



European Securities and
Markets Authority

Annual report 2012





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Foreword

by the Chair / STEVEN MAIJOOR



ESMA has successfully completed its second year of operations as the European Union's (EU) independent securities and markets regulator. This second Annual Report documents how ESMA has established itself as an institution and the progress it has made in meeting the objectives set for it by the European Parliament and Council.

ESMA's objectives, which inform all of its activities and actions, include:

- ◆ building a single rulebook;
- ◆ ensuring supervisory convergence across the EU;
- ◆ supervising credit rating agencies;
- ◆ promoting and furthering investor protection; and
- ◆ contributing to the financial stability of the EU.

While ESMA's first year of operations was marked by volatile markets conditions, the past year, while remaining difficult for markets, has seen some improvement in systemic risk indicators in the EU's securities markets, particularly in the second half of 2012. However, we remain far from sanguine about the risks posed to the stability of our markets, having found that risk indicators remain at high levels due to the on-going sovereign debt and banking crisis, the realignment of risk assessments by investors, funding risks, potential long-term implications of low interest rates and obstacles to orderly market functioning. We will continue to monitor this situation as part of our daily responsibilities and through our work with the European Systemic Risk Board (ESRB).

In meeting these objectives ESMA has worked closely with the National Competent Authorities (NCAs) of Member States and continued to build on its strong working relationships with our fellow European Supervisory Authorities: the European Banking Authority

(EBA); and the European Insurances and Occupational Pensions Authority (EIOPA).

As with 2011, the driver for the majority of ESMA's activity continued to be the implementation of the regulatory and supervisory changes identified by the EU as necessary to tackle the financial crisis, and to meet its G20 commitments to build a more resilient financial system. The key areas where ESMA made tangible progress against these goals were: its work on embedding the new supervisory regime for credit rating agencies (CRAs) in the EU; its work on the single rulebook; and in achieving supervisory convergence across Member States.

Now 18 months into its supervision of CRAs, ESMA completed its first full round of inspections of the major registered entities, with our findings published in March 2012. The report identified several shortcomings and areas for improvement, which now form part of each entity's supervisory plan. Our thematic work in 2012 focused on CRAs compliance functions and their bank rating methodologies, reviewing the processes of disclosure and implementation of changes in bank rating methodologies, the rigorous and systematic application of methodologies and the methodological review process. By the end of 2012 we had registered 19 CRAs in the EU, with one certified CRA from Japan, and we continue to receive further registration applications.

ESMA made significant steps in the creation of a single rulebook through a variety of means. Our most high-profile work focused on the development of technical standards in two areas: short selling and credit default swaps, in support of market integrity, and those in support of the European Markets Infrastructure Regulation, which meets the EU's G20 commitment to



◆◆◆ regulate the over-the-counter derivatives market. In addition, ESMA has provided the European Commission with advice on secondary legislation on prospectuses, UCITS, alternative investment funds and short selling. Finally, in support of our single rulebook objective we have provided advice and support on legislative developments including: MiFID 2 and MiFIR; the Market Abuse Directive (MAD) and Market Abuse Regulation (MAR); and the Central Securities Depositories Directive (CSD), which is being finalised by the European Parliament and the Council.

We have made good progress in meeting our mandate on achieving convergence of supervisory and regulatory practices across the 27 Member States. This we achieved through the development of guidelines for market activities including high frequency trading, but also with a strong emphasis on addressing the investment and asset management industry. This included developing guidelines dealing with: alternative investment funds managers; exchange traded funds (ETFs) and UCITS; the suitability of advice to investors; and investment firms' compliance functions. Additionally we have conducted peer reviews of NCAs' activities in order to assess the degree of convergence in the application and enforcement of EU law, and have published reviews on the prospectus regime and the use of sanctions for market abuse. Finally, the determination of a large number of pre-trade transparency waivers under MiFID has contributed to common practices across borders.

In tandem with our work on supervisory convergence, ESMA has played an important role in coordinating actions by NCAs in emergencies related to *adverse mar-*

ket developments. This we experienced during the summer of 2012 with worsening market conditions in the EU, and ESMA played a key role in coordinating the subsequent short-selling bans that were imposed. ESMA, in November, then took up its new official role under the Short Selling Regulation, with the issuance of its opinions on the restrictions imposed by Greece and Spain in their respective markets.

A major objective underpinning the work securities regulators are carrying out, is enhancing investor protection, and ESMA does not differ in this respect. Since its creation, ESMA has worked hard to reinforce the European framework for investor protection through a series of concrete initiatives. In 2012 these included guidelines, already mentioned, on ETFs and UCITS and the suitability of advice to investors and investment firms' compliance functions, which, as well as harmonising regulatory practices, help to strengthen the protection accorded to investors. In addition, ESMA issued a warning to investors regarding the pitfalls they face when using the internet for investment purposes, following an observed rise in complaints reported by national authorities.

Away from purely regulatory or supervisory matters, ESMA increased the resources allocated to supporting its financial stability objective, improving its ability to assess stability risks in financial markets. ESMA's work on financial stability is a mix of specific projects and regular risk reporting. In the past year, we have completed specific work on the risks associated with the current industry trend towards structured and complex retail products. In addition, we have conducted a first assessment of

the size of the shadow banking system in the EU, and have begun projects on an analysis of CDS markets and the contribution of the hedge fund sector to systemic risks in financial markets.

The global aspect of the reform of financial markets, and their interconnectedness, has meant that ESMA has been very engaged in international coordination and cooperation over the past 12 months. This has included: participation in the international coordination of OTC derivatives reform; the endorsement of various jurisdictions' CRA supervisory systems as being equivalent to the EU standards; and the commencement of negotiations on a Memorandum of Understanding on the supervision of alternative investment funds. ESMA also contributes to work-streams of the Financial Stability Board and has recently become an Associate Member of the International Organization of Securities Commissions (IOSCO).

The Joint Committee of the three European Supervisory Authorities, comprising ESMA, the EBA and EIOPA, which I had the honour of chairing in 2012, has made very good progress in its aims of: ensuring consistency in their views on topics of common interest; developing common solutions; and to exchange information on their respective sectors.

In carrying out its tasks, ESMA has ensured that all relevant stakeholders had the opportunity to provide input into our decisions, through open public consultations, interaction with various stakeholder associations – representing both investors and market participants – and by soliciting the views of the Securities Markets Stakeholders Group.

Finally, I want to thank my colleagues from the EU's national authorities who, as members of the Board of Supervisors, have contributed to making significant progress in meeting our objectives. While my fellow members of the Management Board provided assistance and advice in ensuring the smooth functioning of the Authority.

Ultimately, none of this would be possible without those individuals whose commitment and hard work allowed ESMA to achieve all it has in 2012, the staff. I look forward to another rewarding twelve months leading this team.

Steven Maijoor
Chair
European Securities and Markets Authority



Foreword by the Executive Director / VERENA ROSS



The European Securities and Markets Authority (ESMA) completed its second year of activity as the EU's securities markets regulator in 2012, which, as in the previous year, proved to be a busy one where ESMA had to deliver against a demanding Work Programme. In my role as Executive Director, I am therefore pleased to report on what this entailed for ESMA in 2012.

Building and expanding an organisation against the background of growing responsibilities, in an environment where financial markets continued to be volatile, can be a challenge. Nevertheless, ESMA proved itself capable of keeping pace with, and meeting, the many demands it faced in terms of legislation, organisation and new responsibilities, and successfully delivered against many of its new tasks.

The first half of the year was dominated by embedding our supervision of credit rating agencies and delivering regulatory technical standards to underpin forthcoming securities legislation. A key focus throughout the year was the new set of rules aimed at bringing OTC derivatives trading under regulatory oversight, by requiring them to be subject to central clearing. This new EMIR regulation will also provide ESMA with key responsibilities, similar to those for CRAs, in terms of the supervision of trade repositories, recognition of non-EU CCPs as well as participation in all CCP colleges. We started to prepare ourselves to be able to fulfil these new responsibilities in 2013.

While much of ESMA's policy work in 2012 focused on building a single rulebook for the EU, it also began the shift toward becoming a more supervisory, and supervisory-convergence oriented, institution, in addition to its policy role. This was reflected in our recruitment. Overall, ESMA continued to grow at a steady pace throughout 2012, beginning with about 60 staff and reaching 100 by year-end. We have welcomed staff from a wide variety of backgrounds, including those with experience of European institutions, national regulators and financial markets. Looking at the long list of responsibilities ESMA will have under EMIR, and other legislation, the number and variety of staff we require will continue to grow. Much of the latter half of 2012 was spent preparing for the contin-

ued development of the Authority in 2013, planning recruitments and ensuring that the operational capacity of the organisation was ready for these developments. This included, amongst other things, obtaining agreement from the Budget Authorities for ESMA to expand its occupancy in 103 rue de Grenelle to two additional floors.

However, the growth in the Authority was also reflected in a growing maturity in other areas, as ESMA developed the systems and procedures needed to ensure that its financial, procurement and other administrative processes met the strict rules laid down under EU procedures – a fundamental issue to ensure that a supervisory authority leads by good example. We achieved, as a result of these revamped processes, significant improvements in our operational effectiveness which, combined with the implementation of new internal control functions, allowed us to achieve compliance with our EU mandated administrative targets and objectives.

These improvements in processes and procedures allowed ESMA to maintain, throughout the year, a high level of operational effectiveness so that the important targets in our work programme – building the single rulebook, the direct supervision and registration of CRAs, boosting investor protection, financial stability and supervisory convergence activities – were achieved.


ESMA's 2012 Annual Accounts (see page 78), reflect the continuing development of the Authority. I would like to thank all ESMA staff for their hard work, commitment and the enormous contribution each of them has made to deliver an impressive output in 2012 against, often, challenging deadlines. My thanks also goes to my colleagues in the Management Board and Board of Supervisors of ESMA, the many participants in working groups, industry panels and all stakeholders that contributed to a successful 2012 for ESMA.

Verena Ross
Executive Director
European Securities and Markets Authority

01



ESMA's role and objectives

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- ❖ Effective, coherent and sound regulation is key in maintaining investors' confidence, and ultimately also in ensuring the growth, integrity and efficiency of EU financial markets.

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ESMA's role and objectives

Established in January 2011, ESMA is charged with enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves these aims by building a single rulebook for EU financial markets and ensuring its consistent application across the EU, and contributing to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.



The organisational characteristics of ESMA

The following six characteristics describe ESMA, and how it achieves its mission and objectives:

- ◆ **European:** When carrying out its tasks, ESMA acts in the interest of the EU. The organisation reflects the diversity of the EU;
- ◆ **Independent:** ESMA is independent from the EU institutions, national authorities and financial markets participants;
- ◆ **Co-operative:** ESMA forms, together with the national authorities, a EU network of financial markets supervisors. It co-operates with all relevant European bodies, including the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB), and with regulators outside the EU;
- ◆ **Accountable:** ESMA's decision-making is transparent and it deals with its stakeholders in an open and inclusive manner. The organisation is accountable to the European Parliament, European Council, European Commission and the wider public;
- ◆ **Professional:** ESMA strives for professional excellence by employing high-quality staff with strong technical expertise, knowledge and experience of financial markets, and through following sound practices and procedures; and
- ◆ **Effective:** ESMA uses its resources efficiently in order to maximise its impact in promoting investor protection and stable and well-functioning markets in the EU.

ESMA's objectives

Sound and effective regulation of securities markets is key for the growth, integrity and efficiency of the EU's financial markets and economy, and effective regulation and supervision is a vital factor in securing and maintaining confidence amongst market participants. In order to foster these conditions, ESMA was created as an independent EU Authority to improve harmonisation in both supervisory rules and practices.

In order to achieve harmonised rule implementation throughout the EU, ESMA serves as a standard setter in relation to securities legislation and provides technical advice where mandated by the European Commission (EC). It also has an important role in directly supervising financial players with pan-European profile, currently credit rating agencies (CRAs) and in the future trade repositories (TRs). In the future, ESMA will also participate in the supervision of Central Counterparties (CCPs) through supervisory colleges.

ESMA's annual report is an important tool in providing accountability regarding its delivery against its objectives and annual Work Programme. ESMA's role can be better understood through five objectives namely:



1. Financial Stability

In order for ESMA to contribute to safeguarding the financial stability of the EU's securities markets, it is crucial that it continuously analyses trends and, at an early stage, identifies potential risks and vulnerabilities at a micro-prudential level. ESMA achieves this, across borders and sectors, by conducting economic analyses of European securities markets and modeling the impact of potential market developments.

ESMA informs the European Institutions, the other European Supervisory Authorities (ESA)s and the ESRB on a regular and ad-hoc basis about its findings. The aggregation of micro-data collected at supervisory level is key to identifying the build-up of potential macro risks to the economy as a whole. Therefore, it is crucial to inform regularly all necessary decision-makers, including, at the EU level, the Financial Services Committee (FSC) and the Financial Stability Table of the Economic and Financial Committee (EFC-FST). Beginning in 2013, ESMA will also publish bi-annual reports in order to raise awareness of potential threats to financial stability. ESMA also contributes to fostering financial stability by coordinating emergency measures across the EU.

2. Investor Protection

Ensuring that the interests of investors are always properly met is another important task for ESMA. ESMA achieves this through promoting transparency, simplicity and fairness in securities markets for consumers of financial products or services. In order to ensure that investors enjoy the same level of protection regardless of the point of sale or the product being sold, ESMA collects, analyses and reports on consumer trends, while promoting both financial literacy and education initiatives and contributing to the enhancement of common disclosure rules.

It is important for ESMA to monitor new and existing financial activities as this allows it to assess the need of whether to adopt guidelines and recommendations that promote safe and sound securities markets, and the convergence of regulatory practice to ensure that investor protection across the EU is enhanced.

If ESMA identifies products which may inherently present serious threats to investors, it will consider issuing warnings. If current legislative proposals come into force, ESMA will be able in future, as a last resort, to ban temporarily certain products. ESMA's work in this area will include focusing on ensuring that the financial information provided by market participants to investors is clear, understandable and in compliance with existing rules.

3. Single Rulebook

In its role as a standard setter, ESMA works on establishing harmonised technical standards (TS) in different areas of securities regulation. By drafting those standards, ESMA contributes to creating a single EU rulebook applicable to all market participants and creating a level-playing-field across the EU. It also serves to promote the quality and consistency of national supervision, the enhanced and consistent protection of investors across the EU and to strengthen the oversight of cross-border groups.

4. Convergence

ESMA was established to foster supervisory convergence thereby reducing regulatory arbitrage resulting from different practices across the EU. Different supervisory practices have the potential to undermine not only the integrity, efficiency and orderly functioning of markets, but ultimately financial stability.

In order to foster fair and balanced supervisory practices, ESMA conducts peer reviews of existing EU securities legislation. In addition, ESMA has a number of tools to achieve regulatory convergence, including issuing opinions, entering into mediation and, as a last resort, a breach of EU law procedure.

ESMA aims to use its convergence work to drive its activities in other areas of its Work Programme, including enhancing the single rulebook, through issuing guidelines and recommendations in areas where difference of application exist, and through providing advice to the Commission on areas where revised legislation might be necessary to align supervisory practices.

5. Supervision

ESMA's direct supervisory powers are focused on two groups of participants in the financial markets, namely credit rating agencies and trade repositories. Since 1 July 2011, ESMA is the EU body responsible for the registration and supervision of CRAs. Beginning in 2013, ESMA will also have direct supervisory powers regarding trade repositories and participate in the supervision of CCPs through supervisory colleges led by national supervisors.

In undertaking supervision of pan-EU financial market participants, who may have an impact on the integrity of the EU's financial markets, ESMA contributes to safer and sounder financial markets and thereby supporting investor protection.

ESMA organisation

Since its establishment in January 2011, ESMA has had responsibility to enhance the protection of investors and promote stable and well-functioning financial markets in the EU. As an independent institution, ESMA achieves this aim by building a single rulebook for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

ESMA's Governance and Management

Two decision-making bodies govern ESMA: the Board of Supervisors and the Management Board. ESMA has a full-time Chair, Steven Maijor, and an Executive Director, Verena Ross. Both are based at ESMA's premises in Paris and serve a five-year term which may be extended once. The Chair is responsible for preparing the work of the Board of Supervisors (BoS) and chairs both the meeting of the BoS and the Management Board. He also represents the Authority externally.

The Executive Director is responsible for the day-to-day running of the Authority, including staff matters, developing and implementing the annual Work Programme, developing the draft budget of the Authority and preparing the work of the Management Board.

ESMA's Board of Supervisors

In addition to the ESMA Chair, the Board of Supervisors is composed of the heads of 27 national authorities (where there is more than one national authority in a Member State those authorities will agree which of their heads will represent them), with one observer from the European Commission, a representative of EBA and EIOPA and one representative of the ESRB. In addition, Norway, Iceland and Liechtenstein were invited to attend as permanent observers, and Croatia will soon join as a full member on its accession to the EU. The Board guides the work of the Authority and has the ultimate decision-making responsibility regarding the adoption of ESMA TS, opinions, recommendations, guidelines and any other decisions, including the issuance of advice to the EU institutions.

The current Members of the Board and summaries of their 2012 meetings can be found on ESMA's website:

↗ [http:// www.esma.europa.eu/bos](http://www.esma.europa.eu/bos)

ESMA's Management Board

In addition to the ESMA Chair, the Management Board of ESMA is composed of six members (and an alternate for each) selected from the Board of Supervisors by its members. The Executive Director and a representative from the Commission attend as non-voting participants (except on budget matters where the Commission has a vote).

The main role of the Board is to focus on the management aspects of the Authority, such as the development of a multi-annual Work Programme, the budget and staff resources.

The current Members of the Board and summaries of their meetings in 2012 can be found on ESMA's website:

↗ [http:// www.esma.europa.eu/mb](http://www.esma.europa.eu/mb)

ESMA's Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (MSG) was established under the ESMA Regulation to help facilitate consultation with stakeholders in areas relevant to ESMA's tasks. ESMA is required to consult the MSG on its draft guidelines and technical standards. The MSG's 30 members first met in July 2011 and were appointed by ESMA for a period of two and a half years following an open call for candidates. They represent financial market participants and their employees', consumers and other retail users of financial services, users of financial services and small and medium sized enterprises.

In 2011, the Group elected Guillaume Prache, a consumer representative, as its Chair. He is supported by joint Vice-Chairs Peter de Proft, a representative of users of financial services, and Judith Hardt, a representative of financial market participants. The Group met on five occasions in 2012 and, in addition, it held two meetings together with the ESMA Board of Supervisors. The Group has issued numerous pieces of advice, opinions and reports on issues concerning ESMA's policy-making activities. Documents and summaries of these meetings, as well as the Group's annual report, can be found on ESMA's website:


↗ [http:// www.esma.europa.eu/msg](http://www.esma.europa.eu/msg)



02



ESMA's achievements against its 2012 objectives

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- ❖❖ Ensuring financial markets work in a fair, efficient and transparent manner is a key objective of securities regulators. ESMA contributes to market transparency, integrity and efficiency by ensuring the appropriate EU rules exist and are implemented and enforced consistently.

2.1	Financial Stability	20
2.2	Financial Consumer Protection	26
2.3	Supervision	30
2.4	Single Rulebook	34
2.5	Convergence	52

ESMA's achievements against its 2012 objectives

ESMA's second year of operation was marked by the implementation of those changes in financial legislation identified by the EU as necessary to tackle the financial crisis, and to meet its G20 commitment to building a more resilient financial system.



The three most relevant areas where ESMA made progress against these goals were:

- ◆ ESMA's standards regarding market infrastructures (EMIR);
- ◆ its work on embedding the new supervisory regime for credit rating agencies (CRA2); and
- ◆ the entry-into-force of the new EU Short-Selling Regulation where ESMA gained fresh powers and responsibilities. These were called upon already at the birthdate of the Regulation where ESMA issued opinions on curbs in Greece and Spain.

The Authority delivered other important pieces of work that helped in further shaping the single rulebook and in achieving supervisory convergence across Member States. The two key areas in terms of developing the rulebooks were short-selling and EMIR, which meets the EU's G20 commitment to regulate the over-the-counter derivatives market. In addition, ESMA has provided advice on secondary legislation on prospectuses and both UCITS and alternative investment funds (AIFMD). In support of our single rulebook objective this also involved conducting preparatory work on new upcoming pieces of securities legislation such as MiFID 2 and MiFIR, the Market Abuse Directive (MAD) and Market Abuse Regulation (MAR), and the Central Securities Depositories Directive (CSD), which is being finalised by the European Parliament and the Council.

ESMA also progressed in achieving convergence of supervisory and regulatory practices across the EU. This included the issuance of guidelines for market activities such as high-frequency trading, but also addressed alternative investment funds managers, exchange traded funds (ETFs) and plain-vanilla UCITS. It also involved guidelines on

the suitability of advice to investors and investment firms' compliance functions. In order to identify those areas of existing legislation where more convergence may still take place, ESMA, in 2012, conducted peer reviews of national authorities' activities in order to assess the degree of convergence in the application and enforcement of EU regulation, and have published reviews on the prospectus regime and the use of sanctions for market abuse.

Looking at securities markets which, compared to 2011, continued to see some volatile periods in 2012, ESMA has played a key role in coordinating action by NCAs in emergencies related to adverse market developments. At the same time ESMA beefed up its market monitoring and intelligence work in reporting to the EU institutions, particularly the ESRB, in order to contribute to raising awareness of risks and trends in financial markets.

ESMA, in its second year of supervision of CRAs, completed its first full round of investigations of the key CRAs, identifying shortcomings and areas for improvement, the respective report was published in March. In 2012, ESMA examined CRAs' bank rating methodologies, including reviewing the processes of disclosure. By the end of 2012 there were 19 registered CRAs in the EU with one certified CRA from Japan. ESMA continues to receive further registration applications. Most of our work as a standard setter and supervisor is driven by our investor protection aim. Protecting the rights of investors can take many forms, including prescriptive rules to firms offering services, but also involving educating and alerting investors about potential risks. In 2012, ESMA issued a warning to investors regarding the pitfalls facing investors when using the internet for



investment purposes, following an observed rise in complaints reported by national authorities.

