

Terms of Reference

Investment Management Standing Committee (IMSC)

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 2023-2028¹ 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. Furthermore, ESMA is committed to support the European Commission² in its efforts in building the Savings and Investment Union which includes increasing the effectiveness of the financial markets, as well as in delivering on the goals of simplification and burden reduction while maintaining an effective supervision, a high level of financial stability and strong investor protection.
4. ESMA acts within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR²) and among others within the scope of several acts and any further legally binding Union act which confers tasks on ESMA. These acts include among others Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (UCITS), Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), Regulation No 345/2013 on European venture capital funds (EuVECA), Regulation No 346/2013 on European social entrepreneurship funds (EuSEF), Regulation 2015/760 on European long-term investment funds (ELTIF), Regulation (EU) 2017/1131 on money market funds (MMF), Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (CBDR).
5. In order to fulfil ESMA's mission, the Board of Supervisors has established the Investment Management Standing Committee, thereafter the IMSC, pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify its tasks, responsibilities, functioning and governance.
6. The terms of reference for the IMSC are set out below and are to be read together with the 'Procedures for ESMA groups' (ESMA22-104-5119).

¹ https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf

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

Tasks and responsibilities

7. The IMSC contributes to ESMA's mission by:
 - developing, maintaining, and streamlining the single rulebook in the area of collective investment management and ensuring its effective and common application;
 - enhancing the protection of investors in the area of collective investment management while contributing to a larger retail investor base to develop the Capital Markets Union;
 - promoting sustainable finance and long-term oriented capital markets incorporating the sustainability considerations in the single rulebook and in supervisory practices in the area of collective investment management.
8. In particular the IMSC contributes to the strategic priorities and thematic drivers of the ESMA Strategy in the following ways:
 - Fostering Effective Markets and Financial Stability
 - Developing technical advice to the European Commission, draft technical standards and opinions on the provisions of the legislation that are relevant to its area of competence (i.e. collective investment management), inter alia on various topics in the area of investor protection and financial stability, with the view to ensuring a harmonised implementation of that legislation.
 - Maintaining and streamlining the single rulebook in the collective investment management area to reflect new developments, address identified risks (including in relation to financial stability and investor protection), and overall ensure its effective and consistent application.
 - Facilitating the early identification and analysis of financial stability risks in the collective investment management sector, including from a micro- and macro-prudential perspective, through the exchange of information and the sharing of experiences, inter alia, in the area of authorisation, conduct of business rules, systems and controls, risk management, organisational requirements and cross-border activities and enhancing the quality and availability of information at EU level for investors, market participants and regulators.
 - Developing advice to competent authorities under Article 25(7) of the AIFMD when threats to financial stability are identified.
 - Strengthening Supervision of EU Financial Markets
 - Contributing actively to ESMA's tasks in strengthening the supervision of the investment management sector by
 - promoting and implementing supervisory convergence among competent authorities through the exchange of supervisory practices and the implementation of common supervisory principles and approaches on the ground,

- assessing operational supervisory issues arising from the implementation of the relevant legislation, and
- developing supervisory practices and guidance.

Where appropriate, the analysis of individual supervisory cases should be used as an important tool for the IMSC work in this area³.

- Focusing on bringing together supervisory knowledge and capabilities and promoting exchange of experiences and approaches to ensure effective and efficient supervision as well as a consistent understanding and application of the single rulebook in the investment management sector.
- Coordinating common supervisory actions (CSAs) and participating in activities concerning peer reviews in the investment management sector.
- Enhancing protection of retail investors
 - Facilitating the identification and analysis of investor protection risks in the collective investment management sector through the exchange of information and the sharing of experiences among competent authorities.
 - Reinforcing convergence work to prevent significant consumer detriment by fostering a common supervisory culture and consistent supervisory outcomes for investors, including the co-ordination of CSAs.
- Enabling Sustainable Finance
 - Developing, maintaining and streamlining sustainability considerations on the provisions of the legislation that are relevant to the collective investment management sector and its supervisory practices, with the view of promoting high quality sustainability disclosures and hence reduce the risk of greenwashing.
 - Focusing on the consistent implementation and supervision of the sustainability related legislation in the collective investment management sector to introduce effective and common supervisory standards and guidance to the market.
- Facilitating Technological Innovation
 - Supporting the Digital Finance Standing Committee (DFSC) by providing a forum for discussions on topics to be raised by competent authorities including: (i) potential risks, emerging trends and vulnerabilities associated with technological developments and (ii) the impact of technological innovation in the investment management sector.
- Facilitating Effective Use of Data
 - Enhancing the use of the datasets available (in particular the data sets under AIFMD, and the MMF Regulation), to take a more systematic data-driven approach

³ References to supervised entities by NCAs can be made on an anonymous basis.

to regulation and supervision in the collective investment management sector. An example of the use of such data set is the calibration of the parameters of the stress tests for MMFs, under the ESMA Guidelines on MMF stress tests.

- Supporting data-driven, evidence-based supervision in NCAs and supervisory convergence with activities such as sharing of relevant risk analysis outcomes with NCAs.

