although the number of NCAs issuing sanctions under the UCITS directive increased slightly, a small number of NCAs remain responsible for a majority of sanctions, and in general the numbers at national level appear low.

ESMA also published its fourth annual statistical report (ASR) on the performance and costs of retail investment products. The report provided an overview of EU retail investment products from 2010 to 2019. With around EUR 11 trillion in assets, of which more than EUR 4.5 trillion was held by retail investors, UCITS remained the largest investment fund sector in the EU. AIFs followed with EUR 6.5 trillion, of which around EUR 1 trillion was held by retail investors (retail AIFs). Structured retail products were the smallest market, at around EUR 400 billion outstanding for retail investors.

In April 2021, ESMA published its third ASR on the AIF sector. The report found that the sector's net assets increased by 15 % in 2019 to EUR 6.8 trillion in net asset value from EUR 5.9 trillion in 2018. In the report, ESMA warned that risks related to potential liquidity mismatch at short horizons remained high especially for real estate funds.

### **Effective preliminary investigations of an alleged breach of European Union law by national competent authorities**

ESMA conducted a preliminary inquiry into an NCA's activities following complaints that the NCA failed to ensure that the former fund managers and depositaries of an AIF complied with their obligations under the AIFMD. The case, which ESMA has been closely monitoring over the past 3 years, was closed in December 2021, once ESMA was satisfied that the NCA concerned had launched a series of investigations and, where relevant, had taken effective supervisory and enforcement action against the actors involved in the matter.

### **Money market funds**

The acute market stress period of March 2020 showed that EU money market funds (MMFs) remain vulnerable to liquidity risk on their asset and liability sides. Based on this experience and the roles played by markets,

investors and regulations, in February 2020 ESMA published an opinion proposing a set of amendments to the money market fund regulation (MMFR). The proposals were informed by consultation responses and included potential reforms targeting the liability side of MMFs as well as the asset side. The proposals also included potential reforms that are external to MMFs.

ESMA supported the ESRB's work on MMFs in 2021 through its co-chairing and participation in the Joint Expert Group on non-bank financial intermediation. In July 2021, the ESRB published the ESRB's analysis of systemic vulnerabilities of MMFs and preliminary policy considerations on how to reform MMFs. Building on this analysis, in December 2021 the ESRB approved its recommendation aimed at increasing the resilience of MMFs. This recommendation also reflected policy discussions at international level, including the proposals of the FSB of 11 October 2021 to which ESMA staff contributed. Through that work stream, ESMA also supported the production of the sixth annual ESRB EU non-bank financial intermediation risk monitor.

Following the transmission of the 2021 adverse scenario by the ESRB, ESMA published the annual update of the guidelines on MMF stress tests in early 2022. These took into account the ESRB's assessment of prevailing sources of systemic risks in addition to the vulnerabilities already identified by ESMA during the COVID-19-related market stress.

### **Cross-border distribution of funds**

In 2021, ESMA supported the implementation of the regulation on cross-border distribution of investment funds in several ways.

In February, ESMA published a final report and draft implementing technical standards (ITS) under the regulation on cross-border distribution of investment funds. The draft ITS specify the publication of information by NCAs on their websites, the notification of ESMA of information by NCAs, and the publication of information by ESMA on its website in relation to the national laws, regulations and administrative provisions governing marketing requirements and the applicable regulatory fees and charges levied by NCAs for the cross-border activities of fund managers. The draft ITS also include provisions on the communication of information by NCAs to ESMA for the purpose of developing and maintaining a central database listing UCITS and AIFs marketed across borders on ESMA's website.

ESMA also published new guidelines on the cross-border distribution of funds, specifying requirements according to which marketing communications must be identifiable as such, describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and contain information that is clear, fair and not misleading.

Finally, ESMA published a report analysing the effects of national laws, regulations and administrative provisions governing marketing communications of investment funds. Key findings included that only a very limited number of NCAs carry out the ex ante or ex post verification of marketing communications and that greater harmonisation of the marketing requirements is expected to be achieved after the transposition of the directive on the cross-border distribution of collective investment undertakings.

### European long-term investment funds review

In February 2021, ESMA submitted a range of proposals to the European Commission aimed at increasing the use of the European long-term investment funds (ELTIFs) framework. ESMA proposed bringing ELTIFs more in line with the needs of investors, which would make them a more attractive investment vehicle for professional investors, as well as a potential alternative for retail investors to place savings. This would further improve SMEs' access to funding. The proposal for a review of the ELTIF regulation published later in the year by the Commission took into account the vast majority of these proposals.

### 2.3.3. Issuer disclosure

#### Objective for 2021

Strengthen the level of supervisory convergence and facilitate the exchange of experience in the areas of prospectuses, notifications of major holdings, corporate governance and takeover bids.

Continue contributing to the single rulebook under the prospectus regulation and the transparency directive, as necessary.

Contribute to the set-up of high-quality corporate reporting standards, including standards for non-financial reporting, through the provision of enforcers' views on endorsement advice and their views on new pronouncements on International Financial Reporting Standards (IFRSs), and the maintenance of an updated regulatory framework for digital reporting.

Strengthen supervisory convergence in the area of supervision and enforcement of financial and non-financial information, with a particular focus on issues related to alternative performance measures, sustainable finance and the European single electronic format (ESEF).





## **Supervisory convergence under the prospectus regulation**

Throughout the year, ESMA carried out a range of activities aiming to promote the convergence of supervisory practices, including by publishing Q&As and facilitating discussions of supervisory cases in the area of prospectus.

ESMA published its annual report on prospectus activity and sanctions for 2020. The report revealed a continuation of the downward trend in prospectus approvals seen in previous years. As regards prospectus-related enforcement activity, a total of 58 administrative sanctions and other administrative measures were imposed by two NCAs for infringements of the prospectus regulation, mainly related to offerings of securities without the prior publication of a prospectus.

## **Supervision and enforcement of corporate reporting requirements**

ESMA published its annual report on enforcement and regulatory activities, covering the 2020 calendar year. In this period, ESMA observed that the examination of the financial statements drawn up under IFRSs covering approximately 17 % of issuers listed on European Economic Area regulated markets led to enforcement actions against 250 issuers in order to address material departures from IFRSs, representing an action rate of 40 %. As regards non-financial reporting, the action rate reached 10 %.

In 2021, as per its European common enforcement priorities, ESMA's efforts to increase supervisory convergence mainly focused on harmonising the enforcement of COVID-19-related impacts on financial reporting as regards the presentation of financial statements, accounting for impairment of assets, financial instruments and leases, and impacts on non-financial reporting in the areas of social and employee matters, business models and value creation. Climate change risks were also a focus in relation to non-financial reporting.

In March 2021, in order to ensure a common supervisory approach by all NCAs concerning the application of the accounting frameworks used by UK issuers, ESMA published a statement concerning the application of transparency requirements by UK issuers with securities admitted to trading on regulated markets in the EU, now third-country issuers, under the transparency directive.

ESMA addressed several letters to the IFRS Interpretations Committee. These letters drew attention to observed diversity in the application of the requirements of IFRS 9 on financial instruments, in the accounting treatment of rent concessions by lessors and lessees, and in the classification of shares issued by SPACs as equity or liability. ESMA published a report on the application of IFRS 7 and IFRS 9 regarding banks' expected credit losses. This report will also feed into ESMA's input to the upcoming post-implementation review by the International Accounting Standards Board (IASB) of the application of IFRS 9 regarding expected credit losses.

As in previous years, ESMA facilitated ongoing supervisory case discussions. In 2021, these discussions focused on financial reporting, narrative reporting and alternative performance measures. In addition, ESMA fostered discussions among NCAs on structuring the enforcement of non-financial information under the current regime of the non-financial reporting directive.

## **High-quality corporate reporting standards**

In 2021, ESMA published its response to the European Financial Reporting Advisory Group (EFRAG) in support of the full endorsement in European law of the new IFRS for insurance contracts (IFRS 17). This new standard will provide a consistent system of requirements to account for insurance and reinsurance contracts.

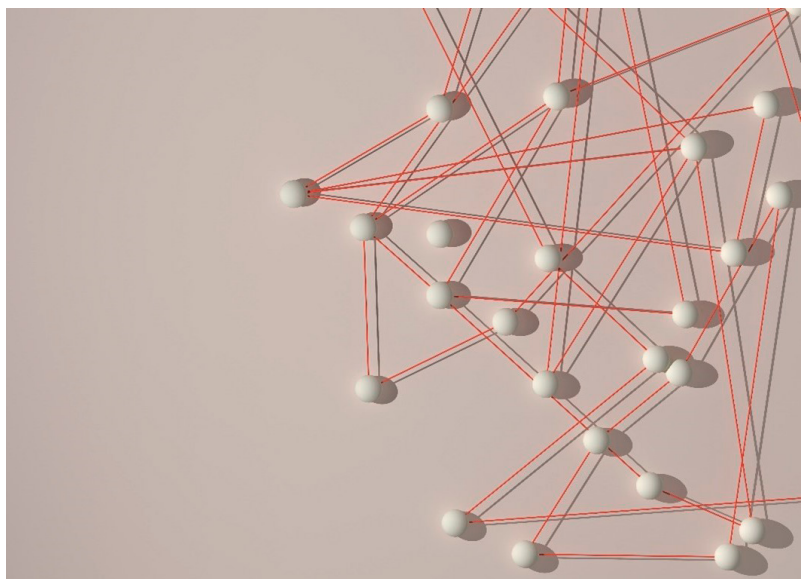
In March 2021, ESMA published a response to the IASB's request for information on the post-implementation review of IFRSs 10, 11 and 12 on consolidation, and provided recommendations for issuers on how to improve the application of the standards and the transparency of their disclosures. The response was supported by the publication of a report on the implementation of those standards in the EU. Further responses by ESMA to IASB consultations related to its proposed agenda for the next 5 years, business combinations under common control, lack of interchangeability (amendments to International Accounting Standard 21) and rate-regulated activities.

As regards sustainability reporting standards, in July 2021 ESMA responded to the IFRS Foundation's consultation supporting the establishment of an International Sustainability Standards Board under its umbrella. ESMA also provided support to IOSCO's work in this area. As regards the EU, ESMA significantly contributed as an observer to EFRAG's preparatory work for European sustainability reporting standards,

as set out in the European Commission’s legislative proposal for a corporate sustainability reporting directive.

### European single electronic format (ESEF)

As regards the ESEF, ESMA published its annual final report updating the RTS on the ESEF taxonomy files and later the XBRL taxonomy files. This was accompanied by an update to the *ESEF Reporting Manual* and in December an update to the ESEF conformance suite. Following the optional delay in the mandatory application of ESEF to 2022, ESMA also monitored the implementation of the ESEF in jurisdictions where the option was not taken and for companies that voluntarily reported under ESEF in other jurisdictions in order to prepare for the first year of mandatory application.



### 2.3.4. Benchmark providers

<b>Objective for 2021</b>	<p>Promote the consistent application of the benchmarks regulation (BMR) requirements and ensure convergent supervisory approaches and practices among NCAs.</p> <p>Ensure ESMA’s readiness to perform its new supervisory and enforcement powers with regard to EU critical benchmarks and recognised third-country administrators of benchmarks.</p> <p>Actively participate in the interest rates reform in the EU and provide the secretariat to the Working Group on Euro Risk-Free Rates.</p>
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In 2021, ESMA’s focus with regard to benchmarks expanded beyond the areas of policy, supervisory convergence and international cooperation. In preparation for ESMA’s new supervisory mandate starting in January 2022, the authority closely engaged with the relevant competent authorities to ensure the smooth transition of the supervisory responsibilities, notably from the FSMA (for the administrator of the EU critical benchmark Euribor), the BaFin and the Central Bank of Ireland (for the recognised third-country administrators). ESMA adapted its organisation, strengthened its supervisory capabilities and developed its first supervisory strategy to fulfil its new supervisory responsibilities. ESMA also started engaging with third-country administrators interested in becoming recognised in the EU.

### Policy and supervisory convergence

With the aim of advising the Commission on fees to be paid by benchmark administrators that are supervised by ESMA starting in January 2022, ESMA published its final report on its technical advice regarding supervisory fees for benchmark administrators under the BMR in February 2021. Supervisory fees will be collected from administrators of critical benchmarks and administrators of third-country benchmarks that are subject to the EU recognition regime. ESMA’s final report specifies the type of fees, the services for which fees are due, the amount of the fees and the frequency of payment.

In September 2021, ESMA published guidelines on methodology, oversight function and record keeping. These guidelines were triggered by observations during the COVID-19 pandemic and were aimed at ensuring the convergent application of the BMR, focusing on adjustments to benchmarks in exceptional circumstances in relation to transparency of methodology, oversight function and record-keeping requirements.

In March 2021, ESMA published its technical advice for the Commission on procedural rules for imposing fines and penalties on benchmark administrators under its direct supervision. In May 2021, ESMA issued a supervisory briefing focusing on the presence of an administrator in its Member State of location and on outsourcing. The briefing provided guidance on how NCAs should effectively supervise administrators that are part of a group that may include or have links to non-EU entities. It also dealt with the appropriate outsourcing arrangements, where the service provider is located outside the EU.

## European and international cooperation

ESMA issued four opinions to the NCAs that recognised or endorsed third-country benchmarks in the previous 2 years, assessing how these NCAs have applied the relevant legal requirements. ESMA identified good practices in the context of an endorsement application and a recognition application, and areas of the BMR where further clarification could support the development of consistent supervisory practices and approaches among NCAs.

In June 2021, the European Commission, the European Central Bank, the EBA and ESMA issued a joint statement in which they strongly encouraged market participants to use the time remaining until the cessation or loss of representativeness of all London Interbank Offered Rate (LIBOR) settings to substantially reduce their exposures to these rates.

In 2021, ESMA replaced the European Central Bank as the secretariat of the Working Group on Euro Risk-Free Rates. Under ESMA's secretariat, the working group has focused on the transition from LIBORs and Euro Overnight Index Average (EONIA) to the relevant risk-free rates. The working group issued several publications to promote the transition ahead of the cessation of LIBORs and EONIA. Moreover, the working group actively engaged with the Commission regarding the discontinuation of EONIA and of GBP and JPY LIBORs, including in the context of the designation of the statutory replacement rate of EONIA.

## 2.3.5. Credit rating agencies

### Objective for 2021

Assess registration applications under the CRA regulation: ensure that registrants meet the regulatory requirements and objectives of the CRA regulation and that applications are completed within regulatory deadlines.

Ensure that credit ratings in the EU are independent, objective and of high quality by conducting timely supervisory activities with a lasting impact.

Ensure the timely indication of key supervisory risks/concerns to support the proactive and outcome-based supervision of CRAs.

Request timely and effective remediation by CRAs of supervisory concerns and adopt enforcement actions where breaches of the CRA regulation are identified.

In 2021, the pandemic outbreak continued to have a significant impact on the business and risk profile of CRAs. Therefore, ESMA, in accordance with its risk-based approach, reassessed its supervisory focus, reprioritised some activities and set up dedicated monitoring plans.



ESMA maintained regular interactions with CRAs and further developed an analytical framework for monitoring credit rating activity in relation to the pandemic. The analytical framework used the data reported to ESMA by the CRAs and allowed ESMA to inform relevant stakeholders of CRA rating activity and identify supervisory concerns.

In its engagement with CRAs, focused in particular on business continuity, the incorporation of ESG factors in credit ratings' disclosures, IT, and information security and adherence to the key requirements of the CRA regulation (e.g. the proper application of methodologies, conflicts of interest, internal controls, transparency and governance).

## Policy developments

ESMA provided the European Commission with advice on supervisory fees, assessed the implementation of the authority's guidelines on disclosure and issued guidance in the area of preliminary ratings. Furthermore, ESMA worked to provide the Commission with an assessment of the level of integration of ESG factors in CRA methodologies.

In June 2021, following a request from the Commission, ESMA provided its final technical advice to the Commission on the proposed revision to the delegated regulation on supervisory fees charged to CRAs. ESMA's proposals aligned the approach to collecting supervisory fees across supervisory mandates while ensuring that fees charged remained in proportion to CRAs' turnover.

In accordance with ESMA's supervisory strategy and as subsequently requested by the Commission in its strategy for financing the transition to a sustainable economy, ESMA shared its assessment of the implementation of its *Guidelines on Disclosure Requirements Applicable to Credit Ratings*, with a focus on the disclosure of material ESG factors in credit rating press releases. These were further explained through a dedicated risk analysis article published in February 2022. The article found that the overall level of disclosures has increased since the guidelines were introduced, but that a high level of divergence across CRAs and ESG factors leaves some room for further improvement. ESMA will consider the appropriate supervision and policy tools for achieving further transparency in this area.

In 2021, ESMA began work to deliver guidelines that provide greater clarity to market participants as to whether or not entities or debt instruments have been

subject to an initial review or a preliminary rating. The final guidelines were published in early 2022 and provide guidance on what interactions are relevant to disclosure, the content and timing of disclosures, and steps to ensure that these disclosures are more accessible to investors and the market.

Finally, ESMA published an opinion on the usability and accessibility of credit ratings that are disclosed on CRAs' websites as well as on the European Rating Platform. The usability of these credit ratings is severely limited, as they cannot be accessed in a machine-readable format or downloaded in sufficient numbers to be used for regulatory purposes. ESMA proposed that the legislators amend the CRA regulation or take alternative legislative action to address these concerns.

## Direct supervision

### *Small credit rating agencies*

In 2021, ESMA took stock of market conditions since 2015, when the CRA regulation's reporting requirement entered into force using a unique dataset containing all EU ratings issued and outstanding covering EUR 20 trillion worth of EU financial products and nearly 6 000 issuer ratings. It is clear that the landscape for small CRAs at EU level is a challenging one: small CRAs are used almost exclusively in local single-rating markets (the 'periphery') and are locked out of the larger 'core' market (of issuers seeking more than one rating for their products or themselves).

In 2021, ESMA implemented more calibrated engagement with small and medium-sized CRAs. This new approach has involved creating a dedicated contact point for supervisory dialogue, and centralising supervisory expertise relevant to these entities.

### *Market trends and risks in outstanding ratings*

ESMA has been actively monitoring the credit ratings market to identify and address new risks posed by industry and capital market developments, such as those stemming from the COVID-19 crisis, developments in ESG products, the assessment of cyber-risk, the impact of new technologies and the rise of collateralised loan obligation issuance.

Exploiting ESMA's extensive Credit Ratings Data Reporting Tool (RADAR) database of credit rating actions, which covers EU and non-EU ratings, ESMA published an article as a part of its Trends Risks and Vulnerabilities (TRV) series on how credit ratings

evolved during the exceptional circumstances of early 2020. Overall, corporate and sovereign ratings were downgraded rapidly following the onset of the pandemic, especially non-financial corporate ratings. Sectors particularly vulnerable to declining economic activity, such as the energy and consumer cyclical sectors, were most affected.

In response to the COVID-19 crisis, ESMA continued to engage with CRAs to monitor the impact of COVID-19 on the most exposed sectors and on their operations, focusing on business continuity and adherence to key requirements of the CRA regulation. For certain asset classes, ESMA assessed the ability of existing methodologies to address stressed market conditions, and the timely incorporation of available information in rating actions taken during the pandemic.

Through its data-driven monitoring activities, ESMA identified certain areas of potential risk, for example in the context of BBB-rated entities, the high-yield bond market, CRAs' rating surveillance processes and application of specific methodologies.

#### *Methodologies and quality-rating process*

ESMA continued to review material changes and to assess errors in the rating methodologies and in their application. In this respect, ESMA engaged with CRAs to assess practices around CRAs' identification, evaluation, resolution and disclosure of errors. In its assessment, ESMA noted some discrepancies among CRAs and stressed the importance of having in place a comprehensive definition of error and ensuring that they are immediately notified of the errors.

A key area of attention has been the changes in rating methodologies. ESMA focused its work on assessing the drivers of changes to methodologies and on ensuring that CRAs use methodologies that are robust, systematic, continuous and subject to validation, including back-testing.

Concerning the quality of the rating process, ESMA assessed how CRAs organise and implement analytical support activities across their organisations, with a particular focus on the control environment deployed for intragroup outsourcing arrangements.

#### *CRAs' Strategy and governance*

In 2021, ESMA actively engaged with CRAs' senior management to address concerns in the area of strategy and governance. In particular, ESMA focused on the integrity and effectiveness of CRAs' boards, assessing their independence from the rating business and their ability to provide sufficient oversight. In October 2021, ESMA held a virtual round table for independent non-executive directors (INEDs) to share examples of leading practices in the areas of culture, strategy and internal controls, and to facilitate a discussion about risk management. Following the round table, ESMA sent a letter to all CRAs highlighting that INEDs must remain independent from CRAs' operations to fulfil their oversight responsibilities. INEDs play a key role in shaping their firm's culture and strategy and in providing constructive challenge in areas such as business development, internal controls and risk management.

In addition, ESMA has assessed the implementation of its guidelines on internal controls published in 2020. In this respect, ESMA has observed an overall satisfactory maturity level within the industry, also considering proportionality for smaller CRAs. ESMA has identified key areas for improvement in the control environment and has engaged with the senior management of CRAs to communicate its expectations.

#### *Information technology and security*

Throughout the year, ESMA reviewed all IT and information security incidents and had follow-up discussions with CRAs where needed. In addition, ESMA engaged with CRAs to assess their approach to cyber-risk and to address identified concerns on cloud outsourcing.

In November 2021, ESMA held a virtual round table on IT and information security to discuss regulatory expectations and to facilitate the exchange of views on the challenges faced by small and medium-sized CRAs in this area, considering the principle of proportionality. ESMA gave examples of good practices adopted and explained some of the key risks arising across the industry in the areas of IT governance, outsourcing, business continuity and information security.



## 2.4. Markets and infrastructures

### 2.4.1. Third-country central counterparties

#### Objective for 2021

Recognise (or review the recognition of) third-country CCPs providing clearing services in the EU.

#### Direct supervision of Tier 2 third-country central counterparties

In July 2021, ESMA developed and published a methodology for assessing if third-country CCPs or some of their clearing services are of such substantial systemic importance that the third-country CCPs should not be recognised as providing certain clearing services or activities in the EU.

