

## Terms of Reference

### Investor Protection 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. Furthermore, ESMA is committed to support the European Commission<sup>2</sup> 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 ESMAR<sup>3</sup>) and among others within the scope of Directive 2014/65/EU (MiFID II), Regulation (EU) No 600/2014 (Markets in Financial Instruments Regulation – MiFIR), Directive 97/9/EC (Investor Compensation Schemes Directive), Directive 2002/65/EC (Distance Marketing Directive) and, where relevant, Directive 2019/878 (CRD V) and Regulation (EU) No 2019/876 (CRR), Regulation (EU) 2019/2033 (IFR) and Directive 2019/2034 (IFD).
5. In order to fulfil ESMA's mission the Board of Supervisors has established the Investor Protection Standing Committee, hereafter IPSC, 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

6. The IPSC contributes to ESMA's mission by helping ensure that investors are effectively protected, with a particular focus on the protection of retail investors and helping achieve a suitable approach to the regulatory and supervisory treatment of new or innovative financial products or activities provided to retail investors, in coordination, when needed, with other ESMA groups.

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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> See mission letter to Commissioner Albaquique [link](#) and Council Budapest declaration [link](#)

<sup>3</sup> ESMA Regulation No 1095/2010 of the European Parliament and of the Council

7. Through its tasks, IPSC fulfils the role of the “Consumer Protection and Financial Innovation Committee” referred to in the ESMA Regulation<sup>4</sup>.
8. In particular, the IPSC contributes to the strategic priorities and thematic drivers of the ESMA Strategy in the following ways:
  - Enhancing the protection of retail investors
    - IPSC facilitates the early identification of behaviours by firms and clients through the exchange of information and the sharing of experiences in the area of authorisation, conduct of business rules, systems and controls, organisational requirements and cross-border activities, including the identification of areas requiring further analysis or the adoption of investor warnings or policy developments by IPSC or other SCs.
    - IPSC, furthermore, works with NCAs to promote financial education and to increase investors’ awareness of the risks (for instance those connected to investment through social media or arising from the use of artificial intelligence tools) in relation to the provision of investment advice and other investment services and activities.
    - IPSC coordinates the launch of common supervisory actions (CSAs) under MiFID II, the launch of mystery shopping exercises across the EU and participates in activities concerning peer reviews in the investment services area.
    - IPSC identifies topics where coordination with the European Data Protection Board is needed or situations in which national data protection authorities should be invited to attend the meeting.
  - Strengthening Supervision of EU Financial Markets
    - IPSC contributes to the development of a single rulebook in the area of investment services and crowdfunding services by developing technical advice to the European Commission, the European Parliament or the Council of the EU, draft technical standards and reviewing existing ESMA instruments with the view to ensuring a harmonised implementation of the EU legislation on a range of issues such as authorisation, conduct of business rules, systems and controls, organisational requirements and cross-border activities.
    - IPSC leads or actively contributes to achieving greater convergence and consistency of NCAs’ supervisory approaches and practices in relation to investor protection, taking into account technological developments and the evolution of the framework in relation to sustainable finance. It contributes to this task by promoting the building and implementation of a common culture on the supervision of services under its mandate and by fostering interaction among NCAs’ supervisory teams, having recourse to all available tools, including

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<sup>4</sup> Article 9(4)

common supervisory principles, and, where appropriate, analysing individual cases.

- IPSC will contribute to the application of the MiFIR third country regime, if and when relevant.
- Enabling Sustainable Finance
  - IPSC contributes to the Commission's work on MiFID II changes to integrate sustainability in firms' organisational and conduct of business requirements.
  - IPSC works to ensure effective and consistent application and supervision of MiFID II requirements on sustainability, in particular in the area of product governance, organisational requirements and the suitability assessment.
  - IPSC pays particular attention to the protection of retail investors in the context of the development of sustainable products and the increased risk of greenwashing.
- Facilitating Technological Innovation
  - IPSC through its work on the Single Rulebook for EU financial markets and on supervisory convergence, mentioned above, also aims to foster convergence in the regulatory and supervisory treatment of new or innovative financial activities and technological innovation (including the digitalisation of investment services and the use of AI) with an impact on retail investor protection.

In addition, the IPSC 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.

