

## Terms of Reference

### Senior Supervisors Forum

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) enabling 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 Articles 1.5(a),(d),(g), 8(1a),(aa),(b),(e), 29 and 29a and Recital 40 of the ESMAR. These provisions, inter alia, require promoting sound, effective and consistent supervision, preventing regulatory arbitrage, and enhancing supervisory convergence across the internal market, by establishing high quality common supervisory standards and practices, developing a common supervisory handbook and building a common supervisory culture through a diversified toolkit, including Union Strategic Supervisory Priorities (USSPs).
4. In order to fulfil ESMA's mission and in line with ESMAR, the Board of Supervisors has established the Senior Supervisors Forum, thereafter SSF, 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 SSF contributes to ESMA's mission mainly by (i) promoting risk-based, outcome-focused and data driven supervision and enforcement, (ii) enabling the development of a common supervisory and enforcement culture and of an enforcement and supervisory community in the EU, (iii) developing and fostering high quality common supervisory principles, criteria, methodologies and practices (iv) overall, facilitating the exchange of best supervisory practices and sharing supervisory knowledge and experience.
6. Through its activities in these areas and related deliverables, the SSF contributes to all ESMA strategic priorities with a view to strengthening supervision of EU financial markets. The SSF's contribution to ESMA strategic priorities is done through its own

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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

work and by informing the work of relevant ESMA groups which promote supervisory convergence in their respective areas of action.

7. In particular, the SSF plays an integral role in ensuring a risk-based, outcome focused and data driven approach to supervisory convergence by identifying those supervisory risks of potential highest impact on investor protection, orderly functioning of markets or financial stability that need to be addressed through supervisory convergence work, including coordinated supervision and enhanced supervisory capabilities<sup>3</sup>. Notably, the SSF carries out and presents to the Management Board and Board of Supervisors an annual risk assessment that will be used to prioritise and shape ESMA's supervisory convergence work.<sup>4</sup> Through this exercise, the SSF develops a common understanding of the key supervisory risks which inform NCAs' supervision and planning in those areas.
8. Based on the risk assessment exercise, the SSF periodically recommends to the Management Board and Board of Supervisors the establishment of USSPs that NCAs shall take into account when drawing up their work programmes. The SSF develops outcome-focused frameworks to implement the USSPs concertedly across the EU using the most appropriate tools<sup>5</sup>. Considering the mitigation activities taken by NCAs, including those supported by ESMA, and the conclusions and outcomes of such activities, the SSF provides on an annual basis input, direction and advice to the Management Board and Board of Supervisors including on possible follow-up actions needed.
9. The SSF develops and maintains the framework of convergence tools, guiding on the best choice of convergence tools to use based on the risks identified and desired supervisory outcomes. The SSF develops high level supervisory principles and approaches for supervision, notably through a common supervisory Handbook. The handbook aims to act as an important guidance tool to supervisors in carrying out effective and consistent supervision across the EU.
10. The SSF also can also provide input, direction and advice on cross-cutting and cross-border supervisory risks that may arise, including emerging risks, and may provide views on supervisory initiatives that would require concerted supervision amongst NCAs and on the convergence tools to use for an EU wide response.
11. The SSF provides input, direction and advice to foster a common enforcement culture with the overriding aim of ensuring consistency of outcomes for similar infringements across the EU and legally sound enforcement. In this role, the SSF might *inter alia* facilitate cross-border enforcement action or cooperation or advise on possible common enforcement priorities.

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<sup>3</sup> The risk identification exercise will capture all sectors covered by ESMA under its convergence mandate. For two sectors, namely corporate reporting and CCPs, ESMA will gather discourse from the relevant Groups with a supervisory focus already in place and hence the risk identification exercise will be conducted through those [CCP SC in relation to CCPs and) Financial Reporting Working Group (FRWG) and Sustainability Reporting Working Group (SRWG) for corporate reporting]. The SSF on market related matters will therefore be informed of the risks identified by the CCP SC in relation to CCPs, thereby ensuring a comprehensive and fulsome overview of risks in the market area. Additionally, for corporate reporting, the risk identification will be conducted on a written basis integrating the risks identified through the FRWG and SRWG process.