Based on this methodology, ESMA published in December a report summarising its assessment of Tier 2 CCPs established in the UK. The report identified three clearing services, as being of substantial systemic importance to the EU's financial stability or one or more of its Member States. These are SwapClear of LCH Ltd for the clearing of interest rate derivatives denominated in euro and Polish zloty, in addition to the credit default swaps service and the short-term interest rate derivatives service of ICE Clear Europe Ltd, in both cases for euro-denominated products.

the assessment concluded that the costs of derecognising these clearing services would outweigh the benefits at this point in time and therefore did not recommend that the European Commission should derecognise these clearing services.

However, ESMA found that the limited supervisory powers could hamper authorities' access to timely information and their opportunities to intervene effectively to manage financial stability risks, in particular in crisis events and in the context of Tier 2 CCP recovery and resolution. ESMA set out several proposals to address these shortcomings in an accompanying public statement, such as considering appropriate incentives for reducing the size of EU exposures to Tier 2 CCPs and expanding equivalence assessment and ESMA's crisis management toolbox to cover cases of CCP recovery and resolution.

In parallel, ESMA enhanced its direct engagement with the Tier 2 CCPs and the Bank of England by setting up dedicated supervisory teams, establishing supervisory programmes and developing supervisory procedures for Tier 2 CCPs, including the validation of three significant model changes.

#### Recognition and monitoring of Tier 1 third-country central counterparties

ESMA launched the tiering and review of the recognition of third-country CCPs recognised by ESMA by September 2020. This affected 34 recognised CCPs. By December 2021, ESMA had adopted tiering decisions for half of the third-country CCPs undergoing review. ESMA also assessed the application of three

US CCPs, following the adoption in January 2021 of an equivalence decision for the US Securities and Exchange regulatory framework for CCPs.

ESMA launched negotiations to update the supporting memoranda of understanding with 15 jurisdictions, to improve the notification and exchange of information on third-country CCPs, as well as the legal and regulatory and supervisory developments in the relevant third-country jurisdictions. As part of these efforts, in January 2021 the Commodity Futures Trading Commission and ESMA signed a new memorandum of understanding regarding the cooperation and the exchange of information with regard to certain registered derivatives clearing organisations established in the United States that are CCPs recognised by ESMA under EMIR.

Based on the data that it had collected from third-country CCPs, in December, ESMA discussed a first report on the risks arising from recognised third-country CCPs in the EU, beyond those related to the two Tier 2 CCPs.

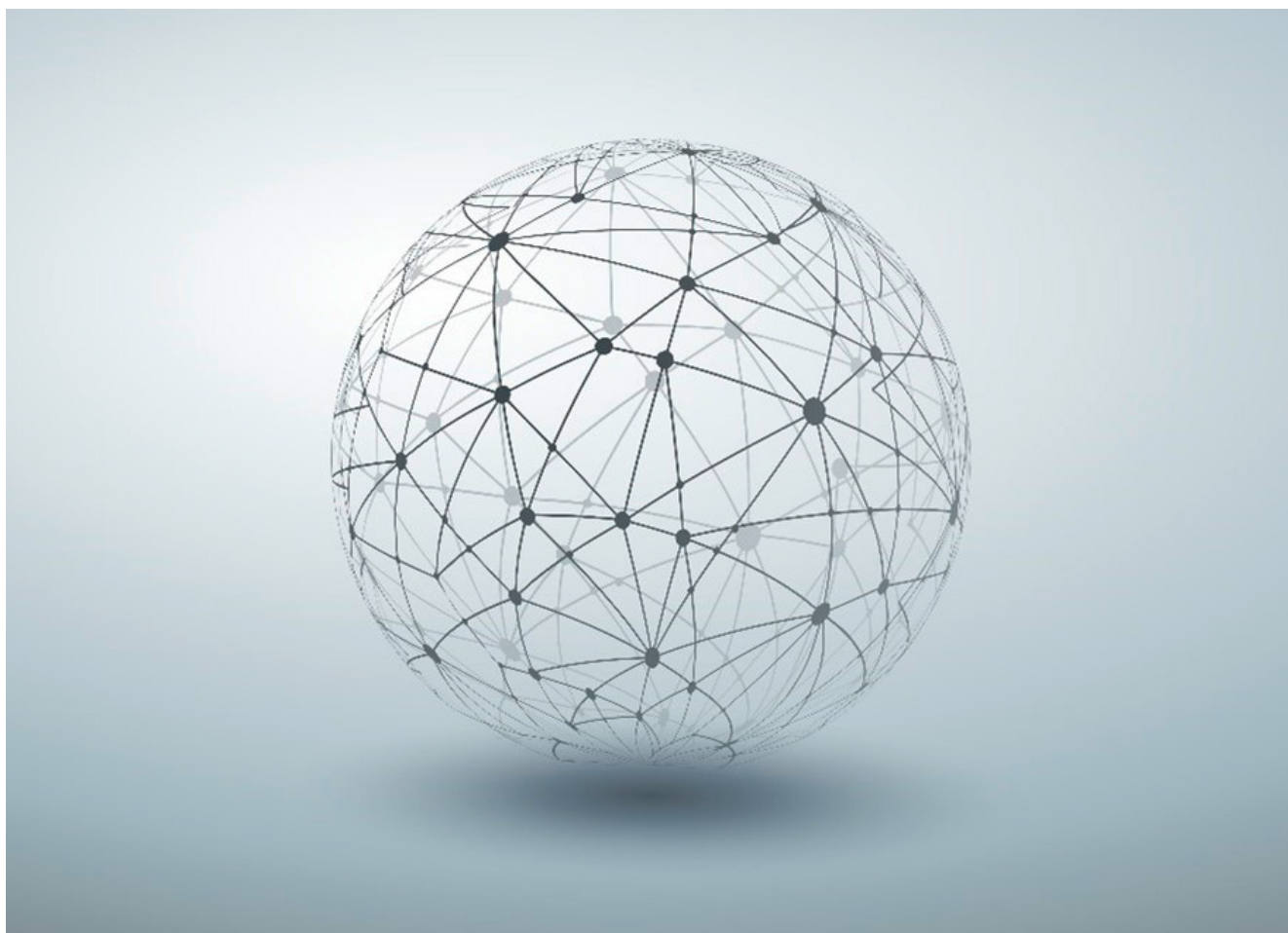
## 2.4.2. European Union central counterparties

### Objective for 2021

Ensure the consistent implementation of:

- EMIR for EU CCPs through the newly created CCP Supervisory Committee, including, for instance, the issuance of opinions following consultations with NCAs on a range of supervisory topics and decisions, as well as continued and enhanced coordination across EU NCAs;
- the CCP recovery and resolution regulation once adopted, including, for instance, the issuance of guidelines.

Contribute to the single rulebook in the area of CCPs by developing the level 2 regulations resulting from EMIR 2.2 and from the CCP recovery and resolution regulation once adopted.



## Consistent implementation of requirements applicable to CCPs

In 2021, to ensure the consistent implementation of the regulatory framework for EU CCPs, ESMA adopted 11 validations and opinions. In addition, ESMA published two final reports on the revised guidelines on written agreements between members of CCP colleges, published in January, and the guidelines aimed at assisting competent authorities in the application of EMIR provisions dealing with the review and evaluation of CCPs, issued in February.

To equally ensure the consistent implementation of the recovery and resolution regulatory framework, in July 2021 ESMA launched four public consultations on draft guidelines covering recovery aspects of the CCP recovery and resolution regulation and in September 2021 held an open hearing to gather stakeholders' feedback. These were followed by two additional consultations held in November 2021 on draft guidelines covering resolution aspects of the CCP recovery and resolution regulation. These were important steps towards ensuring the consistency of the EU CCP recovery and resolution regimes at EU level in line with the highest international standards. The final report was published in January 2022.

## Central counterparty stress tests

In June 2021, ESMA published the framework for its fourth stress test for CCPs to assess the resilience of recognised EU and Tier 2 third-country CCPs to adverse market developments, and their safety from such developments, and to identify any potential shortcomings. The fourth stress test uses improved methodologies, based on lessons learned from previous exercises, and will also assess the combination of concentration costs and credit losses when liquidating defaulting portfolios. The fourth stress test addresses for the first time a specific subset of operational risks regarding the reliance of CCPs on third-party providers.

## Completing the single rulebook

In April 2021, ESMA published its final report containing draft RTS on changes to CCPs' services and activities, as well as models and parameters under EMIR. The draft RTS aimed to specify (i) the conditions under which additional services or activities require an extension of authorisation; (ii) the conditions under which changes to the CCPs' models and parameters require validation;

and (iii) the procedures for consulting CCP colleges on whether or not those conditions are met.

In February and June, ESMA organised two workshops on CCPs' margins and procyclicality in times of crisis. Their aim was to exchange views on the functioning of CCPs' anti-procyclicality measures during the pandemic based on ESMA's research and to examine the lessons learned to determine possible improvements.

In November, ESMA launched a consultation examining the potential extension of the list of financial instruments eligible for investments by CCPs under EMIR, including EU MMFs. The consultation paper explored the benefits and disadvantages of the potential inclusion of financial instruments that are considered highly liquid with minimal market and credit risk. It also looked at whether or not the inclusion of MMFs is authorised under the EU MMFR.

## 2.4.3. Data reporting service providers

### Objective for 2021

Continue to contribute to the establishment of a robust DRSPs regulatory framework and promote supervisory convergence in the area of DRSPs among NCAs.

Provide technical advice and/or develop technical standards as a follow-up to the changes pertaining to DRSPs that were introduced to MiFID II/MiFIR following the ESAs' review. Ensure that the RTS and ITS further specifying MiFID II/MiFIR deliver on their objectives and propose amendments to the relevant regulations if necessary.

Ensure ESMA's readiness to perform its new supervisory and enforcement powers with regard to DRSPs

In 2021, ESMA focused on preparing for its new responsibilities as the direct supervisor of the largest EU DRSPs, which took effect in January 2022. As part of this work, ESMA developed a new IT system (built using big data technologies) to support the processing, storage and supervisory analysis of large volumes of MiFIR transaction data. Furthermore, ESMA worked on finalising the single rulebook and engaged with NCAs to organise the handover of supervisory files while putting in place new internal processes and procedures.





## Direct supervision

DRSPs' handover from NCAs to ESMA required the development of additional delegated regulations. In March 2021, ESMA provided technical advice to the European Commission on these delegated regulations covering (i) the criteria for derogation from ESMA's supervision; (ii) the procedural rules for supervisory measures and penalties; and (iii) authorisation and supervisory fees. ESMA's advice drew on and aimed to ensure consistency with the regulatory frameworks for data providers under ESMA's supervision, including TRs and SRs, and streamline the approach to assessing the derogation criteria.

## Policy developments

In March 2021, ESMA published its final report on the review of transaction and reference data reporting obligations to inform the process relating to the ongoing MiFID II/MiFIR review. The report included recommendations and possible legislative amendments to MiFIR with a view to simplifying the current reporting regimes while ensuring the quality and usability of the reported data.

Owing to a delay in the adoption of the relevant delegated acts, in December 2021 ESMA issued

a statement to clarify the transfer of power and duties relating to supervisory and enforcement activity in the field of certain DRSPs from NCAs to ESMA. The statement outlined the approach to DRSP supervision that it would follow in the interim period until the relevant delegated acts became applicable.

Finally, in August, ESMA consulted on draft RTS under the MiFIR regarding suitability assessments of DRSP management body members.

## 2.4.4. Trading and post-trading

### Objective for 2021

Ensure the consistent application of critical areas and respond to potential amendments to the MAR by issuing new technical standards or by revising existing ones.

Ensure a proportionate and efficient short selling regulatory framework through its reassessment and its consistent application by providing guidance to market participants.

Ensure and promote the consistent application of MiFID II and MiFIR requirements and coordination between NCAs. Further develop a common understanding of arising supervisory challenges in the area of secondary markets, identified as a continued priority for ESMA's convergence activities.

Continue contributing to the review of MiFID II/MiFIR by providing expertise and market intelligence and recommending possible amendments.

Ensure that the RTS and ITS further specifying MiFID II/MiFIR deliver on their objectives and propose amendments to the relevant regulations if necessary.

Contribute to the single rulebook in the area of post trading by reviewing and amending technical standards under EMIR. Monitor and contribute to the consistent implementation and application of EMIR (in particular following the changes introduced by the EMIR refit), in particular through developing reports, publishing Q&As and providing guidance to market participants and NCAs.



## Short selling

Taking stock of the lessons learned during the COVID-19 crisis, in September 2021 ESMA launched a public consultation on the possible review of the short selling regulation (SSR). The consultation paper contained an empirical analysis of the impact of the short selling bans adopted after the COVID-19 outbreak, and several proposals to streamline the framework based on the experience gained during the same period. A final report on the review of certain aspects of the short selling regulation was published in March 2022.

In addition, ESMA has examined the evidence gathered after the emergency decisions adopted until March 2021, which temporarily lowered the notification threshold to 0.1 % of the issued share capital. The analysis showed that a substantial amount of additional and essential information became available to NCAs owing to the reporting of net short positions at the level of 0.1 %. Therefore, ESMA issued an opinion recommending that the European Commission permanently lower the threshold to notify net short positions on shares to NCAs from 0.2 % to 0.1 % of the issued share capital.

## Market abuse

### *Guidelines on delayed disclosure of inside information*

Under the MAR, issuers should publicly disclose as soon as possible any inside information that directly concerns them. After a public consultation, ESMA

reviewed its guidelines on delayed disclosure under the MAR to cover the inside information that issuers that are also financial institutions may possess as a result of interactions with their prudential competent authority.

In particular, the amended guidelines specify that institutions have a legitimate interest in delaying the disclosure of inside information (i) about their intention to carry out redemptions, reductions and repurchases of their own funds until the prudential competent authority has given its authorisation; and (ii) relating to draft supervisory review and evaluation process (SREP) decisions informally communicated to them, until the prudential competent authority's decisions become final.

Furthermore, the amended guidelines specify that information relating to Pillar 2 capital requirements received by institutions within the SREP is highly likely to be price-sensitive and is expected to be considered inside information. In addition, information relating to Pillar 2 capital guidance (P2G) received by institutions within the SREP may be inside information, and price sensitivity is expected when the difference between the P2G and the institution's level of capital is not minor and is likely to result in a major reaction by the institution (such as a capital increase), or when the institution's P2G is not in line with market expectations.

### *Other activities related to the market abuse regulation*

In May 2021, ESMA published a non-binding negative opinion on an intended accepted market practice

(AMP) on liquidity contracts notified by the French Autorité des marchés financiers. ESMA considered the new practice incompatible with the MAR and a related opinion on points for convergence issued by ESMA in 2017. In its assessment, ESMA expressed concerns about the absence of limits on positions and the presence of volume and resources limits that are significantly higher than those recommended in its 2017 opinion on points for convergence.

In November, ESMA published its annual report on administrative and criminal sanctions, and other administrative measures, issued across the EU under the MAR. The report found that NCAs and other authorities imposed a total of EUR 17.75 million in fines related to 559 administrative and criminal actions under the MAR. The report described an increase in the number of administrative sanctions and measures in 2020 compared with 2019, rising to 541 from 279 the preceding year. However, it also found that the financial penalties imposed related to administrative sanctions, were significantly lower, reaching only EUR 17.5 million in 2020, compared with EUR 82 million in 2019.

Finally, in December, ESMA published its [annual report](#) on the application of AMPs in accordance with the MAR. The number of liquidity contracts and the volumes traded under the AMPs decreased from June 2020 to June 2021 for the four NCAs that adopted them (Comisión Nacional del Mercado de Valores, Comissão do Mercado de Valores Mobiliários, Commissione Nazionale per le Società e la Borsa and Autorité des marchés financiers), with only a marginal number of contracts operational under the Italian and Portuguese AMPs.

## Transparency requirements under MiFIR

To reflect the findings and recommendations of various MiFID review reports published by ESMA in 2019 and 2020, in July ESMA launched a consultation paper reviewing the transparency requirements under MiFIR. As the European Commission was working in parallel on amendments to the MiFID II/MiFIR framework, ESMA limited the scope of its review of RTS 1 and 2, focusing on more technical issues and covering in particular:

- the recommendations made in the ESMA MiFID review reports on equity and non-equity transparency that could be addressed at level 2 without prior change of MiFID II/MiFIR;
- amendments aimed at improving the quality of over-the-counter (OTC) data, including in view of

the potential establishment of a consolidated tape for equity and non-equity instruments (notably detailing changes relating to the treatment and flagging of non-price-forming transactions as well as clarification on reporting fields);

- technical amendments based on feedback provided by stakeholders, in particular during the technical call for evidence on RTS 1 and 2 that was published in 2020.

## MiFID/MiFIR review

ESMA provided multiple reports and opinions to the EU institutions to inform the processes relating to MiFID/MiFIR.

In April, ESMA published its final report on the functioning of OTFs. The main focus of the report was on analysing the definition of OTFs, taking a specific look at the definition of a multilateral system and the trading venue perimeter. The report also looks at the number of OTFs authorised in the EU and their market share, examines how OTFs apply discretion and reviews their use of matched principal trading.

After a consultation launched in May, ESMA published the *MiFID II/MiFIR Annual Report* under RTS 2 in July. ESMA proposed that the Commission should move to stage 3 of the phase-in for the transparency requirements (to improve the currently limited pre- and post-trade transparency available to market participants in the bond market), for both the average daily number of trades threshold used for the quarterly liquidity assessment of bonds and the pre-trade size specific to the instrument threshold for bonds.

In September, ESMA published the MiFID II/MiFIR review report on algorithmic trading. The final report concluded that no fundamental issues had emerged with regard to the MiFID II algorithmic trading regime, which overall delivered on its objectives. ESMA nevertheless made some recommendations aimed at simplifying the regime and increasing its efficiency.

## Transparency

Following a public consultation that was launched at the end of 2020, in June ESMA published its final guidelines on the MiFID II/MiFIR obligations on market data. These guidelines provide clarity on the requirements to publish market data on a reasonable commercial basis and to make market data available free of charge 15 minutes after its publication.

In May 2021, ESMA published a working paper on the impact of the double volume cap mechanism on European equity markets, highlighting the overall positive impact of the double volume cap mechanism on market liquidity in the continuous trading and auction markets (lit markets).

### **Periodical ESMA publications and calculations under MiFID II/MiFIR**

An important part of ESMA's role is to publish a range of periodical reports and data extracts to support national supervisors and market participants. This includes (i) quarterly liquidity assessments for bonds subject to the pre- and post-trade requirements of MiFID II and MiFIR; (ii) quarterly reports with data for the systematic internaliser quarterly calculations for equity, equity-like instruments, bonds and other non-equity instruments under MiFID II and MiFIR; (iii) annual transparency calculations for equity, equity-like and non-equity instruments; and (iv) annual reports on waivers and deferrals for equity and non-equity instruments. In 2021, ESMA published the reports for 2019 and 2020. Overall, ESMA observed no major change in market microstructure, and waivers and deferrals regimes remain an integral part of the EEA's market structure.

### **Transition to risk-free rates – clearing and trading obligations**

To amend the scope of both the clearing obligation and the derivatives trading obligation (DTO) to accompany the benchmark transition for OTC derivatives, after a consultation in July 2021, ESMA published its final report in November 2021. The report set out proposed draft RTS amending the scope of the clearing obligation and DTO for OTC interest rate derivatives denominated in euro, pounds sterling, yen and US dollars, as part of the transition away from EONIA and LIBOR to alternative benchmarks, primarily risk-free rates such as €STR. It also presented a timeline for when these changes should come into effect.

ESMA's proposed amendments aimed to ensure a smooth benchmark transition while maintaining an effective scope for these two obligations, in line with the G20 objectives. In preparing the report, ESMA worked closely with the authorities from third-country jurisdictions, who have also been revising their clearing obligations and DTOs in order to facilitate international convergence as far as possible.

Following the publication of the draft RTS and given the time it will take for them to become applicable,

ESMA issued a public statement to accompany the benchmark transition. ESMA encouraged NCAs to take a risk-based approach to their supervisory tasks and not to prioritise their supervisory actions in this area.

### **Commodity derivatives, emission allowances and derivatives thereof**

In 2021, ESMA published nine opinions on position limits regarding commodity derivatives under MiFID II/MiFIR. ESMA found that the proposed position limits are consistent with the objectives established in MiFID II and with the methodology developed for setting those limits.

In May, ESMA published an updated opinion on ancillary activity calculations. The opinion provided an estimate of the market size of commodity derivatives and emission allowances for 2020. The estimation of market sizes is important to enable market participants active in commodity derivatives to assess whether or not they exceed the ancillary activity thresholds in MiFID II and consequently have to apply for authorisation as an investment firm.

### **EMIR clearing thresholds**

In November 2021, ESMA published a discussion paper on the EMIR clearing thresholds, seeking feedback from market participants and in particular from counterparties trading OTC derivatives and from CCPs. The report aimed to collect stakeholder views on the effectiveness and proportionality of the coverage provided by the EMIR clearing thresholds and, more broadly, on the EMIR regime as a whole. It also analysed the effectiveness of the EU regime by comparing it with similar third-country regimes. In addition, the discussion paper examined feedback on an issue raised by energy firms who indicated that they were constrained in their commercial and hedging activities owing to the EMIR clearing threshold framework. ESMA's report, based on a preliminary analysis of EMIR TR data collected before the withdrawal of the United Kingdom from the EU, presented key metrics on financial and non-financial counterparties and the volume of OTC derivative trades captured under the current regime.

### **Supervisory measures and penalties regarding compliance with the EMIR over-the-counter derivative requirements**

In July 2021, ESMA published its third report on supervisory measures and penalties in relation to

counterparties' compliance with the EMIR OTC derivative requirements. Notably, this third exercise covers the period from January 2019 to December 2020 and takes into account the changes introduced to EMIR through the EMIR refit in 2019 and different aspects affecting EMIR-related activities, such as preparations for the United Kingdom's withdrawal from the EU and the COVID-19 pandemic.

The report highlights, among other aspects, an increase in the use of EMIR data for supervisory purposes, some challenges in looking at group activities, a need for more supervisory measures regarding third-country entities with a link to the EU and the benefits of exchanges among NCAs. Such exchanges are facilitated by ESMA with initiatives such as supervisory case discussions that allow NCAs to exchange their experiences. The report also provided more clarity on which counterparties are subject to the clearing obligation thanks to the expanded clearing threshold notification mechanism introduced under EMIR refit. In addition, the report includes reference to enforcement cases and sanction amounts.