Another means of ensuring investor protection is ensuring that the right level of transparency for investment products exists through high quality information; a topic that remained high on ESMA's agenda. This involved monitoring developments, and promoting the Authority's viewpoint, within the international financial reporting community and international standard setting bodies. In pursuit of this role, ESMA contributed to the development of International Financial Reporting Standards (IFRS) and provided assistance on accounting related issues, such as the application of IFRS when dealing with sovereign debt.

Alongside this important policy role, ESMA continued its work on sharing experiences between national supervisors on market surveillance issues and matters relating to upcoming changes in existing EU legislation, including the Prospectus (PD) and Transparency Directives (TD), Takeover Bids, etc.

ESMA also made progress in its joint work in this area with the other ESAs and the ESRB. In 2012, the three ESAs – ESMA, EBA and EIOPA – conducted joint work in its Joint Committee on cross-sector issues: it looked into cross-sector risks, investor protection and financial innovation, tackled supervisory issues of financial conglomerates, and also covered issues such as money laundering.

2.1 Financial Stability

Financial stability can be defined as a situation where the financial system at large is running smoothly without any disruptions and where the system – comprising of financial intermediaries, markets and market infrastructures – is capable of absorbing financial and real shocks without disturbing the allocation of assets.



Financial stability means that the financial system should be able to efficiently and smoothly transfer resources from savers to investors, and risks should be both assessed and managed and priced accurately.

Understood this way, the safeguarding of financial stability requires identifying the main trends, risk and vulnerabilities in the allocation of financial resources from savers to investors and possible mis-pricing or mismanagement of financial risks. This monitoring must be forward-looking: inefficiencies in the allocation of capital or shortcomings in the pricing and management of risk can affect financial stability and ultimately economic stability. Monitoring developments at both micro and macro levels is key. This is reflected in the set-up of ESMA, its sister authorities EBA and EIOPA and ultimately that of the ESRB where the information comes together at a macro level.

This cross-sector cooperation is key for stability matters as it is financial intermediaries, such as banks, insurance companies and other institutional investors that route assets from the investor to the borrower and it is market infrastructures through which money and financial assets flow between buyers and sellers.

ESMA monitors securities markets' trends, risk and vulnerabilities

Following its mandate to monitor regularly developments in EU securities markets, in 2012 ESMA issued several periodic risk reports and summaries of market trends to the EU Institutions. ESMA also contributed to risk reports issued by other institutions such as the ESAs' Joint Risk Sub-committee and to the ESRB.

In November 2012, ESMA started to prepare its first report on trends, risk and vulnerabilities in EU

securities markets. The report looks back at markets' performance for 2012 and will be published twice a year in the future.



NEXT STEPS

The report will include monitoring of financial markets in general as well as individual market segments. It will also provide a thorough analysis of risks in securities markets including a projection of future developments. Publication is expected in February 2013.

ESMA's Weekly Financial Monitor

Besides providing quarterly updates to the public, ESMA conducts internal market surveillance on a day-to-day basis; a result of which is ESMA's Weekly Financial Monitor, which provides weekly updates/ summaries on short-term trends and developments within the European financial markets. This publication has been produced throughout 2012. The monitor reports about short-run developments of European stock market indices, yields and risk spreads for sovereign debt and corporate debt, commodity prices and hedge fund indices. In late 2012 the lay-out of the weekly has been revamped to better fit ESMA's needs.

The Weekly Financial Monitor is used by ESMA staff, as well as by national and regional public bodies, to screen for major shifts in financial markets, providing a pan-European market perspective. Throughout 2012, the report observed a gradual relaxation of European sovereign debt markets, which initially remained tense, and the rise of a system of market clusters in the European financial system. This also reflected another trend, the end to the initial depreciation of the Euro which was mirrored by decreased risk spreads.



NEXT STEPS

ESMA will continue to provide key internal stakeholders with weekly market insights in order to inform all public bodies that look after financial stability with timely updates of market developments.

ESMA issues four risk dashboards for securities markets in 2012

In addition to the preparation of its all-year report on trends, risks and vulnerabilities, ESMA also issued four Risk Dashboards. These Dashboards assessed the risk situations in EU securities markets for each of the four quarters of 2012. Key risks – such as liquidity, credit and other risks – are presented in an easy-to-understand fashion by making use of charts that show the development of the different types of risks over time, using a traffic light-kind of system with green for low, yellow for average and red for high risks. These risk dashboards are aimed at both EU and national public bodies that oversee financial markets.

Main risk categories

Risk category	Change since 3Q12	Outlook for 1Q13	Systemic risk
Liquidity risk	→	→	Orange
Market risk	↘	→	Yellow
Contagion risk	→	→	Orange
Credit risk	↗	↗	Red

Note: Assessment of main risk categories for markets under ESMA remit (since past quarter and outlook for current quarter). The systemic risk assessment based on categorisation of ESA Systemic Risk Heat Map, green=low, yellow=moderate, orange=high, red=very high.

For the first quarter of 2012, all risks were evaluated as being at least at a high level, while credit risks were assessed as being very high. The main risk was seen to be the declining capacity of distressed sovereign debtors to meet their future refinancing needs. In the second quarter of 2012, this assessment changed only slightly and only in so far that the risks for a mis-valuation of assets and the risks to sovereign refinancing were deemed to have decreased. On the other hand, contagion risks were perceived as being higher. Accordingly, the

main risks were seen in the growing reluctance to insure sovereign debt and the concentration of sovereign debt within the domestic banking systems of the EU. In the third quarter of 2012, ESMA re-assessed the aggregated risks in financial markets, concluding that there was a slight decrease compared to the second quarter.

The main drivers for this development were seen in lower liquidity risks due to improved pricing capabilities of market participants, and a partial relaxation in the issued volume of short-term securities. This mildly optimistic trend continued in the fourth quarter of 2012. Most risk categories had improved. The improvements in both liquidity and market risk seem to have outweighed the, at the time, still increasing credit risks stemming from banks' refinancing risk and the developments in sovereigns of distressed economies.

In addition, the fourth quarter risk dashboard identified several topical risks stemming from the sovereign debt crisis in the banking industry, including the low interest rate environment, market clustering and impaired market functions, as potentially important risk factors for the future.



NEXT STEPS

ESMA will continue to issue its Risk Dashboards, the format of which will change. Those changes will reflect methodological improvements aimed at raising the quality of ESMA's risk assessment. In addition, ESMA will strive to cooperate with the three other ESAs in order to continue the past successful work on the harmonization of the three ESA's Risk Dashboards.

ESMA conducts thematic economic research

Besides regularly observing financial markets, so ESMA can identify the developing risks and dangers to financial stability as well as assessing the impact of existing or planned regulations and policy measures, ESMA in 2012 conducted three in-depth research projects. The first of these projects focused on a network analysis of exposure risks in Credit Default Swaps (CDS) markets. The two other projects looked into the structure of the market for retail investment products and the risks arising in the intermediation of funds from the repo market via prime brokers to hedge funds.

CDS project feeds into macro-risk analysis

This work by ESMA aimed to analyse and better understand the market structure of credit exposures determined by the trading of CDS contracts written against EU reference entities, such as sovereigns, financial and non-financial reference entities. The analysis revealed that CDS exposures trace so called *scale-free networks* which can be described as networks of a small (but increasing over time) number of highly interconnected net CDS sellers and a high number (and increasing over time) number of peripheral/less connected CDS buyers. Such a market structure underpins the assumption that it is large and highly interconnected net CDS sellers which are the primary source of systemic counter-party risk in the CDS market.

Combining this finding with the concept and indicators of network centrality, helped ESMA to identify which were the *key nodes* of the CDS market i.e. the potential *super-spreaders* of financial contagion.

Using balance sheet items, ESMA tried to model the financial resiliency of those banks identified as *super-spreaders* or being *systemic relevant*. The research showed that those banks on average seem to hold a lower buffer of equity per unit of their assets compared to other non-systemically relevant banks. However, recent recapitalisation exercises imposed on these banks by financial supervisors seemed to have reduced this difference, thus taking a step in the right direction for financial stability.

**NEXT STEPS**

This analysis will be part of the ESRB report on financial markets interconnectedness in the EU; it will then be reviewed for a joint ESMA/Banque de France working paper publication.

ESMA looks into the systemic dimension of hedge fund illiquidity and prime brokerage

Another thematic review of ESMA in 2012 evaluated the vulnerabilities and risks imminent in the intermediation of funds from repo market to prime brokers, and finally to hedge funds. ESMA used monthly time series data of the biggest 306 global hedge funds and their prime brokers, covering the period of July 2001 to December 2011. ESMA analysed the data by employing a vector error correction model. The study finds that in regular times, i.e. in times without stress in financial

markets, hedge funds and prime brokers complement each other's business activities. Thus, hedge funds receive loans from prime brokers and provide, in exchange, their illiquid assets, either in securitised or in raw form, as collateral. Both parties profit, since hedge funds can leverage their investments and prime brokers are able to make profits through maturity and risk transformation. Accordingly, the volume of this interconnected business is mainly determined by asset prices and the risks perceived in the relevant markets.

However, the project's empirical evidence illustrated that this specific form of financial intermediation was impaired at the height of the recent global financial crises. This effect can be explained by the hoarding of liquid securities by prime brokers that are eager to avert various types of runs by their clients. Those possible runs include: the incentive for repo counterparties to withdraw their investments or to raise haircuts, thereby consuming more collateral; the incentive for hedge funds to resolve their loan contracts prematurely in order to restore or preserve the value of their assets; and the incentive for hedge fund clients' to withdraw their investment, forcing hedge funds to disinvest and therefore to recall their collateral from prime brokers. ESMA found that the volatility of market activities reflected a general increase in perceived risks as the trigger for prime brokers' collateral hoarding. These findings are consistent with evidence from the previous academic research literature.

Besides, ESMA's study provided fresh insights into the distinct dynamic dissemination patterns of financial shocks through hedge fund illiquidity and prime broker activity. In particular, it demonstrated that the consequences of possible shocks depend on the specific shock sources. However, notwithstanding any differences, prime brokers' securities holdings are a central transmission variable for the materialisation of any possible shock. All adverse shocks which could, in some form, also be observed during the recent financial crisis, induce a deleveraging process for hedge funds. Such deleveraging could impair the profitability of hedge funds' stronger than the one of prime brokers.

From a systemic risk perspective, the project's results emphasise that fairly general market shocks can severely impair one of the potential substitutes for the traditional financial intermediation through the banking sector. Moreover, the central factor in these reactions is securities hoarding by prime

brokers. Since the latter are closely connected with the traditional banking system, feed-back effects into the latter are therefore highly probable. In addition, the central role of prime brokers' securities holdings indicates that, apart from the pure fact that there is a high concentration in this market segment anyway, prime brokers are systematically immanent by nature since they are the central node in transmitting shocks throughout the entire intermediation chain.



NEXT STEPS

The complete project report is currently under consideration for ESMA's Working Paper Series. It is also planned to conduct further research in this field in 2013.

ESMA looks into benefits and risks of retailisation of complex products

Another area ESMA conducted research on in 2012 was the selling of complex products to retail investors, a trend known as *retailisation*. Notwithstanding the potential benefits brought by some of these products, trends linked to retailisation have been closely monitored by securities markets supervisors as it could increase risks for the financial system at large. From a consumer protection perspective, retail investors may face difficulties in understanding the drivers of risks and returns of complex products. As a result, it might be particularly challenging for them to make proper investment decisions. If some retail investors do not properly understand the risk and reward profile of complex products, unexpected losses might lead to complaints, reputational risks for issuers and a loss of confidence in the regulatory framework and, more broadly, in financial markets. From an issuer's perspective, complex products targeted at retail investors may be used to generate profits through fees and may also provide an alternative source of funding.

ESMA research focused on complex funds and structured products. Complex funds are proxied by alternative UCITS, whose Assets under Management (AuM) have experienced strong growth over the last few years, from around €20bn in 2007 to €90bn in 2011. Empirical evidence shows that complex funds have offered annual returns of 2.6% on average in 2006-2011, higher than the equity market but less than non-UCITS complex funds.

Regarding structured products sold to retail investors, outstanding amounts represented around €815bn in December 2011, an increase



by 12% since 2007. ESMA's analysis based on a sample of around 80 structured products indicates that the mark-up (the difference between the issue price and the fair value) is around 5% on average and 6.5% when credit risk is included. Actual returns on around 3,000 structured products offering at least 100% capital protection were on average 2.50%, but they were lower than the return on a risk free investment.

The empirical evidence provided in the report calls for on-going monitoring of trends related to retailisation and identifies potential issues.



NEXT STEPS

ESMA's final report on retailisation will be published in 2013.

ESAs look into risks across banking, insurance and securities markets

In 2012, the three ESAs issued joint reports on risks and vulnerabilities in the EU financial system which mainly focused on cross-sector risks in the EU banking, insurance and securities sector. The two reports were released in March and September 2012. The reports to which ESMA made significant contributions, found that the risks to the EU financial system decreased slightly in the first quarter of 2012 and increased afterwards again. In general the vulnerability of the system was considered to be at an elevated level throughout the entire period to September 2012. The main reasons for this assessment were the deepening of the eurozone debt crisis and the worsening of the macro-economic conditions and outlook, which severely affected investor confidence. In addition, fiscal consolidation processes seemed to have accelerated this development.

The quality of banks' asset and funding risks were identified as the key risks, whereby in September these risk were assessed as even higher than in the March report. In particular, the September report expressed increasing concerns over the quality of assets. Both reports found that risks to the macro-economic development of the EU were perceived as having intensified throughout the first eight months of 2012 due to the deleveraging of banks, thus increasing the overall risks for the entire financial system.

Both reports found that negative pressures on financial institutions' business models and profitability increased, affecting their ability to raise capital. The ability to raise equity was further hampered by the sluggish development of the European stock market (compared e.g. with the US market) and the depressed level of many banks' share prices. In addition, risks related to the persistently low level of interest rates had become more relevant, and posed particular challenges for life insurers and pension funds. Market risks remained elevated due to search-for-yield incentives, and the high and bouncing levels of volatility.

Reports update on risk developments

The September report upgraded the risks related to increasing asset encumbrance by banks from emerging to main current risks, due to rapid growth in the level of encumbrance. This trend was found to severely restrict the amount of assets protecting unsecured creditors and depositors and reducing banks' balance sheet flexibility. Under emerging risks, the report discussed the risks related to an increasing use of novel funding structures (liquidity swaps and ETFs). In addition, while the move to central counterparty clearing was assessed as desirable, it was emphasised that a swift implementation of regulatory reforms, which address potential systemic risks due to the rapid increase and market concentration in the use of CCPs in derivative transactions, would be important.

From a policy perspective, the restoration of trust in Europe's banking industry and breaking-up of the sovereign-bank link were deemed to be urgent. While the contemporaneous decision for the unified supervisory mechanism was evaluated as supportive, the report proposed the swift and comprehensive implementation of an effective single supervisory mechanism. Other main policy conclusions were as follows:

Both reports asked for a harmonized and coordinated approach to measuring asset quality and risk weighted assets and an improvement in transparency (across countries and sectors). In addition they called for balanced and swift implementation of the banking regulatory reforms, in order to support market confidence in banks.

The reports suggested resolving the measures addressing pro-cyclicality in Solvency II quickly, in order to allow the finalisation of the framework. They called for a prudent and transparent establishment of those measures without endangering adequate capitalisation in the insurance sector:

- ◆ an effective ex ante coordination of national policy actions and regulatory initiatives, where appropriate and in line with European legislation, was proposed in order to safeguard the Single Market; and
- ◆ supervisors were alerted to increasing levels of asset encumbrance. The reduced protection of those depositors not covered by deposit guarantee schemes and of unsecured creditors, as well as limited transparency of encumbered assets, was mentioned as a potential reason for supervisory action.



NEXT STEPS

The three ESAs will continue this series of bi-annual reports in 2013. The preparations for the first report in 2013 are well under way with the report expected for April.



2.2 Financial Consumer Protection

Ensuring the protection of consumer's rights is another important task for ESMA. It achieves this through promoting transparency, simplicity and fairness in securities markets for consumers of financial products or services. In order to ensure that investors enjoy the same level of protection regardless of the point of sale, ESMA collects, analyses and reports on consumer trends, while promoting both financial literacy and education initiatives and contributing to the enhancement of common disclosure rules so as to consumers can take suitable investment decisions.



Should ESMA identify any products which may inherently present serious threats to investors, it will consider issuing warnings. If current legislative proposals come into force ESMA will have the power, as a last resort, to temporarily ban certain products. ESMA's work in this area will include a focus on ensuring that the financial information provided by market participants to investors is clear, understandable and in compliance with existing rules.

ESMA monitors financial innovation

ESMA, co-ordinates the national competent authorities' treatment and response to new or innovative financial activities and decides how it should act in this field. ESMA is putting in place a pro-active system that will allow it to identify and respond with risk mitigating strategies to financial innovations that may either give rise to systemic risk or have the potential to harm investors. The Authority divided financial innovation into two streams, products and processes.

ESMA has worked with NCAs to understand how each goes about the process of identifying, monitoring and in certain cases inhibiting financial innovation. From this body of work, ESMA has begun to develop a set of best practices. This toolkit for financial innovation suggests an array of methodologies, some quantitative while others entirely qualitative, to understand and when needed respond to innovative products.

Investor trends, innovative investment products and processes

ESMA is actively working with NCAs to better understand the changing investment profiles of their respective investment communities. From a statistical standpoint, ESMA examined how macroeconomic factors are changing the saving and spending patterns across the EU. In turn, we drill down to how those changes are driving changes in their investment behavior, both in terms of amount invested and types of investment. In particular, ESMA is looking for patterns across the European EU. Our NCAs provide us with valued information on localised trends on a regular basis that we use to identify and confirm more wide-spread patterns. For example survey results on investment product sales and investor complaints, both qualitative and quantitative, informs and then confirms observable patterns.

Consultative working group put in place

In November 2012, ESMA published a call for candidates to form the FISC Consultative Working Group. The profiles of the selected members are market participants and practitioners who provide ESMA and FISC with market intelligence on financial innovation not easily found. The members include Chief Investment Officers, Chief Product Development Officers, Chief Risk Officers, a number of leading academics focused on financial innovation, as well as members of the consulting community and investor representatives.



NEXT STEPS

The Group will hold its first meeting in February 2013.

ESMA works on investor education

While the primary responsibility for the work of investor education is best undertaken at the NCAs level, ESMA is well placed to raise awareness as to the importance of the issue across NCAs, and to encourage and communicating best practices. Within ESMA, the Authority has mapped initiatives underway across Member States relative to:

1. Financial Education programmers;
2. Publication of materials both material and electronic;
3. Initiatives underway relative to younger investors; and
4. Other initiatives, such as NCA investor warnings.

From this work, ESMA intends to distribute a set of Financial Education best practices to Member States and in turn ensure a level of consistency in the financial education undertaking across Member States.



NEXT STEPS

For co-ordination/action by ESMA, FISC's main on-going task in 2013, and beyond, will be to make proposals, where appropriate, for the co-ordinated response to issues identified in the areas of financial innovation. Depending on the issue at hand, it will do this: (1) by co-ordinating measures to be adopted at national level, or (2) through direct action by ESMA (for example, a warning).

Investor protection – MiFID

ESMA issues guidelines on aspects of the MiFID suitability requirements

ESMA published its final report on 6 July 2012 together with final guidelines on certain aspects of the MiFID suitability requirements.

Assessing suitability is an important MiFID investor protection requirement as it helps in avoiding mis-selling. Supervisory experience indicates that full and effective compliance with the MiFID suitability requirements is not as consistent or as wide-spread across Member States as it could, or should, be. This compromises both MiFID's and ESMA's investor protection aims.

The guidelines focus mainly on the need for firms to have in place appropriate policies and procedures in order to know their clients and products when recommending suitable investment choices.

ESMA guidelines on aspects of the MiFID requirements for the compliance function

On 6 July 2012, ESMA published its final report, together with final guidelines on certain aspects of the MiFID compliance function requirements.

The financial crisis highlighted the need for better monitoring and managing of risk by investment firms, and for a more comprehensive and pro-active compliance strategy in firms. In addition, compliance risk often takes second place to other risk areas within an investment firm, and this can lead to the deficient implementation of appropriate compliance processes. The compliance function should therefore have a more prominent role within investment firms.

The guidelines are aimed at helping investment firms to increase the effectiveness of the compliance function, so are focused on the responsibilities of the compliance function. They are intended to reinforce the importance of the compliance function within the firm.

ESMA consults on draft remuneration guidelines for investment advisors

On 17 September 2012, ESMA published a consultation paper on proposed guidelines on remuneration policies and practices under MiFID. The draft guidelines aim to strengthen investor protection by

seeking to improve the implementation of the MiFID rules on conflicts of interest and conduct of business in the area of remuneration across the EEA Member States.

➔ <http://www.esma.europa.eu/page/IPISC-documents>



NEXT STEPS

Stakeholders had until 7 December 2012 to respond to the consultation paper. ESMA will consider the response received, and expects to publish a final report, together with final guidelines, in Q2 2013.

MiFID provides supervisory briefings to foster coherence

ESMA is required to play an active role in building a common EU supervisory culture by promoting common supervisory approaches and practices. In this regard, on 19 December 2012, ESMA published two supervisory briefings, issued in terms of Article 29 of the ESMA Regulation, relating to the MiFID rules on suitability, and on appropriateness and execution-only respectively.

Both are aimed at NCAs, but are also intended to give market participants indications of compliant implementation and application of the relevant MiFID provisions. Fostering more coherent application of Union law ultimately also promotes investor protection.

Suitability

The MiFID suitability rules give firms a certain degree of flexibility in complying with the duty to obtain the necessary information about the client's circumstances on the one hand, and using this information in making recommendations or taking investment decisions on the other hand. It applies in relation to the application of Article 19(4) of MiFID; and Articles 35 and 37 the MiFID Implementing Directive (2006/73/EC).

Appropriateness and execution-only

This supervisory briefing explains the MiFID appropriateness test. It takes account of related CESR work and the Commission's database of MiFID "Questions and Answers". It applies in relation to the application of Articles 19(5) and (6) of MiFID; and Articles 36-38 of the MiFID Implementing Directive (2006/73/EC).



