

# Terms of Reference

## Issuers Standing Committee

1. ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability, by (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. In order to fulfil its mission, the ESMA Strategy 2023-2028<sup>1</sup> sets out three strategic priorities: (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets and (iii) enhancing protection of retail investors and two thematic drivers: (i) enhancing sustainable finance and (ii) facilitating technological innovation and effective use of data.
3. ESMA shall act within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR<sup>2</sup>) and among others within the scope of the Transparency Directive (Directive 2004/109/EC) and of the Prospectus Regulation (Regulation (EU) 2017/1129). ESMA shall also act "in the field of activities of market participants in relation to issues not directly covered by the legislative acts referred to in paragraph 2" (the Transparency Directive and the Prospectus Regulation)", including matters of corporate governance<sup>3</sup>, auditing<sup>4</sup> and financial reporting<sup>5</sup>, taking into account sustainable business models and the integration of environmental, social and governance related factors, provided that such actions are necessary to ensure the effective and consistent application of those acts. The Authority shall also take appropriate action in the context of take-over bids<sup>6</sup>, [...].
4. In order to fulfil ESMA's mission, the Board of Supervisors has established the Issuers Standing Committee, thereafter ISC, pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify its tasks, responsibilities, functioning and governance.

### Tasks and responsibilities

5. The ISC contributes to ESMA's mission by actively monitoring and/or contributing to regulatory developments relating to issuer information and certain aspects of conduct as per the areas and legal acts mentioned above in paragraph 3, including how to improve the quality and consistency of issuer information to the market – especially in

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma\\_strategy\\_2023-2028.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf)

<sup>2</sup> ESMA Regulation No 1095/2010 of the European Parliament and of the Council

<sup>3</sup> Shareholder Rights Directive (Directive 2007/36/EC), the Directive 2017/828 amending Directive 2007/36/EC promoting long term engagement and the upcoming Corporate Sustainability Due Diligence Directive (CSDDD)

<sup>4</sup> Audit Directive (Directive 2014/56/EU) and Audit Regulation (Regulation (EU) No 537/2014)

<sup>5</sup> Accounting Directive (Directive 2013/34/EU), IAS Regulation (Regulation 1606/2002/EC) and amended Commission Regulation 1126/2008/EC adopting IFRS on the basis the IAS Regulation (Regulation 1606/2002/EC), Non-Financial Reporting Directive (Directive 2014/95/EU), Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464), Taxonomy Regulation (Regulation (EU) 2020/852)

<sup>6</sup> Takeover Bids Directive (Directive 2004/25/EC)

relation to the development of financial and sustainability reporting requirements. The ISC also promotes appropriate supervisory convergence with respect to issuer information. Finally, the ISC contributes to the development of issuers' electronic reporting as well as to enhancing the audit of financial and sustainability information. In particular, the ISC contributes to the strategic priorities and thematic drivers of the ESMA Strategy by:

- **Fostering Effective Markets and Financial Stability**
  - Facilitating timely identification of risky behaviours and developments through: (i) the exchange of information and sharing of experiences in detection and monitoring of practices notably related to the implementation of the prospectus regime; and (ii) the active contribution to the development of requirements within the remit of the ISC that promote timely and internationally consistent information on these behaviour and developments. In cooperation with the EBA, EIOPA, the ECB and the CEAOB, the ISC contributes to the assessment and evaluation of financial and sustainability reporting standards from a financial stability perspective.
  
- **Strengthening Supervision of EU Financial Markets**
  - Contributing to the consistent application by market participants and to the consistent supervision by national competent authorities of relevant EU legislation through, for example: (i) the promotion of regular discussion of supervisory cases and practices; (ii) the monitoring of the application of the related ESMA guidelines<sup>7</sup> and any other existing convergence tools; (iii) the development of new or amended convergence tools; (iv) the promotion of capacity building initiatives; and (v) the engagement in other related activities necessary to achieve that objective, including the Heatmap and Union Strategic Supervisory Priorities (USSPs);
  
  - Contributing to the set-up of high-quality requirements for financial and sustainability reporting (including Article 8 Taxonomy), by providing enforcers' views, as appropriate, through: (i) opinions and/or responses to public consultations on new pronouncements or amendments to existing ones, including those from the commission, the International Accounting Standards Board (IASB), the International Sustainability Standards Board (ISSB), the IFRS Interpretations Committee (IFRS IC) and the European Financial Reporting Advisory Group (EFRAG); (ii) the active monitoring of the endorsement of IFRS into EU law, (iii) technical advice to the European Commission and (iv) the development of technical standards when empowered to do so;