### Effective preliminary investigations of an alleged breach of European Union law by national competent authorities

Another important preliminary inquiry carried out by ESMA in 2021 concerned an NCA's practice of disclosing confidential data received from natural and legal persons under the SSR to whoever requested access under its national legislation regarding public access to documents. After the receipt of information from industry associations, ESMA liaised with the NCA concerned. Following these interactions, the NCA voluntarily decided to change its practice and no longer discloses these data. The case was therefore closed by ESMA without the need to formally open a breach of EU law investigation.



## 2.4.5. Central securities depositories

### Objective for 2021

Monitor and contribute to the consistent implementation and application of the CSDR, in particular through the development of reports and by providing guidance to market participants and NCAs.

Contribute to the single rulebook by developing new technical standards or revising existing ones, if amendments to the CSDR are required, and by developing reports on CSDR matters.

### Reports on the implementation of the central securities depositories regulation

In July, ESMA published its CSDR report on the provision of bank-type ancillary services by CSDs. The report contains suggestions to enhance the authorisation process that allows CSDs to provide bank-type ancillary services themselves. It also includes several proposals to facilitate the provision of bank-type ancillary services by non-bank CSDs, in particular to enable them to offer settlement services in foreign currencies.

### Preparation and implementation of the central securities depositories regulation settlement discipline regime

In September, ESMA published a final report on guidelines on settlement fails reporting.

ESMA also announced that, by the start date of the CSDR settlement discipline regime in February 2022, it would start publishing information on trading venues with the highest turnover for bonds. This will enable CSDs to access centralised and transparent information facilitating the application of cash penalties for bonds.

In addition, considering both the changes expected from the CSDR review to the CSDR buy-in regime, and the serious difficulties raised by market participants in implementing the existing buy-in regime, in September ESMA wrote to the European Commission asking them and the co-legislators to consider delaying the mandatory buy-in regime.

In December, ESMA published a statement to clarify information on the practical implementation of the CSDR settlement discipline regime. This supervisory

statement calls for the deprioritisation of the supervision of the buy-in requirements. The application of the other CSDR settlement discipline requirements, in particular the settlement fails reporting and the cash penalties regimes, would apply as planned as of February 2022.

## 2.4.6. Securitisation repositories

<b>Objective for 2021</b>	<p>Promote the consistent application of the securitisation regulation (SECR) requirements and the exchange of supervisory experiences and coordination among NCAs. This applies, in particular, to the area of simple, transparent and standardised (STS) securitisation.</p> <p>Assess registration applications under the SECR and be the gatekeeper ensuring the registration of firms with high quality standards.</p> <p>Effectively identify the risks linked to the quality of the data of SRs. This will have a timely and lasting impact on supervisory activities at individual SR level.</p>
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In 2021, ESMA registered and began supervising the EU's first two SRs. The establishment of SRs completed the roll-out of the securitisation disclosure requirements, which had been under way for several years. Consequently, ESMA dedicated resources to setting up infrastructure for monitoring data flows, maintaining and updating guidance, and communicating with reporting entities, national supervisors, and private and public data users.



In addition, ESMA contributed to the implementation of the capital markets recovery package by developing draft technical standards related to STS notification for synthetic securitisation.

### Direct supervision

The SRs are required to provide direct and immediate access to securitisation data, free of charge, to investors and potential investors as well as to all the entities listed in the SECR to enable them to fulfil their respective responsibilities, mandates and obligations.

In June 2021, ESMA approved the registration of the first two SRs: European DataWarehouse GmbH, based in Germany, and SecRep B.V., based in the Netherlands. Since 30 June 2021, reporting entities must make their securitisation data available through one of the registered SRs. Furthermore, securitisation data users have been encouraged to report any data quality issues that they have identified to ESMA.

Following the registration of the two SRs, ESMA has monitored the proper functioning of securitisation data reporting to SRs and had discussions with the SRs where needed. ESMA also engaged and cooperated with relevant stakeholders and other regulatory and supervisory bodies at EU and third-country levels.

In 2021, ESMA published updated technical reporting instructions and an XML schema on securitisation disclosure templates and continued providing Q&As to help stakeholders to better understand the SECR and in particular the disclosure templates falling under ESMA's remit.

### Simple, transparent and standardised securitisation notifications to ESMA

In October 2021, ESMA submitted its final report on technical standards specifying the content and format of the STS notification for on-balance sheet securitisations (synthetic securitisations) to the European Commission. The report aimed to ensure consistency between the STS notification frameworks for traditional and synthetic securitisations, while considering the specific nature of synthetic securitisations. Synthetic securitisations are almost exclusively executed in the private markets between a credit protection buyer and a credit protection seller.

ESMA also continued its work towards replacing the previous interim solution of an STS list on ESMA's website with a new STS register. This allowed an automated process to facilitate the delivery of STS



notifications, which went live on 2 February 2022. The new register provides investors and supervisors with improved access to individual STS traditional securitisations to assist them in performing their respective due diligence and supervisory tasks.

### 2.4.7. Trade repositories

<b>Objective for 2021</b>	Ensure the high quality, integrity, confidentiality and availability of TR EMIR data by conducting timely supervisory activities with lasting impact.
	Following the registration of EU firms providing securities financing transaction (SFT) reporting services in 2020, effectively identify and address key risks to the objective that SFT data are of good quality by conducting timely supervisory activities with lasting impact. Request remediation at individual TR level.
	Minimise disruptions to the transition to EU TRs following the end of the United Kingdom's transition period.

#### Direct supervision

Following the end of the transition period of the United Kingdom's withdrawal from the EU in January, ESMA withdrew the registration of four UK-based TRs. As

a result of these withdrawal decisions, EU derivatives and SFTs subject to the reporting obligation under EMIR and the securities financing transactions regulation (SFTR) needed to be reported to an EU-established TR.

In this context, ESMA put in place several supervisory actions to ensure the uninterrupted and stable provision of TR services in the EU and the continuity of its supervisory monitoring.

In 2021, ESMA held four virtual round tables with the TRs to discuss several policy topics and general supervisory issues. The round tables proved to be an effective tool to gather feedback from the TRs and to facilitate efficient interactions between ESMA and the supervised firms, communicate ESMA's expectations and ensure consistency in practices across the industry.

#### Data quality

In line with the objectives set in the 2021 work plan, one of ESMA's main supervisory objectives was to enhance the quality of data reported to TRs under EMIR and the SFTR. ESMA's key focus was on access to data for ESMA and other public authorities, the accuracy and integrity of EMIR reports, anomaly detection and EMIR reconciliation.

ESMA has also been focusing on identifying potential TR data quality issues in several areas, with specific projects following these up with relevant remediation plans for TRs. In particular, ESMA has assessed (i)

the correct implementation of the data filtering rules to provide EMIR data to regulators in accordance with their mandates; (ii) the adherence to EMIR and SFTR validation rules by TRs; (iii) the consistency and correct generation by TRs of trade activity and trade state reports; (iv) correct TR data ingestion; and (v) the accurate publication of SFTR data.

As part of its regular data-driven monitoring of TRs, ESMA has been identifying various counterparty reporting issues. In those cases, ESMA has been liaising with the relevant NCAs. Where issues have affected many counterparties (duplicated reporting, untimely reporting, incorrect valuations of options contracts, outliers, etc.), ESMA has shared relevant data and information with all of the NCAs affected to support their supervisory activities. In addition, ESMA increased the exchange of identified counterparty reporting issues to support the NCAs in their EMIR and SFTR supervisory mandates.

Finally, ESMA also processed around 30 TR data quality issues reported by EMIR and SFTR data users (NCAs and central banks) and followed up with the TRs to monitor remediation.

### *Information technology and security*

In line with the objectives set out in the 2021 work programme, ESMA focused on the risks related to IT, information security, strategy and governance arrangement in certain TRs. In the area of cloud outsourcing, for example, ESMA engaged with TRs that had decided to outsource parts of their IT environment to cloud service providers (CSPs) to assess whether or not they met the relevant standards and requirements, including ESMA's cloud computing guidelines. The TRs were promptly notified of deficiencies identified, and appropriate remedial actions have been requested.

ESMA also analysed and assessed more than 300 information incidents, which affected the confidentiality, integrity and availability of EMIR and SFTR data reported by TRs. ESMA followed up accordingly with the firms to ensure that the issues were appropriately addressed.

### **EMIR and SFTR guidelines**

In April 2021, ESMA published a final report and guidelines on reporting periodic information and material changes by TRs supervised under EMIR and the SFTR. These guidelines aimed to increase the transparency of TRs supervised by ESMA. In addition, ESMA published an updated statement on the

implementation of legal entity identifier requirements for third-country issuers under the SFTR reporting regime. The updated statement set out the expectations for TRs and counterparties, as well as the relevant supervisory actions to be carried out by authorities.

The final report and guidelines on the calculation of positions in SFTs by TRs under the SFTR were published in May. These guidelines aimed to ensure consistency of position calculation across TRs while considering the specificities of SFT reporting.

In May 2021, ESMA launched a consultation on amendments to its guidelines on data transfer between TRs under EMIR and its guidelines on data transfer between TRs under the SFTR. The new set of guidelines, which was published in March 2022, will further enhance the framework for data transfer of derivatives and SFTs between TRs.

### **Supervisory fees charged by ESMA to trade repositories**

In July 2021, following a request from the European Commission, ESMA provided advice on a proposed revision to the delegated regulations on supervisory fees charged to TRs under EMIR and under the SFTR. ESMA's proposals aligned the approach to collecting supervisory fees across supervisory mandates while ensuring that fees charged remained proportionate to TRs' turnover.

## **2.5. Risk assessment**

In undertaking risk assessments, ESMA monitors and assesses market developments and risks within its remit, as well as trends in financial innovation, sustainable finance and retail consumer behaviour. The risk assessments are carried out with a view to supporting ESMA's objectives of promoting investor protection, orderly markets and financial stability.

### **2.5.1. Risk monitoring and analysis**

<b>Objective for 2021</b>	Identify financial market risks and report on these risks to the relevant institutions.
	Work to ensure a convergent approach to identifying areas where product intervention powers provided by MIFIR could be used.





## Trends, risks and vulnerabilities

ESMA's trends, risks and vulnerabilities reports and risk dashboards contribute to promoting financial stability and enhancing consumer protection by regularly investigating cross-border and cross-sector issues in financial markets, at both wholesale and retail levels. ESMA publishes TRVs twice per year, complemented by a risk dashboard.

In February 2021, the first TRV report was published. The report extensively covered the recovery of EU financial markets from the significant COVID-19-related market stress in the second half of 2020, amid notable public policy interventions, the availability of new vaccines and a reduction in uncertainty stemming from the United Kingdom's withdrawal from the EU. However, ESMA warned that risks in markets under its remit remained very high, as it continued to observe growing asset valuations against weak economic fundamentals. Decoupling was identified as the main risk to EU financial markets, highlighting the possibility of potential sudden market corrections in a context in which investors remained sensitive to events.

Financial markets continued their recovery during the first half of 2021 and the global economic outlook improved. ESMA continued to observe a prolonged period of risk to institutional and retail investors of further – possibly significant – market corrections amid elevated asset valuations. For a more positive

risk assessment to be made, observed market trends would need to show resilience over an extended period. Resilience would critically depend on the ability of financial markets to withstand a reduction in public policy support on the monetary or fiscal side without material disruptions.

To support ESMA's single rulebook, convergence and supervisory tasks, ESMA undertakes in-depth research into a wide range of contemporary market issues that are published in TRV reports or as stand-alone working papers. In 2021, ESMA published nine such topical TRV reports and three working papers, some of which are highlighted in the following sections.

ESMA also contributed to the production of two Joint Committee risk reports with the other ESAs, highlighting the main risks and vulnerabilities across the financial sector <sup>(7)</sup>.

## Risk dashboards for 2021

ESMA published two risk dashboards highlighting that EU financial markets remained highly sensitive to events and volatile. A sudden risk reassessment, amid the general decoupling of securities prices from economic fundamentals, remained the main risk to EU financial markets, and ESMA therefore maintained

<sup>(7)</sup> See Chapter 2.8.1 for further details on the joint risk assessment.

its risk assessment. Credit risk was likely to increase further as a result of increasing corporate and public debt levels.

Going forward, ESMA noted a prolonged period of risk to institutional and retail investors of further – possibly significant – market corrections and observed very high risks across the whole of ESMA's remit. The extent to which these risks would further materialise would critically depend on market expectations on monetary and fiscal policy support and on the pace of economic recovery.

## **ESMA's annual statistical report series (ASR)**

In ESMA's ASR series, ESMA leverages data it collects and maintains, including where possible supervisory data, to share insights that can help market participants' supervisors, for example by facilitating oversight, and enhancing supervisory convergence across the EU.

In December, ESMA published its first ASR on EU securities markets and its fourth ASR on EU derivatives markets. The two reports provided the first comprehensive view of the EU derivatives and securities markets after the United Kingdom's withdrawal from the EU, that is, without data reports from UK financial participants. In both reports, the impact of the withdrawal was significant: the size of derivatives markets and the volume of securities trading were around two thirds lower without the United Kingdom. Overall, at the end of 2020 the EEA30 securities markets turnover volumes amounted to EUR 8.8 trillion for equities, and EUR 17.9 trillion for bonds, while the EEA30 derivatives market had a total volume of EUR 254 trillion gross notional amount outstanding.

## **Asset management**

### *Stress simulation of funds in the context of COVID-19*

ESMA published a joint supervisory exercise with the NCAs in the form of a data-driven assessment of the impact of the liquidity crisis on funds, and an assessment of funds' preparedness for future shocks, involving stress simulation exercises with several assumptions.

### *Funds and single-name credit default swaps – hedging or trading?*

ESMA published a working paper providing a comprehensive overview of the drivers of the use of

single-name credit default swaps by UCITS investment funds using EU regulatory data on derivatives.

### *Equity funds and derivatives*

ESMA also published a working paper built on data collected under EMIR, providing new insight into the types of derivatives that are traded by UCITS equity funds, why some of them trade derivatives whereas others do not, what makes some more active traders and to what extent trading in derivatives is a reaction to daily changes in markets.

## **Sustainable finance**

### *Fund portfolio networks – a climate risk perspective*

ESMA provided a preliminary climate risk scenario analysis for EU investment funds, differentiating between funds whose portfolios are tilted towards more polluting assets (brown funds) and funds with cleaner portfolios (green funds). Besides total system-wide losses of EUR 152 billion to EUR 443 billion, most brown funds' losses range from about 9 % to 18 % of affected assets, in contrast to green funds' losses, which usually range from 3 % to 8 %. In addition, brown funds have more systemic impact: they contribute more to total system-wide losses (by virtue of their greater interconnections within the fund universe) than green funds.

### *Environmental, social and governance ratings*

ESMA's first published TRV report in 2021 contained a description of the market for ESG ratings, including types of ratings and key providers, and presented several use cases. According to this analysis, several issues and risks reduce the potential benefits of these ratings, owing to the absence of a regulatory framework. Furthermore, the lack of a common definition and of comparability, together with transparency issues, could ultimately be detrimental to the transition towards a more sustainable financial system. To illustrate the impact of these issues on investors, our analysis focuses on the specific case of ESG benchmark construction

### *Environmental impact and liquidity of green bonds*

ESMA's second TRV report included an article investigating the carbon dioxide emissions of green

bond issuers and showed that, between 2009 and 2019, energy firms, utilities and banks that issued a green bond were much more likely to disclose emissions data, and that they have on average reduced their carbon intensity to a larger extent than other firms. This confirms the view that green bonds act as a signal of firms' climate-related commitments. In addition, the article compared the liquidity of green and conventional EUR corporate bonds from green bond issuers and found that green bond liquidity appears to be tighter. However, the differential with conventional bonds has remained small and broadly constant, suggesting no particular vulnerability of the green segment of the corporate bond market.

## Financial innovation

### *Cloud outsourcing and financial stability risks*

The analysis included in ESMA's second TRV report suggested that CSPs need to be significantly more resilient than firms to improve the safety of the financial system. In financial settings where only longer (multiperiod) outages result in systemic costs, the results suggest that CSPs can best address systemic risks by strongly reducing incident resolution times, rather than incident frequency. In the model, using a backup CSP successfully mitigates the systemic risk caused by CSPs. Finally, there is a clear need for detailed data on outages from financial institutions and CSPs.

### *Language-processing techniques help the European supervisors*

ESMA published the results of a pilot exercise to apply natural-language-processing techniques on a unique dataset of 54 000 key information documents that describe structured retail products produced under the packaged retail investment and insurance-based products regulation. This work illustrates how these techniques can produce useful measures for European supervisors, policymakers and risk analysts. Information extracted from text opens new possibilities for supervisory assessments. In addition, text-based information is not correlated with (i.e. complementary to) numerical information, which can help policymakers to determine if the legislation is working as intended. Lastly, text-based information can identify new sources of financial risks to investors.

## 2.6. Data reporting and management

### Objective for 2021

Improve the quality of reported data, identified as a continued priority for supervisory convergence and as a precondition for data-driven, risk-based supervision, by implementing ESMA's data strategy following the implementation of the SFTR, EMIR refit, AIFMD, MMF, prospectus regulation, MAR and MiFIR reporting regimes.

Operate the data-reporting IT systems and perform data management and statistical analyses in order to support ESMA's activities, in particular focusing on improving the quality, integration and usability of data, in close coordination with NCAs. In addition, carry out ESMA's role as a data hub by providing data to NCAs, market participants and investors.

Contribute to the review of MiFID II/MiFIR, the MMFR, and the AIFMD (if required) by providing expertise and market and supervisory intelligence and making recommendations regarding possible amendments related to data reporting, including data quality.

ESMA fulfils its mission by using multiple data sources to generate evidence on which it can base its decisions. To enhance the effectiveness and efficiency of data reporting, ESMA' strategic approach encompasses the entire data life cycle, including drafting and implementing regulations, providing guidance to reporting entities and NCAs, enhancing ESMA's role as a data hub, and monitoring data quality and its use by other relevant authorities.

As a data hub for authorities, investors and market participants, ESMA regularly published centrally accessible databases of registered financial market participants, as well as information on financial instruments' reference and transparency data under MiFID/MiFIR, credit ratings and prospectuses, among other things. Furthermore, ESMA reinforced its position as a hub by finalising tasks as part of the ESAs' review that resulted in all venues connecting.

To improve the quality of the data, in 2021 ESMA and NCAs executed several action plans on the reporting

regimes established under the AIFMD, the MMFR, EMIR, the SFTR, the prospectus regulation and MiFID/MiFIR. Concerning MiFID/MiFIR, the financial instruments reference data system data quality methodologies were reviewed and improved in July. These actions were reinforced by the provision of further guidance to the reporting entities (in the form of guidelines, opinions, Q&As and reporting instructions) and the IT system's design and established validations.

### **2.6.1. Guidance reporting instructions and data validation rules**

ESMA uses several tools to guide and assist entities subject to a data reporting requirement, and to enable supervisors and data users to identify inconsistencies, inaccuracies and incompleteness of the reported data. These tools include (i) the XML schema defining the reporting format and modalities; (ii) reporting instructions and Q&As providing detailed guidance and explanations for reporting in different scenarios; (iii) data quality validation rules, which are implemented by repositories or the supervisors receiving the data; and (iv) guidelines.

ESMA continuously revises and updates these instruments in response to stakeholder input, regulatory changes, and data observations with a view to attaining an ever-higher quality of data. In 2021, ESMA published and updated the guidance and instruments in relation to several reporting regimes including securitisation, AIFMD, TR and SFTR reporting. These changes were relevant to a wide range of market participants with reporting obligations including trading venues, systematic internalisers, investment firms, data reporting services providers, originators and sponsors of securitisation, and asset management companies.

### **2.6.2. ESMA – an evidence-based authority**

In accordance with its data strategy and its strategic orientation for 2020–2022, ESMA bases its activities on the use of data for advanced analyses. This includes the risk-based and outcome-driven supervision of entities such as CRAs, TRs, DRSPs and CCPs (see Section 2.4) and the assessment of risks to investors, markets and financial stability (see Section 2.5). This statistical information also provides increasingly important evidence on which to base ESMA's policy and supervisory convergence initiatives, as detailed in the following paragraphs.

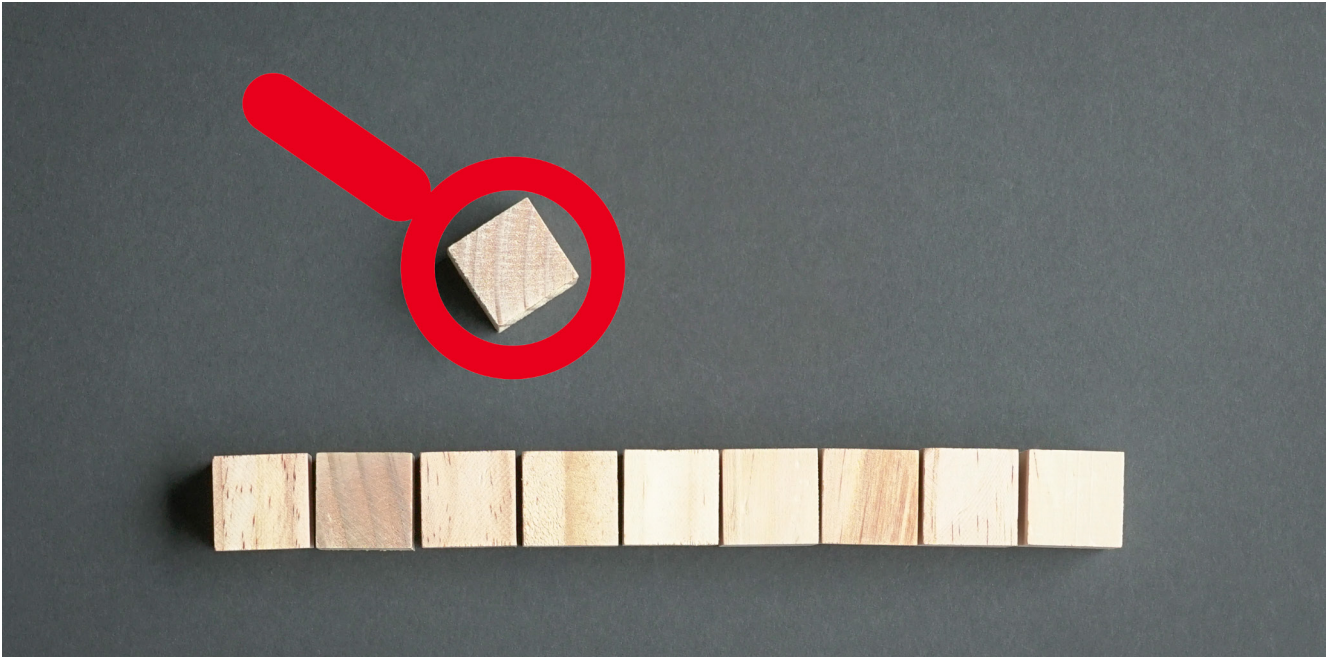
For example, data reported to TRs under EMIR together with the notifications received from market participants in relation to the clearing obligation informed a discussion paper on the review of clearing thresholds. The data reported to TRs, alongside MiFIR transparency data, were used to prepare the draft RTS on the clearing and derivative trading obligations in view of the benchmark transition to risk-free rates. In addition, both EMIR and MiFIR datasets were also used in the update of ESMA's opinion regarding the MiFID ancillary activities for commodity derivatives and in the MiFIR review report on the obligations to report transactions and reference data.