NEXT STEPS

ESMA intends to issue further 'supervisory briefings as one of the 'practical instruments and convergence tools to promote common supervisory approaches and practices' envisaged by Article 29(2) of the ESMA Regulation.

tasks that could be assigned to ESMA. On issues related, these groups will cover the following main areas:

- ◆ conduct of business rules for investment firms and product intervention;
- ◆ operational issues and cooperation between national competent authorities; and
- ◆ organisational requirements, best execution.

ESMA issues MiFID Q&A

Having considered the MiFID provision of services and activities, ESMA published a MiFID Q&A, setting out when the activity of "*automatic execution of trade signals*" is a portfolio management service (as defined in MiFID) and, therefore, requires authorisation.

The updated version of ESMA's MiFID Questions & Answers was published on 22 June 2012.



NEXT STEPS

Having played a key role in supporting the work to develop and implement MiFID 1 and the Level 2 implementing texts, ESMA expects to make good use, in 2013, of all that work as the basis for the revised MiFID 2 and the related Level 2 text, as well as to contribute to the issuing of any required Technical Standards.

ESMA prepares for future investor protection work under MiFID review

In the 4th Quarter of 2012, ESMA mapped the large number of the potential Level 2 empowerments (ESMA tasks) for MiFID implementing measures under the Commission's proposals for MiFID 2 and MiFIR, and formed an initial view of the workload for ESMA.

Due to the number of topics to be addressed, ESMA decided to initiate work on those areas where the MiFID 2 and MiFIR legislative texts seem to be relatively uncontroversial or settled. To this end, ESMA established several working groups to conduct some preparatory work for the possible

ESMA warns retail investors about pitfalls of online investing

In October 2012, ESMA published a guide to assist retail investors before, while and after investing. In September 2012, ESMA issued a warning informing investors about the pitfalls of investing over the internet. The warning was translated into all European languages and distributed in all EU Member States. Finally, ESMA held an Investor Day in December 2012 comprising regulators, policy-makers and representatives of retail investors to discuss current initiatives to bolster investor protection.

▲ [http:// www.esma.europa.eu/investor-corner](http://www.esma.europa.eu/investor-corner)



2.3 Supervision

The lack of harmonisation in financial supervision before and during the financial crisis led the European Parliament to call for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the EU level, and to reflect the increasing integration of its financial markets in Europe. The European System of Financial Supervision (ESFS) which includes ESMA was created in order to overcome those deficiencies and provide a system that is in line with the objective of a stable and single EU financial market for financial services, linking NCAs within a strong EU network.

It was also decided to give a European approach to the supervision of pan-EU players, such as the supervisory colleges in the banking and insurance areas and in the future for CCPs. In addition, ESMA was tasked to be the sole supervisor for Credit Rating Agencies (CRAs) in the EU. The same will be the case, starting from 2013, for trade repositories – those data warehouses that collect, save and make available data on clearing and settlement. In undertaking supervision of financial market participants with pan-EU reach who may have an impact on the integrity of the EU's financial markets, ESMA contributes to safe and sound financial markets which in turn supports investor protection.



ESMA takes on its CRA supervisory role

With the entry into force of the CRA2 Regulation in 2011, ESMA assumed sole responsibility for supervising CRAs registered in the EU. 2012 was the first full year of ESMA's supervisory role in this area. As of 31 December 2012, 19 CRAs were registered and one was certified at ESMA. Among these, three operate under a group structure (Fitch, Moody's and Standard & Poor's), totalling 16 legal entities in the EU. This means that the total number of CRA entities registered or certified in the EU is 33. In addition, one Japanese CRA has been certified by ESMA.

A list of those CRAs which are currently registered and hence are entitled to do business in the EU is available on ESMA's website:

↗ <http://www.esma.europa.eu/page/List-registered-and-certified-CRAs>

ESMA is currently assessing several applications for registration and expects additional applications

in the course of 2013. NCAs cooperated with ESMA in the identification of companies, which are potentially carrying out rating activities in the EU without yet having asked for registration. Following its clarification on the scope of the Regulation, there will be no tolerance for credit rating agencies conducting rating activities without a registration.

First investigations of CRAs

During 2012, ESMA regularly inspected registered CRAs based on a desk-based analysis of periodic information, notifications of changes in the initial conditions, complaints and other market intelligence. In executing its supervisory responsibilities, ESMA conducted investigations into rating processes, governance and internal control and one focused investigation of bank rating methodologies of the three groups of registered CRAs.

During 2012, ESMA also developed its risk function in order to have a flexible and responsive combination of judgement-based intelligence drawn from



the supervisory process, together with quantitative and qualitative information gathered through market intelligence activities. These activities are intended to form a solid framework for the strategic planning and prioritisation of ESMA's supervision. ESMA initially conducted first investigations into Fitch, Moody's and Standard & Poor's, right after their registration at the end of 2011, which concerned three credit rating classes, sovereign ratings, bank ratings and covered bond ratings. Following first on-site inspections and desk-based reviews, ESMA published a report in March 2012, which identified several shortcomings and areas for improvement. ESMA followed up the relevant issues through risk mitigation plans for each individual CRA. The main remedial actions by CRAs included improvements in methodological and rating disclosures, amendments of policies and procedures as regards documentation and record keeping, enhancements in terms of data quality, increased monitoring of the adequacy of resources dedicated to control functions and to analytical business lines and strengthening of the IT audit function in the EU.

Following the first investigation, ESMA carried out an additional investigation into the governance and control functions of an individual CRA. Following its investigation, ESMA communicated to the CRA

a remedial action plan, requesting that this CRA enhance the independence and responsibilities of board members (including independent directors), to empower resources and procedures dedicated to internal control functions, and to improve the methodology review and credit rating surveillance processes.

Bank ratings under focus

During the second half of 2012, ESMA conducted an investigation of Fitch, Moody's and Standard & Poor's with the objective of assessing the compliance of bank rating methodologies with the CRA Regulation. The review also included a set of on-site inspections which took place in July 2012. ESMA examined the implementation of bank rating methodologies, the process for the development of new rating methodologies, changes in methodological frameworks, review and revision of methodologies and controls on set-up and implementation of methodologies. Following the investigation, ESMA requested the CRAs to improve their policies, procedures and processes as regards the elements that should be incorporated in the methodologies and their disclosure thereof, the description of importance of rating factors, the review and changes of methodologies and the information quality and timeliness standards.



Central rating repository goes live

As required under the CRA Regulation, and in support of its supervisory functions, in 2012, ESMA created a central repository (CEREP) to make long-term information on ratings available to the public. CEREP was made publicly available in February 2012 and has recorded more than 400.000 user requests since then. The CEREP database provides information on credit ratings

issued by the CRA's which are either registered or certified in the EU, and allows investors to assess for the first time on a single platform the performance and reliability of credit ratings on different types of ratings, asset classes, and geographical regions over the time period of choice.

ESMA develops automated CRA supervision tool

In addition, ESMA started developing an internal IT tool for CRA supervision called SOCRAT, designed supporting ESMA in the regular monitoring of CRAs' activity. SOCRAT aims at facilitating ESMA's processing of rating actions data in a standardised and automatic manner and support ESMA in its supervisory activities. The reporting obligation to SOCRAT started in November 2012, in light of the 6-month transition period accorded by the relevant regulatory technical standard.

Finally, in 2012 ESMA began periodically exchanging supervisory information with third-country supervisors, with which a cooperation agreement is in place.

Implementation of CRA1

In May 2012, four regulatory technical standards linked to the CRA Regulation (CRA2) were published regarding:

- 1) the presentation of the information that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009;
- 2) the assessment of compliance of credit rating methodologies with the CRA Regulation;
- 3) the information for registration and certification of credit rating agencies; and
- 4) the content and format of ratings data periodic reporting to be requested from CRAs for the purpose of on-going supervision by ESMA.

Following these publications, the Commission published in October 2012 also a delegated Regulation with regard to rules of the procedure on fines imposed to CRAs by ESMA, including rules on the right of defence and temporal provisions. ESMA submitted comments during the consultation phase.



NEXT STEPS

The CRA supervisory and policy work plan for 2013 provides ESMA's main objectives for the following year. In this work plan, ESMA indicates the supervisory and policy work streams it will undertake during the coming period, also in order to fulfil its new responsibilities under the CRA3 Regulation.

➔ [http:// www.esma.europa.eu/system/files/2013-87.pdf](http://www.esma.europa.eu/system/files/2013-87.pdf)

ESMA issues guidelines on CRA Regulation

In December 2012, ESMA also issued a consultation paper on guidelines and recommendations on the scope of the CRA Regulation. The draft guidelines aim to provide clarification on certain aspects of the scope of the CRA Regulation to registered CRAs, other market participants operating on the perimeter of this sector and national securities markets regulators.

ESMA looks into equivalence of third-country CRA regimes

In order to ensure cross-border supervision of rating activity functions in a way that allows European investors to enjoy the same level of protection from non-EU CRAs, which may offer ratings within the EU, ESMA started to assess third-country legal systems and to negotiate agreements with the relevant non-EU supervisor. Following the assessment of the regimes for Australia and Japan, during the first quarter of 2012, ESMA adopted endorsement decisions regarding the US, Canada, Brazil, Hong Kong, Singapore, Mexico, and Argentina. These decisions allowed EU financial institutions to use credit ratings issued in these countries for regulatory purposes. ESMA also submitted, upon request from the Commission, its favourable technical advice concerning the eligibility of the legal and supervisory framework in the US, Canada, and Australia as regards the equivalence regime provided in Art. 5 of the CRA Regulation. The European Commission adopted the equivalence decisions regarding these countries in October 2012.

USA:

↗ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:274:0032:0033:EN:PDF>

Canada:

↗ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:274:0030:0031:EN:PDF>

Australia:

↗ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:278:0017:0018:EN:PDF>

ESMA contributes to regional and international CRA legislation

ESMA had an active role in the work of the International Organization of Securities Commission (IOSCO) Committee 6 on CRAs. In particular, ESMA coordinated the consultation of the EU registered CRAs during the groundwork for the revision of the IOSCO Code of Conduct for CRA activities and was actively involved in the IOSCOs' publication of a consultation paper on the establishment of global colleges for the supervision of internationally active CRAs. Finally, ESMA contributed to IOSCO's report on internal controls and conflicts of interest within CRAs.

Implementation of CRA3

During 2012, ESMA followed the negotiation of the new amendments to the European CRA Regulation (the so-called CRA3 legislative package) by providing its technical feedback – when requested – to the Commission, the European Parliament, and to the Council. ESMA also started its planning for the implementation of the relevant provisions of CRA3.



NEXT STEPS

The CRA3 Regulation contains key provisions for which ESMA will be required to publish policy documents and implement new supervisory tasks. In particular, CRA3 will deal with issues regarding the overreliance on ratings, the disclosure and the timing of sovereign ratings, the conflicts of interest by CRAs' shareholders, the fees charged by CRAs to their clients and the mandatory rotation of CRAs for re-securitisations



2.4 Single Rulebook

The financial crisis exposed the negative effects that unevenly applied legislation can have for the financial markets, its consumers and the economies at large. Therefore, it was felt necessary to introduce effective instruments to establish more harmonised national applications of EU law. In order to foster more coherence in securities legislation and its application, ESMA can issue regulatory technical standards (TS) in order to ensure a level-playing-field and adequate protection of investors. As a body with highly specialised expertise, ESMA, in areas defined by EU law, is entrusted with the development of draft TS, which further detail and clarify the Level-1 EU legislation.

Those standards aim at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing an EU single rulebook applicable to all financial market participants in the internal market. ESMA fulfils this role, or will fulfil this role, for those legal texts framing in the European securities markets (MiFID), their infrastructure (EMIR) and orderly functioning (short-selling, MAD), but also with TS for key financial market participants such as CRAs and investment funds (UCITS, AIFMD).



ESMA provides implementing standards for EMIR

The financial crisis laid bare shortcomings in the field of securities clearing and OTC derivatives trading, identifying a need for central counterparty clearing (CCP) and a stronger role for trade repositories (TRs) to enhance financial stability and integrity.

The Commission therefore started putting together a tailored European regulation covering three areas: OTC derivatives, CCPs and TRs. EMIR, which entered into force in August 2012 aims at contributing to financial stability by bringing clearing obligations to products where no such requirements exist and by strengthening the oversight of CCPs and TRs. ESMA was given a key role as European standard setter, elaborating TSs in areas such as the clearing obligation for OTC derivatives, exemptions from it, and standards for CCPs and TRs. ESMA will also have direct responsibilities in determining the classes of derivatives subject to the clearing obligation, in supervising TRs and in participating in the supervision of CCPs through supervisory colleges led by national supervisors.

EMIR regulatory work

In order to prepare for its role as standard setter, in 2011 ESMA established three task forces to develop the relevant TSs under EMIR. These task forces focused on:

- 1) OTC derivatives;
- 2) CCP requirements; and
- 3) trade repositories.

The work of these task forces continued throughout 2012, drafting the 30 TS and implementing technical standards (ITS) that ESMA submitted to the Commission on 27 September 2012. These draft regulatory and ITS were grouped into 9 Regulations:

1. Regulatory technical standards on OTC derivatives, including:

- a. indirect clearing arrangements;
- b. clearing obligation procedure;
- c. criteria for the determination of the classes of OTC derivatives subject to the clearing obligation;
- d. details to be included in the public register;
- e. liquidity fragmentation;
- f. non-financial counterparties (including the hedging definition and clearing thresholds); and
- g. risk mitigation techniques for OTC derivatives not cleared by a CCP (timely confirmation, portfolio compression, portfolio reconciliation, dispute resolution, mark-to-market and mark-to-model, intragroup transactions);

2. Regulatory technical standards on supervisory colleges for CCPs;

3. Regulatory technical standard on CCP requirements, including:

- a. recognition of third country CCPs;
- b. organisational requirements;
- c. record keeping;
- d. business continuity;
- e. margins;
- f. default fund;
- g. liquidity risk controls;
- h. default waterfall;
- i. collateral;
- j. investment policy; and
- k. review of models, stress testing and back testing;

4. Implementing technical standards on the format of the records to be maintained by central counterparties;

5. Regulatory technical standards on trade repositories matters, notably on:

- a. the minimum details of the data to be reported to trade repositories;
- b. the details of the application for registration as a trade repository; and
- c. the data to be published and made available by trade repositories to relevant authorities; and

6. Implementing technical standards on trade repository matters, notably on:

- a. the format and frequency of the data to be reported to trade repositories; and
- b. on the format of the application for registration of a trade repository.

On 19 December 2012, the Commission adopted, without changes all regulatory and ITS submitted by ESMA on EMIR, except the one on CCP colleges, where the Commission raised issues of legal compatibility with the text of EMIR.

In addition to these six ITS, the three ITS were published in the Official Journal of the EU on 21 December 2012 and entered into force 20 days after publication, although their practical implementation depended on the entry into force of the RTS under EMIR in the course of 2013.

ESMA prepares guidelines and recommendations for CCP interoperability arrangements

Under Article 54(4) of EMIR, ESMA was required to issue by 31 December 2012 Guidelines or recommendations with a view to establishing consistent and effective assessments of interoperability arrangements. During 2012 ESMA worked on its draft technical standards on CCP requirements which were presented to the Commission on 27 September 2012, as required under EMIR.

In order to meet the challenging deadline for delivery of the technical standards, ESMA prioritised the work on the technical standards and therefore only launched a consultation (and not the final Guidelines and recommendations) before 31 December 2012. With the consultation due to on 31 January 2013. In prioritising work on the technical standards ahead of the Guidelines and recommendations, ESMA considered that the applicability of these Guidelines and recommendations would not be immediate and that finalising these guidelines by 31 December 2012 would have required compressing or skipping the consultation period, which would be undesirable for such a complex, technical and relevant matter.

Process and timing

The delivery of technical standards to the European Commission is a transparent and open process which entails a significant period of consultation with stakeholders. In 2012, ESMA consulted twice, and held two public hearings in Paris which were very well attended.

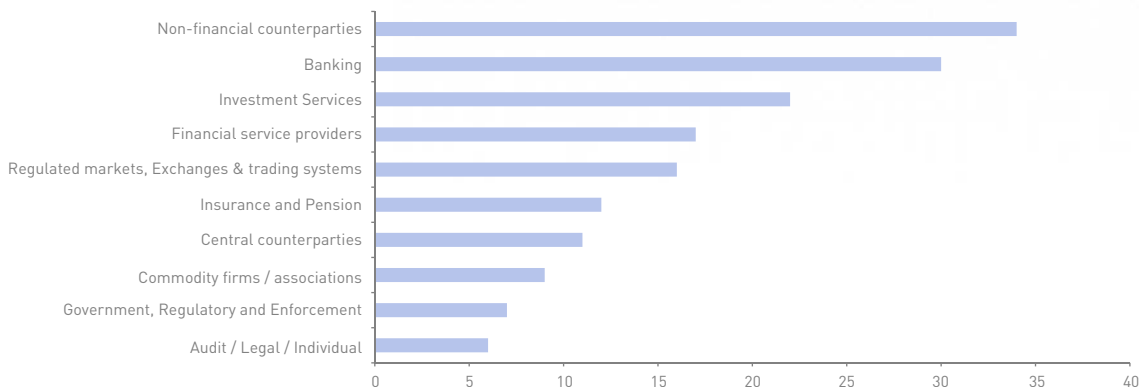
For the second consultation, ESMA received answers from 22 countries, as well as answers from European and International bodies. In terms of countries there was a significant contribution from Germany, the UK, the US and France. A broad range of stakeholders participated in the consultation – not only banks and investment firms, but also central counterparties, exchanges and insurance companies. The most important number of answers came from non-financials or their representative associations, underlining the particularity of this legislation which applies also to non-financial entities.

The breakdown of the responses to the second consultation, per type of respondents and per country, is given in more detail in the two following graphs:

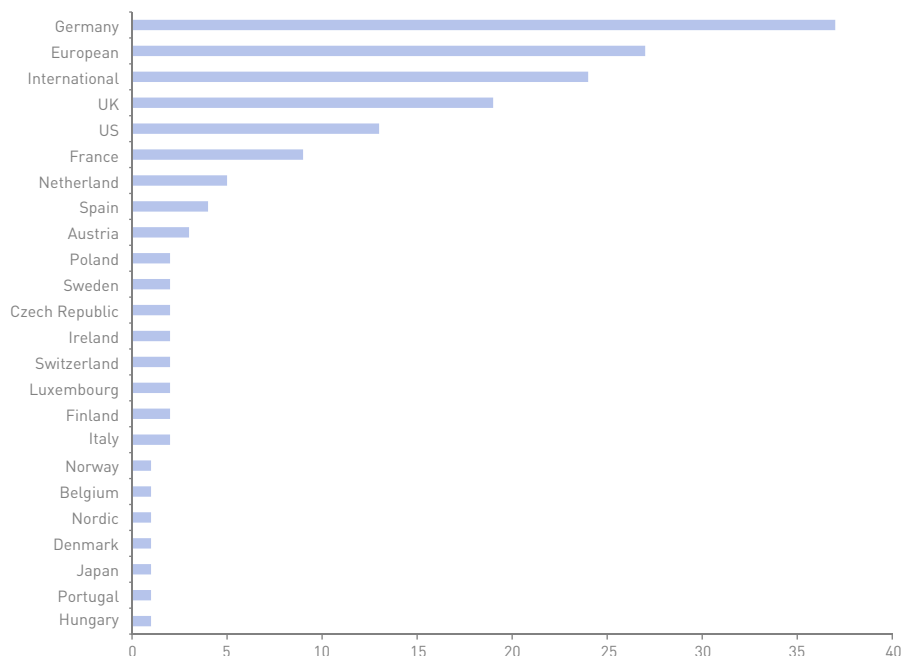
09 February 2012	The European Parliament, the Council and the Commission reached a political agreement on EMIR
16 February 2012	ESMA issued a discussion paper for 4 ½ weeks consultation period
06 March 2012	First open hearing on EMIR
19 March 2012	End of the first consultation, to which 135 responses were received
25 June 2012	ESMA issued a consultation paper for a 6 week consultation period
12 July 2012	Second open hearing on EMIR, with more than 200 stakeholders
16 August 2012	EMIR entered into force
05 August 2012	End of the second consultation, to which 165 responses were received
27 September 2012	The draft standards were delivered to the Commission
19 December 2012	Technical standards (RTS and ITS) endorsed by the Commission
21 December 2012	Implementing technical standards (ITS) published in the Official Journal

Under EMIR, ESMA drafted more than 30 technical standards, under a timetable which is described in more detail above.

Number of responses per type of respondents



Number of responses per country



NEXT STEPS

The EMIR Regulatory Technical Standards will be published in the Official Journal in February 2013 and will enter into force in March 2013. The non-objection period by the Council and Parliament on the EMIR RTSs will end on 19 February 2013. If there is no objection, the technical standards on EMIR are likely to enter into force by the end of March 2013. Following the entry into force of the technical standards, the requirements will start to apply subsequently, among which the most important are the following:

- within six months of the entry into force, CCPs will apply for authorisation to their relevant competent authority
- within six months of receiving a complete application from CCPs, national competent authorities will perform the assessment against the requirements for CCPs, and grant or refuse authorisation
- immediately after CCPs are authorised, ESMA will be notified of the OTC derivative classes cleared by those CCPs and will have 6 months, including a public consultation, to draft technical standards on the suitability of those classes for clearing obligation
- TR will be able to apply for authorisation as of the date of entry into force of the technical standards, and ESMA will have 20 working days to assess whether an application is complete and 40 working days upon receipt of a complete application to accept or reject the TR applications.

The EMIR section of ESMA's website⁽¹⁾ will be updated on a regular basis, to provide clarity to market participants on the on-going developments related to the technical standards on EMIR.

(1) <http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR>



ESMA prepares for new EMIR role

Following the delivery of its technical standards in 2012 on the EMIR text, ESMA also started working on the implementation of EMIR, both in view of the direct responsibilities it will carry out and in order to ensure a consistent application among NCAs.

