esma

European Securities and
Markets Authority

Annual Report 2015

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Steven Maijoor

Chair

EUROPEAN SECURITIES AND MARKETS AUTHORITY

Foreword by the Chair

The European Securities and Markets Authority (ESMA) will have celebrated its fifth anniversary by the time you read this annual report. Looking back at the last five years and specifically at 2015, ESMA has made significant steps in realising its mission of enhancing investor protection and promoting stable and orderly financial markets through a variety of means, namely assessing risks to investors, markets and financial stability, creating a single rulebook, promoting supervisory convergence and supervising credit rating agencies and trade repositories. The Authority is now widely recognised as the EU's markets regulator and it continues to build and strengthen this position through its various work streams.

The first years of its existence were focused on the implementation of the regulatory and supervisory changes in order to ensure a more resilient financial system. The key areas where ESMA made progress were in its now well-established and embedded supervision of credit rating agencies (CRAs), its far-reaching work on the single rulebook and in furthering supervisory convergence across Member States. Looking at the new and updated regulations which are already in place or which will soon be implemented, one can already feel the emergence of a more coherent single European securities market – a market which will be more transparent, integrated and safe for investors to invest in which in turn will contribute to economic growth.

The single rulebook ESMA developed for securities markets covers a broad range of areas, including asset management, investment firms, derivatives, trading venues, CRAs and preparatory work for product transparency (PRIIPS). Derivatives reporting and ESMA's supervision of Trade Repositories (TRs) has improved the transparency of the EU derivatives market which will benefit investors across the Union. ESMA has also significantly strengthened its capabilities to identify risks to investor protection and financial stability. Our supervision on CRAs has further matured and we fined for the first time a supervised entity in our remit. All these activities form part of ESMA's raison d'être.

In all of our activity we cooperate closely with the European Parliament, the European Commission and European Council to achieve our objectives of enhancing investor protection, and ensuring the stability and orderly functioning of financial markets. Especially for our rulebook activity we have ensured a regular dialogue with Parliament and Council to ensure consistency between our draft standards and the legislation agreed by the co-legislators. We also work closely with our fellow authorities EBA and EIOPA within the Joint Committee. Under the chairmanship of ESMA, the Joint Committee focused in particular on consumer protection and cross-sector risk assessment.

MiFID II is, by far, the most significant piece of regulation that ESMA has ever undertaken. It also represents the biggest change to European securities trading in a decade and will alter the way Europe's secondary markets function by making them more efficient, safe and transparent to invest in. MiFID II will also increase the protection of investors by, for example, improving the governance around the development of financial products and making their selling more transparent and suitable to end-users. The magnitude of MiFID II should not be underestimated.

The rules ESMA has delivered on MiFID II in 2015, once implemented, will bring the majority of non-equity products into a robust regulatory regime and move a significant part of OTC trading onto regulated platforms. In addition, ESMA's MAR standards will strengthen the existing market abuse framework by extending its scope to new markets, platforms and behaviours. ESMA's CSDR rules will ensure that CSDs are safe, efficient and sound. Taken together with new rules on post-trading (EMIR), market abuse (MAR) and securities depositaries (CSDR), the MiFID II package is at the heart of the post-crisis reforms of financial markets initiated by the G20 in Pittsburgh and represents over two years of hard work by ESMA.

All this single rulebook activity has benefited from the input and feedback from a broad range of stakeholders provided through consultations, hearings, and participation in our Securities Markets and Stakeholder Group and Consultative Working Groups. I want to thank all stakeholders for their valuable contributions to ESMA's work.

It has been an exceptional experience to chair ESMA in its initial years and I feel honoured to have been entrusted by the Board of Supervisors and the European Parliament with leading ESMA into its next phase of development. Looking ahead, ESMA will shift its focus from legislation to implementation. In 2015, a strategic review was conducted to clarify ESMA's future priorities and activities. In-line with its Strategic Orientation 2016-2020, ESMA will allocate more resources to supervisory convergence activities and reduce its single rulebook activities. There is substantial room for increased convergence of supervisory practices and approaches amongst national regulators. Supervisory convergence does not mean that we will aim to converge to a one-size fits all approach, it means that ESMA will work to promote consistent and effective national application of EU law in a way that ensures the same rules apply to market participants no matter their location. First examples in 2015 of this strategic shift in activity were seen in ESMA's participation in CCP supervisory colleges as well as a peer review on supervisory practices under MAR.