MiFIR transparency data also informed the annual report regarding the appropriateness of moving to the following stage in terms of transparency and of executing the annual report on the application of waivers and deferrals. Finally, in preparation for ESMA's role as supervisor, these data were used in the advice on the criteria to identify DRSPs that should remain under the supervision of an NCA. NCAs compiled the data used by ESMA to produce its review report on algorithmic trading.

Given the relevance of data on net short positions on equities during the COVID-19 pandemic, ESMA issued an opinion to the European Commission on the permanent adjustment of the reporting threshold set out in the SSR and used the available data in its consultation paper on the review of certain aspects of the SSR. The data on short positions combined with EMIR data were also used in ESMA's statement regarding the GameStop trading phenomenon.

Regarding investment funds, ESMA's letter to the Commission regarding the review of ELTIF regulation benefited from the use of AIFMD data. Furthermore, the consultation report on the legislative review of the EU MMFR was based on the analysis of different sources proposing the enhancement of the current reporting regime to support timely monitoring in stressful periods such as the COVID-19 crisis. This crisis triggered the 2020 CSA (published in 2021) on UCITS liquidity risk management, which required the collection and use of data on funds from all 30 EEA Member States.

Providing the final advice for the Commission on the taxonomy regulation required the use of multiple data sources, both regulatory and commercial in nature. This is a complexity that the very same regulation aims to reduce in the future by providing a clear methodology and disclosure procedures to inform on environmentally sustainable activities by companies.



Finally, other legally required annual reports were published by ESMA to monitor EEA markets, such as the reports on CRAs' market share, prospectus activity using data predating the new reporting under Prospectus III and the provision of banking-type ancillary services under the CSDR.

## 2.7. Peer review work

### Objective for 2021

Foster an equally high level of supervisory outcomes and promote investor protection, orderly markets and financial stability through convergence in the EU.

### 2.7.1. Peer reviews

In 2021, ESMA carried out significant peer review work in line with the peer review work programme set out for 2021–2022.

Notably, ESMA concluded the mandatory peer review of CCP supervision focusing on liquidity stress testing and published the associated report in April. Overall, the review found that NCAs' supervisory activities on CCPs' liquidity stress testing were satisfactory. However, it also showed that the assessment of some areas of liquidity stress testing was not always performed or evidenced sufficiently. In particular, NCAs should make sure that the settlement of obligations of defaulting clearing members is reflected in full in the liquidity stress testing framework. The report also

identifies several best practices and considerations to further enhance supervisory convergence with regard to CCPs' liquidity stress testing. ESMA will follow up on the report's findings to identify, where relevant, the most appropriate tools to further enhance supervisory convergence.

ESMA also carried out a discretionary peer review (initiated at the end of 2020) of NCAs' supervision of cross-border activities of investment firms, and launched a discretionary peer review of NCAs' handling of relocation to the EU-27 in the context of the United Kingdom's withdrawal from the EU, and three mandatory peer reviews, namely the peer review on the scrutiny and approval procedures of prospectuses, the peer review on the supervision of CSDs providing cross-border services or participating in interoperable links and the peer review on CCP supervision focusing on business continuity under remote access arrangements <sup>(8)</sup>. All these peer reviews are expected to be concluded in 2022.

### 2.7.2. Follow-up to peer reviews

In 2021, to assess the adequacy and effectiveness of the actions undertaken by NCAs in response to findings and recommendations of peer reviews, ESMA launched the follow-up to the peer review on the *Guidelines on Enforcement of Financial Information* and carried out preparatory work for the follow-up to

<sup>(8)</sup> The initial focus of the peer review was on due diligence on clearing members and was replaced by a focus on business continuity under remote access arrangements.

the peer review on the *Guidelines on ETFs and Other UCITS Issues*. Both follow-ups are expected to be concluded in 2022.

### 2.7.3. Peer review work programme 2022–2023

In 2021, ESMA adopted its second 2-year peer review work programme identifying topics of high risk on which peer reviews can offer the appropriate opportunity to consider and enhance, as needed, the effectiveness and consistency of NCAs' supervisory practices. The 2022–2023 peer review work programme maintains an ambitious plan for peer reviews in line with ESMA's strategic orientation for 2020–2022. It envisages the finalisation of the peer review work conducted in 2021, and the launch of six new peer reviews and four follow-ups. As needed, fast-track peer reviews may also be conducted in urgent cases or in the case of unforeseen events.

## 2.8. Joint Committee

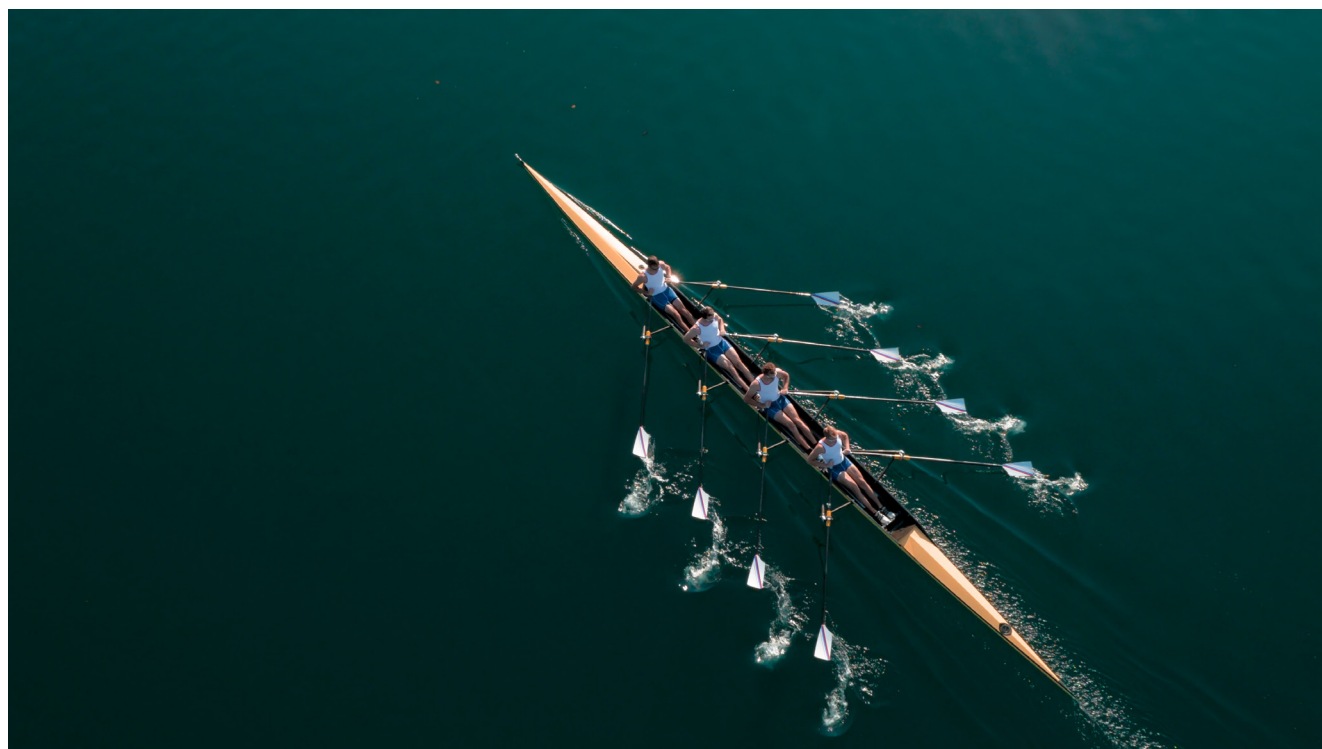
In 2021, the Joint Committee of the ESAs, chaired by ESMA, continued to play a central role in the coordination and exchange of information between the ESAs, the European Commission and the ESRB. The main areas of cross-sectoral focus continued to be joint risk assessment, enhancing consumer protection,

developing the regulatory and supervisory frameworks for sustainable finance and securitisation, monitoring and contributing to the development of digital finance, supporting the scaling up of FinTech through innovation hubs and sandboxes, and cybersecurity.

### 2.8.1. Joint risk assessment

The Joint Committee issued two joint risk assessment reports on risks and vulnerabilities in the EU financial system. The 2021 spring joint risk report highlighted that the COVID-19 pandemic continued to weigh heavily on short-term recovery prospects, focused on several vulnerabilities in the financial markets, and warned of possible further market corrections. The ESAs also warned of a possible deterioration in asset quality and recommended policy actions for supervisors and regulated institutions, including for banks to ensure sound lending practices and the adequate pricing of risks, and to adjust provisioning models to adequately address the impact of the economic shock of the pandemic. The ESAs also called on competent authorities, financial institutions and market participants to continue to develop further actions to accommodate a 'low-for-long' interest rate environment and its risks.

The 2021 autumn joint risk report highlighted increasing vulnerabilities in the financial sector, not least due to side effects of the COVID-19 crisis measures, such as increasing debt levels and upward pressure on asset





prices. The report noted that expectations of inflation and yield growth, as well as increased investor risk-taking, may put additional pressure on the financial system. In this context, the ESAs warned of the continued risk of asset quality deterioration, disorderly increases in yields and sudden reversals of risk premia. In addition to these economic vulnerabilities, the joint risk report highlighted the increased exposure of the financial sector to cyber-risk and to information and communications technology (ICT)-related vulnerabilities. The ESAs highlighted the need for appropriate technologies and adequate control frameworks to be put in place to address threats to information security and business continuity in the financial sector.

## 2.8.2. Consumer protection and financial education

In 2021, consumer protection continued to be a key element of the work of the Joint Committee.

Following the submission of the draft RTS with the proposed amendments to the PRIIPs delegated regulation to the European Commission in January 2021 and as part of a wider initiative of the Commission to develop a new retail investment strategy for the EU, in July 2021 the Joint Committee received a call for advice from the Commission on the review of the PRIIPs regulation. The scope of the mandate from the Commission includes the areas referred to in Article 33 of the PRIIPs regulation, and issues related to the use of digital media. In order to gather evidence, the Joint Committee published a call for evidence for a public consultation until 16 December 2021 and delivered its joint advice in May 2022.

In 2021, a total of 13 administrative sanctions or measures under the PRIIPs regulation were reported

to the ESAs by the competent authorities in three Member States (Czechia, Croatia and Hungary). These measures were fines and orders to the PRIIP manufacturer or people advising on, or selling, PRIIPs to remedy specified breaches of the PRIIPs regulation or the PRIIPs delegated regulation <sup>(9)</sup>.

Furthermore, the Joint Committee finalised its review of the application of the joint ESAs' guidelines on complaints handling that the three ESAs had issued in 2014. The review concluded that the joint guidelines had contributed to a consistent approach to complaints handling across the banking, insurance and securities sectors and had resulted in better outcomes for consumers. This review examined how the ESAs' guidelines on complaints handling have been applied since they came into force. In particular, the final report of the review describes the extent to which the objectives of the guidelines have been achieved; the supervisory actions that NCAs have undertaken as a result of their national implementation, including the steps taken to identify good/poor practices by firms; and the remaining challenges faced.

Finally, the Joint Committee started a new work stream on financial education with the aim of fulfilling the ESAs' mandate to review and coordinate national financial education initiatives. The main focus of the Joint Committee's work in this area in 2021 was on preparing a joint high-level conference on financial education and developing a joint ESAs repository of national education initiatives focused on fraud, scams and cybersecurity, both of which are scheduled for February 2022.

<sup>(9)</sup> The Czech National Bank, the Croatian Financial Services Supervisory Agency and the Central Bank of Hungary reported fines totalling CZK 1 000 000 (approximately EUR 40 225), HRK 390 000 (approximately EUR 51 636) and HUF 3 million (approximately EUR 8 118), respectively.



### 2.8.3. Sustainability-related disclosures

A very significant part of the work of the Joint Committee in 2021 focused on the development of the regulatory and supervisory framework for sustainability-related disclosures.

The sustainable finance disclosure regulation (SFDR), which was amended by Article 25 of the taxonomy regulation, required the ESAs to develop several RTS through the Joint Committee. In 2021, the Joint Committee developed two sets of draft RTS, containing a total of 13 RTS.

First, on 4 February 2021 the ESAs published draft RTS on the content, methodologies and presentation of disclosures under the SFDR that aim to strengthen protection for end investors by providing sustainability disclosures on the principal adverse impacts of investment decisions and on the sustainability features of a wide range of financial products. This will help to respond to investors' demands for sustainable products and reduce the risk of greenwashing. In addition, the draft RTS contain proposals under the taxonomy regulation on the do no significant harm principle.

Second, on 22 October 2021 the ESAs published draft RTS regarding disclosures under the SFDR that relate to financial products investing in economic activities that contribute to environmental objectives. The draft RTS provide disclosures to end investors

regarding the investments of financial products in environmentally sustainable activities, providing them with comparable information to make informed investment choices and enable the development of a single rulebook for sustainability disclosures under the SFDR and the taxonomy regulation. The draft RTS include pre-contractual and periodic disclosures for products referred to in Articles 5 and 6 of the taxonomy regulation that identify the environmental objectives to which the product contributes and show how and to what extent the product's investments are aligned with the EU taxonomy.

The ESAs have also addressed emerging implementation and supervisory issues. In a letter to the European Commission on 7 January 2021, the ESAs highlighted the most important issues relating to the draft RTS under the SFDR. The Commission responded in July 2021, providing interpretative guidance on several of the questions highlighted in the letter in its response.

In addition, on 25 February 2021 the Joint Committee published a joint ESAs' supervisory statement to mitigate the risk of divergent application of the SFDR in the period from 10 March 2021 (application date of the SFDR) to the application date of the SFDR RTS. The overall objective of the joint supervisory statement is to achieve the effective and consistent application and national supervision of the SFDR, promoting a level playing field and the protection of investors.





In November 2021, the Commission informed the European Parliament and Council of the EU that, owing to the technical complexity of the RTS and the timing of the submission, the bundled February and October RTS would become applicable by 1 January 2023.

Apart from the SFDR-related work, through the Joint Committee, the ESAs coordinated their approach with regard to the membership and governance of the new sustainability reporting pillar of EFRAG. In the letter in July 2021 the ESAs reiterated their strong commitment to contributing to the development of high-quality, sustainability reporting standards and expressed their preference to remain active observers in the EFRAG governance framework. The ESAs considered that such an observer status is in line with the proposal for a corporate sustainability reporting directive to require ESMA, and invite the other ESAs, to provide an opinion on EFRAG's draft sustainability reporting standards.

#### **2.8.4. Securitisation**

With a view to supporting the development of the EU securitisation market, the Joint Committee continued its work to address obstacles in the implementation of the securitisation framework and to suggest improvements to the regulatory and supervisory regime to the NCAs and the European Commission.

In particular, the Joint Committee considered the difficulties in ascertaining the jurisdictional scope of

application of certain provisions in the SECR if one or more of the securitisation parties are located in a non-EU country. In the joint opinion issued in March 2021, the ESAs examined the EU securitisation requirements, which may be applicable to third-country parties, and related compliance aspects of a transaction under the SECR. The ESAs also set out their common view on the practical difficulties faced by market participants and recommended that these difficulties should be addressed through interpretative guidance from the European Commission.

Furthermore, in the report prepared in accordance with Article 44 of the SECR, the ESAs assessed the implementation and the functioning of the SECR and provided recommendations on how to address initial inconsistencies and challenges that may affect the overall efficiency of the current securitisation regime. In particular, the report highlighted specific issues related to transparency and due diligence requirements, criteria for STS securitisation and requirements related to the supervision of securitisation. The report was meant to provide guidance to the European Commission in the context of its review of the functioning of the SECR. It also includes an analysis of the efficiency of the STS securitisation framework, considering in particular the role that securitisation could play in economic recovery following the COVID-19 pandemic.

In addition, the Joint Committee provided further guidance on the application of the SECR through Q&As. These Q&As clarify in particular (i) the content and the

format of the information of a securitisation transaction that should be disclosed by the originator, sponsor and securitisation special purpose entity; (ii) the transaction documentation of a STS securitisation that should be made publicly available to facilitate investors' compliance with its due diligence requirements; and (iii) the type of STS certification services that can be provided by third-party verifiers to the securitisation parties. These Q&As were subsequently updated to clarify whether or not a 'vendor financing' structure can be considered a synthetic securitisation.

Finally, in October 2021 the Joint Committee initiated work to address the call for advice from the European Commission. This call for advice seeks the Joint Committee's assistance to assess the recent performance of the rules on capital requirements (for banks, and insurance and reinsurance undertakings) and liquidity requirements (for banks) relative to the framework's original objective of contributing to the sound revival of the EU securitisation market on a prudent basis. The Joint Committee report will be submitted to the European Commission by 1 September 2022.

### 2.8.5. Digital finance

In 2021, the Joint Committee stepped up its digital finance-related work, including in the context of the European Commission's digital finance strategy, with extensive technical discussions on topics such as crypto-assets and digital operational resilience. Moreover, the ESAs prepared a comprehensive response to the European Commission's February 2021 call for advice on digital finance on value chains, platformisation and new mixed activity groups.

The ESAs have been actively involved in discussions on the legislative proposals for a regulation on markets in crypto-assets and DORA. In particular, apart from considering technical and resource elements relating to operational preparations for the proposed supervision and oversight tasks, the chairs of the ESAs sent a letter to co-legislators, in which the ESAs set out their views on how to most efficiently take forward important aspects of the governance and operational processes of the oversight framework for critical third-party service providers and the application of the proportionality principle in the proposed DORA. Among other things, the ESAs stated that the proposal raised challenges to the practical functioning of the oversight framework, especially the complexity of the governance and decision-making process between the Joint Committee of the ESAs, the boards of supervisors of the ESAs and the Oversight Forum.



### 2.8.6. Financial conglomerates

The Joint Committee published its 2021 annual list of identified financial conglomerates. The list comprised 67 financial conglomerates, 65 with the head of group in the EEA, 1 with the head of group in the United Kingdom, and 1 with the head of group in Switzerland. Work also continued to develop reporting templates for conglomerates on intragroup transactions and risk concentration as well as on capital adequacy.

### 2.8.7. Other relevant cross-sectoral Joint Committee work

The Joint Committee finalised the joint final report on the third amendment to the draft ITS on the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with the capital requirements regulation and Solvency II. This amendment addressed (i) the registration of two new CRAs; (ii) the outcome of a monitoring exercise on the adequacy of existing mappings; and (iii) the deregistration of several CRAs.

The ESAs have developed joint Q&As on the Commission delegated regulation on bilateral margin requirements under EMIR clarifying several aspects of the bilateral margin regime. The Q&As clarify, in particular, (i) the relief covered by a partial intragroup exemption from bilateral margin requirements; (ii) the procedure to grant intragroup exemptions from bilateral margin requirements between a financial counterparty and a non-financial counterparty that are based in different Member States; and (iii) the regime

for exemption from bilateral margin requirements for derivatives entered into in relation to covered bonds.

Finally, the Joint Committee discussed the mandate in Article 31a of the ESA regulations to set up a cross-sectoral system for the exchange of information on the fit and proper assessments. The work continued on the draft guidelines for the exchange of information, and on an IT solution consisting of a cross-sectoral competent authorities' contact list and a searchable shared database of holders of qualifying holdings, directors and key function holders assessed for fitness and propriety.

### 2.8.8. European Supervisory Authorities' Board of Appeal

The Board of Appeal is a joint independent body of the ESAs, introduced to effectively protect the rights of parties affected by decisions adopted by the authorities. The ESAs provide administrative support to the Board of Appeal and serve as its secretariat. As of 1 December 2021, the ESAs had renewed 10 members and alternates of the ESAs' Board of Appeal. Following the renewal, Mr Michele Siri was elected as the new President and Mr Christos Gortsos as the new Vice-President of the ESAs' Board of Appeal.

In 2021, three appeal cases were finalised, one brought against each of the ESAs.

In its decision 'A' v ESMA, the Board of Appeal unanimously decided to dismiss the appeal brought by an institution that wishes to stay anonymous as inadmissible. The appeal was in relation to the launch of an investigation into an alleged breach of EU law by an NCA.

In its decision *Howerton v the EBA*, the Board of Appeal unanimously decided to dismiss the appeal brought by Mr Howerton against the EBA in relation to an alleged non-application of EU law by eight NCAs as manifestly inadmissible. This was because the facts described did not seem to involve a subject matter within the remit of the EBA or the Board of Appeal.

Finally, the Board of Appeal decided in its decision *Societatea de Asigurare – Reasigurare City Insurance SA v EIOPA* that the appeal was inadmissible. The appeal was in relation to a balance sheet review exercise of the Romanian insurance sector that was carried out by the *Autoritatea de Supraveghere Financiară* <sup>(10)</sup> with the support of EIOPA.