## Coordination

9. The work of the IPSC is expected to interact with the functions of the following ESMA's Standing Committees: the Investment Management Standing Committee (IMSC), the Markets Standing Committee (MSC), the Digital Finance Standing Committee (DFSC), the Sustainability Standing Committee (SSC). It is also expected to interact with Joint Committee Sub-Committee on Consumer Protection and Financial Innovation (CPFI), reporting to the Joint Committee). The IPSC will ensure close cooperation arrangements in particular with the IMSC, the MSC, SSC and the DFSC as well as the Senior Supervisors Forum (SSF), notably on the topics of investor protection in order for the IPSC to fulfil its coordination role in the area of investor protection across ESMA.
10. Coordination with the relevant ESMA Groups may be achieved in a number of ways such as for example the following:

- Invite the relevant SC / ESMA Group to provide timely updates on relevant workstreams and issues related to retail investor protection;
  - Provide the advice and expertise of the IPSC on key workstreams on the basis of relevant documents to be shared with the IPSC in a timely manner and at an appropriate stage of the process (to be assessed on a case-by-case basis).
11. The IPSC should ensure appropriate coordination arrangements with the EBA's Standing Committee on Consumer Protection and Financial Innovation and EIOPA's Committee on Consumer Protection and Financial Innovation notably on the topics of consumer protection and financial innovation in order to achieve an outcome for the IPSC that is sufficiently aligned with that of the other ESAs, to the extent allowed by sectoral legislation.
12. The IPSC should also discuss technical positions in the scope of the SC to facilitate a coordinated EU approach when ESMA and NCAs participate in international fora.

## **Powers**

13. In line with ESMA's product monitoring obligation under Article 39 MiFIR and its product intervention powers under Article 40 and 43 MiFIR, the IPSC will put in place means to identify potential investor protection concerns or threat to the stability of the financial system and, where appropriate, assess them in accordance with the agreed methodology and procedures.

## **Composition**

14. The IPSC 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. In special circumstances, a representative of an authority other than the ones represented on the Board of Supervisors can be invited to participate as an observer on an ad-hoc or permanent basis. This decision is taken in agreement with the member or members of the IPSC from the same Member State. Participants to an SC meeting from the same Member State are expected to coordinate their positions in advance of the meeting.
15. Members of IPSC, shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the IPSC.
16. Furthermore, representatives of the European Commission, shall be appointed as observers to the IPSC. 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.
17. Members of the IPSC shall have an adequate level of knowledge and skill and the mandate to be able to take a position on the matters discussed.
18. A member of the IPSC may, when a topic for discussion in the IPSC so requires, be accompanied by an expert from its Competent Authority, or by an expert from other

Competent Authority sharing at national level the responsibility for legislation in the scope of IPSC, for the relevant part of the meeting. The IPSC member shall announce this intent to the Rapporteur in advance of the meeting.

19. National data protection authorities can be invited to attend the meetings of the IPSC as observers.

### **Structure and governance**

20. The responsibilities of the Chair, Rapporteur and members of the IPSC 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 IPSC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the IPSC if required by the work and in line with the Procedures for ESMA groups.
22. The IPSC has established the following permanent working group, with its own terms of reference:
  - IPSC Working Group (IWG), established to (i) contribute preparing policy work – as mandated by the IPSC - to help establish a single rulebook and to promote supervisory convergence among national competent authorities in the area of retail investor protection on a range of issues such as authorisation, conduct of business rules, systems and controls, firms' organisation, cross-border activities and sustainable finance; and to (ii) act as a hub for the ongoing sharing of supervisory experiences on real cases, with a view to contributing towards building a common supervisory culture and consistent supervisory practices.
23. The IPSC 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 IPSC to fulfil its tasks.

### **Working methods**

24. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following of the said Procedures.
25. In addition, the members of the IPSC shall consider the following working method obligations and procedures.
26. Documents prepared by a subgroup reporting to the IPSC concerning issues which are of strategic and/or cross-cutting in nature and/or which have been controversial at the level of the subgroup, will be discussed at and agreed upon by the IPSC (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 can be submitted to the IPSC for endorsement without discussion (B-items) and could hence not be subject to discussion unless requested by a significant minority of IPSC members or ESMA staff. Items on the IPSC agenda not coming from or discussed in the subgroups reporting to the IPSC should generally be classified as A-items.

### **Confidentiality**

27. All members and observers of IPSC 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 IPSC are subject to equivalent professional secrecy rules, in line with Article 70(2a) on the ESMA Regulation.

### **Review**

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