The direct responsibilities ESMA will assume relate to the following:

- ◆ Determination of OTC derivatives subject to the clearing obligation;
- ◆ Set-up and maintenance of the register for the clearing obligation;
- ◆ Participation in the colleges of CCPs;
- ◆ Recognition of third country CCPs;
- ◆ Registration and supervision of Trade Repositories; and
- ◆ Recognition of third country Trade Repositories.

ESMA has analysed the resources needed for these upcoming tasks. In this respect ESMA delivered a report on this to the European Parliament, the Council and the Commission on staffing and resources needed from the assumption of its powers and duties under EMIR^[2].

ESMA has also created a dedicated webpage^[3] to raise the awareness on EMIR, most notably by non-financial counterparties. In addition, ESMA has been constantly involved in responding to a high volume of queries on EMIR implementation. More complex points will be dealt with under appropriate guidance in 2013.

ESMA to define which derivatives contracts will need to be centrally cleared

Immediately after CCPs are authorised under EMIR by their competent authority, ESMA will receive a notification with:

- ◆ the classes of OTC derivatives the CCP is authorised to clear;
- ◆ information on the liquidity, level of standardisation, and availability of pricing information of those classes.

ESMA shall then assess the information received, consult and prepare draft technical standards setting the clearing obligations and its framework.

ESMA is currently working in close co-operation with NCA and CCP to prepare this process by:

- ◆ developing a template for the identification of the classes of OTC derivatives, based on industry taxonomies; and
- ◆ running a pilot exercise whereby CCPs submit notifications based on the OTC products that they currently clear. The objective of this exercise is to identify at an early stage any improvement required in the process. It allows CCPs to prepare ahead of the actual notifications, and it allows ESMA to start getting data and evaluating the classes against the criteria for the clearing obligation.

Public register will inform market participants

Under EMIR, ESMA will set up and maintain a public register to inform market participants about the classes of OTC derivatives that have been notified to ESMA, and those that are subject to the clearing obligation. The Public Register will also contain information such as the compliance date for mandatory clearing, and the list of authorised CCPs. In this respect, ESMA analysed the requirements for the development of the register and initiated an IT project to develop a web-based register.

Pension scheme arrangements

Pension scheme arrangements benefit from a temporary exemption from the clearing obligation for the OTC derivative contracts that reduce

[2] <http://www.esma.europa.eu/system/files/2012-874.pdf>

[3] <http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR>

investment risks. For some of them, ESMA is required to provide an opinion to the competent authority responsible for the approval, assessing the compliance of the type of entities or type of arrangements with some requirements set in EMIR as well as the reasons why an exemption is justified. In view of the 30 days period from the receipt of the notification to consult EIOPA and provide the opinion, ESMA performs preparatory work. It conducted a survey with the competent authorities in order to develop the framework for the opinion to be provided.

Exemptions for intragroup transactions

In order to benefit from the intragroup exemption from the exchange of collateral, counterparties will notify the competent authority, which will notify ESMA of its decision or of a notification received. For this purpose, ESMA contributes and coordinates the preparation of templates in order to facilitate and harmonise the process.

ESMA to participate in supervisory colleges for CCPs

With regards to CCPs, ESMA activity will focus on its responsibility for ensuring consistent approaches between competent authorities and across colleges. In this respect, ESMA in 2012 has started developing the following:

- ◆ A framework written agreement for the establishment and functioning of the colleges;
- ◆ A common risk assessment template; and
- ◆ A model of the likely composition of colleges under EMIR.

Recognition of third country CCPs

Third country CCPs will be able to provide services to entities established in the EU only if recognised by ESMA.

ESMA is therefore expected to:

- 1) verify that the CCP is subject to an equivalent regime and co-operate with the Commission for the adoption of an equivalence decision;
- 2) establish the relevant co-operation arrangements with the third country competent authorities;
- 3) consult the relevant authorities within the EU;
- 4) assess the application of the third country CCP; and
- 5) take a decision on its recognition.

ESMA is already analysing a number of jurisdictions' regimes, following a Commission mandate for a technical advice on equivalence^[4].

ESMA responsible for registration, supervision and recognition of trade repositories

In contrast to the supervision of CCPs, ESMA will carry the sole responsibility for assessing the applications for the registration of trade repositories in the EU. It will also process applications for recognition of third-country trade repositories. The Authority will also supervise EU trade repositories who register with it and enter into co-operation arrangements with third-country competent authorities for the monitoring of the activities of recognised trade repositories and in particular for ensuring access of data to the relevant EU authorities.

On the authorisation procedure, ESMA in 2012 has started developing the relevant procedures for managing applications for registration by trade repositories.

As regards recognition, in line with the recognition of third country CCPs, ESMA started the work on assessing the equivalence of the foreign regimes as envisaged by the Commission's mandate for a technical advice^[5].

With reference to third countries' jurisdictions without a TR, a cooperation arrangement with ESMA will be sufficient to ensure access to data held in EU TRs. ESMA is expected to start the working on the relevant MoUs in 2013.



NEXT STEPS

In 2013 ESMA will complete the recruitment of the relevant resources to start preparing itself for the assumption of its new responsibilities, develop the appropriate IT tools and procedures which are necessary to manage the processes described above, receive and process TR applications, provide guidance on reporting and begin TR supervision. ESMA will also complete its mandate on third country jurisdictions as provided for by the Commission and the drafting of MoUs with third countries.

T2S and securities regulators

2012 was an important year for the T2S project. The Framework Agreement (FA), on which ESMA provided detailed comments, was approved by the Governing Council. More than 20 Central Securities Depositories (CSD), willing to participate in T2S, signed it. As a result, the new governance structure, provided for in the FA, was implemented.

[4] http://www.esma.europa.eu/system/files/formal_request_for_technical_advice_on_equivalence.pdf

[5] http://www.esma.europa.eu/system/files/formal_request_for_technical_advice_on_equivalence.pdf

ESMA is closely following up on this important project that serves as a catalyst for harmonisation across the EU. Indeed, developments in the T2S framework are relevant in view of the work performed by ESMA in the scope of settlement fails.

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NEXT STEPS

ESMA will follow up on its previous assessment, analysing the governance and supervisory framework applicable to T2S. When the development phase ends and T2S services are launched, ESMA will have to perform an assessment of the impact of T2S against the provisions that will be relevant at that date. This assessment will be performed in a framework to be defined.

ESMA prepares for Central Securities Depositories Regulation

On 7 March 2012, the Commission adopted a proposal for a Regulation on improving securities settlement and on central securities depositories (CSDs), also amending the Settlement Finality Directive (SFD). ESMA broadly supports this proposal, which reflects ESMA's previous advice to the Commission. The CSD Regulation is expected to introduce:

- ◆ an obligation of dematerialisation for most securities;
- ◆ harmonised settlement periods for most transactions in such securities;
- ◆ settlement discipline measures; and
- ◆ common rules for central securities depositories (CSDs).

According to the Proposal, which is still under negotiation, around 35 implementing measures, additional to the CSD Regulation, are expected to be developed, 25 of which will be by ESMA.

ESMA is assigned a number of draft technical standards under the CSD Regulation Proposal. These will cover:

- ◆ Settlement Discipline;
- ◆ CSD registration; and
- ◆ Requirements for CSDs.

ESMA maps national CSD laws

While the proposal on the CSDR is still under negotiation, in 2012 ESMA began preliminary work by conducting a mapping of the current national laws, regulations and practices on topics covered by the CSD Regulation where ESMA is to

draft technical standards. This mapping enables ESMA to have an updated view of the status pre-CSDR and identify best practices to be considered while drafting the technical standards and also facilitating the transition to the post CSDR environment.

ESMA will use the results of this mapping to identify commonalities and gaps between national regimes, and will design the possible EU regime under the CSDR and topics covered by the draft technical standards mandate.

The timing of developing technical standards will depend on the timing of the Proposal, but the expected six months allowed are expected to be extended during the current negotiations, in order to better reflect the complexity of the matters at hand.

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NEXT STEPS

ESMA will start the drafting of the relevant technical standards, guidelines and technical advices (if required) as soon as the relevant parts of the text are stable. The experience gained in 2012 in mapping the current legal and regulatory regimes and in monitoring settlement fails will be instrumental to this work.

ESMA furthers monitoring of settlement discipline and failures

Following the work started in 2009 by CESR, ESMA has progressed in creating a system for monitoring settlement fails in the EU, for the benefit of regulators and in the context of ESMA's role in financial stability and systemic risk monitoring and mitigation.

The lack of harmonisation in settlement discipline regimes throughout the EU prevents a clear view on the number of settlement fails and ESMA launched an EU joint regulatory action with a view to collect and aggregate data, monitor settlement fails and analyse any increase in fail rates. In 2012, ESMA has developed a common template to facilitate and harmonise the reporting of settlement fails, which is currently done on a voluntary basis by 21 countries.

Every two weeks, the reporting countries submit daily settlement fail rates, with a breakdown per type of instruments (Equities, Corporate bonds and

Government bonds). The reports also contain data on volumes (number of transactions) and values (in EUR-equivalent), with a distinction between failures to deliver cash, and failures to deliver securities. ESMA has developed a tool to aggregate and analyse such data, and maintains periodic and confidential reports to monitor the fail rates at the European level.

The data aggregated at EU level show that in 2012, the fail rates of corporate bonds and Government bonds are typically low, within the range [0.5%-1.5%]. The highest observed average rate is just above 2%. For equities those numbers are higher with a range of [2%-7%]. To date, there is little evidence of the existence of a trend, either upward or downward, in the fail rates in Europe.

+. NEXT STEPS

ESMA will continue monitoring settlement fails on a bi-weekly basis, creating more detailed aggregate statistics on the basis of the reporting of the national competent authorities according to the above-mentioned template.

ESMA co-ordinates with other OTC derivatives regulators at international level

ESMA maintains an intensive dialogue with third-country authorities responsible for regulating derivatives markets and post-trading market infrastructures.

In particular, ESMA has been keeping an on-going dialogue with the U.S. Securities Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC) on the rules implementing the Dodd-Frank Act and their possible effects for EU market participants and market infrastructures, as well as the impacts of EMIR and relevant technical standards on US entities. The dialogue, conducted together with the Commission, has been focusing mainly on:

- ◆ the registration in the US of Swap Dealers and Major Swap Participants;
- ◆ the registration and recognition of third country CCPs; and
- ◆ the registration and recognition of third-country trade repositories and access to data by relevant authorities.

Following bilateral contacts between EU-US and other third-country authorities in 2012 on these

issues, they agreed to set-up a group of relevant regulators (the so-called OTC Derivatives Regulators Group) to identify conflicts in derivatives regulations among the different jurisdictions and to agree on mutually acceptable solutions to deal with those conflicts.

ESMA has also actively contributed to the work of the following international for an charge of ensuring international consistency across regulatory standards related to derivatives markets and post-trading market infrastructures, taking account of these international standards while it has drafted the technical standards under EMIR:

- ◆ FSB expert and implementing group on Legal Entity Identifiers;
- ◆ CPSS-IOISCO Steering Group for the definition of Principles for Financial Market Infrastructures;
- ◆ CPSS-IOISCO Task Force for the definition of OTC derivatives data reporting and aggregation requirements;
- ◆ IOISCO Task Force on OTC Derivatives; and
- ◆ OTC Derivatives Regulators Forum.

Other issues/challenges

Apart from the initiatives already included in the ESMA Work Programme for 2012, ESMA performed ad-hoc or preliminary tasks and will be involved in upcoming legislative initiatives.

+. NEXT STEPS

Settlement Finality Directive

According to the Omnibus I Directive amending the Settlement Finality Directive (SFD), ESMA is designated to receive notification and information.

ESMA has developed pages on its website to make the notifications and information available to the public:

➤ [http:// www.esma.europa.eu/page/SFD-notifications](http://www.esma.europa.eu/page/SFD-notifications)



Securities Law Legislation (SLL)

The smooth cross-border clearing and settlement of securities transactions is vital to the effective operation of an integrated financial market. Many developments took place in recent years such as dematerialisation of securities (from paper securities to electronic registers) and TARGET2-Securities (operational consolidation of settlement in a single platform in Europe). This operational integration requires also a legal harmonisation and the SLL could be a key driver in that regard.

The Commission's work plan included bringing forward legislative proposals on security law in April 2012. The main objective of the measure will be "to reduce the divergence between national substantive laws on book-entry securities and therefore to make a substantive contribution to the simplification of financial markets operations and to their legal safety".

ESMA is prepared to assist the Commission in this respect, including in developing any technical standards that may be required as a result of the proposal.

Close-out netting and resolution

The initiative of the Commission on close-out netting aims at strengthening the legal certainty about netting and, in addition, to reinforce crisis management.

The legal protection of close-out netting provisions, at present mainly regulated by the Financial Collateral Arrangements Directive (FCD). However, the FCD does not allow regulators to delay automatic close-out and termination rights in order to allow a decision on transferring a distressed party's financial contracts to a solvent institution.

To address this point, in its proposal of 6 June 2012 for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms, the Commission includes specific provisions that give regulators the power to impose a stay on close-out netting provisions, subject to certain conditions and with appropriate safeguards for CCPs and security settlement systems. ESMA has conducted related work on recovery and resolution for non-banks.



NEXT STEPS

ESMA will be monitoring this initiative.

Other initiatives aiming at dismantling post-trading barriers

Finally, as regards initiatives in the context of the removal of the Giovannini barriers, ESMA is contributing to the work of the European Post-Trade Group, a joint initiative of the Commission, the ECB, ESMA and the industry. The EPTG met three times on 22 March, 29 June and 19 October with the aim to prepare the terms of reference of the group and work on a gap analysis.

The Giovannini barriers, which were specified in the second report on EU clearing and settlement in April 2003, outlined 15 technical, legal and fiscal barriers identified as the source of the problems and highlighted strategies for dismantling the fragmentation in the EU clearing and settlement infrastructure.

Information on the EPTG and its work can be found under:

➤ http://ec.europa.eu/internal_market/financial-markets/clearing/eptg_en.htm

Markets legislation - MiFID

ESMA prepares for MiFID review

The Markets in Financial Instruments Directive (MiFID) is one of the cornerstones of financial market regulation in the EU and its on-going review is one of the key responses of the EU to the financial crisis. The review contains an ambitious set of new rules which are intended to make EU markets safer, more transparent and increase the overall degree of harmonisation to ensure a level-playing field. The Commission has already published its proposal on the review of MiFID in October 2011 and the negotiations in the Council and the European Parliament on the text continued throughout 2012 and are expected to be completed in 2013. The draft texts contain a large number of empowerments for implementing measures where ESMA expects to either be mandated to draft technical standards or to be asked to deliver technical advice in order for the Commission to draft implementing acts.

ESMA expects the deadlines for delivering these standards and advice to be demanding. Therefore, in 2012 it already dedicated a significant amount of its resources to prepare in tackling the upcoming variety of MiFID issues early. ESMA established four working groups, each of them dealing with a significant number of MiFID topics.

ESMA is preparing a discussion paper that could be published once the political agreement is reached. In 2012, ESMA also established new Consultative Working Groups.

Transparency and the trading obligation

This group leads the work on evaluating and updating the existing pre- and post-trade transparency regime for shares as well as developing the pre- and post-trade rules for instrument classes similar to shares and a multitude of other asset classes. For the latter part all the rules need to be created from scratch and need to take into account the specificities of trading bonds, structured finance products, emission allowances and derivatives, including all the sub-asset classes encompassed by these broad terms. In addition, this group is developing the procedures to put the trading obligation for OTC derivatives in place, which will ensure that those instruments deemed appropriate shall only be traded on certain eligible venues. The group is in the process of producing a first discussion paper, is trying to foresee and tackle the operational issues in the context of putting such rules in place and has liaised with a number of stakeholders already, including US regulators.



NEXT STEPS

This group is working to put in place the right data standards for making the new transparency regime work as well as creating sound rules for the authorisation and operation of consolidated tape providers, approved publication arrangements and approved reporting mechanisms. All those entities will play a crucial role in providing markets with more and better quality transparency data so that previously opaque parts of the financial system are lit and investors get a better view of trading opportunities. In addition, this group will design crucial implementing rules on access provisions which at the moment is a difficult issue in the legislative process. The group has started work on a discussion paper already outlining its thinking and has sought the input from relevant stakeholders also by the means of informal round tables.

Organisational requirements of trading venues

Facilitating access to capital markets for Small and Medium Enterprise (SME) issuers, together with the creation of a common EU quality label for SME markets in order to make investing in SMEs more attractive, and to increase liquidity in SME stocks, another group of ESMA dealing with SME was set up. In 2012, the group has produced initial considerations and also conducted informal round tables with relevant stakeholders to gain insights into how make this concept work in practice.

ESMA issues guidelines on systems and controls in an automated trading environment

Another ESMA work stream, which was initiated before the MiFID review began, addressed the technological developments that have significantly changed the trading landscape over the past few years. In February 2012, ESMA issued its *"Guidelines on Systems and Controls in an Automated Trading Environment"*. The guidelines subsequently went through the *"comply or explain"* procedure foreseen in the ESMA Regulation, where national regulators have to inform ESMA whether or not they intend to comply with the guidelines.

All competent authorities of EU Member States indicated they intended to comply with the guidelines in their notifications to ESMA.



NEXT STEPS

The guidelines become applicable on 1 May 2012 and are intended to help contribute to the stability and robustness of the EU's financial markets. They serve as a good example of ESMA taking the initiative in dealing with a pertinent supervisory topic.

Commodity Derivatives Task Force

ESMA also conducted preliminary work in the regulation and oversight of commodity derivatives markets. Here, the MiFID review contains a set of regulatory tools such as position limits and position reporting which are new to EU legislation. In 2012, ESMA was liaising with stakeholders, for example, in the format of informal roundtables, with regulators on the spot market side, in particular, the Agency for the Cooperation of Energy Regulators (ACER), and with the US CFTC to ensure a smooth development and implementation of such new rules in the EU. It has also established a Consultative Working Group composed of experts from all relevant commodity market sectors.



NEXT STEPS

ESMA will continue its preparatory work on all the varied tasks it will have to comply with under the MiFID review. Once a political agreement is reached by the European co-legislators, ESMA will launch relevant discussion and consultation papers in 2013 with a view to produce technical standards and advice and to achieve a timely implementation and operation of the new MiFID framework.

Short-Selling Regulation

ESMA contributes to the finalisation of the Short-Selling Regulation

The final text of the Regulation on short-selling and certain aspects of credit default swap (SSR) was published on 24 March 2012 and became applicable on 1 November 2012.

ESMA delivers technical standards

The Short-Selling Regulation requires ESMA to develop RTS and ITS in relation to several provisions contained in Articles 9, 11, 12 and 16 of the Regulation. The final draft technical standards were submitted to the Commission on 30 March 2012. They were subsequently endorsed by the Commission without changes:

↗ [http:// www.esma.europa.eu/system/files/2012-228_0.pdf](http://www.esma.europa.eu/system/files/2012-228_0.pdf)

ESMA advises EU Commission on certain aspects of Short-Selling Regulation

In parallel to the work of on the technical standards, ESMA had to prepare a technical advice on delegated act further to the formal mandate received from the Commission on 24 November 2011. This advice was submitted to the Commission on 20 April 2012 together with a last technical standard that was closely related. The content of the ESMA advice was almost entirely included in the delegated regulation the Commission adopted on 9 October 2012. ESMA's final report is available on its website:

↗ [http:// www.esma.europa.eu/system/files/2012-esma-263_-_final_report_on_technical_advice_on_short-selling.pdf](http://www.esma.europa.eu/system/files/2012-esma-263_-_final_report_on_technical_advice_on_short-selling.pdf)

Taking into account the amount of work, complexity of the issues and the very tight deadlines, the process of developing technical standards and preparing the advice on all delegated acts was significantly shorter than normal ESMA practice. A call for evidence (normally used to gather early views to help shape the legal proposals) could not be issued and the length of the public consultation period had to be drastically reduced.

Investment management – UCITS, AIFMD

ESMA continues to clarify rules for alternative investment funds (AIFs)

ESMA consults on draft regulatory technical standards on types of AIFMs and guidelines on key concepts of the AIFMD

On 23 February 2012, ESMA published a discussion paper on key concepts of the Alternative Investment Fund Managers Directive (AIFMD) and types of alternative investment fund managers (AIFM)^[6].

ESMA saw merit in working to ensure the alignment of supervisory practices among EU national competent authorities in the interpretation of certain key concepts of the AIFMD. ESMA sought the views of external stakeholders on the policy orientations with a view to achieving a harmonised application of the AIFMD and in view of the draft technical standards (TS) required by Article 4(4) of the AIFMD. Article 4(4) provides that ESMA shall develop draft RTS to determine types of AIFM, where relevant in the application of the AIFMD, and to ensure uniform conditions of application of the AIFMD.

ESMA consults on key concepts of the AIFMD and on standards for types of AIFMs

As a follow-up to the discussion paper published in February 2012, on 19 December 2012 ESMA published a consultation paper on draft guidelines on key concepts of the AIFMD (ESMA/2012/845)^[7] and a consultation paper on draft RTS on types of AIFMs^[8].

The draft guidelines on key concepts of the AIFMD are aimed at further clarifying the rules applicable to hedge funds, private equity and real estate funds. They aim at building a level-playing-field in the area of AIFs. ESMA's draft guidelines help to clarify what entities are captured by the AIFMD, thereby providing for consistent application of the provisions throughout Europe.

The consultation paper on draft RTS on types of AIFMs represents the next stage in the development of the draft RTS under Article 4(4) of the AIFMD and sets out formal proposals for their content on which ESMA is seeking the views of external stakeholders. These proposals distinguish between managers of AIFs whose investors have the right to redeem their shares at least annually (open-ended AIFs), and those whose investors have less frequent redemption rights.

ESMA may consider developing in the future further draft RTS in order to establish additional typologies of AIFMs where relevant in the application of the AIFMD.

For some of the issues covered in the discussion paper which are not addressed in the two consultations published in December, ESMA will take into account the Commission's Level 2 implementing measures before deciding on the appropriate next steps.



NEXT STEPS

The two consultations run for a six-week period until 1 February 2013. ESMA aims to publish a final report on the draft RTS to be submitted to the Commission in the first half of 2013 for endorsement. ESMA aims to also publish a separate final report on the guidelines on key concepts of the AIFMD in advance of the AIFMD transposition deadline of 22 July 2013.