<sup>(10)</sup> <https://www.asfromania.ro>

## 2.9. ESMA as an organisation

### 2.9.1. Supervisory convergence work across all sectors

<b>Objective for 2021</b>	Promote a common EU risk-based and outcome-focused supervisory and enforcement culture, achieve similar outcomes through reinforced dialogue and cooperation among NCAs' supervisors and enforcement specialists, and select convergence tools appropriate to risks and problems identified.
	Coordinate supervisory action by issuing Union strategic supervisory priorities (USSPs) and promoting the coordination of NCAs' supervisory activity.
	Increase knowledge of NCAs' market context, organisation, resources and independence.

### Structured risk-based approach to supervision

With a view to improving risk-based and outcome-focused supervisory convergence, ESMA – together with the NCAs – reinforced its framework to identify risks and problems that may have an impact on investor protection, the orderly functioning of markets or financial stability in the EU. Applying its structured risk-based approach, ESMA identified the areas of highest risk to prioritise and shape supervisory convergence initiatives through its 2022 annual work programme.

### Convergence tools

ESMA introduced a reinforced framework of dedicated sessions for supervisors to discuss supervisory cases, contributing to the development of effective and consistent supervisory practices. Frequent discussions were organised across all sectors to bring together supervisors from NCAs to discuss supervisory objectives, methods, tools and approaches in relation to over one hundred real supervisory cases, on an *ante* or *ex post* basis.

ESMA finalised the first part of its EU supervisory handbook setting out supervisory best practices and high-quality methodologies and processes.



ESMA worked on a web-based IT tool (to be published in 2022) to implement the provisions of the revised ESMA regulation for Q&As, promoting enhanced transparency on the Q&A process.

Following the revised ESMA regulation introducing coordination groups to the supervisory convergence toolkit, ESMA developed a framework for the implementation of this type of group to coordinate supervisory work, when needed, relating to specific topics and market developments.

### **Coordination of national competent authorities' supervisory activities**

Following the publication of the revised ESMA regulation, in November 2020 ESMA identified the first USSPs for NCAs, costs and performance in the retail area and data quality in the market area, which were valid in 2021. USSPs are an important element of ESMA's approach to ensuring a risk-based supervisory convergence framework in which supervisors in the EU proactively deal with high-impact risks and problems that require a concerted and coordinated supervisory approach.

Based on the above, ESMA undertook several important actions in relation to the two USSPs identified, notably coordinated initiatives – as described in other areas of this report – such as the CSA on the product governance requirements, the CSA on costs and fees, and work to enhance MiFIR transparency data quality through applying the transparency

data quality framework. ESMA considered the work undertaken and retained the two USSPs for another year, agreeing on a new set of actions to be taken by ESMA and NCAs in 2022.

In 2021, ESMA also continued to organise voluntary supervisory colleges in respect of large third-country firms that offer financial services in the EU through different entities operating from different Member States. The voluntary supervisory colleges are a practical and flexible tool to enhance the supervision of complex firms that operate in the EU by exchanging information between participating home NCAs, promoting best practices, reducing supervisory fragmentation and ensuring a joint supervisory approach to different structures and business models.

### **Organisation and independence of national competent authorities**

ESMA organised discussions among NCAs on their general organisations, responsibilities and resources with the aim of helping them to get to know each other better and consider how to address common challenges, such as those related to budget, markets and resources.

In October, each of the three ESAs published their respective reports on the supervisory independence of competent authorities in their sectors. Based on the competent authorities' self-assessment, the three reports highlight that the independence of competent authorities is multifaceted and dependent on several

legal, institutional, operational and cultural factors. The reports take stock of the factual situation on competent authorities' independence from key angles, namely operational, financial and personal independence, and accountability and transparency. The reports seek to factually represent the arrangements and practices reported by competent authorities without assessing the independence of individual competent authorities.

### Enforcement

In 2021, ESMA continued to facilitate closer dialogue and the exchange of practices among NCAs in the enforcement field. This work included convergence initiatives on ESMA's sanctions registers, agreement on an inventory of enforcement sanctions and measures, and work on the referral of cases to enforcement, public messaging and efficiencies aimed to facilitate proceedings.

Alongside this, ESMA continued to engage in thematic discussions of real cases, which focused on the process of the referral of cases to enforcement and factors relevant to the calculation of financial penalties. This remains an important component of ESMA's convergence work, as it seeks to promote the use of similar approaches for similar risks and strives for comparable enforcement outcomes across the EU.

## 2.9.2. Governance and external affairs

<b>Objective for 2021</b>	Lead and coordinate ESMA's relationship with the EU institutions and NCAs.
	Lead and coordinate ESMA's activities regarding its equivalence work and international engagement (with non-EU regulators and with international organisations such as IOSCO and the FSB).
	Provide strategic leadership and coordination on any internal work streams dealing with matters relating to the withdrawal of the United Kingdom from the EU.
	Provide support to ESMA in the areas of stakeholder relations, governance, proportionality, and strategic planning and reporting.
	Provide support to ESMA in the areas of risk management, assurance and accountability.
	Build, maintain and protect ESMA's reputation through engagement and communication.



## Governance

In 2021, ESMA provided support to the Board of Supervisors and the Management Board, notably in relation to the changes to ESMA's governance.

Moreover, ESMA continued to support the Joint Committee and the Board of Appeal, assisted the internal governance bodies and provided support to the senior management. In 2021, ESMA was the lead ESA in the Joint Committee. However, following the expiration of the mandate of Steven Maijoor as ESMA's Chair at the end of March 2021, the Chair of the EBA took on the role of Interim Chair of the Joint Committee until the end of 2021. ESMA continued in its role as the secretariat of the Joint Committee in 2021.

In line with its obligations under its founding regulation and financial regulation, in 2021 ESMA produced a multiannual programming document for 2022–2024, including a detailed annual work programme for 2022.

In its 2022 annual work programme, ESMA set out its work areas of highest priority to deliver on its mission to enhance investor protection and promote stable and orderly financial markets. The 2022 annual work programme has been developed at a time of significant change for ESMA, with its new powers and responsibilities, an increase in its number of staff and senior management changes. The key areas of focus for 2022 include supervision, sustainability, digitalisation and the CMU.

## European Union institutions and international organisations

Throughout the year, ESMA worked closely with the EU institutions to ensure its accountability. In line with its strategic orientation and with the ESMA regulation, ESMA continuously provides formal and informal advice to the European Commission, the European Parliament, and the Council of the EU on legislative initiatives.

At the annual hearing of the ESAs' chairs, ESMA's Interim Chair reported to the Committee on Economic and Monetary Affairs of the European Parliament on ESMA's key achievements and prominent challenges for EU securities markets.

From an international perspective, ESMA contributed to the work of standard-setting bodies, such as the

FSB and IOSCO, where it played an important role in shaping standards that are likely to affect EU legislation and markets.

In particular, ESMA engaged in the FSB's and IOSCO's work around the risks stemming from non-bank financial intermediation risks and liquidity issues caused by redemption pressure on MMFs and open-ended funds during the March 2020 turmoil. ESMA also contributed to the joint work of the FSB and IOSCO in this area.

Moreover, ESMA continued to enhance its cooperation with third-country regulators. ESMA continued to work closely with its key partners in non-EU jurisdictions (e.g. regulatory and supervisory bodies in Hong Kong, Japan, the United Kingdom and the United States).

Finally, ESMA also conducted an assessment of selected equivalence decisions and jurisdictions as part of its equivalence-monitoring mandate. The findings of this exercise informed a confidential report to the European Parliament, the Council of the EU and the European Commission in December 2021, as mandated by the ESMA regulation.

## Communications

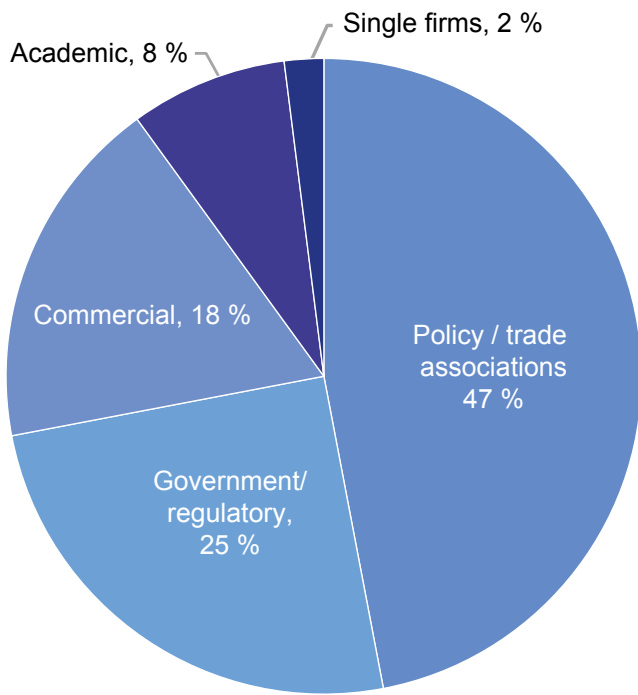
One of the main achievements in 2021 was the ESMA 10th Anniversary Conference, which took place virtually in March 2021. The event gathered representatives from EU institutions, supervisors and a broad range of other stakeholders. The conference was a success, with a total of around 700 participants.

In terms of external communications, in 2021 ESMA produced a significant number of news items, press releases and statements in support of its policy work. These were published on ESMA's website. In addition, ESMA organised 26 interviews and briefings with the media, and ESMA was mentioned 17 000 times in the media in 2021. Visits to ESMA's website reached 2.6 million in 2021, a 37 % increase from 1.9 million in 2020.

In terms of external speaking events, in 2021 ESMA accepted 40 % more invitations than in 2020 (142 invitations accepted out of 209 in 2021, versus 120 accepted out of 248 in 2020).

Figure 1 shows the proportions of the types of organisations in whose events ESMA participated.

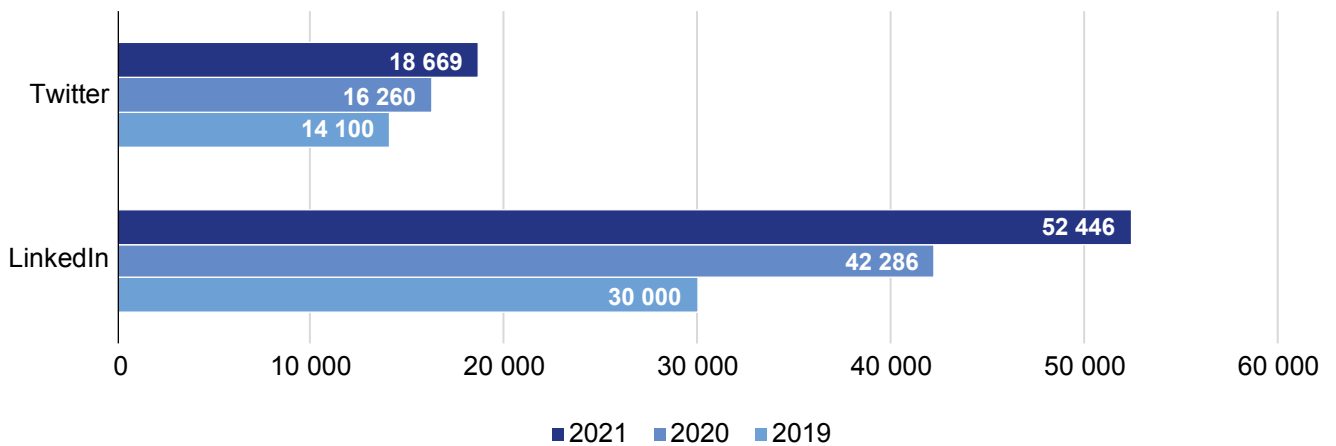
**Figure 1. Accepted organiser types**



It was also an excellent year for ESMA on social media, following the progress it made in 2020. ESMA's social media channels again saw significant growth in 2021, in terms of followers, the sharing of ESMA's publications and content creation. ESMA ended 2021 with 52 446 followers on LinkedIn, up 24 % from 2020, and 18 669 followers on Twitter, up 15 % from 2020 (Figure 2).

In terms of internal communications, the main effort focused on ensuring the organisation could adapt to changing rules linked to COVID-19, preparing colleagues for a physical return to the office, integrating newcomers and the appointment of the new senior management.

**Figure 2. ESMA's social media followers, 2021**



### 2.9.3. Legal

#### Objective for 2021

Provide sound and focused legal advice to ensure informed and legally sound decisions are made.

Provide clarity on ESMA's legal toolbox and easy access to all applicable acts drawn up by the authority.

Promote good administrative behaviour throughout the timely and successful handling of requests for access to documents.

Enhance the drafting and soundness of legal acts adopted by ESMA, notably through the sign-off process for draft technical standards.



#### Legal advice and review

In 2021, ESMA drafted guidelines and draft technical standards, which entailed a total of 13 consultation papers and 7 final reports concerning guidelines as well as 14 consultation papers and 7 final reports regarding draft technical standards. In addition, ESMA conducted the legal review of the opinions and other convergence tools issued in 2021, including public statements, and it was involved in preparing amendments to ESMA's mediation rules.

Regarding litigation, ESMA participated in two cases before the Court of Justice of the EU concerning a request for a preliminary ruling <sup>(11)</sup>, in an action brought against the European Commission <sup>(12)</sup> and as the defendant in a case about an action for annulment <sup>(13)</sup>, which was eventually dismissed by the General Court.

#### Complaints and general correspondence

In 2021, the enforcement function received and handled 1 140 items of correspondence from individual persons and companies. 47 % of them were complaints in relation to alleged breaches of EU law by financial market participants and 0.5 % were complaints in relation to alleged breaches of EU law by NCAs. 41.5 % of the items were requests regarding potential

frauds related to ESMA's logo or name (e.g. whether or not the document attached to the sender's email and bearing ESMA's logo was authentic), and 11 % were general requests (including requests for information about whether or not a particular investment firm was regulated). All the complaints received in 2021 were closed.

More precisely, as regards complaints in relation to alleged breaches of EU law by NCAs, 27 complaints (including complaints carried over from previous years) were the subject of in-depth preliminary inquiries in 2021, for example, through requests for information sent by ESMA to NCAs under Article 35 of the ESMA regulation.

All the preliminary inquiries carried out by ESMA in 2021 were closed without opening a breach of EU law investigation under Article 17 of the ESMA regulation. The most frequent reasons for these closures were the following: (i) the investigation revealed that the allegations put forward by the complainants were unsubstantiated; (ii) the complaints were more suitable to be dealt with by another person or body such as the European Commission or the national courts; (iii) there were more suitable ways for the complaints to be dealt with (e.g. through peer review); or (iv) in the course of the preliminary inquiry, the concerned NCAs voluntarily changed their practices or acted against the acts or omissions of the relevant financial market participants.

<sup>(11)</sup> *HOLD Alapkezelő, C-352/20; Invest Fund Management, C-473/20.*

<sup>(12)</sup> *Lux v Commission, T-513/19.*

<sup>(13)</sup> *Jakeliūnas v ESMA, T-760/20.*



## Requests for access to documents

Any citizen of the EU, and any natural or legal person residing in or with its registered office in a Member State is entitled to solicit access to documents drawn up and received by ESMA pursuant to the access to documents regulation. ESMA may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing in or without its registered office in a Member State.

Throughout the year, ESMA managed 25 requests for access to documents as initial applications and seven confirmatory applications. These data reveal a significant increase compared with 2020, when it handled nine initial applications and seven confirmatory applications, a record number compared with previous years.

## European Ombudsman inquiries

EU citizens may lodge a complaint with the European Ombudsman pleading maladministration concerning the activities of the EU bodies. If declared admissible, the European Ombudsman may conduct an inquiry to verify the alleged facts.

Against this background, the European Ombudsman received two complaints against the activities of ESMA in 2021. Both were closed, and no maladministration was found on the part of ESMA. ESMA continuously follows the EU Ombudsman's inquiries and recommendations, to assess possible implications for ESMA's rules and practices.

## Data protection

ESMA has continued to conduct a growing number of activities relating to data protection, including responding to requests and enquiries from the European Data Protection Supervisor. In addition to the ongoing support in respect of EU data protection regulation implementation, in 2021 ESMA also analysed recent case law and legislative developments on e-privacy. The objective was to assess the current and proposed legal framework and European Convention on Human Rights principles and identify possible ways to address supervisory concerns raised regarding the effectiveness of market abuse investigations. Moreover, ESMA assessed compliance with the personal data processing requirements in relation to complex regulatory mandates, and in particular in designing a joint ESAs' system to facilitate NCAs' sharing of fit and proper assessments based on Article

31(a) of the ESMA regulation. As part of its ongoing activities, ESMA has been constantly assessing new and adjusted tools that involve data processing and has assessed the necessary adjustments to the data records in the light of the new supervisory powers under ESMA's remit (third-country CCPs, benchmark administrators and data reporting service providers).

## Professional secrecy matters

In 2021, ESMA dealt with five requests for the disclosure of ESMA's documents by NCAs.

In 2021, ESMA also launched a survey on the national approaches to professional secrecy rules for NCAs' staff, including as regards their involvement in ESMA's activities before and after ceasing their duties in the NCAs.

The outcome of this survey was satisfactory. For example, all NCAs have in place professional secrecy rules; almost all have specific procedures for organising the dissemination of ESMA information internally, and most of them have specific investigatory and/or sanctioning powers in case of breaches of professional rules. Finally, the report also identified certain 'common minimum expectations' encouraging further enhancements to the national frameworks currently in place, as appropriate.

## 2.9.4. Human resources

### Objective for 2021

Deliver human resources (HR) services, enabling ESMA to attract, deploy and retain the talents required to achieve its objectives, and ensuring efficient HR administration while at the same time fulfilling the regulatory requirements of an EU authority.

ESMA employs different categories of staff:

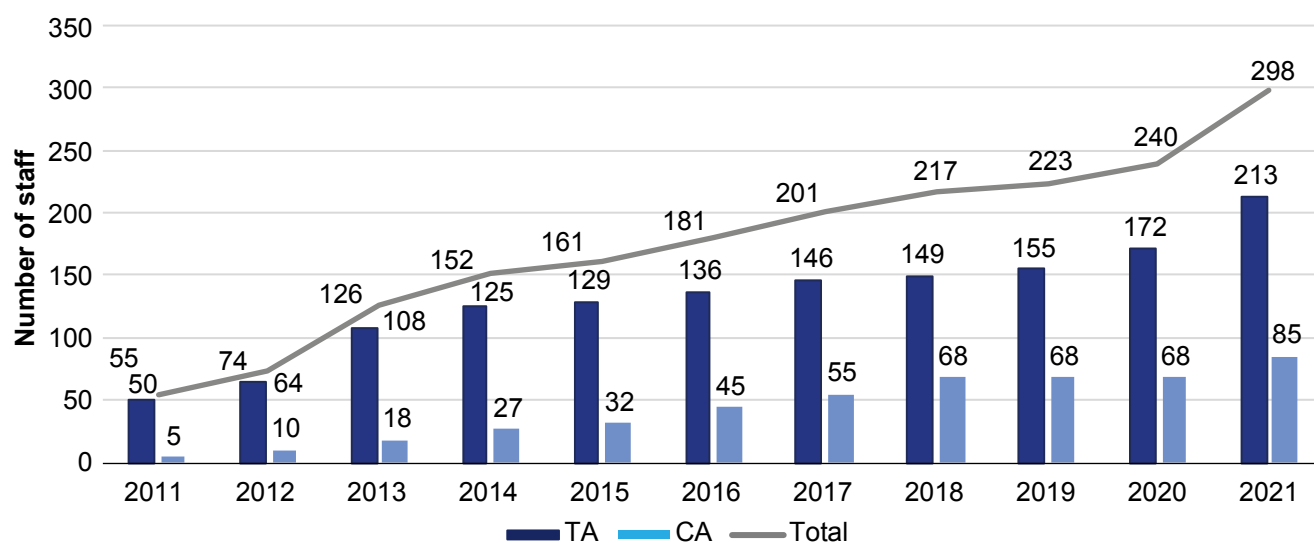
- temporary agents (TAs) <sup>(14)</sup>
- contract agents (CAs)
- seconded national experts (SNEs).

At the end of 2021, ESMA had 298 statutory staff members (TAs/CAs): 213 TAs and 85 CAs (Figure 3). This is 58 more statutory members than in 2020, a 24 % increase.

<sup>(14)</sup> Posts for TAs are listed in the establishment plan of ESMA, which is part of the EU budget.



**Figure 3. Statutory staff population (TAs and CAs) – year-end review**



In addition, on the same date, 10 SNEs were also working at ESMA (the same number as in 2020). This brings the total number of ESMA staff (TAs, CAs and SNEs) to 308, versus 250 in 2020, a 23 % increase. The number of staff increased by only 7 % from 2019 to 2020.

The number of SNEs employed did not change, and ESMA will continue to liaise with the NCAs and other eligible institutions to try to increase the population of this category of staff in the future. This population brings

not only specific expertise (such as direct supervisory experience) but also important experience-sharing and development opportunities for the organisations and individuals involved.

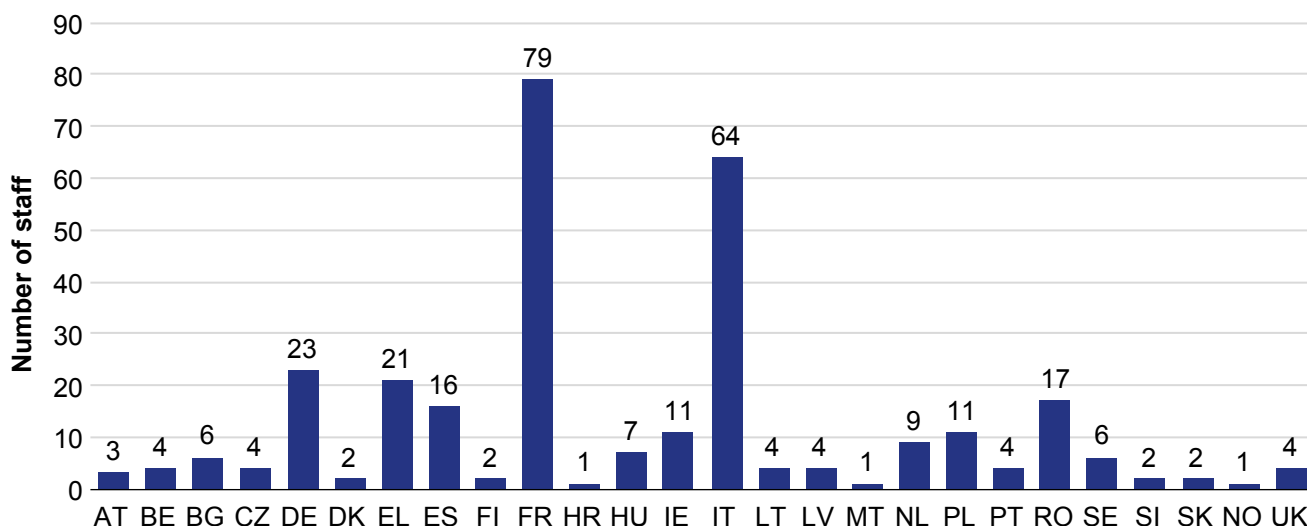
#### Staff by nationality

At the end of 2021, ESMA staff (TAs, CAs and SNEs) included 24 different EU nationalities, 4 UK nationals and 1 EEA national (from Norway).