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<sup>7</sup> ESMA Guidelines on enforcement of financial information (ESMA/2014/1293); ESMA Guidelines on Alternative Performance Measures (ESMA/2015/1415); ESMA Guidelines on Risk Factors under the Prospectus Regulation (ESMA31-62-1293); ESMA Guidelines on disclosure requirements under the Prospectus Regulation (ESMA32-382-1138)

- Contributing to the proper and consistent application of audit requirements in accordance with ESMA's responsibilities specified in the Audit Regulation, including monitoring developments of International Standards of Audit (ISAs) by responding, when considered relevant, to pronouncements from the International Auditing and Assurance Standards Board (IAASB).
- Enhancing protection of retail investors:
  - Promoting regulatory and supervisory outcomes which take into account that information by issuers should be relevant and, as far as possible due to its technical content, comprehensible to retail investors;
  - Contributing to the consistent application by market participants of EU legislation and related ESMA guidelines<sup>8</sup> and other convergence tools in the remit of the ISC and engaging in other related activities necessary to achieve that objective;
  - Fostering the development of corporate disclosure requirements that promote global convergence and international comparability.
- Enabling Sustainable Finance
  - Contributing to the consistent application of Articles 4(2)(b), 4(5) and 5(2)(b) of the Transparency Directive, and by extension of the Accounting Directive when it relates to management reports, including sustainability reporting, published by issuers through the use of ESMA's supervisory toolkit and engaging in other related activities necessary to achieve that objective;
  - Contributing to the legislative developments in the EU and internationally in the area of sustainability reporting;
  - Contributing to the development of financial reporting requirements and related supervisory practices that adequately address climate-related risks in financial statements;
  - Contributing to the legislative developments and supervisory activities in the EU on prospectus, sustainable governance and long-term engagement and related supervisory practices;
- Facilitating Effective Use of Data
  - Maintaining and updating the Draft Regulatory Technical Standards specifying the European Single Electronic Format (ESEF) in which issuers listed on regulated markets should prepare annual financial reports,

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<sup>8</sup> ESMA Guidelines on enforcement of financial information (ESMA/2014/1293); ESMA Guidelines on Alternative Performance Measures (ESMA/2015/1415); ESMA Guidelines on Risk Factors under the Prospectus Regulation (ESMA31-62-1293); ESMA Guidelines on disclosure requirements under the Prospectus Regulation (ESMA32-382-1138)

including sustainability reporting, according to the Transparency Directive and to the Corporate Sustainability Reporting Directive;

- Contributing to the consistent application of the ESEF through discussions of supervisory cases, issuance of guidance and engaging in other related activities necessary to achieve that objective.

## Cooperation

6. The work of the ISC is not expected to duplicate or overlap with the functions of the other ESMA Standing Committees (Sustainability Standing Committee (SSC), Data Standing Committee (DSC) and IT Standing Committee (ITSC)) or the groups reporting to the Joint Committee that will remain responsible for addressing matters in the respective areas of EU legislation that fall within their respective remits.
7. The ISC should, however, ensure close cooperation arrangements, in particular, with the SSC, the DSC and the ITSC to achieve an aligned outcome for ESMA.
8. The cooperation with the SSC may entail:
  - a. updating the SSC on perceived interactions between requirements within the remit of the ISC and other requirements in EU sustainable finance legislation; and seeking the SSC's input on those interactions where relevant; and
  - b. providing input to the SSC on matters, such as Greenwashing, with relevance to the requirements within the remit of the ISC.
9. The cooperation with the DSC may entail providing input to support its work on data usability on the ESEF and on Prospectus, as well as in relation to data which will be required to be submitted to the European Single Access Point (ESAP).
10. The cooperation with the ITSC relates to yearly production of the ESEF Taxonomy Files and Conformance Suite for what concerns their technical – IT – content.
11. The ISC should ensure appropriate coordination arrangements with the corresponding EBA and EIOPA Standing Committees and groups (such as the EBA Standing Committee on Data, Analysis, Transparency and Reporting (SCReDAT)) notably on the topics related to financial and sustainability reporting by financial institutions and insurance undertakings in order to achieve an outcome for the SC that is sufficiently aligned with that of the other ESAs.
12. The ISC should also discuss technical positions in the scope of the SC to ensure a coordinated EU approach when ESMA and NCAs participate in international fora.

## Powers

13. In line with ESMA's product monitoring obligation under Articles 39 MiFIR and its product intervention powers under Article 40 and 43 MiFIR, the ISC shall refer any potential threats it identifies relevant to ESMA's objectives of ensuring investor protection, orderly functioning and integrity of financial/commodity markets and to financial stability, to the relevant Standing Committee.