ESMA prepares AIFMD cooperation arrangements with third-country authorities

During 2012, ESMA negotiated with third country authorities the necessary arrangements that would allow EU authorities to supervise the managers of alternative investment funds (AIFMs) established in those countries.

AIFMD requires cooperation between EU and non-EU authorities

The AIFMD allows third-country AIFMs to manage and market AIFs in the EU insofar as they comply with the specific rules envisaged in the Directive. Among other conditions, European competent authorities are required to have in place cooperation arrangements with the authorities of the third country where the AIFM is established or the AIF is located. The aim of these cooperation arrangements is to ensure that European authorities can carry out their supervisory duties properly in accordance with the AIFMD. In addition, the AIFMD requires cooperation arrangements in case an AIFM delegates the risk or portfolio management to an entity established in a third country and, as from 2016, in case the depositary appointed is established in a third country.

If a competent authority fails to have these cooperation arrangements in place by July 2013 at the latest, third country AIFMs would not be entitled to offer or manage AIFs in that competent authority's territory as from that date.

[6] <http://www.esma.europa.eu/system/files/2012-117.pdf>

[7] <http://www.esma.europa.eu/system/files/2012-845.pdf>

[8] <http://www.esma.europa.eu/system/files/2012-844.pdf>



ESMA approves model MoU

Supervisory cooperation arrangements typically take the form of Memoranda of Understanding (MoU). In order to define the content of the MoU required by the AIFMD, on 23 July 2012 the ESMA's Board of Supervisors of ESMA approved guidelines on the model MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities. These guidelines laid down the model MoU that ESMA has used as the initial benchmark when negotiating with authorities from third countries. ESMA had consulted on a draft text of the guidelines bilaterally with the non-EU authorities that are members of IOSCO before approving the final model MoU.

ESMA negotiated MoU on behalf of the EU authorities

The MoU should be signed by the NCAs and the third-country competent authorities. However, in order to help competent authorities fulfil their obligations under the AIFMD in the most efficient and coordinated manner, it was agreed that the MoU would be centrally negotiated by ESMA. Having a single and comprehensive MoU, centrally negotiated by ESMA with all relevant third-country jurisdictions, would avoid competent authorities having to negotiate individual MoUs separately with all the relevant third country jurisdictions.

As a result of these discussions, on 6 November the Board of Supervisors of ESMA approved the MoU with the Swiss securities regulator (FINMA) and, on 3 December, the MoU with the securities authority of Brazil (CVM). These MoUs define the scope of the cooperation between the EU authorities and the Swiss and Brazilian authorities. The authorities will exchange information, undertake cross-border on-site visits and assist each other in the enforcement of the respective law. The MoUs ensure that the information exchanged between these authorities will be kept confidential. In addition, the MoUs envisage the possibility of EU authorities sharing relevant information received from the third country authorities with other EU authorities, ESMA and the ESRB, provided the appropriate safeguards apply.



NEXT STEPS

The negotiations of the MoUs with the remaining non-EU authorities are at an advanced stage. ESMA expects to reach an agreement with the most relevant jurisdictions before 22 July 2013.

ESMA consults on draft remuneration guidelines for alternative investment fund managers

On 28 June 2012, ESMA published a consultation paper on proposed guidelines on remuneration of AIFMs^[9]. Article 13(2) of the AIFMD obliges ESMA to develop such guidelines.

The AIFMD sets out principles which AIFMs have to follow when establishing and applying the total remuneration policies for certain categories of their staff. These principles are broadly in line with those on governance of remuneration and risk alignment which were introduced by the Capital Requirements Directive (CRD). For this reason, the AIFMD also requires ESMA to cooperate closely with the EBA in developing the guidelines.

The proposed rules are not new within the context of the EU financial sector as, not only are the AIFMD rules broadly equivalent to the ones under the CRD, but also the CRD remuneration principles were in turn based on Recommendation 2009/384/EC. This sets out general principles applicable to remuneration policy in the financial sector and is relevant to all financial undertakings operating in the financial services industry. Overall this emerging set of rules contributes to the respect of the G20 commitments on sound remuneration, as reflected in the Financial Stability Forum's Principles for Sound Compensation Practices and their Implementation Standards that were endorsed by the G20 at the summits in London in April 2009 and Pittsburgh in September 2009.



NEXT STEPS

The consultation closed in September 2012. ESMA aims to publish a final report early in 2013, so that the guidelines will be in place in advance of the AIFMD transposition deadline of 22 July 2013.

Investment Management UCITS

ESMA promotes investor protection for ETFs and other investment funds

ESMA issues guidelines on ETFs and other UCITS issues

In December 2011, ESMA issued guidelines on Exchange-Traded Funds (ETFs) and other UCITS issues^[10]. These guidelines apply to national securities markets regulators and UCITS management companies. UCITS are authorised funds which can be sold to

retail investors across the EU. The guidelines aim to address shortcomings in the current regulatory regime identified by ESMA, particularly taking into account the specific features and risks associated with these types of fund and technique. In 2012, the guidelines were translated into the EU official languages and national supervisors had to inform ESMA whether or not they intend to comply with the rules.

The guidelines set out the information that should be given to investors about index-tracking UCITS and UCITS ETFs, together with specific rules for UCITS when entering into over-the-counter (OTC) financial derivative transactions and efficient portfolio management techniques. The guidelines also set out the criteria for financial indices in which UCITS may invest.

Key provisions of the guidelines

The guidelines' key provisions are:

- ◆ UCITS that fall under the definition of UCITS ETFs will have to carry the identifier "UCITS ETF" in their name;
- ◆ UCITS ETFs will have to ensure appropriate redemption conditions for secondary market investors by opening the fund for direct redemptions when the liquidity in the secondary market is not satisfactory;
- ◆ UCITS entering into efficient portfolio management techniques (EPM) such as securities lending activities will have to inform investors clearly about these activities and the related risks. All revenues net of operating costs generated by these activities should be returned to the UCITS. When a UCITS enters into securities lending arrangements, it should be able at any time to recall any securities lent or terminate any agreement into which it has entered;
- ◆ UCITS receiving collateral to mitigate counterparty risk from OTC financial derivative transactions or EPM techniques should ensure that the collateral complies with very strict qualitative criteria and specific limits in relation to the diversification; and
- ◆ UCITS investing in financial indices will have to ensure that investors are provided with the full calculation methodology of financial indices. Also, UCITS should only invest in financial indices which respect strict criteria regarding, inter alia, the rebalancing frequency and their diversification.



NEXT STEPS

The guidelines will enter into force in February 2013. ESMA will continue working in this area, in particular through the development of a Q&A. This Q&A, which will aim to clarify certain aspects of the guidelines, will be published after the guidelines have entered into force.

[9] <http://www.esma.europa.eu/system/files/2012-406.pdf>

[10] http://www.esma.europa.eu/system/files/esma_en_0.pdf

ESMA opinion clarifies possible investment scope of UCITS funds

In the course of discussions among EU competent authorities and with market participants, questions had emerged about the correct interpretation of Article 50(2)(a) of the UCITS Directive, and in particular whether the derogation it contains applies to units or shares of collective investment undertakings as defined in Article 50(1)(e). To ensure uniform application of the provisions, ESMA published a formal opinion on its interpretation^[11]. In ESMA's view, the derogation introduced by Article 50(2)(a) of the UCITS Directive does not apply to units or shares of collective investment undertakings as defined in Article 50(1)(e). This means that UCITS may only invest in units or shares of collective investment undertakings as defined in Article 50(1)(e) of the UCITS Directive.

ESMA expects that any portfolio adjustments required to ensure compliance with this opinion will be made taking into account the best interests of investors and at the latest by 31 December 2013.



NEXT STEPS

ESMA will monitor the steps taken by national competent authorities to comply with the opinion.

ESMA issues Q&A on the UCITS framework and on Money Market Funds

In 2012, ESMA continued its work to promote supervisory convergence through the publication of Q&As. In the area of investment management, this included an updated version of the Q&A on the guidelines on A Common Definition of European Money Market Funds^[12]. There were also three new Q&A documents on the guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS^[13], the Key Investor Information Document^[14] and UCITS notification^[15].

The purpose of these documents is to provide clarification to stakeholders on certain aspects of these guidelines.



NEXT STEPS

Taking into account further feedback from external stakeholders, ESMA will assess the need to update these documents in 2013.

ESMA reviews application of guidelines on money market funds

In December 2012, ESMA finalised its peer review on the Money Market Funds Guidelines. This peer review served as a timely step to investigate the extent to which the Competent Authorities have put in place the Guidelines decided by the ESMA predecessor. They set out a common definition of European Money Market Funds, with the objective to improve investor protection in this area in distinguishing between Short-term Money Market Funds, and Money Market Funds. For both categories the Guidelines include a list of criteria funds must comply with if they want to use the label "Money Market Fund". In February 2012, ESMA published Questions and Answers with a view to promote common supervisory approaches and practices in the application of the Guidelines by providing responses to questions posed by the general public and competent authorities.

The results demonstrated a varying level of applying the Guidelines in their various aspects, and also showed that a number of Competent Authorities have not transposed the Guidelines into their national legal system within the period set by the Guidelines. Finally the Review produced the identification of a number of good practices which could contribute to an improvement of the supervision of Money Market Funds.



NEXT STEPS

The report will be published in early 2013.

Corporate Finance

ESMA advises EU Commission on amending Prospectus Directive

On 24 November 2010, the European Parliament and the Council adopted a proposal for amending the Prospectus Directive (PD)^[16]. The deadline for transposition of the Prospectus Directive as amended by Directive 2010/73/EU was 1 July 2012. Two EC Delegated Regulations implementing the amending Prospectus Directive came into force on respectively 1 July 2012^[17] and 22 September 2012^[18].

In 2012, ESMA provided two pieces of technical advice on possible delegated acts concerning the PD as amended by Directive 2010/73/EU where the second contributed to the Commission Delegated Regulation that entered into force on 1 July 2012.

[11] <http://www.esma.europa.eu/system/files/2012-721.pdf>

[12] <http://www.esma.europa.eu/system/files/2012-113.pdf>

[13] <http://www.esma.europa.eu/system/files/2012-429.pdf>

[14] <http://www.esma.europa.eu/system/files/2012-592.pdf>

[15] <http://www.esma.europa.eu/system/files/2012-428.pdf>

[16] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF>

[17] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:150:0001:0065:EN:PDF>

[18] Commission Delegated Regulation (EU) No 862/2012 of 4 June 2012: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:256:0004:0013:EN:PDF>



This work is a continuation of work following the request for advice from the Commission to ESMA on 20 January 2011.

ESMA advises Commission on retail cascades and other PD provisions^[19]

On 29 February 2012, ESMA submitted to the Commission a second piece of technical advice^[20] regarding the PD review. Retail cascades are situations where there is a subsequent resale of securities or final placement of securities by financial intermediaries. In its advice, ESMA observed that there is no uniform model of retail cascades within the European financial markets and therefore concluded, with a view to increase transparency, legal certainty, investor protection and the supervisory needs of competent authorities that the consent to use a prospectus needs to be included in the prospectus or base prospectus/ final terms.

The advice also proposed to review the provisions concerning proprietary indices, i.e. an index composed by the issuer itself, and the necessity to require an auditor's report on profit forecasts and estimates when such financial information relates to the previous financial year with a view to increase transparency and alleviate administrative burdens.

ESMA proposes to sharpen provisions around convertible/exchangeable debt securities

In its third piece of advice to the Commission submitted on 21 December 2012, ESMA proposed clarifications of and amendments to the Prospectus Regulation with regard to convertible/ exchangeable debt securities. The proposals concerned an increase in legal clarity, expansion of the application of disclosure requirements concerning the statements on working capital and capitalisation and indebtedness to convertible/

[19] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:149:0001:0126:EN:PDF>

[20] Technical Advice - ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU: <http://www.esma.europa.eu/system/files/2012-137.pdf>



exchangeable debt securities provided that they are equity securities and their underlying shares are not admitted to trading on a regulated market. The advice also covered the application of the proportionate disclosure regime for rights issues.



NEXT STEPS

ESMA will seek to finalise the remaining work resulting from the request for technical advice from the Commission by providing a comparative table of the liability regimes under the PD during 2013. The work related to the criteria to be applied in assessing the equivalence of a third-country financial market (Article 4 (1)) will begin once the review of the Transparency Directive, Market Abuse Directive and MiFID are finalised.

ESMA analyses EU proxy advisor industry

In 2012, ESMA published a discussion paper on the proxy advisor industry in the EU (ESMA/2012/212). Following a fact-finding exercise in 2011, ESMA observed growth in the EU proxy advisory industry and that investors are increasingly using the services of proxy advisors. The consultation gathered information on potential market failure in this area, the state and structure of the market, advisor's methodologies and views on possible different policy options.

Code of Conduct expected to be developed by the proxy advisor industry

ESMA finalised its report on the proxy advisor industry in 2012^[21]. The key issues identified based on market analysis and the feedback received were that there is no clear evidence of market failure in the proxy advisory industry in relation to how proxy advisors interact with investors and issuer. However, a wish seems to exist for further transparency in how voting methodologies are developed and reliability thereof, as well as how conflicts of interest are recognised, dealt with and disclosed. Therefore ESMA encourages the industry of proxy advisors to develop a Code of Conduct within a two year period. The report provides some initial guidance for the content and governance of such a Code.



NEXT STEPS

ESMA will publish its report in early 2013.

ESMA analyses the issue of empty voting

Given the demand in the market for increased transparency in ownership structures of companies a call for evidence was issued to assist ESMA in analysing the extent of empty voting^[22] in the EU markets, any concerns linked to this and whether there was a need for further work in this area. However, the consultation conducted in 2012 provided little substantive evidence on frequency and intensity of empty voting practices. ESMA therefore believes that the feedback was not sufficiently decisive to justify any regulatory action at European level at this time. ESMA published a Feedback Statement concerning the area of empty voting (ESMA/2012/415)^[23] on 29 June 2012.

EU regulators discuss takeover bids

The Takeover Bids Directive^[24] (TOBD) aims to ensure a level-playing-field in Europe for companies launching takeover bids and seeks to ensure transparent and fair treatment of investors. The Commission finalised its report on the application of the TOBD^[25] in June 2012 reaching the conclusion that there is no need for amendments to the TOBD. The Commission did identify some emerging issues where it has presented an informal request that ESMA should address the issue of “acting in concert” by way of producing guidance on the concept.



NEXT STEPS

ESMA will through its established network in this area prepare guidance on the concept of “acting in concept” in the TOBD. The work is expected to be finalised and published in the third quarter of 2013.

[22] Empty voting occurs e.g. when securities are lent to investors which then use the securities lent to vote in the company's shareholders' meetings.

[23] Feedback Statement – Call for Evidence on Empty Voting: <http://www.esma.europa.eu/system/files/2012-415.pdf>

[24] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:142:0012:0023:EN:PDF>

[25] Commission Report on the application of the Takeover Bids Directive COM[2012] 347 final: http://ec.europa.eu/internal_market/company/docs/takeoverbids/COM2012_347_en.pdf

2.5 Convergence

ESMA was set up to foster supervisory convergence by reducing regulatory arbitrage resulting from different supervisory practices across the EU which may have the potential of undermining not only the integrity, efficiency and orderly functioning of markets but ultimately also financial stability.

The Authority aims to use its convergence work to drive its activities in other areas of the Work Programme, including enhancing the single rulebook through issuing guidelines and recommendations in cases where difference of application exist and through providing advice to the Commission on areas where revised legislation might be necessary to align supervisory practices.



ESMA prepares for convergent application of Short-Selling Regulation

After the delivery of both the TS and advice, and in order to facilitate a proper and convergent application, ESMA published information⁽¹⁾ required under the Regulation and needed by those investors which are subject to the regime. Prior to the application date, ESMA published the list of the national websites with the information for fulfilling the transparency requirements on significant net short positions in shares and sovereign debt, as well as the list of the notification thresholds for each EU sovereign debt issuer. ESMA also published and maintains a list of the shares exempted from the regime, based on the information provided by NCAs.

In addition, to promote common supervisory approaches and practices, ESMA adopted and published an initial Q&A document on 13 September 2012 and updated it on 10 October 2012⁽²⁾.

It provides responses to the questions posed by the general public, market participants and competent authorities in relation to the practical application of the short selling framework.

ESMA prepares guidelines on market making activities

The Short-Selling Regulation foresees exemptions for primary market operations on sovereign debt and market making activities, provided that the

entity wishing to be exempted notifies its intent to the relevant competent authority.

Even though the Regulation contains no provisions on standards or guidelines on this matter, ESMA started work on the preparation of guidelines on a common understanding of the market making activities and on a common approach to the application of the ex-emptions (e.g. content of the notification, assessment of the eligibility of notifying entity). This was undertaken in order to ensure a level-playing-field, consistency of market practices and convergence of supervisory practices across the EEA. On 17 September 2012, ESMA launched a three weeks public consultation, the results of which showed a significant degree of variance among market participants over the convergent application of the short selling regulation in this point. Much of this controversy centred around the type and extent of information that needed to be included in notifications made by those intending to rely on the market making exemption and, in particular, whether notifications had to be made on an instrument by instrument basis.

ESMA issues opinions on emergency measures imposed by national supervisors

In accordance with the new coordination role assigned to ESMA under the SSR, on 1 November 2012, the first day of application of the SSR, ESMA issued two positive opinions on the emergency measures that the Spanish and Greek regulators

[1] <http://www.esma.europa.eu/page/Short-selling>

[2] <http://www.esma.europa.eu/page/Short-selling-documents>



(CNMV and HCMC) intended to introduce on that day. These measures, in line with the new short-selling framework, allow these regulators to renew for a 3-month period the temporary short selling bans they had previously put in place.

ESMA starts working on the SSR review

Further to the formal mandate received by the Commission received on 22 October 2012^[3], ESMA has started working on the technical advice it should submit on the evaluation of the SSR by 31 May 2013. It will contribute to the report the Commission should deliver to European Parliament and the Council by 30 June 2013 under the SSR.



NEXT STEPS

ESMA is expected to publish in early 2013 its final report and issue guideline on market making. NCAs will then have two months to indicate whether they comply with them and, where relevant, to publicly explain their reasons for not complying.

A call for evidence will be conducted in early 2013. ESMA will finalise its technical advice on the evaluation report of the SSR following which it will also update its Q&A document if required.

[3] http://www.esma.europa.eu/system/files/esma_ssr_review_mandate_20121012.pdf

ESMA inputs into financial reporting standards

ESMA also works on issues related to financial reporting, audit, period reporting and storage of regulated information. In particular it contributes to the consistent application of International Financial Reporting Standards (IFRS) in the EU and to build a common supervisory culture and consistent approaches between NCAs in the EU.

ESMA achieves its main objectives through two main permanent working group: the European Enforcers Coordination Sessions (EECS) who is developing and promoting common supervisory approaches and practices across EU Member States; and the IFRS project group who is monitoring regulatory developments relating to IFRS and preparing comment letters on IASB, IFRS Interpretation Committee (IC) and EFRAG pronouncements.

Convergence of IFRS enforcement activities

EECS is a forum in which EU enforcers exchange views and discuss experiences relating to the enforcement of financial reporting standards and in particular IFRS. The harmonisation of enforcement in Europe is necessary in order to contribute to the creation of a single efficient capital market.

A key function of EECS lies in analysing and discussing emerging issues and decisions taken by independent EU national enforcers in respect of IFRS financial statements published by issuers with securities traded on a regulated market. The objective of these meetings is to share and compare practical experience in the fields of accounting and enforcement in order to achieve harmonisation and coordination of future decisions.

Another function of EECS is to identify issues not covered by the financial reporting standards or which may be open to conflicting interpretations for referral to standard setter. Three meetings were organised with the IASB and/or IFRS IC staff and other topics have been submitted for discussion in that forum as in the case in relation to the accounting impact of a debt exchange, with reference to the example of the exchange of Greek bonds occurred in March 2012.

In the report on the IFRS enforcement activities in Europe, ESMA provided details on the activities coordinated by EECS.

In November 2012, in order to promote consistent application of IFRS, ESMA together with European

NCAs identified and published common financial reporting topics which they believed were particularly significant for European IFRS listed companies on the basis of the economic and market situation. Those priorities focused on: financial instruments, recognition and measurement of impairment of non-financial assets, measurement of defined benefit obligations and recognition of provisions in accordance with IAS 37.

ESMA clarifies forbearance practices in financial reporting

As the financial crisis has had a major impact on the financial position and performance of publicly traded companies in the financial sector, ESMA has become concerned at the lack of clarity in issuers' financial statements regarding their treatment of forbearance-related practices, the potential impact this might have on issuer's financial performance and possible consequences for investors and markets. In December 2012, ESMA published the Public Statement on Forbearance Practices in the IFRS Financial Statements. ESMA believes this statement will contribute to the accuracy, transparency and comparability of IFRS reporting.

The public statement included the description of forbearance as a practice that constitutes an objective evidence of impairment and pointed out the accounting treatment and disclosures IFRS require in these circumstances. In particular ESMA asked for application of a heightened level of scepticism when assessing impairment of loans subject to forbearance.

This public statement forms part of broader work on forbearance practices undertaken by regulators, including the EBA and the ESRB, who are examining the issue in the context of prudential reporting and macro-economic risks respectively.

ESMA reviews accounting practices related to exposures to Greek bonds

Following the Statements and opinion issued in 2011 stressing the need for transparency and adequate recognition and measurement of impairment in relation to exposures to Greek Government bonds in 2012, ESMA engaged in a review exercise of the accounting practices followed by listed issuers for the 2011 annual IFRS accounts. The report found that enforcers observed a good level of consistency as regards the level of impairment losses recognised in the 2011 financial statements. Nevertheless there were also identified were key areas such as

disclosures relation to gross exposures, maturities, yearly variations and information on credit default swaps (CDS) on which the level of consistency was not very high and further improvements are needed.