**Table 1. Nationalities of ESMA staff per contract type and function group**

	AT	BE	BG	CZ	DE	DK	EL	ES	FI	FR	HR	HU	IE	IT	LT	LV	MT	NL	PL	PT	RO	SE	SI	SK	NO	UK	Total
<b>TA</b>	1	2	5	3	17	2	11	13	1	57	—	4	9	42	3	2	1	5	5	3	13	6	1	2	1	4	<b>213</b>
<b>CA</b>	1	2	1	1	4	—	9	3	1	21	1	3	1	20	1	2	—	2	6	1	4	—	1	—	—	—	<b>85</b>
<b>SNE</b>	1	—	—	—	2	—	1	—	—	1	—	—	1	2	—	—	—	2	—	—	—	—	—	—	—	—	<b>10</b>
<b>Total</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>4</b>	<b>23</b>	<b>2</b>	<b>21</b>	<b>16</b>	<b>2</b>	<b>79</b>	<b>1</b>	<b>7</b>	<b>11</b>	<b>64</b>	<b>4</b>	<b>4</b>	<b>1</b>	<b>9</b>	<b>11</b>	<b>4</b>	<b>17</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>308</b>
<b>%</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>7</b>	<b>1</b>	<b>7</b>	<b>5</b>	<b>1</b>	<b>26</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>21</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>100</b>

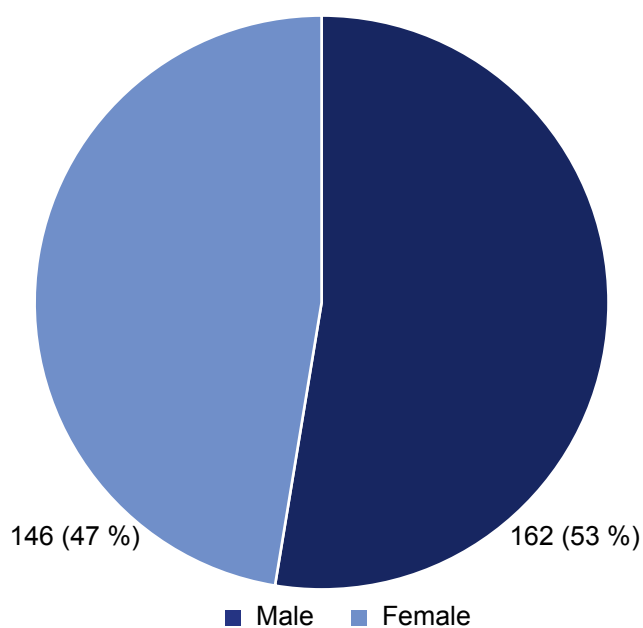
**Figure 4. Nationalities of ESMA staff (TAs, CAs and SNEs)**



**Staff by gender**

The global gender balance among ESMA staff (TAs, CAs and SNEs) was 53 % male to 47 % female in 2021 (Figure 5), versus 54 % male to 46 % female in 2020.

**Figure 5. Gender distribution at ESMA**



The evolution of the gender balance (in all staff groups) over the last 10 years indicates that the proportion of female staff members has progressively increased from 37 % in 2012 and has stabilised at around 46–48 %.

As regards staff with formal management responsibilities (Chair, Executive Director, CCP Directors, heads of department and heads of unit), the percentage of women has increased in the past few years to stabilise at around **55 %** (whereas in 2011 ESMA had only one woman with formal management responsibilities – 12.5 %).

The staff turnover rate was 3.6 % in 2021 versus 5.6 % in 2020, meeting the target of less than 10 %.

In 2021, recruitment was a key activity. Onboarding newcomers from reserve lists established in 2020 and running new recruitment procedures were the main focuses. A total of 21 selection procedures were launched, 2 075 CVs were screened and 175 candidates were interviewed. Three calls for traineeship positions are continuously open for applications, allowing 54 trainees to start their traineeship throughout the year. ESMA recruited 102 staff members, some of whom were already working at ESMA in a different function.

As regards internal training, ESMA's internal staff (TAs, CAs and SNEs) attended a total of 623 days of training in 2021 versus 322 days in 2020, or an average of 2.2 days per full-time equivalent versus 1.3 days in 2020.

### Training provided to national competent authorities

In 2021, ESMA organised nine training events for the NCAs, conducted entirely online owing to the COVID-19 pandemic. The total number of participants was 1 279, coming from the EEA member states.

### 2.9.5. Finance and procurement

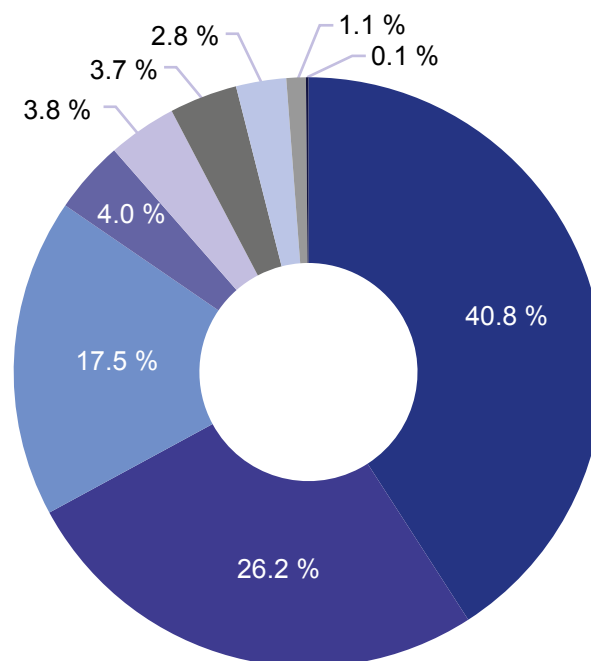
<b>Objective for 2021</b>	Further align the financial and procurement function with the ESMA strategy by continuing to enhance the efficiency of financial and procurement processes.
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A growing and more complex budget was again managed with a stable overall number of transactions. This was thanks to a continuous effort to further simplify and optimise financial transactions.

In 2021, ESMA continued to benefit from the full digitalisation of all financial and procurement processes achieved in 2017 with the introduction of a paperless system. This system allowed administrative processes to continue during the year despite the ongoing COVID-19 pandemic, as in 2020 when the pandemic started.

In 2021, ESMA was financed by nine streams of income, as shown in Figure 6.

Figure 6. Revenue for 2021 by source



- National competent authorities
- European Union
- Credit rating agencies
- Trade repositories
- EMIR 2.2
- NCA's – for delegated tasks
- EU advance for ESAs review
- SFTR
- STS

Budget execution, a key indicator for the European Commission, was 99.94 % in 2021, above 99 % as in all previous years since 2014.

The year 2021 was the first full year in which ESMA collected fees from third-country CCPs and the first year when ESMA started collecting fees from SRs, on top of fees from CRAs and TRs under EMIR and the SFTR.

In 2021, ESMA also successfully migrated its activity-based management model from an Excel-based system to a new cloud-based environment, called Anaplan. This achievement marked a big step forward in the authority's planning and reporting capabilities, in the context of the increasing complexity of its budgeting and costing models.

In 2021, 15 procurement procedures were managed (compared with 11 in 2020), and 7 were completely finalised (compared with 11 in 2020).



## 2.9.6. Corporate services

### Objective for 2021

Provide proactive and effective support to ESMA by ensuring the smooth running of the facilities of the authority and the acquisition of goods and services, in accordance with the EU public procurement rules and procedures.

Ensure the health and safety of ESMA's staff and visitors.

ESMA completed the finishing works on its new premises, delayed by the pandemic following its move from '103 Grenelle' to 'iBox' at the end of 2019. All year long, it also continued to successfully tackle the many logistical challenges posed by the COVID-19 situation, for example by keeping the office open all year and continuously adapting the premises and its processes to the changing protective measures adopted by the French government and the European Commission.

Moreover, it installed a new desk management and booking tool to better ensure that public health guidance was followed in the office, increase flexibility and prepare for a 'new normal'.

In terms of environmental performance, ESMA continued its progress towards reaching its objective of becoming Eco-Management and Audit Scheme certified. The EU Eco-Management and Audit Scheme is a premium management instrument developed by the Commission for companies and other organisations to evaluate, report and improve their environmental

performance. In 2021, ESMA recycled 4.2 tonnes of paper versus 7.8 tonnes in 2020 and 21.9 tonnes in 2019, which represented the saving of 82 trees and 39 491 litres of water. This evolution can be explained by the increase in remote working due to the pandemic in 2020 and 2021.

## 2.9.7. Information and communication technologies

### Objective for 2021

Provide effective and proactive ICT support to staff and manage ESMA's ICT resources in a flexible and efficient way.

Promote supervisory convergence and manage financial information through building and maintaining relevant IT systems, with the objective of collecting, exchanging, analysing and disseminating securities and financial markets information as required by relevant EU legislation.

ESMA's ICT activity falls into two main categories, namely:

- supporting ESMA as an organisation;
- EU IT projects aimed at supporting supervisory convergence, risk analysis and the exchange of financial data among NCAs and between NCAs, ESMA and the public.



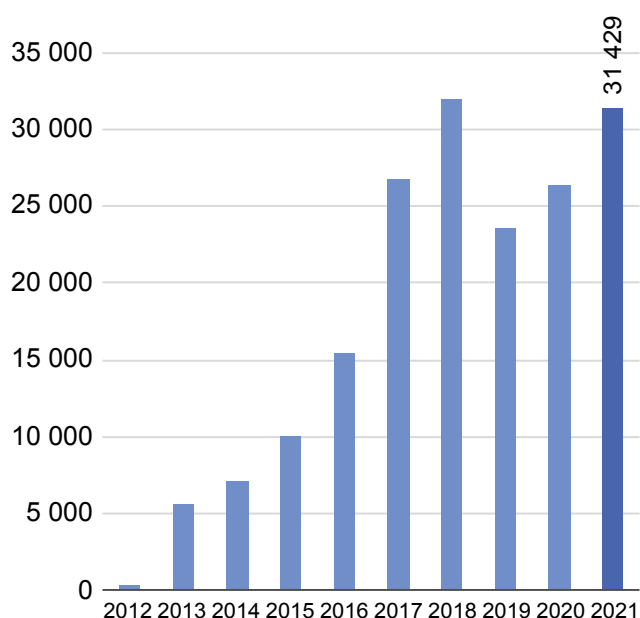
At the end of 2021, ESMA was managing 36 applications and 275 virtual servers.

At the same time, ESMA's systems had 2 283 users, an increase of 27 % compared with 2020. The vast majority of them were external active users, coming from NCAs, trading venues, CRAs and TRs, among others.

ESMA's help desk continued to face a heavy workload: in 2021, it managed 31 429 tickets, an increase of 19 % compared with 2020, despite a decrease of 28 % in the number of incidents. The average time for closing requests was 1.83 days, well below the target of 3 days.

The annual evolution of the total number of tickets managed by the unit since 2012 can be seen in Figure 7.

**Figure 7. Number of requests for support submitted to the IT help desk**



In 2021, ESMA fully benefited from the upgrade to its workplace tools performed in 2020, notably with Teams having replaced Skype as a telephony and videoconferencing collaboration tool and the migration to the public cloud (Azure). ESMA also continued to increase its cybersecurity response capacities in a general context of persisting heightened threats. In addition, the authority also continued to prepare for a 'new normal', for example by implementing a desk management and booking tool (Condeco) on its premises.

## 2.10. Management

### 2.10.1. Follow-ups on audits and evaluations

ESMA has put in place arrangements to ensure that all recommendations made by the internal and external auditors are promptly and adequately addressed within the agreed deadlines through dedicated action plans. ESMA follows up on all findings and recommendations, and reports to the Management Board on a quarterly basis.

#### European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA). The audit provides a statement of assurance of the reliability of the accounts of the authority and the legality and regularity of the underlying transactions.

The 2020 statement of assurance indicated that the accounts of the authority for the year ending 31 December 2020 presented fairly, in all material respects, the financial position of the authority at 31 December 2020, the results of its operations, its cash flows and the changes in net assets for the year then ended. These were in accordance with its financial regulation and with accounting rules adopted by the European Commission's accounting officer. It also stated that the revenues and payments underlying the annual accounts for the year ending 31 December 2020 were legal and regular in all material respects.

The 2020 ECA statement of assurance included observations relating to:

- calculating CRAs' and TRs' fees;
- monitoring contract ceilings and approval;
- waiving the recovery of late payment fees;
- monitoring 'time and means' contracts.

Two recommendations from previous years were considered ongoing, namely:

- the need to continue discussions with the Commission to resolve issues in the regulation of fees and the need to avoid cross-financing of fee-related activities;
- pension contributions by NCAs.



The ECA audit of the 2021 annual accounts is ongoing. The draft report will be available by mid 2022.

In 2021, the ECA also conducted a performance audit on investment funds in the EU and issued five recommendations to ESMA, the ESRB and the Commission. The final report was made public by the ECA on 21 February 2022.

### Internal Audit Service

ESMA is also audited by the Internal Audit Service (IAS) of the European Commission.

In 2021, the IAS performed an audit on HR management and ethics, concluding that ESMA's management and control systems in place for HR management and the promotion of the ethical environment are adequately designed, efficient and effectively implemented and support the authority in achieving its business objectives.

In the context of the audit, the IAS issued four recommendations in the following areas:

- documenting exceptional decisions and practices
- selection in the recruitment process
- the HR strategy and competency framework
- the appraisal exercise.

## 2.10.2. Follow-up on observations from the discharge authority

On 28 April 2021, the European Parliament 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)), the '2019 discharge report' <sup>(15)</sup>. The ESMA regulation specifies that ESMA should provide a reasoned opinion on the position of the European Parliament and on any other observations provided by the European Parliament in the discharge procedure.

The corresponding opinion <sup>(16)</sup> was published on 6 May 2021 by ESMA and included the following key points in the light of the 2019 discharge report:

- regarding its **funding model** and limitations pertaining to cross-financing, ESMA noted 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;
- on **resources**, ESMA concurred with the view expressed by the European Parliament that sufficient means should be allocated to ESMA to allow it to adequately and efficiently carry out its current and future tasks, notably in the fields of sustainable finance and digital finance;
- regarding the European Parliament's observations on the appropriateness and effectiveness of ESMA's **governance structure**, especially with regard to its supervisory powers, ESMA stressed that it completed in Q3 2020 the establishment of its CCP Supervisory Committee, which will help to ensure the consistent and effective supervision of EU and global clearing infrastructures;
- with regard to the **prevention and management of conflicts of interest**, ESMA emphasised 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;
- on **staff policy**, ESMA noted the European Parliament's recognition of ESMA's solid track record with regard to gender balance at both management and staff levels.

<sup>(15)</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0200\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0200_EN.pdf)

<sup>(16)</sup> [https://www.esma.europa.eu/sites/default/files/library/esma22-105-1363\\_esma\\_opinion\\_on\\_2019\\_discharge\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/esma22-105-1363_esma_opinion_on_2019_discharge_report.pdf)



### 2.10.3. Strategy for efficiency gains

ESMA continues to pursue efficiency gains and synergies in its areas of activity. This section gives some examples of areas in which efficiency gains have been or are being made.

Many and important new mandates and tasks have been taken on by ESMA through full internal redeployment and therefore without any additional resources. This is the case for the European crowdfunding service providers and continues to be the case for the new responsibilities stemming from EMIR 2.2 in the area of the EU CCPs' supervisory work together with the policy work required by the CCP recovery and resolution regulation. In addition, ESMA is now conducting major work streams on sustainable finance and digital finance, the prospectus regulation and the MMFR with very limited, if any, additional resources.

In terms of administrative efficiencies, ESMA had already made major efforts before 2021. In particular, the entirety of ESMA's administration (HR, ethics, finance, and procurement and facility management processes) has been digitalised (zero paper) for several years. This has led to a general improvement in efficiency in these areas, notably in terms of speed and reliability, while also reinforcing traceability and contributing to a greener environment by reducing paper consumption. In addition, in 2021, ESMA benefited from its migration to the public cloud, signifying a major step forward in terms of cost-efficiency too, as savings are expected

while systems are scaled up, allowing ESMA to further streamline its IT budget.

In 2021, this high level of digitalisation and significant prior experience in teleworking also allowed these key administrative functions to continue operating extremely satisfactorily and without disruption, as in 2020. This was despite the persistence of the COVID-19 pandemic throughout the year, which forced staff to telework frequently.

ESMA staff travel less every year (32 % less in terms of the total number of missions between 2015 and 2019, despite staff increases during the same period). In 2020 and 2021, owing to COVID-19, the number and cost of missions decreased even further. Regarding meetings, thanks to its prior investments in audio- and videoconferencing and a voting tool, ESMA has continued to work smoothly during the COVID-19 pandemic.

The following are other areas in which efficiency gains have been made:

- a growing budget has been managed with a stable overall number of transactions thanks to a continuous effort to simplify and optimise processes while respecting the financial rules;
- procurement resources have been optimised by joining interinstitutional procedures and by leading major inter-agency procurement processes.



#### 2.10.4. Delegation and subdelegation of the powers of budget implementation to ESMA's staff

Pursuant to Articles 73, 74 and 90 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of the EU laying down detailed rules for the implementation of the financial regulation and the internal rules on implementation of the budget, the Executive Director, as the authorising officer of ESMA, has delegated financial powers to the heads of department, heads of unit and team leaders, for the budget lines they are responsible for in line with their activities.

The ESMA subdelegation breakdown per budget line is organised to ensure:

- business continuity (e.g. through the identification of backups for each budget line);
- efficiency, through an appropriate balance between the maximum ceiling of each subdelegation and the authorising officer by subdelegation's responsibility in ESMA.

The authorising officers by subdelegation have to accept in writing the delegations granted to them, following Article 11a of the staff regulations of officials of the EU, Article 11 of the conditions of employment of other servants of the EU and paragraph 3.2 of the charter for authorising officers by subdelegation.

On a yearly basis, ESMA controls the implementation of the subdelegations granted by the Executive Director in accrual-based accounting).

## 2.11. Internal control

### 2.11.1. Effectiveness of the internal control system

The internal control framework supplements the financial regulation and other applicable rules and regulations with a view to aligning ESMA's standards with the highest international standards set by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) internal control integrated framework (the COSO framework). ESMA's internal control framework was adopted by its Management Board in November 2018, replacing the previously approved 2012 internal control standards.

The COSO framework was reviewed in 2013 to move from a compliance-based to a principle-based system, with the aim of ensuring robust internal control through consistent assessment, while providing the necessary flexibility to allow it to be adapted to the specific characteristics and circumstances of different businesses. To keep up with these recent changes in international best practice, it was appropriate to update ESMA's internal control framework accordingly.

ESMA's internal control framework consists of five internal control components, which are built on 17 principles, based on the COSO 2013 internal control integrated framework and further supported by several characteristics.

To assess the status of the internal control system in 2021, in Q1 2022 ESMA performed its annual self-



assessment of the effectiveness of the implementation of the internal control principles in accordance with the framework.

### 2.11.2. Conclusions of the assessment of internal control systems

The main objective of the self-assessment is to analyse in detail if all of the internal control principles are present and functioning in the organisation.

To do so, in 2021, ESMA measured 78 internal control indicators, covering all internal control principles, as a primary source of information. In addition, ESMA analysed secondary sources of information, including audit reports and security risk logs.

This information allowed ESMA to identify the main strengths and deficiencies of each principle and assess each principle and component. In total, ESMA identified 22 deficiencies, most of which were minor and none of which called into question the presence and proper functioning of the principles. ESMA concluded in its self-assessment that the internal control system was present and functioning well. Some improvements are needed, mainly in the control environment and control activities components.

### 2.11.3. Risk management

ESMA operates in an ever-changing environment with many uncertainties. ESMA has developed an annual process of identifying and assessing risks to assist in the mitigation of risks that could threaten the delivery of its mission. The annual organisational risk assessment takes a combination of a bottom-up and a top-down approach: the bottom-up approach involves identifying risks at department level and the top-down approach involves a management assessment and evaluation of strategic risks considering the input from departments. Significant risks are then reviewed by ESMA's Management Board, which endorses the risks and action plans.

The top risks identified during the assessment are summarised and included in ESMA's programming document. The top risks identified in 2021 in relation to the 2022 work programme were:

- limited capacity to deliver on ESMA mandates – inadequate resources and lack of expertise to manage the extensive legislative agenda (i.e. the CMU and CCPs), the consequences of the United Kingdom's withdrawal from the EU and potential

new mandates for ESMA in certain areas, such as the CSDR;

- difficulties in recruiting and retaining the right expertise in certain areas and the integration of a significant number of newcomers and its potential impact on ESMA's values and culture;
- the security of ESMA's IT systems in the context of the increased risk of cybersecurity threats;
- fragile, more volatile financial markets and diminished investor protection resulting from the prolonged COVID-19 crisis / post-crisis period, limited supervisory convergence and supervision of third-country CCPs.

### 2.11.4. Ethics, anti-fraud measures and the management of conflict of interests

#### Ethics

In 2021, ESMA launched two targeted surveys and subsequently prepared two reports on rules and practices put in place by NCAs with regard to dealing in financial instruments by their staff and national approaches to professional secrecy rules for staff of NCAs, including their involvement in ESMA's activities before and after ceasing their duties in the NCAs.