<sup>5</sup> The outcome-focused approach for the USSPs may also be used for other projects in light of ESMA's outcome focused strategic ambition.

12. Overall, the SSF provides senior supervisory input and expertise on common supervisory issues and ensures consistency in addressing horizontal convergence issues. It promotes continuous discussions and development of an effective EU common supervisory and enforcement culture, including through innovative supervisory tools and methods, under a risk-based, outcome focused and data-driven approach to supervision.

### **Cooperation**

13. The work of the SSF is not expected to duplicate or overlap with the responsibilities of the other ESMA groups that remain responsible for addressing matters in their respective areas within their remits.
14. The SSF should ensure close cooperation with all other ESMA groups, in particular in respect to the risks prioritised through the annual risk assessment exercise, the USSPs, and the experience with convergence tools and high-level supervisory principles.
15. Cooperation with the relevant groups could be achieved, among others, through:
  - Discussing the outcome of the annual risk identification exercise with the Chair and/or Rapporteur of the relevant group to exchange the risks identified and use of this tool.
  - Discussing the identified USSPs and their outcome-focused framework.
  - Mutually exchanging input, information or updates in relation to workstreams and matters which are within the SSF and the relevant group's mandate.

### **Composition**

16. The SSF currently has four different compositions reflecting the diverse range and scope of security markets in the EU. Notably there are three sectoral configurations on (i) investment services, (ii) investment management, (iii) market<sup>6</sup>, and (iv) a horizontal configuration on enforcement.
17. For each configuration, the SSF 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 email distribution list.
18. For each sectoral configuration, the SSF is comprised of Heads of supervision within the sectoral area, with significant knowledge and experience of supervising the financial services industry in their Member State. For the enforcement configuration, the SSF is comprised of Heads of Enforcement, or an equivalent function depending on the relevant NCA's organisation. As a general principle, the Board Member shall

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<sup>6</sup> Notably market abuse, trading and post-trading excluding CCPs.

ensure that the nominee has the appropriate seniority, expertise and experience and may wish to nominate a different participant for the different SSF configurations.

19. A member of the SSF may, when a topic for discussion in the SSF so requires, be accompanied by an expert from their Competent Authority for that part of the SSF meeting. The SSF member shall announce this intent to the Rapporteur in advance of the meeting.
20. Members of the SSF shall coordinate their positions with those held by persons from the same NCA who serve as members / alternates of other SSF compositions or ESMA groups.

### **Governance**

21. The responsibilities of the Chair, Rapporteurs<sup>7</sup> and participants of the SSF are as set out in the Procedures for ESMA groups (ESMA/2022/BS/236rev2), which also set out the rules concerning ESMA Group's structure, governance and working methods.
22. The SSF may set up permanent working groups or temporary task forces or project / drafting teams reporting to the SSF, if required by the work and in line with the Procedures for ESMA groups.
23. The SSF has established the following permanent working group with its own terms of reference: the Enforcement Working Group (**EWG**), established to address in particular: work to foster greater supervisory convergence in enforcement matters through projects with tangible outcomes; the provision of a forum for NCAs to share and exchange best practices through thematic real case discussions; proactive engagement with ESMA groups and substructures; and proactive engagement with the European Commission on topics of relevance for the EWG. This working group shall report to the SSF enforcement configuration, with the Terms of Reference [ESMA43-388-854]. The SSF provides strategic direction to the Enforcement Working Group by identifying priority topics as well as providing a critical review of its output.
24. Each configuration of the SSF will meet at least twice a year of which at least half of the meetings will take place virtually. The SSF may also decide when needed to meet in a joint setting across all configurations or to meet on an ad hoc basis in extraordinary and extenuating circumstances. Meetings of substructures will be organised as necessary to enable the SSF to fulfil its tasks.
25. The Chair may invite the European Commission to attend an SSF meeting or part of a meeting to discuss non-supervisory matters.

### **Working Methods**

26. The working methods will follow the Procedures for ESMA groups.

### **Confidentiality**

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<sup>7</sup> The SSF has one rapporteur for all sectoral configurations, and one rapporteur for the enforcement configuration.

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

**Review**

28. The Terms of Reference will be reviewed every two years by the Board of Supervisors.