ESMA contributes to the development of IFRS

ESMA continues to monitor developments in IFRSs proposed by the IASB and the IFRS Interpretations Committee and to respond to calls for market input from these bodies by putting forward the views of European securities regulators and IFRS enforcers. In this capacity, ESMA maintains close contacts with and submits comment letters to the IASB and EFRAG with the aim of contributing to the standard-setting process and the creation of a European single rulebook. In 2012 ESMA submitted 22 comment letters from which the most important related to the IASB's proposals on revenue recognition and IFRS for SMEs. ESMA also voiced its opinion on the suitability of International Public Sector Accounting Standards (IPSAS) for EU Member States and EFRAG's discussion paper on Business Combinations Under Common Control. ESMA is actively involved in the debate on the governance framework around private standard-setting bodies such as the IFRS Foundation and the International Federation of Accountants (IFAC).

ESMA consultation on materiality in IFRS

In 2011, ESMA issued a Consultation Paper on Materiality analysing and identifying common principles related to establishing materiality as understood under IFRS. ESMA published the summary of responses (ESMA/2011/525) and organised a public roundtable in October 2012. Consistent with the results of the consultation, ESMA itself does not plan to publish any guidance on materiality, but will continue to engage with the IASB and the International Auditing and Assurance Standards Board (IAASB) and to provide relevant input for the project started by the standard setter on the Disclosure framework. ESMA plans to publish a feedback statement to the materiality Consultation Paper in early 2013.

ESMA continues dialogue with third-country enforcers

In its continuing efforts to contribute to the quality of future financial reporting under IFRS on a global basis, ESMA has maintained its active dialogue with the US SEC.



NEXT STEPS

Supervisory convergence work will continue in 2013 through the regular EECS meetings to discuss enforcement decisions to be taken by NCAs and through the publication of regular extracts, and where necessary statements and/or opinions.

ESMA will continue and enhance its contribution with the standard setter (IASB) through comment letters. It will also contribute more pro-actively to the IASB by providing its Board with insights of experiences on the implementation of these standards in practice and how they could potentially be improved to enhance their enforceability.

In 2013, ESMA, together with EU NCAs, will continue to monitor the level of transparency of issues identified and communicated in 2012 in the common enforcement priorities or in other reviews performed such as on forbearance and goodwill impairment, and will consider whether further action is required in 2013 and report on those findings.

A special focus will be on the review and analysis of the accounting practices of financial institutions in the IFRS financial statements for the year ended on 31 December 2012, and about the application of the business combinations standard.

In 2004, ESMA predecessor CESR published two standards on the enforcement of financial information. After six years of experience with enforcement of IFRS it was decided in 2010 to review the enforcement standards. A preparatory fact-finding exercise was organised in order to better understand the revised EU enforcement system characteristics and identify new means to ensure supervisory convergence. The guidelines will be published for consultation in the first half of 2013.

Peer Review

ESMA reviews good practices under MAD

In December ESMA concluded its work on the first mapping stage of its work on a peer review concerning Supervisory practices under MAD. The purpose of the work was to see how the NCAs nationally undertake certain tasks in the area of market integrity supervision, with a view to further strengthen the consistent application of the market abuse legislation in the EEA.

The scope of the peer review included the following points:

- ◆ Competent Authorities' supervisory practices as regards investment firms' and regulated markets' and MTFs' (if applicable) obligations to have in place the necessary market abuse investigation capabilities;
- ◆ Competent Authorities' supervisory practices as regards the treatment of insider lists by issuers or persons acting for their account and the treatment of price-sensitive information; and
- ◆ Competent Authorities procedures in dealing with requests for information from other Member States; and in addition how NCAs deal with matters of Rumours and information from alternative sources of information (Complaints or tip-offs).

The mapping report was finalised in December 2012 together with the self-assessment report.



NEXT STEPS

The peer review report will be finalised in early 2013. ESMA will also want to develop best practices which can serve to further contribute to supervisory convergence. The mapping report as well as the peer review reports is expected to be published in 2013 when finalised.

➤ <http://www.esma.europa.eu/content/ESMA-finds-high-level-consistency-EU-national-regulators%E2%80%99-practices-approval-investment-pros>

progress in the discussions on the review of the current market abuse directive at European Parliament and Council levels, and where requested or relevant, contributed to the debate.

In autumn 2012, the Council's general approach to the Market Abuse Regulation was agreed and the European Parliament's legislative report was issued. On that basis and taking into account the Trilogue negotiations between the EP, the Council and the European Commission, ESMA decided to initiate preliminary work on the possible technical standards and delegated acts ESMA is likely to be asked to, respectively, develop and submit.



NEXT STEPS

While waiting for the outcome of the Trilogue, ESMA intends to intensify its preliminary work, and to be in position to begin immediately the process of drafting technical standards drafting and advising on delegated acts, including where relevant, consulting publicly to gather stakeholders' views.

ESMA coordinates EU market surveillance

In 2012, ESMA coordinated the joint action of 11 NCAs in relation to help to identify and prevent layering and spoofing from occurring on the European financial markets. The NCAs, through letters addressed to members of their respective markets, they reminded firms of their obligations to have appropriate systems and controls in place to identify and prevent layering and spoofing as per the ESMA guidelines *Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities*. They were also reminded their continuing obligation to notify their competent authority of any reasonable suspicions of market abuse, which became effective as of 1 May 2012. Direct access providers (DMA) were also reminded of their responsibility for the trading of their clients.

Cross-Sector Convergence – Joint Committee

ESMA prepares for Market Abuse Directive review

In October 2012, the Commission presented its proposals of the Market Abuse Regulation (MAR) and the Market Abuse Directive (MAD 2) aimed at strengthening the market abuse regime in Europe. Throughout the year, ESMA carefully followed the

ESAs work on cross-sector issues

The mission of the Joint Committee of the ESAs is to serve as a *forum* in which the ESAs 'shall cooperate regularly and closely and ensure cross-sector consistency in a number of areas' [Article 54 of the ESAs' Regulations]. Through the joint efforts and significant commitment of the

three European Supervisory Authorities, the Joint Committee has ensured not only the consistency of their views on topics of common interest, but has also been instrumental in developing common solutions and the exchange of information amongst the respective sectors. In 2012, ESMA chaired the Joint Committee.

A hub for cooperation, contributing to financial stability

The Joint Committee work programme is supported by four Sub-Committees: Risk, Consumer Protection and Financial Innovation, Financial Conglomerates and Anti-Money Laundering.

In addition to the work of the Sub-Committees, bi-monthly physical meetings of the Joint Committee, teleconferences and ad hoc discussions of the ESAs, have allowed its members to have regular exchanges on market developments and to assess any potential cross-sector contagion effects. The Chairs have conferred frequently outside the confines of the regular meetings, when confronted with adverse market developments in order to exchange information and to maintain a coherent cross-sector approach.

A catalyst for efficient cross-sector processes

In 2012, the Joint Committee has carried out the majority of its work through its Sub-Committees dedicated to key areas of cross-sector concern.

ESAs look into cross-sector risks

The crisis has shown the importance of cross-sector interconnectedness as a driver of risk. This Sub-Committee has been a key forum for sharing information and data on risks between the ESAs, allowing better understanding and anticipating risks, developing the joint Report on Risks and Vulnerabilities in the EU Financial System. This Report, produced twice a year, contributes to a cross-sector approach to risk analysis and financial stability, and is shared with the ESRB and the Council's Economic and Financial Committee (EFC). In addition, information has been exchanged on specific topics, including for example the structure of the Credit Default Swaps market.

Cross-sector investor protection and financial innovation in focus

This Sub-Committee has begun work and has set up three Sub-Groups that are:

- 1) consumer protection (complaints handling and templates for collecting, analysing and reporting on consumer trends);

- 2) product oversight and governance (mapping of product approval and governance process); and
- 3) packaged retail investment products – PRIIPs – (development of proposals for the European Commission concerning delegated acts, and for the development of draft Regulatory Technical Standards in the areas envisaged by the PRIIPs legislative proposal).

To reach out to consumers of financial services, retail investors, and other stakeholders the ESAs will together organise their first Joint Consumer Strategy Day in 2013.

ESAs tackle financial conglomerates issues

This Sub-Committee developed the ESAs' response to the call for advice from the Commission on the review of the Financial Conglomerates Directive (FICOD), in relation to the scope of application, internal governance, as well as supervisory empowerment and sanctions issues. Following a public consultation in the second quarter of 2012 the final advice was provided to the Commission in October 2012.

The Sub-Committee also prepared a proposal for draft Regulatory Technical Standards on the uniform conditions of application of the calculation methods of own funds under Article 6.2 of the FICOD, and a joint public consultation was launched on 31 August 2012.

The Joint Committee further published its annual update of the list of identified Financial Conglomerates in July 2012.

The ESAs have also hosted several training sessions for National Competent Authorities on the supervision of Financial Conglomerates under the FICOD, to assist supervisory convergence in this regard.

ESAs look at combating money laundering

This Sub-Committee has assessed the situation across EU Member States of the legal and regulatory provisions, as well as supervisory standards, in relation to the application of the Third Money Laundering Directive (3rd MLD), regarding beneficial ownership, Customer Due Diligence requirements and Simplified Due Diligence requirements, inter alia, publishing two reports in April 2012.

Additionally, in August 2012, the Sub-Committee published a Protocol on cooperation between home and host supervisors, to facilitate effective anti-money laundering supervision of agents and branches of payment institutions in host Member States in accordance with the Payment Services Directive.



In December 2012, a joint report was published on the application of anti-money laundering and counter-terrorism financing (AML/CTF) obligations to, and the AML/CTF supervision of e-money issuers, agents and distributors in Europe. The report highlights significant differences in Member States' interpretation of the 2nd E-money Directive and the treatment of e-money issuers.

Other areas

One of the key tasks in 2012 was the Joint Committee's work on, where the Regulation requires that TS are developed jointly by the three ESAs. In March 2012, the Joint Committee put forward its *Joint Discussion Paper on Draft Regulatory Technical Standards on Risk Mitigation Techniques for OTC Derivatives not cleared by a CCP*. This work will benefit in 2013 from the progress by the different work-streams on OTC derivatives regulation, both in Europe and globally.

The Joint Committee and the Boards of Supervisors of EBA and ESMA agreed in September 2012 to start working on benchmark related issues.

The ESAs also jointly provided support to the Board of Appeal, which was formed in December 2011. Since then, the Board of Appeal elected its president and vice-president and set up its rules of procedures.

+

NEXT STEPS

The ESAs have striven to adopt a coordinated approach vis-à-vis the European System of Financial Supervision (ESFS) evaluation by the Commission, by providing a joint response to the European Parliament's set of common questions in view of the public hearing of September 2012, and a self-assessment report to the Commission on 21 December 2012. More generally, the ESAs adopted a coordinated approach towards questions of common interest when it comes to interacting with EU institutions and stakeholders. They will further cooperate on the evaluation by the Commission in 2013.

Common Supervisory Culture – cross-sector training

In 2012, the ESAs continued to play an active role in further strengthening a common supervisory culture through establishing a cross-sector

training programme in addition to each ESA's sector training programme.

The cross-sector training programme for 2012 included the following training activities:

No.	Name of training activity	Date	Location	Host	Number of participants
1	Update on ESAs	8-9 March	Paris	EBA	35
2	Corporate Governance	12-13 March	Paris	ESMA	73
3	Seminar on-site supervision	14-15 March	Paris	ESMA	30
4	Colleges of Supervisors: decision making in a college	26 - 27 April	Warsaw	KNF	32
5	Legal English	16-May	Paris	ESMA	13
6	XBRL Implementation	29-30 May	Madrid	Bank of Spain	56
7	EU law for Non-lawyer	18-19 June	Luxembourg	CSSF	18
8	Financial Consumer Education	8-9 October	Budapest	HFSA	34
9	Supervision of Financial Conglomerates.	24-Oct	Frankfurt	EIOPA	31
10	General course on Derivatives, Central Counterparties and Trade Repositories and Implementation of EMIR	30-31 October	Frankfurt	BaFin – Deutsche Bundesbank	52
11	IT assessment for IT supervisors	5-7 November	Budapest	HFSA	23
12	CRA	09-Nov	Paris	ESE - ESMA	51
13	Seminar on-site supervision	6-7 December	Lisbon	CMVM	12
Total					460

Compared to 2011, in 2012 the ESAs have increased the number of cross-sector seminars from six to 13. In addition, the ESAs have offered four soft-skill courses on presentation skills which were open to supervisory staff of all three sectors. Compared to 2011, participation in ESA cross-sector trainings (excluding soft-skill courses) has almost doubled from 244 supervisors attending to 460.

In order to ensure that all NCAs are represented equally at ESA trainings, it was decided in 2011 to provide financial support for ESA training participants, if possible.



NEXT STEPS

The ESA Training Programme 2013 has been created by assessing the needs for training as well as identifying hosts via an online questionnaire. 39 NCAs have responded to the online survey. In addition, each ESA has developed a sector training programme and might organise soft-skill courses which are open to all three sectors.



ESMA increased number of internal training courses

In 2011, ESMA planned 15-18 seminars for 2012 and with the cooperation of the NCAs organised all 18 courses.

This included eight sector seminars and ten cross-sector seminars.

Sectoral seminars

	Title	Date	Location	Number of participants
1	Insider trading: definition and investigation techniques	24-25 May 2012	KNF, Warsaw	39
2	Project Management	14-15 June 2012	ESMA, Paris	15
3	Market Surveillance and Enforcement in 2012	16-17 July 2012	ESMA, Paris	49
4	IFRS 10, 11, 12 and 13	22 October 2012	ESMA, Paris	52
5	Transaction Reporting	22-23 October 2012	BaFin, Frankfurt	30
6	The systemic financial crises 2007-20??	19 November 2012	ESMA, Paris	33
7	General course on MiFID for Junior supervisors	26-27 November 2012	ESMA, Paris	58
8	Negotiation Skills	10-11 December 2012	ESMA, Paris	10



Together with the increasing number of courses the number of participants increased as well up to almost 600 for sector and cross-sector courses. Beside the classroom training events ESMA offered e-learning courses to the NCAs for the first time. The e-learning catalogue covers about 60 courses with almost 500 tutorials. Over the year about 200 licenses were distributed amongst the NCAs, and of the 200 users, 145 started to use the e-learning, and these have spent more than 772 hours on their studies. The 145 users were interested in 278 tutorials and about 2/3 of them did finish at least one tutorial.

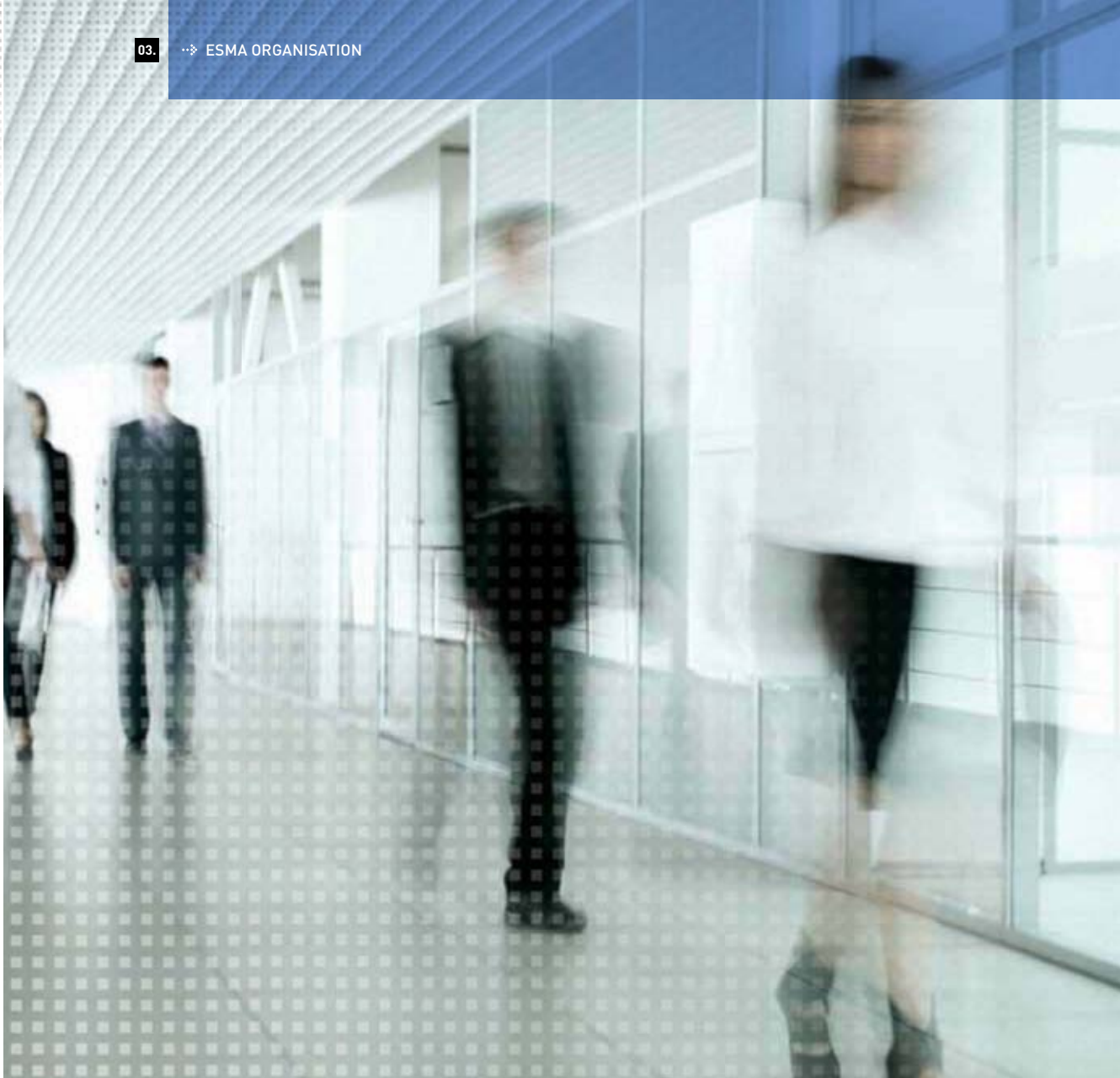
03



ESMA organisation

- 
- ❖❖ ESMA's mission is to enhance the protection of investors and reinforce stable and well-functioning financial markets in the EU. In order to deliver against its mission, ESMA was set up as an independent EU institution for the securities markets. As such the Authority is accountable to the EU institutions and applies the EU's financial and organisational rules and procedures.

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ESMA organisation

Since its establishment in January 2011, ESMA has had responsibility for enhancing the protection of investors and promoting stable and well-functioning financial markets in the EU. As an independent institution, ESMA achieves this aim by building a single rulebook for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with pan-European reach, either through direct supervision or through the active co-ordination of NCAs.



ESMA's Governance, Management and Internal Control Systems

Two decision-making bodies govern ESMA: the Board of Supervisors (BoS) and the Management Board (MB). ESMA has a full-time Chair, Steven Maijoor, and an Executive Director, Verena Ross.

Day to day Management

ESMA has six Units/Divisions. In 2012, one Head of Unit was newly appointed. The Heads are responsible for the activities in their respective business areas. The Executive Director and the Heads are responsible for ESMA's day to day management.

ESMA's management meets on a weekly basis. They discuss ESMA's objectives and work programme priorities follow up and agree on cross-ESMA issues and solutions. Planning activities are a crucial part of the management and internal control system of ESMA. An Annual Work Programme is adopted every year in September for the following year by the Board of Supervisors. A multi-annual staff policy plan is in place. The Work Programme is monitored internally throughout the course of the year. Progress on its implementation is reported to the Management Board.


A comprehensive set of reports on key activities such as recruitment and budget execution is provided monthly to the Executive Director and quarterly to the Management Board.

A number of measures have been taken for the reinforcement of management and decision making processes:

- ◆ Risk management has been set up for the prioritization of activities in the supervision function;
- ◆ An IT Management and Governance committee oversees IT projects and a business owner has been assigned for all IT systems in place; and
- ◆ In order to enhance the planning and follow up of the planning, operational owners were established for each budget line.

In 2012, the Executive Director, as the Authorising Officer (AO), delegated financial responsibility to three Heads of Units/Divisions and the budget officer (Authorising Officers by Delegation (AOD)). The Head of Operations could enter into budgetary and legal commitments and authorize payments up to €8,000 on all expenditures including staff expenditures. The rest of Head of Units/Divisions could enter into budgetary and legal commitments and authorise payments up to €8,000 on mission expenditures. The budget officer had a delegation up to €8,000 on certain lines, in case of absence of the Head of Operations.

For the expenditure of 2012, the AODs signed a Declaration of Assurance to the AO, similar to the one signed by the AO herself, for the area for which they have been delegated responsibility.

A photograph of two men in business suits walking towards the camera in a modern, brightly lit hallway. The man in the foreground is slightly out of focus, while the man behind him is sharper. The hallway has a high ceiling with a grid of lights and large windows on the right side.

3.1 ESMA operations, budget and organigramme

ESMA is divided into six Divisions/Units, dealing with markets, investment and reporting, CRAs, financial stability and economic research, legal and co-operation and operational issues. The Authority is chaired by Steven Maijoor, Chair, while Verena Ross, Executive Director, is responsible for its day-to-day management. The Chair and Executive Director are supported by the Communications Team, the Accounting Risk and Control Teams and by their personal assistants.



ESMA continues growth in 2012

Starting from 35 staff in 2011, ESMA's recruitment plan for 2012 contained 26 new posts to be filled with the objective to reach 101 staff members by end of the year, out of which 75 Temporary Agents and 26 external staff, the latter composed of Contractual Agents (10) and Seconded National experts (16).

Including all job offers made to candidates, ESMA has reached the objective of 100% fulfilment of the Establishment plan (Temporary Agents) by end 2012. ESMA has also taken great care to achieve the best possible gender and geographical balance possible, taking into consideration the specificity of ESMA jobs: 22 EU nationalities are represented with a male/female ratio of 63% to 37%.

In 2012, ESMA has successfully implemented a staff appraisal policy and procedure, and a first appraisal exercise for the 52 eligible staff was completed in the first half of the year. According to the Staff Regulations reform, a qualitative approach was developed based on five levels of performance. A tailor-made competency framework was developed for ESMA.