#### Anti-fraud measures

ESMA has adopted an anti-fraud strategy for 2022–2025, which includes an assessment of the main risks relating to fraud and specific action points to achieve the objectives set out in the strategy. The main objectives of the strategy are to (i) enhance anti-fraud culture across the organisation; (ii) strengthen measures for the detection of fraud; and (iii) maintain an efficient reporting system.

#### Management of conflicts of interest

ESMA examined 251 annual declarations of conflicts of interest. None raised any issues relating to potential conflicts of interest. It also established two joint committees, one for senior managers and one for other staff members, which need to be involved in case conflicts of interest concerns arise in the context of intended future activity after leaving ESMA or in relation to the gainful employment of the spouse of a staff member.

Furthermore, in 2021 ESMA undertook several actions to raise awareness of conflicts of interest and ethics



rules, including conducting induction sessions for newcomers. It also held an all-staff session to brief staff about the inquiry into dealing in financial instruments and on cooling-off periods and to introduce the revisions to conflicts of interest policy concerning post-employment rules.

ESMA also conducted targeted checks in the context of selection committees, recommending to the Executive Director a change in the composition of the selection panels in nine instances owing to the relationships extending beyond collegial working, which could lead to the appearance of potential conflicts of interest. In addition, ESMA was involved in assisting the leaving Chair and Executive Director on ethics matters and on the assessment of future intended activity after leaving ESMA, without any conflicts of interest concerns identified. In the same vein, ESMA successfully onboarded the new Chair and the Executive Director.

### **2.11.5. Statement of the manager in charge of risk management and internal control**

I, the undersigned, Manager in charge of risk management and internal control within ESMA,

In my capacity as manager in charge of risk management and internal control, I declare that, in accordance with ESMA's internal control framework, I have reported my

advice and recommendations on the overall state of internal control in ESMA to the Executive Director.

I hereby certify that the information provided in the present annual report and in its annexes is, to the best of my knowledge, accurate, reliable and complete.

Paris, 19 May 2022

[Signed]

**Roxana De Carvalho**

Head of Governance and External Affairs

ESMA

## **2.12. Declaration of assurance**

### **2.12.1. Review of the elements supporting assurance**

The level of reasonable assurance is down to the personal judgement of ESMA's Executive Director and the authorising officers by delegation, based on all information at their disposal. This information can be structured around pillars or building blocks of assurance.

The main building blocks of the Executive Director's declaration of assurance are:

- the Executive Director's own knowledge of the management and control system in place;
- the observations of the ECA known at the time of the declaration;
- the observations of the IAS known at the time of the declaration;
- the declarations of assurance made by the authorising officers by delegation to the Executive Director;
- the results of the assessment of the internal control system;
- the *ex ante* and *ex post* controls;
- the validation of the accounting systems;
- an analysis of the list of recorded exceptions;
- a summary of European Anti-Fraud Office activities relevant to ESMA.

In support of the annual activity report, all authorising officers and heads of department are asked to sign a declaration of assurance for their areas of responsibility. In 2021, the former Executive Director of ESMA, Verena Ross, also signed a declaration of assurance for the period during which she was Executive Director of ESMA.

The purpose of these declarations is to confirm, on the basis of the facts in their possession, that the information contained in the report gives a true and fair view – except if otherwise specified in any reservations related to defined areas of revenue and expenditure – and that the resources assigned have been used for their intended purpose and in accordance with the principles of sound financial management. The heads of department, the authorising officers by delegation and the former executive director confirmed their reasonable assurance that, overall, suitable controls are in place and working as intended and that the risks identified are being appropriately monitored and mitigated.

Given the control system in place, the information obtained from the building blocks above and the lack of critical findings from the ECA and the IAS at the time of the declaration, there is no reason to question the

efficiency and effectiveness of the control system in place.

## 2.12.2. Reservations

Based on the assurance provided by the control system in place, the Executive Director sees nothing that would justify or require a reservation.

### Materiality criteria used

In line with the guidelines on the preparation of the annual activity report, ESMA used the qualitative and quantitative materiality criteria described below to assess if the issues identified merited a reservation.

### Qualitative criteria used

ESMA considers significant any weaknesses in the internal control system that fall under certain qualitative criteria, namely:

- significant errors detected during the control exercises;
- a significant weakness in the control system;
- situations in which ESMA does not have sufficient evidence from the internal control system or audit coverage to be confident in providing the necessary assurance;
- situations in which a major issue has been highlighted by the ECA or the IAS of the European Commission (critical audit recommendations for underlying weaknesses) relevant to the area covered by the declaration of assurance that are not adequately addressed by other internal controls and for which the materiality threshold is exceeded;
- situations revealed through ESMA's own control work or audits in which significant risks remain unmitigated;
- a significant reputational risk.

### Quantitative criterion used

In accordance with the Commission's guidelines on the preparation of annual activity reports, the ECA uses a 2 % materiality threshold. ESMA has therefore set the quantitative criterion of materiality at 2 % of its total budget.

### 2.12.3. Overall conclusions on assurance

Taking into account the review of the elements supporting assurance, the Executive Director is of the opinion that the management and control systems in place at ESMA are working as intended, risks are being appropriately monitored and mitigated, and necessary improvements and reinforcements are being implemented.

Based on all of the facts presented in the report and in the light of the opinions expressed by the ECA on the reliability of the accounts and on the legality and regularity of the transactions underlying the accounts, ESMA can conclude that the systems in place provide reasonable assurance that the resources under the responsibility of the Executive Director were used for their intended purposes and in accordance with the principles of sound financial management.

### 2.12.4. 2021 declaration of assurance by the Executive Director of ESMA

I, the undersigned, Executive Director of the European Securities and Markets Authority,

In my capacity as authorising officer,

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal such as the results of the self-assessment, ex-post controls, the work of the Internal Audit Service and the lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.

Confirm that I am not aware of anything not reported that could harm the interests of European Securities and Markets Authority.

Paris, 31 May 2022

[Signed]

**Natasha Cazenave**

Executive Director

European Securities and Markets Authority

# Annexes



# ANNEX I – Reporting on key performance indicators

ESMA has defined a list of KPIs that are regularly reported to the Management Board. ESMA's work programme in 2021 was measured against these indicators.

Activity	KPI	Target	2020 results	2021 results
Promoting supervisory convergence	Business-related KPIs			
	Number of cases of non-compliance with guidelines and recommendations	N/A	27	28
	Number of peer reviews conducted	4	1	1 <sup>(17)</sup>
	IT project-related KPIs			
	IT systems delivered compared with those planned (%)	80	88	93
	Projects' budget execution for the current year (%)	95	93	97
	Maintenance budget execution for the current year (%)	95	94	100
	Open tickets versus closed (%)	> 95	98.8	99.3
Assessing risks to investors, markets and financial stability	Number of risk topics analysed	8	18	12
	Number of risk monitoring reports delivered against the work plan, including ESMA TRVs (2), ESMA risk dashboards (2), Joint Committee of the ESAs risk reports (2) and ESMA ASRs (4)	10	10	10
	Data and statistics: coverage of ESMA databases under central data management (%)	90	85.6	82

(\*) N/A = Not available

<sup>(17)</sup> All peer reviews were launched, as planned, and will be finalised in 2022

Activity	KPI	Target	2020 results	2021 results
Direct supervision of specific financial entities	Cases that met the time designated for the overall enforcement process (%)	> 50	80	67 <sup>(18)</sup>
	Risk scenarios that triggered a supervisory action and resulted in a drop in the risk following the action (%)	> 70	76	74
Single rulebook	Technical standards reviewed (%)	N/A	N/A	16
Organisational implications	Rate of implementation of commitment appropriations (%)	> 95	94	99.94
	Rate of cancellation of payment appropriations (%)	< 5	4.6	4.3
	Rate of payments executed within legal/contractual deadlines (%)	> 95	96	97.8
	Average vacancy rate (%)	< 10	14	4
	Staff turnover rate (%)	< 10	5.2	3.6
	Completion of the activities of the annual work programme (%)	> 85	81.5	91
	Rate of implementation of audit recommendations (%)	> 85	57	75

<sup>(18)</sup> Cases ongoing at any stage of the ESMA enforcement process (opened following a decision of the Executive Director, referred to an Independent Investigating Officer (IIO) or submitted to BoS).



# ANNEX II – Statistics on financial management

## Costs and benefits of controls

The controls in place are designed to optimise their effectiveness and efficiency, by striking the right balance between the benefits of the controls regarding in particular the legality and regularity of the underlying transactions, and the effectiveness and efficiency of the controls considering the risks involved.

ESMA has estimated the costs of controls in 2021. The calculation method was inspired by the approach used by the European Commission. The estimated costs of controls include the estimated salary costs (including social charges) of the staff directly involved in the relevant control systems. These activities were centred on the following areas: finance and verification processes, internal control self-assessment activities and audit coordination, security, ethics and anti-fraud.

Considering the above, in 2021, ESMA allocated EUR 0.847 million for control activities, amounting to 1.4 % of the authorities' total budget for 2021.

Regarding the effectiveness of the controls, the ECA has given ESMA an unqualified opinion on the 2020 accounts. No other indications were found that the controls in place were not effective. Regarding the efficiency and economy of the controls, no serious anomalies were reported to bring these into question. Considering the positive results of the verifications of the *ex ante* and *ex post* controls, the absence of critical recommendations stemming from audits, the well-established framework for managing exceptions and the regularity of operations, the overall balance between the effectiveness, efficiency and economy of the controls is reasonably satisfactory.

## Budget execution C1

2021 C1	Voted budget for 2021 (after transfers) (1)	Commitments (2)		Payments (3)		To be carried forward (4)	
ESMA's budget title	Budget for 2021 (EUR)	Committed (EUR)	(2)/(1) (%)	Paid (EUR)	(3)/(1) (%)	(2)–(3) (EUR)	(4)/(1) (%)
I	37 605 473	37 601 048	99.99	37 301 093	99.19	299 956	0.80
II	7 933 630	7 907 066	99.67	6 867 878	86.57	1 039 187	13.10
III	12 396 194	12 394 297	99.98	7 842 655	63.27	4 551 642	36.72
IV	767 552	767 552	100.00	767 552	100.00	—	0.00
<b>Total C1</b>	<b>58 702 849</b>	<b>58 669 963</b>	<b>99.94</b>	<b>52 779 178</b>	<b>89.91</b>	<b>5 890 785</b>	<b>10.03</b>

NB: Appropriations corresponding to the EU contribution for the current year.

ESMA spent 99.94 % of its budget in 2021 on an approved budget of EUR 58 702 848 (excluding the contributions from the NCAs and other external

entities for the delegated IT tasks, which represented EUR 1 722 449 in 2021). Only EUR 32 886 of ESMA's budget was not used at the end of 2021.

## Number and value of budget transfers

ESMA's budget title	2021 initial budget (1) (EUR)	First budget transfer (EUR)	Second budget transfer (EUR)	Third budget transfer (EUR)	Fourth budget transfer (EUR)	First budget amendment (EUR)	Fifth budget transfer (EUR)	2021 final budget (2) (EUR)	(2) – (1) (EUR)	VAR (%)
Staff	39 663 176	—	– 339 507	– 69 423	– 491 194	– 1 133 879	– 23 700	37 605 473	– 2 057 703	– 5
Infrastructure & Administration	7 831 000	—	30 000	73 000	151 630	—	– 152 000	7 933 630	102 630	1
Operating expenditure	11 575 000	—	309 507	– 3 577	339 564	—	175 700	12 396 194	821 194	7
Delegated tasks - only core budget	767 552	—	—	—	—	—	—	767 552	—	0
<b>Total</b>	<b>59 836 728</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>– 1 133 879</b>	<b>—</b>	<b>58 702 849</b>	<b>– 1 133 879</b>	<b>– 2</b>

NB: Owing to rounding, there may be a EUR 1 difference between the sum of the subtotals and the totals. VAR, variance.

## Interest charged for late supplier payments

In 2021, ESMA paid zero interest for late payments to suppliers.

## Budget outturn and cancellation of appropriations (data from provisional accounts for 2021) (EUR)

Calculation of budget outturn	2019	2020	2021
Reserve from the previous year's surplus	—	—	—
Revenue actually received	47 459 449	54 762 442	60 881 221
Payments made	(42 800 419)	(46 106 125)	(54 236 666)
Carry-over of appropriations	(5 798 467)	(8 137 815)	(7 422 820)
Cancellation of appropriations carried over	173 108	352 306	301 931
Adjustment for carry-over of assigned revenue appropriation from previous year	1 161 381	725 157	1 081 073
Exchange rate differences	(407)	(2 168)	(994)
Adjustment for negative balance from previous year	—	—	—
<b>Total</b>	<b>194 645</b>	<b>1 593 797</b>	<b>603 746</b>

## Budget outturn

For the calculation of budget outturn, the following parameters are considered. The revenue entered in the accounts is the amount actually received during the year. For the purposes of calculating the budget result for the year, expenditure comprises payments made against the year's appropriations plus any of the appropriations for that year that are carried over to the following year. Payments made against the year's appropriations are payments that are made by the accounting officer by 31 December of the financial year.

The following are added to or deducted from the resulting figure: the net balance of cancellations of payment appropriations carried over from previous years and any payments that, because of fluctuations in the euro rate, exceed non-differentiated appropriations carried over from the previous year, and the balance of exchange rate gains and losses recorded during the year.

Payment appropriations carried over include automatic carry-overs and carry-overs by decision. The

cancellation of unused payment appropriations carried over from the previous year includes the cancellations on appropriations carried over automatically and by decision. It also includes the decrease in assigned revenue appropriations carried over to the next year in comparison with the previous year.

## C1 cancelled appropriations

ESMA uses non-differentiated appropriations for its C1 credits. In 2021, the total amount of appropriations inscribed as C1 funds that were not used at the end of the year equalled EUR 32 886.

## C8 cancelled appropriations

In 2021, out of a total of EUR 7 056 742 C8 payment appropriations, 95.72 % was consumed (EUR 6 754 811). A total of EUR 301 931 (or 4.28 % of the C8 appropriations for the year) was cancelled.

# ANNEX III – Establishment plan and benchmarking exercise

## ESMA's staff population in 2021 (all categories of staff)

Staff population		Headcount as of 31 December 2020	Headcount as of 31 December 2021
Officials	ADs	—	—
	ASTs	—	—
	ASTs/SCs	—	—
TAs	ADs	164	205
	ASTs	8	8
	ASTs/SCs	—	—
Total TAs		<b>172</b>	<b>213</b>
CAs (FG IV)		45	55
CAs (FG III)		23	30
CAs (FG II)		—	—
CAs (FG I)		—	—
Total CAs		<b>68</b>	<b>85</b>
SNEs		10	10
<b>Total</b>		<b>250</b>	<b>308</b>

NB: AD, administrator; AST, assistant; FG, function group; SC, secretary.

## ESMA's establishment plan for 2021 (temporary agents)

Category and grade	Establishment plan in EU budget for 2021	Filled as of 31 December 2021
AD16	1	1
AD15	3	3
AD14	1	1
AD13	3	0
AD12	10	6
AD11	15	5
AD10	24	18
AD9	42	36
AD8	40	28
AD7	45	30
AD6	17	15
AD5	37	62
<b>Total ADs</b>	<b>238</b>	<b>205</b>
AST11	—	—
AST10	—	—
AST9	—	—
AST8	2	—
AST7	3	—
AST6	3	—
AST5	3	5
AST4	1	2
AST3	—	—
AST2	—	—
AST1	—	1
<b>Total ASTs</b>	<b>12</b>	<b>8</b>
AST/SC6	—	—
AST/SC5	—	—
AST/SC4	—	—
AST/SC3	—	—
AST/SC2	—	—
AST/SC1	—	—
<b>Total ASTs/SCs</b>	<b>—</b>	<b>—</b>
<b>Total</b>	<b>250</b>	<b>213</b>

NB: AD, administrator; AST, assistant; SC, secretary.

## Benchmarking against previous year's results

The table below outlines the results of the seventh job-screening exercise conducted in ESMA and in all EU regulatory agencies. The exercise is based on Articles 29(3) and 38(1) of the framework financial regulation. The methodology was designed by

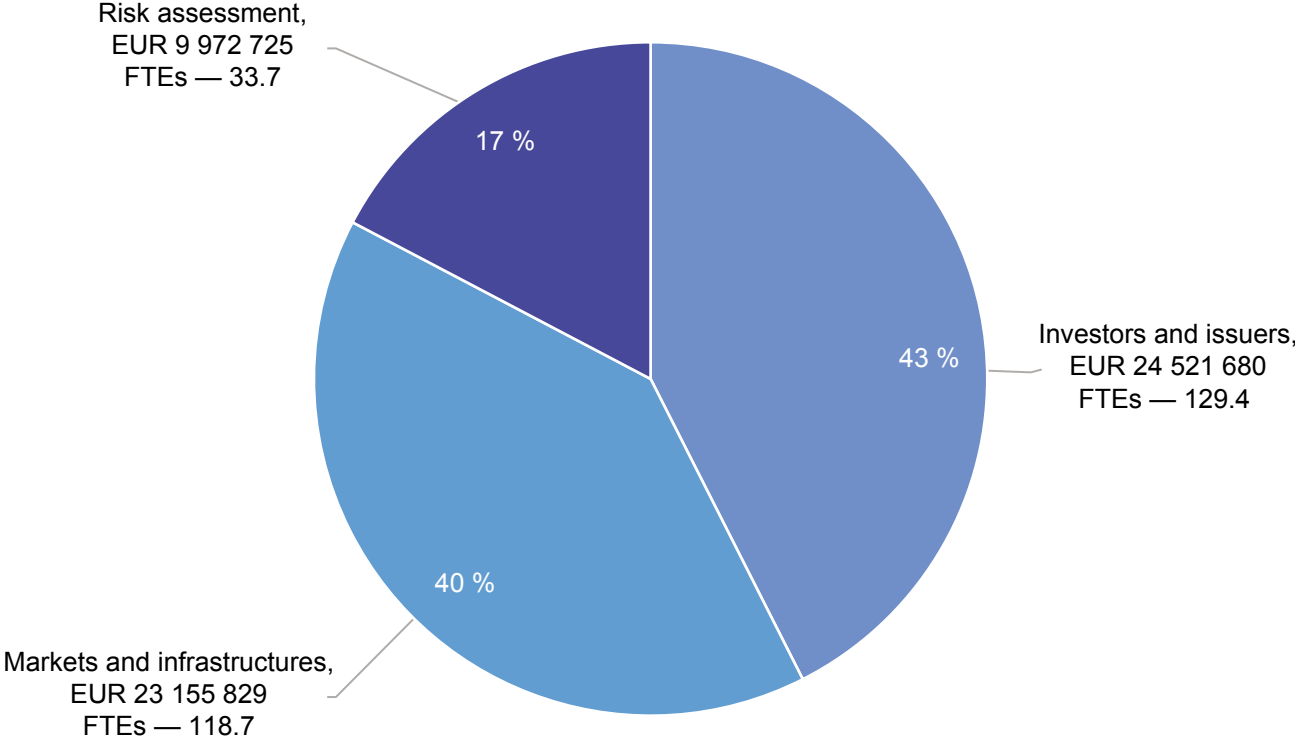
a working group including representatives from different EU agencies (including ESMA) and from the European Commission (the Directorate-General for Budget, the Directorate-General for Human Resources and Security and the Secretariat-General). It was generated as an adaptation, refinement and clarification of the Commission's job-screening methodology, which it had been implementing for several years.

Job (sub)category	2020 (%)	2021 (%)
<b>Administrative support and coordination</b>	<b>20.2</b>	<b>15.9</b>
Administrative support	13.5	13.2
Coordination	6.7	2.7
<b>Operational</b>	<b>75.3</b>	<b>79.7</b>
General operational activities	10.3	15.1
Programme management and implementation	57.1	45.9
Top operational coordination	3.5	5.2
Evaluation and impact assessment	4.5	13.5
<b>Neutral</b>	<b>4.5</b>	<b>4.4</b>
Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control	4.5	4.4
Linguistic activities	0	0

NB: Reference date – 31 December 2020/2021.

# ANNEX IV – Human and financial resources by activity

The total costs for 2021 amount to **EUR 57 650 234**, with **282** internal full-time equivalents (TAs, CAs and SNEs), excluding EUR 2 721 094 and three full-time equivalents for delegated projects.



NB: FTE, full-time equivalent.

# ANNEX V – Contribution, grant and service-level agreements

At the end of 2021, ESMA had in place the following service-level agreements with other EU institutions.

Entity	Topic	Starting year
CdT	Translation services	2018
CERT-EU	IT security support	2014
Directorate-General for Budget	Use of ABAC and ABAC-data warehouse data extraction	2013
Directorate-General for Human Resources and Security	Accredited European schools	2021
Directorate-General for Human Resources and Security	HR services (learning and development, health and well-being)	2018
Directorate-General for Informatics	Digital services	2019
EASA	EASA inter-agency permanent secretariat	2016
EBA	Accounting services	2021
EFSA	Inter-agencies cost-sharing agreement (shared support office)	2018
EPSO-EUSA	EPSO – assistance to institutions, agencies and bodies at their request, with a view to selecting officials, TAs and CAs	2019
	EUSA – training	
European Commission	Medical services	2011
Office for the Administration and Payment of Individual Entitlements	General assistance to the authority and sharing IT applications	2018
Office for the Administration and Payment of Individual Entitlements	Services provided by the PMO on the basis of the staff regulations	2015
Publications Office of the European Union	Production of the general publications of ESMA and related services	2015
Office for the Administration and Payment of Individual Entitlements	Conditions under which the PMO provides services, goods or work to the client	2021

NB: ABAC, accrual-based accounting; CdT, Translation Centre for the Bodies of the European Union; CERT-EU, Computer Emergency Response Team for the EU institutions, bodies and agencies; EASA, European Union Aviation Safety Agency; EBA, European Banking Authority; EFSA, European Food Safety Authority; EPSO, European Personnel Selection Office; EUSA, European School of Administration. The above service-level agreements allow ESMA to access high-quality and specialised services and – at the same time – benefit from economies of scale, good prices and efficiency gains. Overall, the financial impact is positive.