9. In addition, the IMSC will

- contribute to the objective of simplification and burden reduction when developing its regulatory and supervisory output, and be accountable to the Board of Supervisors on the manner those issues have been addressed in the final outputs.
- identify and recommend areas for burden reduction and simplification within its scope of work.

Cooperation and Coordination

10. The work of the IMSC is not expected to duplicate or overlap with the functions of the other ESMA's Standing Committees, such as the Investor Protection Standing Committee (IPSC), Sustainability Standing Committee (SSC), Risk Standing Committee (RSC), Data Standing Committee (DSC) and Senior Supervisors Forum (SSF) 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. The IMSC should, however, ensure close cooperation with those Standing Committees that have a coordination role and in particular with the (i) SSC, notably on sustainable finance (ii) IPSC, notably on investor protection, (iii) RSC, notably on financial stability issues and risks related to market trends, (iv) DSC, notably on data reporting, as well as (v) SSF, notably on the risks prioritised through the annual risk assessment exercise and the Union Strategic Supervisory Priorities (USSPs), in order to achieve an aligned outcome for ESMA.

11. Cooperation with the relevant SCs/ESMA Groups may be achieved in a number of ways such as for example mutually exchanging input, information or updates in relation to workstreams and matters which are within the IMSC and relevant groups' mandates.

12. The IMSC can 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 IMSC 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.

Composition

14. The IMSC 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 an IMSC meeting from the same NCA shall coordinate their positions in advance of the meeting.
15. Where responsibilities within the remit of the IMSC are split at national level between more than one competent authority and are partly entrusted to competent authorities that are not represented in the ESMA Board of Supervisors, representatives of those authorities shall appoint a member and/or an observer to the IMSC, as appropriate. Each member and/or alternate will be representing the relevant competent authority. IMSC members representing competent authorities from the same Member State shall coordinate their positions in advance of any IMSC meeting and whenever IMSC members' input is sought (for instance, in case of written procedures).
16. Members of the IMSC shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the IMSC.
17. Furthermore, representatives of the European Commission shall be appointed as observers to the IMSC. The observers are not allowed to be present during discussion of confidential topics such as discussion of supervisory cases relating to individual financial market participants.
18. Members of the IMSC shall have an adequate level of knowledge and skill and the mandate to be able to take a position on the matters discussed.
19. A member of the IMSC may, when a topic for discussion in the IMSC so requires, be accompanied by an expert from its Competent Authority for that part of the IMSC meeting. The IMSC member shall announce this intent to the Rapporteur in advance of the meeting.

Structure and governance

20. The responsibilities of the Chair, Rapporteur and members of the IMSC are as set out in the 2023 Procedures for ESMA groups (ESMA22-104-5119), which also set out the rules concerning ESMA Group's structure, governance and working methods.
21. The IMSC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the IMSC if required by the work and in line with the Procedures for ESMA groups.
22. The IMSC has established the following permanent working group with its own terms of reference:
 - Operational Working Group (OWG) established to support the IMSC to contribute to the ESMA strategic priorities and thematic drivers of the ESMA Strategy. In particular, the IMSC-OWG supports the IMSC on the priority relating to 'Strengthening Supervision of EU Financial Markets' by promoting common

supervisory approaches and practices across Member States and enhancing mutual understanding thereby improving convergence across the EU.

23. The IMSC has established a dedicated Consultative Working Group (CWG) reporting to the IMSC in line with the Procedures for ESMA groups. The CWG shall advise the IMSC on matters within scope of the CWG. The IMSC can, where appropriate, consult the CWG of other SCs in coordination with the rapporteur of that SC.
24. The IMSC has also established a permanent project team on the Money Market Funds (MMFs) Stress Tests (ST) Guidelines to support technical work related to the annual update of the MMFs ST Guidelines referred to in Article 28(7) of the MMF Regulation⁴.
25. The IMSC 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 IMSC to fulfil its tasks.

Working methods

26. The working methods will follow section 11 of the 2023 Procedure for ESMA groups.
27. Documents prepared by a subgroup reporting to the IMSC concerning issues which are of strategic and/or cross-cutting nature and/or which have been controversial at the level of the subgroup, will be discussed at and agreed upon by the IMSC (A-items). Documents from these subgroups concerning issues which are neither strategic nor cross-cutting in nature and which were supported by a large majority of WG members will be submitted to the IMSC for endorsement without discussion (B-items) and will hence not be subject to discussion unless requested by a significant minority of IMSC members or ESMA staff. Items on the IMSC agenda not coming from or discussed in the subgroups reporting to the IMSC should generally be classified as A-items. Recurrent deliveries that can be considered non-strategic include, for example, Q&As.

Confidentiality

28. All members and observers of the IMSC are under the obligation to respect confidentiality requirements equivalent to those applicable to ESMA staff and to Board of Supervisors' Members under Article 70 of the ESMA Regulation. It is the responsibility of Board of Supervisors' members to ensure that their representatives in the IMSC are subject to equivalent professional secrecy rules, in line with Article 70(2a) on the ESMA Regulation.

Review

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

⁴ [ESMA50-43599798-12301 Guidelines on stress test scenarios under the MMF Regulation.pdf](#)