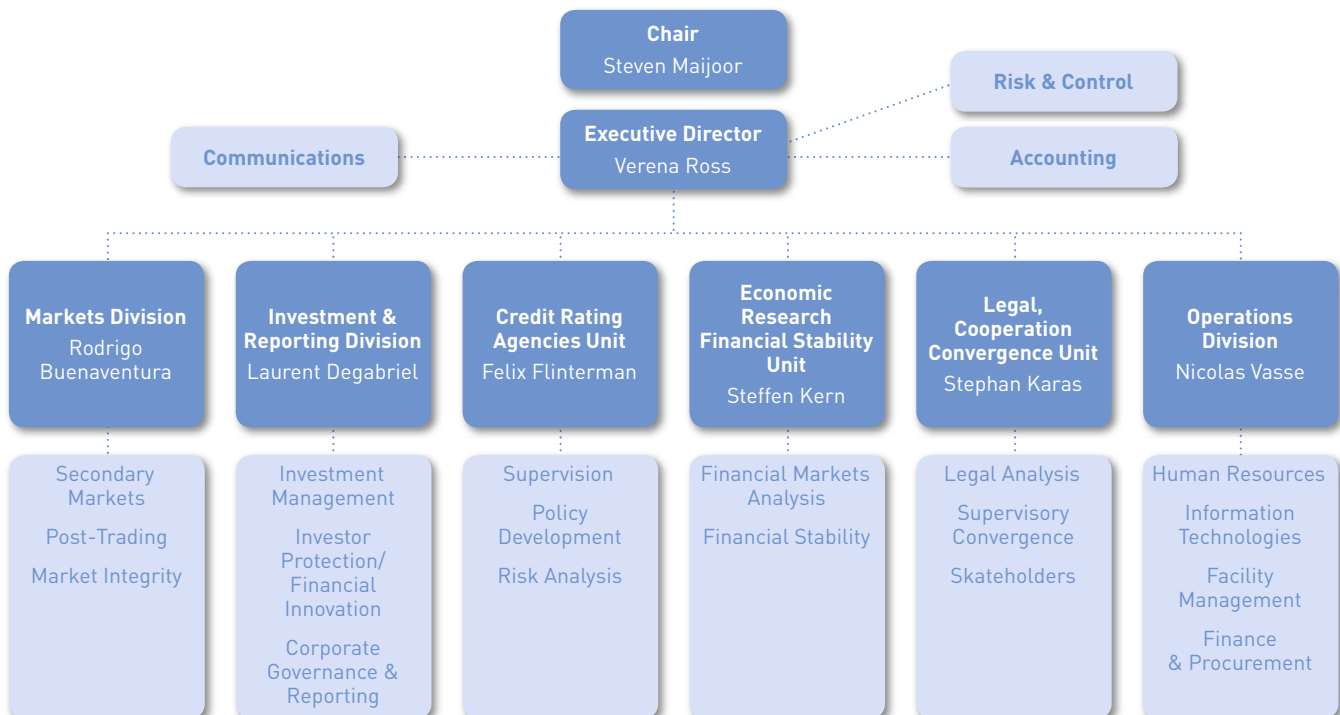
ESMA prepares extension of premises

Since July 2011, ESMA has been headquartered at 103 rue de Grenelle in Paris' 7th arrondissement, where it rents 3,000 sqm in a business centre. This has provided enough space for up to 120 staff as well as the large-scale meeting facilities.

However, by the end of 2013 the number of staff working at ESMA's premises (including external contractors) is expected to reach 184; the current premises therefore needed to be extended. ESMA decided to add some 2,000 sqm to its premises which were available within the same building. Following approval from the European Parliament and Council, ESMA signed a contract for the new space in late 2012. Internal works began at the end of 2012 and the new space will be ready by spring of 2013.

The detailed organigramme can be viewed below:

1. ESMA organisational chart, 31.12.2012



ESMA's standing committees, working groups and task forces

As well as being comprised of Divisions and Units, much of the Authority's technical work is conducted through standing committees (SC), working groups and task forces, panels and networks, which draw together senior experts from NCAs. The different ESMA groups are established either on a permanent basis or limited in time, depending on the issues handled and the mandate given. The groups are chaired by senior representatives of NCAs and supported by ESMA staff which act as rapporteurs.

More details on: [http:// www.esma.europa.eu](http://www.esma.europa.eu)

Other groups, boards and task forces

There are a number of other groups, networks and task forces falling outside the permanent structures which are currently undertaking work on important issues these include the Commodities Task Force, to provide analysis and advice on commodities related issues, along with a number of collaborative groups formed with other organisations in order to respond to special mandates.

ESMA's Boards and its composition

Members of the ESMA Management Board (December 2012)

Member	Authority	Country
Steven Maijoor	ESMA	
Karl-Burkhard Caspari	BaFin	Germany
Raul Malmstein	FSA	Estonia
Julie Galbo	FINANSTILSYNET	Denmark
Jean Guill	CSSF	Luxembourg
Kurt Pribil	FMA	Austria
Carlos Tavares	CMVM	Portugal
Martin Wheatley	FSA	United Kingdom

Members of the ESMA Board of Supervisors (December 2012)

Member	Authority	Country
Steven Maijoor	ESMA	
Jean Paul Servais	FSMA	Belgium
Stoyan Mavrodiev	FSC	Bulgaria
Pavel Hollmann	National Bank	Czech Republic
Julie Galbo	Finanstilsynet	Denmark
Karl-Burkhard Caspari	BaFin	Germany
Raul Malmstein	FSA	Estonia
Konstantinos Botopoulos	CMC	Greece
Elvira Rodriguez	CNMV	Spain
Gerard Rameix	AMF	France
Matthew Elderfield	Central Bank	Ireland

Guiseppe Vegas	Consob	Italy
Demetra Kalogerou	CySEC	Cyprus
Kristaps Zakulis	FCMC	Latvia
Vytautas Valvonis	Central Bank	Lithuania
Jean Guill	CSSF	Luxembourg
Károly Szász	PSZAF	Hungary
Andre Camilleri	FSA	Malta
Ronald Gerritse	AFM	Netherlands
Kurt Pribil	FMA	Austria
Marek Szuszkiewicz	KNF	Poland
Carlos Tavares	CMVM	Portugal
Gabriela Anghelache	CNVM	Romania
Damjan Zugelj	SMA	Slovenia
Ivan Barri	National Bank	Slovak Republic
Anneli Tuominen	FIN-FSA	Finland
Martin Andersson	Finansinspektionen	Sweden
Martin Wheatley	FSA	United Kingdom

Observers to the Board (December 2012)

Name	Authority	Country
Unnur Gunnarsdóttir	FI	Iceland
Mario Gassner	FMA	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Adam Farkas	European Banking Authority	
Carlos Montalvo	European Insurance and Occupational Pensions Authority	
Francesco Mazzaferro	European Systemic Risk Board	
Jonathan Faull	EU Commission	

ESMA's standing committees, working groups and task forces

As well as being comprised of Divisions and Units, much of the Authority's technical work is conducted through standing committees (SC), working groups and task forces, panels and networks, which draw together senior experts from NCAs.

The different ESMA groups are established either on a permanent basis or limited in time, depending on the issues handled and the mandate given. The groups are chaired by senior representatives of NCAs and supported by ESMA staff who act as rapporteurs. A table of ESMA's SCs and their task below:

Name of SC	Mandate	Chair
Secondary Markets Standing Committee	<ul style="list-style-type: none"> work on structure, transparency and efficiency of secondary markets for financial instruments, incl. trading platforms OTC markets (such as regulated markets, MTFs, systematic internalisers or other platforms). develop technical standards and guidelines, elaborating advice to the Commission relating to the MiFID. 	Martin Wheatley , FSA, UK
Investment Management Standing Committee	<ul style="list-style-type: none"> work on issues relating to collective investment management, covering both harmonised and non-harmonised investment funds. develop technical standards, elaborating advice to the Commission, or developing guidelines and recommendations relating to UCITS and AIFMD. 	Giuseppe Vegas , CONSOB, Italy
Post-Trading Standing Committee	<ul style="list-style-type: none"> work relating to clearing and settlement of transactions in financial instruments. develop technical standards, elaborating advice to the Commission or developing guidelines and recommendations relating to EMIR. 	Gerard Rameix , AMF, France
Credit Rating Agencies Technical Committee	<ul style="list-style-type: none"> assist ESMA in the tasks relating to CRAs promoting convergence in the application of the CRA Regulation and enhancing legal certainty for market participants. prepare technical standards and common guidelines. co-ordinate with other international organisations and third-country regulators that are performing activities in relation to CRAs. 	Verena Ross , ESMA
Corporate Finance Standing Committee	<ul style="list-style-type: none"> work relating to the Prospectus Directive, corporate governance, and major shareholding disclosures under the Transparency Directive. develop technical advice and guidance, standards on the provisions of the above Directives. in the area of corporate governance, respond to areas which relate to securities laws in the EU. 	Ronald Gerritse , AFM, Netherlands
Corporate Reporting Standing Committee	<ul style="list-style-type: none"> work on issues related to accounting, audit, periodic reporting and storage of regulated information. co-ordinate the activities of national enforcers from the European Economic Area (EEA) relating to the enforcement of compliance with IFRS. foster operational co-operation between EU and non-EU regulators. 	Julie Galbo , FSA, Denmark
ESMA-Pol Standing Committee	<ul style="list-style-type: none"> work on issues relating to market surveillance, enforcement of securities laws, facilitation of co-operation of national authorities and exchange of information in market abuse investigations. develop technical standards, elaborating advice to the Commission or developing guidelines and recommendations on issues relating to the integrity of markets on issues such as market abuse or short-selling. 	Konstantinos Botopoulos , HSC, Greece
Investor Protection and Intermediaries Standing Committee	<ul style="list-style-type: none"> deal with regulatory issues related to the provision of investment services and activities by investment firms and credit institutions. Particular regard is made to investor protection, including the conduct of business rules, distribution of investment products, investment advice and suitability. develop and provide technical advice to the Commission, and for preparing technical standards, guidelines and recommendations relating to the provisions of MiFID applicable to investment services and activities. 	Jean-Paul Servais , FMSA, Belgium
Financial Innovation Standing Committee	<ul style="list-style-type: none"> achieve a co-ordinated approach to the regulatory and supervisory treatment of new or innovative financial activities. identify risks to investor protection, and to financial stability, in the financial innovation area; and then to produce a risk mitigation strategy. 	Anneli Touminen , FSA, Finland
Review Panel	<ul style="list-style-type: none"> contribute to supervisory convergence through supporting the consistent and timely implementation of Community legislation in the EU. conduct peer reviews and mapping exercises. review the implementation of EU legislation and ESMA standards and guidelines. 	Jean Guill , CSSF, Luxembourg
Committee of Economic and Markets' Analysis	<ul style="list-style-type: none"> financial markets monitoring and analysis. identification, monitoring, and assessments of trends, potential risks and vulnerabilities in financial markets across borders and sectors, including a thorough focus on financial innovations and incentives related to market practices both at the wholesale and retail level. 	Carlos Alves , CMVM, Portugal
IT Management Group	<ul style="list-style-type: none"> IT projects governance and ESMA IT infrastructure for information sharing. 	Nicolas Vasse , ESMA



ESMA builds data registers

The ESMA founding regulation requires the collection, the publication and the regularly update on its website of information relating to its field of activities. Transparency requirements applied to the relevant policy fields are set up by the Omnibus (2010/78/EU - amendments to Prospectus, MiFID and UCITS directives) and AIFMD (2011/61/EU) directives. The IT project started in 2012 aims to implement four main registers – MiFID investment firms, UCITS management companies, AIFMD alternative investment fund managers and Prospectus. The main achievements in 2012 include the approval of the business requirements by the relevant business standing committees, the approval of the detailed technical specifications by the IT Management and Governance group, the procurement of the IT solution and the start of the development. The integration of these register is foreseen for Q2 (MiFID, UCITS and AIFMD) and Q3 2013 (Prospectus), followed by testing and Go-Live in Q3/Q4 2013 for MiFID, UCITS and AIFMD registers and Q4 2013/Q1 2014 for the Prospectus register.

The project considers the above elements as a single new IT application in order to create synergies not only between the required elements under Omnibus and AIFMD but also with other new data register obligations of ESMA.

ESMA's 2012 budget

ESMA's budget in 2012, increased to €20,279,000 in 2012 from €16,962,000 in 2011 (e.g. an increase of 20%). Budget execution at the end of 2012 was 86% for commitments and 65% for payments. In total 271 commitments and 2,219 payment orders were approved by the Authorising Officers in 2012.

ESMA began charging Credit Rating Agencies fees for their supervision from January 2012. This meant that for the first time ESMA's funding came from three separate sources; supervisory fees totalled €3,001,000 (15%), contributions from national authorities competent for the supervision of financial markets in the European Economic Area totalled €10,158,000 (50%), in addition ESMA received a subsidy from the EU budget of €7,120,000 (35%).

Annual accounts

The annual accounts of ESMA have been established in accordance with the Financial Regulation of ESMA as adopted by ESMA's Board of Supervisors and Management. The "Framework Financial Regulation" Commission Regulation (EC, EURATOM) No 652/2008 of July 2008 amending Regulation (EC, EURATOM) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, EURATOM) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

The accounting rules, methods and guidelines are those as adopted and provided by the Accountant of the European Commission.

3.2

Internal Control



ESMA adopted its own Internal Control Standards (ICS) during 2012

They specify the necessary expectations and requirements in order to build an effective system of internal control that could provide a reasonable assurance on the achievement of the ESMA objectives. These control standards were developed along the lines of the European Commission's Internal Control Standards, which are based on the international COSO standards.

The standards cover the areas of mission and values, human resources, planning and risk management processes, operations and control activities, information and financial reporting, and evaluation and audit. Each Internal Control Standard is made up of a number of requirements to be met.

ESMA staff performed a high level assessment and prioritisation of activities to be developed in the field of internal control, followed by a more detailed assessment of the status of implementation of internal control standards that was presented to the Management Board in December 2012.

Ethics and management of conflict of interest

ESMA policy on prevention of conflict of interest is governed by the staff regulations of officials of the European communities.

Following the Code of good administrative behaviour, the ethics guide was adopted in 2012 and an Ethics Officer was appointed. The ethics guide covers the policy in relation to management of conflict of interests, gifts and hospitality, missions, outside activities whilst in active employment and post-employment, among others. It is applicable to all managers, staff members and seconded national experts.

Ex ante control mechanisms and preventive measures are in place, including staff awareness-raising and training. Following the provisions of the ethics guide, all staff and seconded national experts are required to sign an annual declaration on conflicts of interest, and all declarations are assessed by the Ethics Officer.

Internal procedures, decisions and implementing rules

The internal control system also includes a number of internal procedures. In 2012, new policies and procedures were put in place and include, for example, financial handbook, procurement procedures, recruitment procedures and training for new staff.

There are also a number of decisions adopted by the Management Board regarding internal policies/rules. In 2012 decisions were introduced regarding missions, temporary agents, adoption of internal audit service mission charter, part-time work, amendments of the rules of procedure and adoption of internal control standards, among others.

The Board of Supervisors adopted decisions in 2012 related to the rules of procedure of the mediation panel, breach of EU law investigations and election of Management Board members, among others.

Five implementing rules on the Staff Regulations were also adopted during 2012, covering issues such as missions, part-time work or middle management. Financial implementing rules were also adopted by the Management Board.

Authorisation and registration of exceptions

During 2012, a policy and central register on exceptions and non-compliance was approved. ESMA documented duly approved exception and non-compliance reports. These exceptions are logged centrally.

Centralised support and control functions

ESMA has a number of centralised support and control functions in place. The most important of these are the accountant (appointed by the MB), the centralised procurement function, the financial verifying officers and the internal control officer.

The accounting officer is responsible for:

- ◆ the proper implementation of payments;
- ◆ collection of revenue and recovery of amounts established as being receivable;

- ◆ preparing, presenting and keeping the accounts;
- ◆ laying down the accounting rules and methods and the chart of accounts;
- ◆ validating the accounting systems of ESMA; and
- ◆ treasury management.

The methodology used in 2012 to validate accounting data was a 100% check of financial transactions at payment level.

An assistant to the accountant was hired in 2012 to reinforce and ensure backup of the function.

The mission of the procurement function is to ensure that the ESMA public procurement procedures and grants are carried out in accordance with the financial rules. It verifies legality, regularity and financial issues related to the procurement procedures, contracts and agreements prior to authorisation by the Authorising Officer, and it reports on any exceptions or deviations. The centralised procurement function is responsible for coordinating all aspects of procurement, and is directly

involved in all tenders over EUR 60 000. The function has been extended in 2012 with a new member of the staff.

The financial verifying officers are responsible for verifying financial transactions and performed ex-ante controls on all commitments and payments during 2012.

The internal control system has been reinforced in 2012 by the establishment of the role of internal control officer. This role includes designing, facilitating and monitoring the implementation of internal control and risk assessment systems at ESMA. It performs assessments, validations and ex-post controls of the different functions in order to provide reasonable assurance to the Executive Director and the Management Board on the correct functioning of the Agency. This role also coordinates relations with the European Court of Auditors and the Internal Audit Service, including coordination of the follow-up on all audit recommendations.





3.3

Building blocks of assurance



Follow up of audits and evaluations

European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA) in two visits. The audit provides a Statement of Assurance as to the reliability of the accounts of the Authority and the legality and regularity of the transactions underlying them.

In ECA statement of assurance of 2011, it was indicated that ESMA accounts are reliable and the transactions underlying the accounts are legal and regular.

The ECA audit of the 2012 annual accounts is on-going. The draft report will be available in June 2013. The first audit mission was performed in

November 2012 and the second audit mission will be performed in March 2013.

All recommendations raised by ECA regarding the 2011 annual accounts are being addressed by ESMA.

Among others:

- ◆ budget implementation has increased by 12%;
- ◆ ESMA has adopted its own internal control standards;
- ◆ the inter-institutional agreement in relation to European Anti-Fraud Office (OLAF) has been reached;
- ◆ recruitment procedures have been reviewed; and
- ◆ most HR implementing rules have been or are in process of being adopted.

Internal audit service

ESMA is also audited by its internal auditor, the Internal Audit Service of the Commission (IAS).

Although ESMA was not audited by the IAS of the Commission during 2012, IAS performed their first mission in ESMA in 2012 and developed the audit work to be performed in the form of a risk-based multiannual IAS Strategic Audit Plan 2013-2015.

All observations and recommendations in the risk assessment were taken into account and appropriate action plans were developed by ESMA. The audit plan and the implementation of the action plans were adopted by the Management Board.

The implementation of these actions is being followed up regularly.

Follow up of reservations from previous years

No reservations have been made in the previous annual reports.

Follow up of observations from the discharge authority

Conclusions

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 Court of Auditors known at the time of the declaration;
- ◆ the observations of the Internal Audit Service known at the time of the declaration;
- ◆ the declarations of assurance made by the authorising officer by delegation to the Executive Director;
- ◆ the result of the assessment of the internal control standards; and
- ◆ the list of recorded exceptions.

Given the control system in place, the information attained from the building blocks above and the lack of critical findings from the Court of Auditors and the Internal Audit Service at the time of the declaration, there is no reason to question the efficiency and effectiveness of the control system in place.

3.4

Declarations of assurance



European Securities and
Markets Authority

The Executive Director

Date: 26 April 2013
ESMA/2013/492

2012 Declaration of Assurance by the Executive Director of ESMA

I, the undersigned, Verena Ross, 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⁽¹⁾ ;

State that I have reasonable assurance that the resources assigned to the activities described in this 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 ex- ante and ex-post control verifications performed during the year;

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

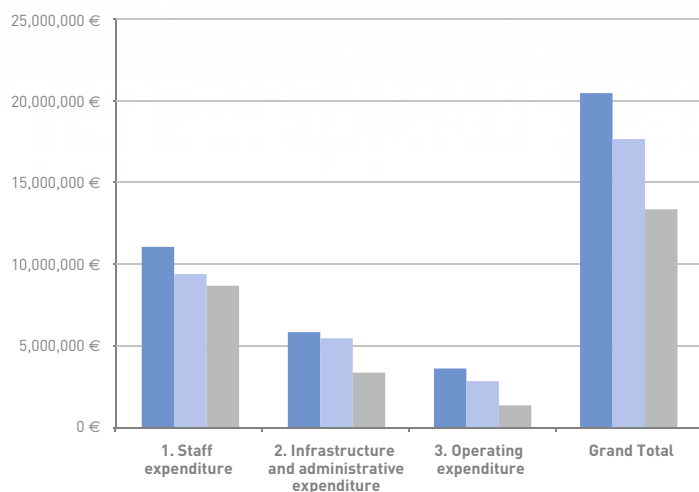
Paris, 26 April 2013

Verena Ross
Executive Director
European Securities and Markets Authority

¹ Fair view in this context means a reliable, complete and correct view on the state of affairs in the service

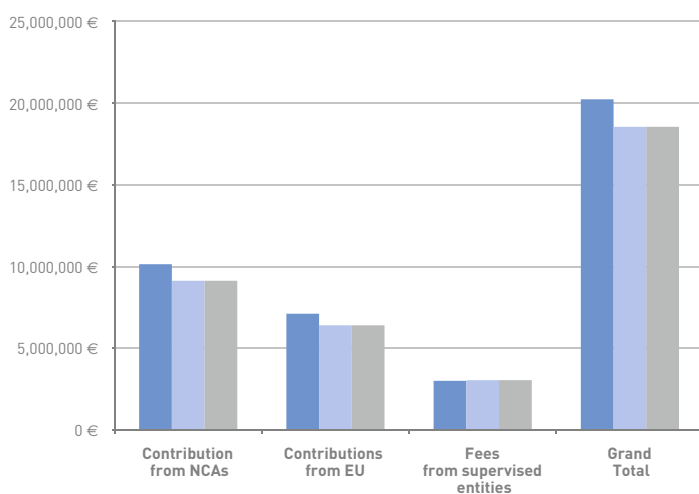
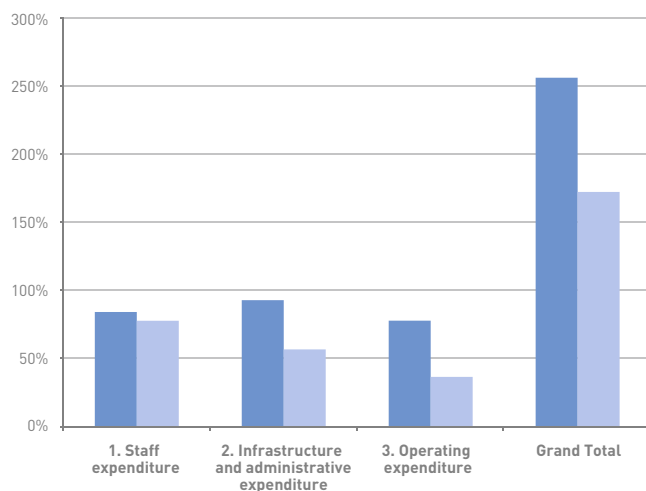


ESMA's detailed budget and staff numbers



2012 – overall budget

- ◆ 20.279m€ - overall budget for 2012
- ◆ 17.5m€ or 86% of the budget was committed
- ◆ 13.2m€ or 65% of the budget had been spent to end December 2012
- ◆ The remaining 4.3m€ will be paid in 2013.