# ANNEX VI – Environmental management

In line with the environmental commitments in its strategic orientation for 2020–2022, ESMA is putting in place an environmental management system and is working towards becoming registered with the EU Eco-Management and Audit Scheme (EMAS). ESMA conducted an environmental review to determine its significant environmental aspects and to ensure compliance with EU, as well as the applicable national and local, environmental requirements. ESMA's environmental policy, adopted on 13 June 2017, sets out the following objectives to reduce the environmental impact of its work and to improve its environmental performance:

- minimise the consumption of energy, water, paper and other resources;
- encourage the prevention of waste and environmental pollution by maximising the recycling and reuse of items and by optimising their disposal;
- take the necessary measures to reduce carbon dioxide emissions and minimise the impact of mobility and travel;
- comply with relevant environmental legislation, administrative regulations and other requirements.

To achieve these objectives, ESMA has been working with its staff and suppliers to reduce waste, improve recycling and reduce travel (e.g. by making better use of technology to work towards a paperless office and to increase their use of videoconferencing). ESMA has the ambition to become a paperless supervisor by 2025. By that time, ESMA's internal processes will be paperless

and it will have no paper-based communication with its supervised entities or with NCAs. In addition, ESMA's new premises (from 2019) have high environmental quality certification, which is France's standard for green buildings, based on the principles of sustainable development, for its construction, conception and operation.

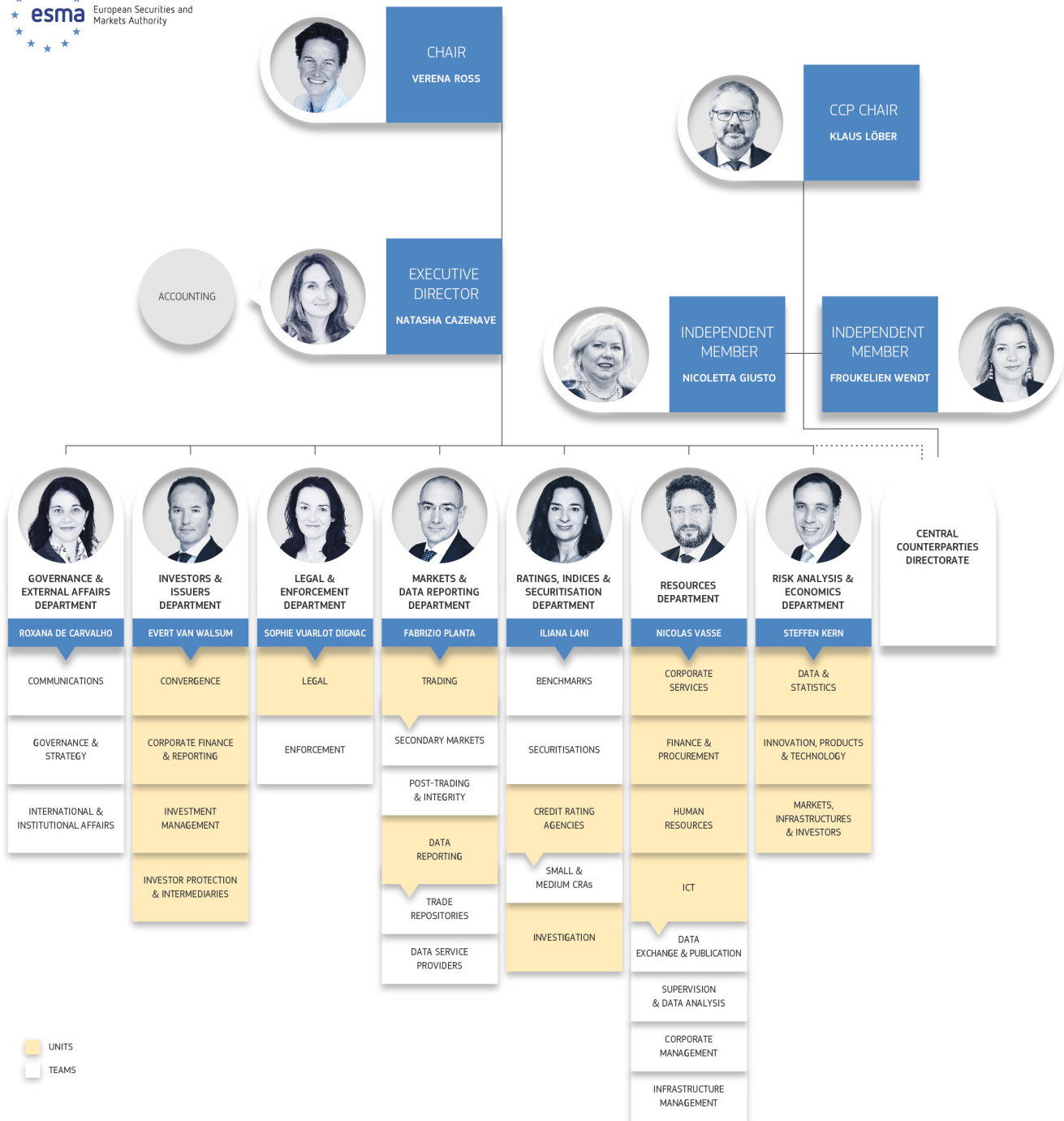
The remote working imposed during large parts of 2020 and 2021 led to an improvement in several key environmental indicators, such as paper recycling (4.2 tonnes of paper was recycled in 2021 versus 7.8 tonnes in 2020 and 21.9 tonnes in 2019) and missions (a 88 % decrease compared with 2020 following a decrease of 83 % from 2019 to 2020).

Impacts of or progress towards the achievement of goals are measured and monitored through a KPI control panel that is set by ESMA's management.

Although the project to achieve EMAS registration needed to be deprioritised in 2020 and 2021 to concentrate resources on work relating to the COVID-19 pandemic, the next steps will be to finalise the implementation of the environmental management system and achieve EMAS registration. This will ensure that continuous progress is achieved towards ESMA's environmental objectives. In 2021, ESMA also raised the awareness of staff on current environmental performance with dedicated training sessions and several communications on approved environmental best practices and continued to work on continuing to use remote meetings after the pandemic to maintain the related reduction in travel and the associated environmental benefits.



# ANNEX VII – Organisational chart as at 31 December 2021



# ANNEX VIII – ESMA’s boards and standing committees

The ultimate decision-making body of ESMA is the Board of Supervisors, whereas the Management Board ensures that the authority carries out its mission and performs the tasks assigned to it.

## ESMA’s Boards and their 2021 composition

### Members of the Management Board as of 31 December 2021

Member	Authority	Country
Verena Ross	ESMA (Chair)	—
Vojtech Belling	Czech National Bank (CNB)	Czechia
Vasiliki Lazarakou	Hellenic Capital Markets Commission (HCMC)	Greece
Robert Ophèle	Autorité des marchés financiers (AMF)	France
Derville Rowland	Central Bank of Ireland (CBI)	Ireland
Magdalena Łapsa Parczewska	Komisja Nadzoru Finansowego (KNF)	Poland
—	Vacant seat	—
Ugo Bassi	European Commission (non-voting member)	—
Natasha Cazenave	ESMA Executive Director (non-voting member)	—
Erik Thedéen	ESMA Vice-Chair (observer)	—

### Members of the Board of Supervisors as of 31 December 2021

Member	Authority	Country
Verena Ross	ESMA (Chair)	—
Jean-Paul Servais	Financial Services and Markets Authority (FSMA)	Belgium
Mariya Filipova	Комисията за финансов надзор (FSC)	Bulgaria
Vojtěch Belling	Czech National Bank (CNB)	Czechia

Member	Authority	Country
Karen Dorte Abelskov	Finanstilsynet	Denmark
Thorsten Pötzsch	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Andre Nõmm	Finantsinspeksioon (FSA)	Estonia
Derville Rowland	Central Bank of Ireland (CBI)	Ireland
Vasiliki Lazarakou	Hellenic Capital Market Commission (HCMC)	Greece
Rodrigo Buenaventura	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Robert Ophèle	Autorité des marchés financiers (AMF)	France
Ante Žigman	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Croatia
Paolo Savona	Commissione Nazionale per le Società e la Borsa (CONSOB)	Italy
George Theocharides	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus
Santa Purgaile	Finanšu un kapitāla tirgus komisija (FKTK)	Latvia
Rūta Merkevičiute	Lietuvos Bankas	Lithuania
Claude Marx	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg
Gergő Szeniczey	Magyar Nemzeti Bank (MNB)	Hungary
Christopher Buttigieg	Malta Financial Services Authority (MFSA)	Malta
Laura Van Geest	Autoriteit Financiële Markten (AFM)	Netherlands
Eduard Müller	Finanzmarktaufsicht (FMA)	Austria
Magdalena Łapsa-Parczewska	Komisja Nadzoru Finansowego (KNF)	Poland
Gabriel Bernardino	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Gabriel Gradinescu	Autoritatea de Supraveghere Financiară (ASF)	Romania
Anka Čadež	Agencija za trg vrednostnih papirjev (ATVP)	Slovenia
Peter Tkáč	Národná Banka Slovenska (NBS)	Slovakia
Anneli Tuominen	Finnish Financial Supervisory Authority (FSA)	Finland
Erik Thedéen	Finansinspektionen (FI)	Sweden

## Non-voting members of the Board of Supervisors as of 31 December 2021

Member	Authority	Country/organisation
Unnur Gunnarsdóttir	Fjármálaeftirlitið (FME)	Iceland
Marcel Lötscher	Finanzmarktaufsicht (FMA)	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Ugo Bassi	European Commission	EU
François-Louis Michaud	European Banking Authority (EBA)	EU
Fausto Parente	European Insurance and Occupational Pensions Authority (EIOPA)	EU
Francesco Mazzaferro	European Systemic Risk Board (ESRB)	EU
Frank Buchel	European Free Trade Association (EFTA) Surveillance Authority	EFTA

### Standing committees and working groups

ESMA's work is supported by standing committees <sup>(19)</sup>, working groups and task forces, which bring together senior experts. The different ESMA standing committees are established on a permanent basis.

Each committee is chaired by a board member and supported by ESMA staff. Many standing committees also have consultative working groups made up of external stakeholder representatives.

ESMA's standing committees, included in the table below, prepare the technical work on all areas of ESMA's activities.

Name of standing committee	Chair
CCP Policy Committee	Klaus Löber, ESMA
CCP Supervisory Committee	Klaus Löber, ESMA
Committee of Economic and Markets Analysis	Carmine Di Noia, CONSOB, Italy
Corporate Finance Standing Committee	Benoit de Juvigny, AMF, France
Corporate Reporting Standing Committee	Annemie Rombouts, FSMA, Belgium
Data Standing Committee	Christopher Buttigieg, MFSA, Malta
Financial Innovation Standing Committee	Birgit Puck, FMA, Austria
Investment Management Standing Committee	Derville Rowland, CBI, Ireland

<sup>(19)</sup> <https://www.esma.europa.eu/about-esma/working-methods/standing-committees-and-other-bodies>

Name of standing committee	Chair
Investor Protection and Intermediaries Standing Committee	Rodrigo Buenaventura, CNMV, Spain
Market Integrity Standing Committee	Rodrigo Buenaventura, CNMV, Spain
Post-Trading Standing Committee	Carmine Di Noia, CONSOB, Italy
Secondary Markets Standing Committee	Robert Ophèle, AMF, France
Supervisory Convergence Standing Committee	Jos Heuvelman, AFM, Netherlands
Advisory Committee on Proportionality	Magdalena Łapsa-Parczewska, KNF, Poland

# ANNEX IX – Overview of the activities of the Securities and Markets Stakeholder Group

The SMSG was established under the ESMA regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. In 2021, the SMSG held seven meetings, two of which were held together with ESMA's Board of Supervisors.

The rules of procedure of the SMSG <sup>(20)</sup> require ESMA to include in its annual report an overview of the activities of the group, including a summary of any reports and other advice it has formulated throughout the year. In 2021, the SMSG produced the following advice and reports. These were either in response to a consultation launched by ESMA or a result of the group's own initiative. All these documents are available on ESMA's website <sup>(21)</sup>:

- *SMSG advice ESMA on its consultation paper on guidelines on the MIFID II/MIFIR obligations on market data,*
- SMSG own initiative advice to ESMA on the Wirecard case,
- *SMSG advice to ESMA on its consultation paper on 'guidelines on certain aspects of appropriateness and execution-only',*
- *SMSG advice to the ESA's joint consultation paper on taxonomy-related sustainability disclosures,*
- *SMSG response to the ESMA's consultation report on 'EU money market fund regulation – legislative review',*

- *SMSG response to the European Commission's consultation on the EU strategy for retail investors,*
- SMSG's advice for ESMA on digital finance,
- *SMSG advice to ESMA on its draft 2022 annual work programme,*
- SMSG's advice on remuneration guidelines,
- *SMSG advice to ESMA on its consultation paper on the review of certain aspects of the short selling regulation.*

SMSG meetings typically start with discussions on recent market developments. Such discussions allow the SMSG to highlight to ESMA and the organisations to exchange views on topics of general interest in the securities markets and related areas. In 2021, the presentations given at these meetings were on topics such as:

- a research paper on investors' trust in robo-advice;
- a research paper on the fragmentation of the order flow and dark trading at the height of the COVID-19 pandemic;
- the results of research conducted on certain issues regarding value for money research on market structures.

<sup>(20)</sup> [https://www.esma.europa.eu/sites/default/files/library/esma22-106-2371\\_smsg\\_rules\\_of\\_procedure\\_2020.pdf](https://www.esma.europa.eu/sites/default/files/library/esma22-106-2371_smsg_rules_of_procedure_2020.pdf)

<sup>(21)</sup> [https://www.esma.europa.eu/databases-library/esma-library?f%5B0%5D=im\\_esma\\_sections%3A9](https://www.esma.europa.eu/databases-library/esma-library?f%5B0%5D=im_esma_sections%3A9)

# ANNEX X – Provisional annual accounts for 2021

The 2021 annual accounts of ESMA are produced in accordance with its financial regulation; they are adopted by ESMA's Management Board and Board of Supervisors and are published on ESMA's website.

Disclaimer: please note that the annual accounts are provisional and at the publishing date of the annual report are awaiting observations of the external auditor of ESMA.

## Balance sheet (EUR)

	Note	2021	2020
<b>Assets</b>			
<b>Non-current assets</b>			
<i>Intangible fixed assets</i>	<b>II.1.a</b>		
Computer software		4 943 949	4 086 735
<i>Tangible fixed assets</i>	<b>II.1.b</b>		
Plant and equipment		96	222
Computer hardware		339 707	340 346
Furniture		379 675	440 642
Other fixtures and fittings		4 609 386	4 695 027
<b>Total</b>		<b>10 272 813</b>	<b>9 562 972</b>
<b>Current assets</b>			
	<b>II.2</b>		
Current receivables	II.2.a	1 249 370	1 314 205
Sundry receivables	II.2.b	27 357	54 184
Deferred charges and accrued income	II.2.c	1 927 829	1 829 962
Cash and cash equivalents	II.2.d	6 563 604	11 420 188
<b>Total</b>		<b>9 768 161</b>	<b>14 618 539</b>
<b>Total assets</b>		<b>20 040 974</b>	<b>24 181 511</b>



	Note	2021	2020
<b>Liabilities</b>			
<b>Non-current liabilities</b>			
Deferred revenue	II.4	4 724 421	6 692 718
<b>Total</b>		<b>4 724 421</b>	<b>6 692 718</b>
<b>Current liabilities</b>			
Current payables	II.5.a	3 687 310	5 084 515
Sundry payables	II.5.b	—	640 000
Payables towards consolidated entities	II.5.c	842 246	2 459 238
Deferred revenue	II.4	1 228 486	1 343 248
<b>Total</b>		<b>5 758 042</b>	<b>9 527 001</b>
<b>Total liabilities</b>		<b>10 482 463</b>	<b>16 219 719</b>
<b>Total net assets</b>		<b>9 558 511</b>	<b>7 961 792</b>

## Statement of financial performance (EUR)

	Note	2021	2020
<b>Operating result</b>			
<b>Operating revenue</b>	<b>III.1</b>		
Subsidy from the Member States		23 832 443	21 023 185
Subsidy from EFTA countries		737 847	597 250
EU balancing subsidy		17 574 825	15 369 063
Fees from supervised entities		15 953 989	14 708 779
NCA's contribution to IT delegated projects		2 833 732	3 180 568
Foreign currency conversion gains		3 868	2 343
Other miscellaneous revenue		12 492	86 829
<b>Total</b>		<b>60 949 196</b>	<b>54 968 017</b>

	Note	2021	2020
<b>Operating expenses</b>	<b>III.2</b>		
Staff expenses	III.2.a	36 655 522	30 226 912
Building and related expenses	III.2.b	5 702 454	5 581 471
Other expenses	III.2.c	14 204 253	13 086 140
Depreciation and amortisation	III.2.d	2 792 499	3 013 236
Foreign currency conversion losses		4 862	4 526
<b>Total</b>		<b>59 359 589</b>	<b>51 912 285</b>
<b>Operating result</b>		<b>1 589 607</b>	<b>3 055 732</b>
<b>Non-operating result</b>	<b>III.3</b>		
Financial revenue		12 314	495
Financial expenses		5 201	45 373
<b>Non-operating result</b>		<b>7 112</b>	<b>(44 878)</b>
<b>Result from ordinary activities</b>		<b>1 596 719</b>	<b>3 010 854</b>
<b>Result from extraordinary items</b>		<b>—</b>	<b>—</b>
<b>Economic result for the year</b>		<b>1 596 719</b>	<b>3 010 854</b>

EFTA, European Free Trade Association.

## Cash flow statement (EUR)

	2021	2020
<b>Cash flow from ordinary activities</b>		
<b>Surplus/deficit from ordinary activities</b>	<b>1 596 719</b>	<b>3 010 854</b>
Depreciation and amortisation	2 792 499	2 986 951
Increase/decrease in provisions	—	—
Increase/decrease in receivables	(6 206)	(2 359 647)
Increase/decrease in accounts payable	(2 037 205)	1 614 499
Increase/decrease in liabilities to consolidated entities	(1 616 992)	1 270 324
Increase/decrease in deferred income	(2 083 059)	—
<b>Net cash flow from operating activities</b>	<b>(2 950 964)</b>	<b>3 512 127</b>
<b>Cash flow from investing activities</b>		
Increase/decrease in fixed assets	(3 502 340)	(1 364 748)
<b>Net cash flow from investing activities</b>	<b>(3 502 340)</b>	<b>(1 364 748)</b>
<b>Net increase/decrease in cash</b>	<b>(4 856 584)</b>	<b>5 158 233</b>
<b>Cash at the beginning of the period</b>	<b>11 420 188</b>	<b>6 261 957</b>
<b>Cash at the end of the period</b>	<b>6 563 604</b>	<b>11 420 188</b>

## Statement of changes in net assets (EUR)

Capital	Reserves		Accumulated equity	Economic result of the year	Total net assets
	Fair value	Other			
<b>Balance as at 31 December 2020</b>	—	—	<b>4 950 938</b>	<b>3 010 854</b>	<b>7 961 792</b>
Changes in accounting policies	—	—	—	—	—
<b>Balance as at 1 January 2021 (if restated)</b>	—	—	<b>4 950 938</b>	<b>3 010 854</b>	<b>7 961 792</b>
Allocation of the result for 2020	—	—	3 010 854	(3 010 854)	—
Economic result for the year	—	—	—	1 596 719	<b>1 596 719</b>
<b>Balance as at 31 December 2021</b>	—	—	<b>7 961 792</b>	<b>1 596 719</b>	<b>9 558 511</b>

# ANNEX XI – Abbreviations

ABAC	accrual-based accounting
AFM	Autoriteit Financiële Markten
AIF	alternative investment fund
AIFMD	alternative investment fund managers directive
AMF	Autorité des marchés financiers
AMP	accepted market practice
ASR	annual statistical report
BMR	benchmarks regulation
CA	contract agent
CBI	Central Bank of Ireland
CCP	central counterparty
CMU	capital markets union
CNB	Czech National Bank
CNMV	Comisión Nacional del Mercado de Valores
CO	clearing obligation
CONSOB	Commissione Nazionale per le Società e la Borsa
COSO	Committee of Sponsoring Organisations of the Treadway Commission
CRA	credit rating agency
CSA	common supervisory action
CSD	central securities depository
CSDR	central securities depositories regulation
CSP	cloud service provider
DORA	digital operational resilience act
DTO	derivatives trading obligation
EBA	European Banking Authority
ECA	European Court of Auditors
EEA	European Economic Area
EFIF	European Forum for Innovation Facilitators
EFRAG	European Financial Reporting Advisory Group
EFTA	European Free Trade Association
EIOPA	European Insurance and Occupational Pensions Authority
ELTIF	European long-term investment fund
EMIR	European market infrastructure regulation
ESAs	European Supervisory Authorities
ESEF	European single electronic format
ESG	environmental, social and governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FSA	Finnish Financial Supervisory Authority

FMA	Finanzmarktaufsicht
FSB	Financial Stability Board
HCMC	Hellenic Capital Market Commission
HR	human resources
IAS	Internal Audit Service
IASB	International Accounting Standards Board
ICT	information and communications technology
IFRS	International Financial Reporting Standard
IOSCO	International Organization of Securities Commissions
IT	information technology
ITS	implementing technical standards
KNF	Komisja Nadzoru Finansowego
KPI	key performance indicator
MAR	market abuse regulation
MFSA	Malta Financial Services Authority
MiFID	markets in financial instruments directive
MiFID II	revised markets in financial instruments directive
MiFIR	markets in financial instruments regulation
MMF	money market fund
MMFR	money market fund regulation
NCA	national competent authority
OTC	over the counter
OTF	organised trading facility
PRIIP	packaged retail and insurance-based investment product
P2G	Pillar 2 capital guidance
Q&A	question and answer
RTS	regulatory technical standards
SFDR	sustainable finance disclosure regulation
SFT	securities financing transaction
SFTR	securities financing transactions regulation
SMEs	small and medium-sized enterprises
SMSG	Securities and Markets Stakeholder Group
SNE	seconded national expert
SR	securitisation repository
SREP	supervisory review and evaluation process
SSR	short selling regulation
STS	simple, transparent and standardised
TA	temporary agent
TR	trade repository
TRV	trends, risks and vulnerabilities
UCITS	undertakings for collective investment in transferable securities
USSP	Union strategic supervisory priority





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