14. In accordance with the Board of Supervisors' Decision on Delegation to the ESMA Chair (ESMA22-106-4539), the ISC is tasked with the finalisation of letters or other appropriate documents specifically related to technical matters in relation to corporate reporting (financial and sustainability reporting and auditing) to relevant external bodies (such as the IASB, IFRS IC, ISSB, EFRAG, IAASB and similar bodies), as described by these Terms of Reference or within already agreed policy lines. These documents are then approved by the ESMA Chair. The ESMA Board of Supervisors will be consulted for ex-ante approval of any draft document relating to governance issues or issues likely to represent a new significant policy orientation.

## Composition

15. The ISC shall be composed of one person per Board of Supervisors member as principal member and one person as an alternate, each representing that Board member. In addition, a maximum of three persons or a functional email address can be added to the e-mail distribution list. Participants to a SC meeting from the same NCA shall coordinate their positions in advance of the meeting.
16. Unless otherwise specified in the national legislation transposing the Transparency Directive, where a Member State has designated a competent authority other than the authority represented at the Board of Supervisors for carrying out the obligations provided by the Transparency Directive and for ensuring that the provisions adopted pursuant to the Transparency Directive are applied (Art. 24.1 TD), representatives of those bodies may be members of the ISC. Participants to a SC meeting from the same Member State should coordinate their positions in advance of the meeting.
17. Members of the ISC shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the ISC.
18. Furthermore, representatives of the European Commission, the EBA and the EIOPA shall be appointed as observers to the ISC.
19. Members of the ISC shall have an adequate level of knowledge and skill and the mandate to be able to take a position on the matters discussed.
20. A member of the SC may, when a topic for discussion in the SC so requires, be accompanied by an expert from its Competent Authority for that part of the SC meeting. The SC member shall announce this intent to the Rapporteur in advance of the meeting.

## Structure and governance

21. The responsibilities of the Chair, rapporteur and members of the ISC are as set out in the Procedures for ESMA groups, (ESMA/2011/BS/236rev2), which also set out the rules concerning ESMA Group's structure, governance and working methods.
22. The ISC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the ISC if required by the work and in line with the Procedures for ESMA groups.

23. The ISC has established the following permanent working groups each with their own terms of reference, all established in particular to (i) develop and promote common supervisory approaches and practices as well as application of EU legislation and guidance across Member States by enhancing mutual understanding, thereby improving convergence across the EU and (ii) contribute to the development of EU and international legislation in their relevant area:
- Prospectus Working Group (PWG) – with the Terms of reference (ESMA32-65-392).
  - Shareholder Transactions Working Group (STWG), with respect to Takeover Bids and Major Shareholding – with the Terms of reference (ESMA32-65-397).
  - Financial Reporting Working Group (EECS) (FRWG (EECS)), also known externally as European Enforcers Coordination Sessions (EECS)<sup>9</sup>, with respect to financial reporting and related-topics – with the Terms of Reference (ESMA32-65-393).
  - Sustainability Reporting Working Group (SRWG), with respect to sustainability information (European and international sustainability reporting standards, Article 8 of the Taxonomy Regulation) – with the Terms of reference (ESMA32-65-396).
24. The ISC also established a Corporate Governance Task Force (CGTF), which continues the work former Corporate Governance Working Group established under the former Corporate Finance Standing Committee (ESMA31-54-297) in order to finalise the ongoing tasks in relation to a mandate from the EC regarding the review of the Shareholder Rights Directive. Once this work is finalised (expected in July 2023) the ISC would consider whether and in what form further work is to be carried out in the future.
25. The ISC also established an ESEF Project Team (ESEF PT) to update the RTS on ESEF, develop further guidance to facilitate correct application of the requirements and foster supervisory convergence of the enforcement related to the correct application of the RTS.
26. The ISC will meet on a regular basis as required in order to deliver its tasks under ESMA's (multi-)annual work programme. Meetings of substructures will be organised as necessary to enable the ISC to fulfil its tasks.

### **Working methods**

27. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following.
28. In addition, the members of the ISC shall consider the following working method obligations and procedures to ensure that the ISC can devote sufficient time for matters of strategic relevance.
29. Documents prepared by the PWG, STWG, FRWG (EECS) and SRWG or issues, either because they are of strategic and/or cross-cutting nature or because they have been

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<sup>9</sup> as defined in ESMA's Guidelines on enforcement of Financial Information (ESMA32-50-218)

controversial at WG/Project Team level, will be discussed at and agreed upon by the ISC (A-items). Documents from those groups of non-strategic or cross-cutting nature which were supported by a large majority of WG members will be submitted to the ISC for endorsement without discussion (B-items) and will hence not be subject to discussion unless requested by at least one ISC member or ESMA staff.

30. Items on the ISC agenda not coming from or discussed in the ISC WGs should generally be classified as A-items.

### **Confidentiality**

31. All members of the ISC are under the obligation to respect confidentiality as per paragraph 30 of the Procedures for ESMA Groups.

### **Review**

32. The Terms of Reference will be reviewed at least every two years by the Board of Supervisors.