2012 – revenues

- ◆ 20.279m€ - overall budget for 2012
- ◆ 10.158m€ from National Competent Authorities
- ◆ 7.12m€ from EU budget
- ◆ 3.001m€ from supervisory activities.

ESMA head count in 2012

Table 1 – Number of temporary agents (TA), contract agents (CA) and seconded national experts (SNE) per unit (as of 31 December 2012)

	Markets	Investment & Reporting	CRAs	Economic Research	Operations	Legal	Senior Management	Total Staff
TA	11	10	14	7	17	7	9	75
CA	1	1	3	1	4	1	1	12
SNE	2	5	1	0	0	4	0	12
Total	14	16	18	8	21	12	10	99

Figure 1 – Total number of staff 2011-2012

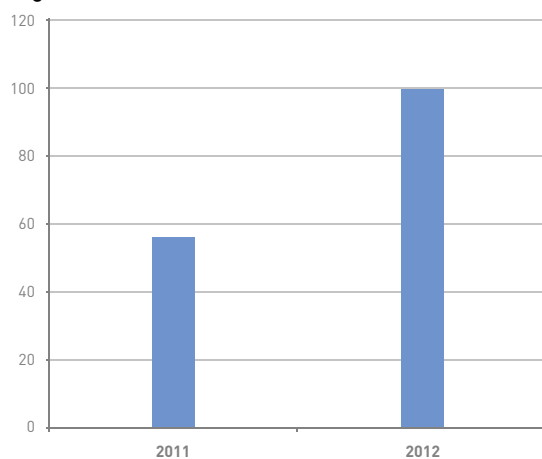


Figure 2 – Gender balance - 2012

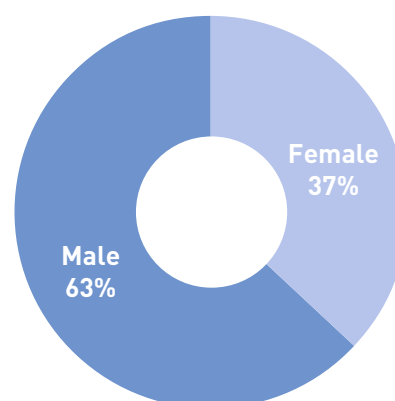


Figure 3 – Geographic balance in 2012

Number of staff (TA, CA and SNE) as of December 2012: ESMA employed staff from 22 Member States.

Country	Austria	Belgium	Bulgaria	Denmark	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Netherlands	Norway	Poland	Portugal	Romania	Slovak Republic	Spain	Sweden	United Kingdom	Total
Number	2	3	3	1	1	21	11	4	2	5	13	2	1	3	1	1	2	3	1	8	1	10	99

ESMA Establishment Plan 2012

Posts		Posts actually filled in 31.12.2011 ⁽²⁷⁾	Posts in EU Budget 2012 ⁽²⁸⁾	Posts actually filled at 31.12.2012 ⁽²⁹⁾
Officials	AD			
	AST			
TA	AD	41	63	65
	AST	9	12	10
Total⁽³⁰⁾		50	75	75
CA FG IV		1	4	4
CA FG III			4	
CA FG II		4	2	8
CA GFG I				
Total CA⁽³¹⁾		5	10	12
SNE ⁽³²⁾		1	16	12
Total		56	101	99
Structural service providers ⁽³³⁾		10	10	10
Total		66	111	107
External staff ⁽³⁴⁾ (replacement ⁽³⁵⁾)			4	10

Other disclosure

Agreements with third countries

Article 33(3) of the ESMA Regulation requires ESMA to set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.

For 2012, these were:

- 1) MoU on the supervision of CRAs between ESMA and Canadian authorities:

↗ [http:// www.esma.europa.eu/system/files/ mou_esma___canadian_authorities.pdf](http://www.esma.europa.eu/system/files/mou_esma___canadian_authorities.pdf)

- 2) MoU on the supervision of CRAs between ESMA and CNV Argentina:

↗ [http:// www.esma.europa.eu/system/files/ mou_cnv_esma_signed_sm.pdf](http://www.esma.europa.eu/system/files/mou_cnv_esma_signed_sm.pdf)

- 3) MoU on the supervision of CRAs between ESMA and the U.S. SEC:

↗ [http:// www.esma.europa.eu/system/files/ esma-sec_mou_march_2012.pdf](http://www.esma.europa.eu/system/files/esma-sec_mou_march_2012.pdf)

- 4) MoU on the supervision of CRAs between ESMA and MAS Singapore:

↗ [http:// www.esma.europa.eu/system/files/ 2012-124.pdf](http://www.esma.europa.eu/system/files/2012-124.pdf)

- 5) MoU on the supervision of CRAs between ESMA and ASIC:

↗ [http:// www.esma.europa.eu/system/files/ 2011-454.pdf](http://www.esma.europa.eu/system/files/2011-454.pdf)

Access to information

Pursuant to Article 17(1) of the Access Regulation, a report shall be annexed to ESMA's annual report including: (a) the number of cases in which ESMA refused to grant access to documents; (b) the reasons for such refusals; and (c) the number of sensitive documents not recorded in the register.

In 2012, ESMA has received four requests for access to information one out of which could not be granted as it referred to French labour law.

⁽²⁷⁾ Offer letters sent should be counted as posts filled in with a clear reference in a footnote with a number how many posts/positions it concerns.

⁽²⁸⁾ As authorised for officials and temporary agents (TA) and as estimated for contract agents (CA) and seconded national experts (SNE).

⁽²⁹⁾ This number includes 15 job offers made to candidates (out of which 13 were accepted before 31/12/12) who will enter in service in 2013.

⁽³³⁾ Service providers are contracted by a private company and carry out specialised outsourced tasks of horizontal/support nature, for instance in the area of information technology. At the Commission the following general criteria should be fulfilled: 1) no individual contract with the Commission; 2) on the Commission premises, usually with a PC and desk; 3) administratively followed by the Commission (badge, etc.) and 4) contributing to the value added of the Commission. FTE

⁽³⁵⁾ This figure represents interim workers that are recruited to cope with exceptional workload or to replace departing staff.

Staff category and grade	Establishment plan in EU Budget 2012		Modifications in 2012 in application of flexibility rule ⁽³⁶⁾		Establishment plan in voted EU Budget 2013		Modifications envisaged in establishment plan 2013 in application of flexibility rule ⁽³⁷⁾		Establishment plan in Draft EU Budget 2014		Establishment plan 2015		Establishment plan 2016	
	Officials	TA	Officials	TA	Officials	TA	Officials	TA	Officials	TA	Officials	TA	Officials	TA
AD 16														
AD 15		1		1		1		1		1		1		1
AD 14		1		1		1		1		1		1		1
AD 13		1										2		2
AD 12		4		2		3		3		4		2		3
AD 11		4		1		5		5		7		7		8
AD 10		5		3		6		6		9		11		13
AD 9		5		5		12		13		19		24		27
AD 8		11		10		24		24		32		36		39
AD 7		11		17		24		23		29		31		35
AD 6		11		13		18		18		23		26		27
AD 5		9		12		12		12		15		17		19
Total AD	63		65		106		106		140		158		175	
AST 11		1												
AST 10		1												1
AST 9		2				1		1		1		1		
AST 8		1		1										
AST 7		1												
AST 6						1		1		1		1		2
AST 5				1		2		2		4		3		4
AST 4		1		3		6		6		6		7		7
AST 3		2		2		2		2		2		2		2
AST 2		1				3		3		2		3		3
AST 1		1		3								1		
Total AST	11		10		15		15		16		18		19	
Total	74		75		121		121		156		176		194	


(36) In line with Article 32 (1) of the EU framework Financial Regulation. ESMA's Management Board may modify, under certain conditions, the establishment plan up to 10% of posts authorised, unless the financial rules of the body concerned allow for a different % rate.

(37) *Ibid.*

04



ESMA's 2013 Work Programme

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- ❖ Besides delivering against its 2012 objectives, ESMA developed a detailed Work Programme for 2013 which sets out the key priorities the Authority aims to achieve in the year ahead.

N°	Unit / Division	Standing Committee	ESMA role	Work stream / Task title
1	All	All	Single Rulebook	Technical standards and guidelines on information exchange and cooperation arrangements among national authorities
2	All	All	ESMA organisation	Support to Board of Supervisors, Management Board, eleven Standing Committees, two Technical Committees, Networks and Task Forces
3	All	Joint Committee	Convergence	Joint Committee work: support, Packaged Retail Investor Products (PRIps), Asset Money Laundering (AML), Non-Cooperative Jurisdictions, Financial Conglomerates, Joint Committee Risk Sub-Committee, Joint Committee's Impact Assessment network
4	CRA	CRAs	Single Rulebook	Technical standards following CRA3 Regulation
5	CRA	CRAs	Supervision	Cooperation arrangements with third countries regulators
6	CRA	CRAs	Supervision	Endorsement assessment of third countries and advice on equivalence
7	CRA	None	Supervision	Assessment of applications for registration
8	CRA	None	Supervision	Thematic and individual reviews (on desk and on site) of registered CRAs
9	CRA	None	Supervision	Cooperation with third country regulators
10	CRA; Legal, coordination and convergence	None	Supervision	Enforcement and sanctions
11	Economics	CEMA	Contribution to Financial Stability	Collection and management of data, studies, reports
12	Economics	CEMA	Single Rulebook	Impact Assessments-related work
13	Economics	None	Contribution to Financial Stability	Relationship with the ESRB (cooperation, joint research, reporting and working groups)
14	Economics / Markets Investment and Reporting	CEMA/SMSC/ Post-Trading/ Investment Management	Contribution to Financial Stability	ESMA stress testing work
15	Investment and Reporting	Corporate Finance	Contribution to Financial Stability	Possible delegated acts derived from the EC Green Paper on the European Corporate Governance framework
16	Investment and Reporting	Corporate Finance	Contribution to Financial Stability	Technical Advice to the Commission on revised Prospectus Directive
17	Investment and Reporting	Corporate Finance	Single rulebook	Technical standards following the revision of the Transparency Directive: Notification requirements and update and maintenance of Q&A
18	Investment and Reporting	Corporate Finance	Single Rulebook	Equivalence assessment of third country regimes regarding corporate finance
19	Investment and Reporting	Corporate Finance	Consumer protection	Possible work on quality and integrity of (a) voting chain and (b) institutional investor codes
20	Investment and Reporting	Corporate Finance	Single Rulebook	Updating and maintenance of Q&As and Recommendations

Deliverable

Delivery date

Priority

Technical standards; Guidelines	Q4	2-medium/high
	Permanent	N/A
Reports	Permanent	2-medium/high
Technical standards	Q3	1-high
Memorandum of Understanding	Permanent	2-medium/high
Fully reasoned draft Decisions /Advice	Permanent	2-medium/high
Registration decision	Permanent	1-high
Risk mitigation plans /enforcement proposal	Permanent	1-high
Exchange of views on risks, priorities and perimeter	Permanent	2-medium/high
Possible CRAs sanctions	Permanent	1-high
Studies; reports	Permanent	2-medium/high
Impact Assessment Advices; Reports	Permanent	2-medium/high
Biannual reporting; internal reports	Permanent	1-high
Coordination of activities; advice	Permanent	1-high
Delegated Act	Q2	1-high
Technical Advice	Q2	1-high
Technical standards	Q3	1-high
Report	Q4	2-medium/high
	Q2	2-medium/high
Q&As	Permanent	3-medium/low

N°	Unit / Division	Standing Committee	ESMA role	Work stream / Task title
21	Investment and Reporting	Corporate Finance	Single Rulebook	Technical standards as requested by Omnibus II
22	Investment and Reporting	Corporate Finance	Single Rulebook	Technical standards as requested by the Omnibus I Directive
23	Investment and Reporting	Corporate Reporting	Supervision	Consistent application of IFRS/Enforcement of financial reporting (EECS) with particular focus on: exposure to financial instruments that become subject to enhanced risk and impairment of non-financial assets and going concern
24	Investment and Reporting	Corporate Reporting	Single Rulebook	Preparatory work on technical standards on Audit Regulation
25	Investment and Reporting	Corporate Reporting	Single Rulebook	Revision of Enforcement Standards - financial information
26	Investment and Reporting	Corporate Reporting	Consumer Protection	Mapping of the application of requirements (e.g. post-implementation review)
27	Investment and Reporting	Corporate Reporting	Consumer Protection	Monitoring European developments in Audit Oversight, developments in the area of non-Financial Information, Integrated Reporting and Periodic Reporting and Monitoring ISA developments (IAASB)
28	Investment and Reporting	Corporate Reporting	Consumer Protection	Monitoring IFRS developments (IASB), contribution to EFRAG and ARC, XBRL developments (including follow-up discussion paper) and OAM
29	Investment and Reporting	Corporate Reporting	Convergence	On-going dialogue with third country regulators (China, Japan, US...)
30	Investment and Reporting	FISC	Consumer Protection	Data collection, monitor financial activities and innovation, co-ordination activities
31	Investment and Reporting	Investment Management	Supervision	Implementation of third country chapter of AIFMD
32	Investment and Reporting	Investment Management	Single Rulebook	Technical Advice on Venture Capital and Social Entrepreneurship Funds
33	Investment and Reporting	Investment Management	Single Rulebook	Technical Advice, guidelines and possibly technical standards on UCITS V
34	Investment and Reporting	Investment Management	Single Rulebook	Technical standards, advice, guidelines and Q&A on AIFMD
35	Investment and Reporting	Investment Management	Single Rulebook	Guidelines on AIFMD remuneration
36	Investment and Reporting	Investment Management	Single Rulebook	Guidelines, Q&As and opinions on UCITS IV
37	Investment and Reporting	Investment Management	Single Rulebook	Guidelines on a Common Definition of European Money Market Funds
38	Investment and Reporting	IPISC	Consumer protection; Single Rulebook	Technical standards following the revision of MiFID (MiFID 2, MiFIR)
39	Investment and Reporting	IPISC	Consumer protection; Single Rulebook	Guidelines on MiFID remuneration
40	Legal, cooperation and convergence	None	ESMA organisation	Support to the European Commission on the European System of Financial Supervisors Evaluation 2013

Deliverable

Delivery date

Priority

Technical standards	Q4	4-low
Technical standards	Q4	4-low
Opinions; Statements	Permanent	1-high
Technical standards	Q4	1-high
Technical standards or guidelines	Q4	1-high
Report	Q3	2-medium/high
Meetings	Permanent	2-medium/high
Meetings	Permanent	2-medium/high
Meetings	Permanent	2-medium/high
Internal Reports	Permanent	1-high
Cooperation arrangements with non-EU CAs; Methodology for peer review of authorisation and supervision of non-EU AIFMs; Technical advice on information to be reported to ESMA under Article 67	Q3	1-high
Technical Advice	Q1	1-high
Technical Advice; technical standards; guidelines	Q4	1-high
Technical standards, advice, guidelines, Q&A	Q4	1-high
Guidelines	Q1	2-medium/high
Guidelines; Q&As; Opinions	Q4	2-medium/high
Guidelines	Q4	3-medium/low
Technical Advice; technical standards	Q4	1-high
Guidelines	Q2	2-medium/high
Self-Assessment; Reports	Q4	1-high

N°	Unit / Division	Standing Committee	ESMA role	Work stream / Task title
41	Legal, cooperation and convergence	None	ESMA organisation	Follow up of crisis planning and powers, depending on progress of sectorial legislation
42	Legal, cooperation and convergence	None	Convergence	Regulatory and supervisory training and staff exchange fostering convergence
43	Legal, cooperation and convergence	None	ESMA organisation	Securities and Markets Stakeholder Group Support
44	Legal, cooperation and convergence	None	ESMA organisation	Access to documents
45	Legal, cooperation and convergence	None	Convergence	Execution of ESMA's powers (BUL, Media-tion, Crisis Management, Product Intervention) incl. representation in front of Board of Appeal
46	Legal, cooperation and convergence	None	ESMA organisation	Legal quality control regarding ESMA Legislation
47	Legal, cooperation and convergence	Review Panel	Convergence	Peer reviews and reports. Conduct of business rules; Supervisory practices with regard to conduct of Business rules under MiFID (as a follow up to a Mapping in 2012): Best Execution: High Frequency Trading Guide-lines
48	Management	None	ESMA organisation	Accounting: Establish financial statements, bookkeeping, treasury and cash management, assets management
49	Management	None	ESMA organisation	External communication: Annual Report, daily communications with external stakeholders - press queries, releases, briefings, publications, Institutional Communications Network, Web site
50	Management	None	ESMA organisation	Risk and Control: Establish, monitor and review internal control standards across ESMA; Grow data protection security capability, Audit coordination
51	Markets	ESMA-Pol	Single Rulebook	Application of Short Selling Regulation
52	Markets	ESMA-Pol	Single Rulebook	Preparatory work on Delegated Acts and technical standards under Market Abuse Regulation
53	Markets	ESMA-Pol	Single Rulebook	Report on the review of Short Selling Regulation
54	Markets	ESMA-Pol	Single Rulebook	Cooperation arrangements with third countries authorities under the Short Selling Regulation
55	Markets	ESMA-Pol	Single Rulebook	Guidelines on harmonised transaction reporting
56	Markets	ESMA-Pol	Supervision	Review of ESMA-Pol handbook
57	Markets	None	Supervision	Participation and coordination of CCPs' colleges
58	Markets	None	Convergence	Recognition of third country CCPs
59	Markets	None	Convergence	Recognition of third country Trade Repositories
60	Markets	None	Supervision	Registration of Trade Repositories

Deliverable	Delivery date	Priority
	Permanent	2-medium/high
16 courses	Permanent	2-medium/high
	Permanent	2-medium/high
Legal Advice regarding appli-cation of Access to Documents Regulation	Permanent	3-medium/low
Handling of Cases	Permanent	N/A
Legal advice	Permanent	N/A
Reports	Permanent	1-high
Annual accounts	Permanent	N/A
Annual Report	Q2	N/A
	Permanent	N/A
Guidelines; Q&A	Q2	1-high
Technical Advice; technical standards; Delegated Acts	Q4	1-high
Report	Q2	1-high
Template MoU; Guidelines	Q4	2-medium/high
Guidelines	Q1	2-medium/high
ESMA-Pol handbook	Q4	3-medium/low
Good practices	Permanent	1-high
Decision	Permanent	1-high
Decision	Permanent	1-high
Decision	Permanent	1-high

N°	Unit / Division	Standing Committee	ESMA role	Work stream / Task title
61	Markets	None	Supervision	Supervision of Trade Repositories
62	Markets	Post-Trading	Single Rulebook	Joint technical standards on Article 11 of EMIR (Exchange of collateral)
63	Markets	Post-Trading	Single Rulebook	Technical standards and Guidelines on CSD Regulation
64	Markets	Post-Trading	Single Rulebook	Technical standards on determination of the clearing obligation
65	Markets	Post-Trading	Single Rulebook	Technical standards revising the clearing threshold
66	Markets	Post-Trading	Single Rulebook	Guidelines on the enforcement of EMIR provisions on OTC derivatives
67	Markets	SMSC	Convergence	Development of a central multilateral functionality for communication of trading suspensions
68	Markets	SMSC	Single Rulebook	Pre-trade transparency waivers
69	Markets	SMSC / ESMA-Pol > Commodity Derivatives Task Force	Single Rulebook	Preparatory work on technical standards and advice on delegated and implementing acts under MiFIR and MiFID 2
70	Operations	ITMG	ESMA organisation	Implementation of agreed IT work programme: registers required on Omnibus (Prospectus/MiFID/UCITS), AIFM register, EMIR, new version of TREM (transaction reporting exchange mechanism), etc
71	Operations	None	ESMA organisation	Extension of premises due to an increase of statutory staff from 101 employees to 160 employees
72	Operations	None	ESMA organisation	Recruitment of 59 new staff members
73	Operations	None	ESMA organisation	Facility Management: maintenance of the building, events management, catering, information systems support (telephone, audio conference, helpdesk)
74	Operations	None	ESMA organisation	Finance and Procurement: open call for tenders, contracts management, budget planning and implementation, financial circuits, filing
75	Operations	None	ESMA organisation	Human Resources: personnel management, career development, internal training

Deliverable	Delivery date	Priority
	Permanent	1-high
Technical standards	Q1/Q2	1-high
Technical standards; Guidelines	Q4	1-high
Technical standards	Permanent	1-high
Technical standards	Permanent	1-high
Guidelines	Q1	2-medium/high
Deployment of the new communication system	Q1	2-medium/high
Ad-hoc publica-tion of new descriptions of proposals for waivers as-sessed by ESMA	Permanent	2-medium/high
Technical standards; Technical Advice; Dele-gated Act; Implementing Acts	Q4	1-high
IT systems	Permanent	1-high
Extension of premises	Q2	1-high
59 new mem-bers of staff recruited	Q4	1-high
	Permanent	N/A
	Permanent	N/A
	Permanent	N/A

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ESMA - CS 60747 - 103 rue de Grenelle - 75345 Paris Cedex 07 - France
Tel. +33 (0) 1 58 36 43 21 - www.esma.europa.eu