ESMA's supervisory convergence work will be an important building block of the Capital Markets Union (CMU), as consistent application is needed to ensure that the single rulebook on paper becomes a single market in practice. In terms of ESMA priorities this includes the MIFID II implementation, consistent supervision of CCPs and ESMA's support of specific CMU topics like passport arrangements in asset management.

In 2015, ESMA has continued to play an important role in international cooperation regarding regulatory and supervisory matters. This has involved agreeing terms of cooperation that ensure the different regional regulations work together in practice and benefit investors and market participants more broadly. This meant progressing on recognising third-country entities such as CCPs or preparing for non-EU alternative investment funds passport arrangements as well as signing MoUs on derivatives and CRAs. At the rulemaking level, ESMA continued its active participation in the IOSCO Board, several IOSCO policy committees as well as its European Regional Committee.

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.

Last but not least, none of this would be possible without those individuals whose commitment and hard work enabled ESMA to achieve all it has in 2015, the staff.

Steven Maijoor,
Chair
European Securities and Markets Authority

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Verena Ross

Executive Director
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Foreword by the Executive Director

Locking back, 2015 can be described as an important transitional year for ESMA. It was a year involving the delivery of key parts of the single rulebook, but also one of solid preparation for ESMA's changed focus towards supervisory convergence, an area where many new challenges are looming. This shifting focus needed to be mirrored within ESMA's internal organisation.

The new phase of ESMA's development required a revised Strategic Orientation 2016-2020 which was agreed in May 2015. In support of this new direction we embarked on an internal reorganisation which reflects, and supports, the activities that are helping us achieve our statutory objectives - namely risk assessment, the single rulebook, supervisory convergence and supervision.

The reorganisation took place in November 2015 with the main organisational changes being the creation of a cross-cutting Risk Analysis and Economics Department, the concentration of our supervision activities into a single Supervision Department and a new Corporate Affairs Department to provide a transversal unit in support of our governance, planning and outreach activities. In the area of supervisory convergence, we created a small central team to coordinate the significant supervisory convergence work that is going on all across the organisation. In the new structure we will expect to see more multidisciplinary project working which will draw on different areas of expertise to ensure we are capable of dealing with the challenges ahead.

Excellent cooperation across departments and between staff at all levels ensured a smooth transition from the old to the new structure. Embedding the new organisation will require continued effort and focus from all of us to ensure we remain well set-up and can successfully deliver on our Strategic Orientation over the next five years and beyond.

Leaving aside the strategic reorientation and internal reorganisation, 2015 was a busy year where ESMA had to deliver against a demanding Work Programme. Maintaining the pace in terms of meeting the ever increasing demands placed on ESMA, against the background of limited resources, can be a challenge. Last year, ESMA proved itself capable of meeting these demands and rise to the challenge. On reaching its fifth anniversary, ESMA has become a well-established and well recognised Authority in the EU, which continues to deliver against a demanding reform agenda. For me, as Executive Director, this meant maintaining a strong focus on the day-to-day operations, including the management of our budget and staff resources and the planning, monitoring and execution of ESMA's work programme.

In 2015, ESMA continued to improve its internal functioning by adopting new implementing rules, policies and procedures in human resources, finance and procurement, but also in facility management and information technology. These were supported by the testing of new e-workflows for certain processes which will be implemented and further extended in 2016. These changes will allow us to

simplify administrative processes and will increase our efficiency as an organisation. Activity-based costing was further advanced in 2015, allowing ESMA to increase the transparency and monitoring of its cost centres, which is particularly important where fees are raised directly from the industry (currently ESMA's CRA and TR supervision activities). On the IT side we delivered five new systems that help to support the regulatory agenda through providing information to the supervisory community and the wider public.

Moving towards implementation of the single rulebook and towards more supervisory convergence also means that ESMA will continue to be a hub for national competent authorities (NCA). In 2015, this included the start of building and operating cross-EU IT systems to collect and publish data that will allow the EU markets to operate successfully. NCAs from 27 countries have agreed to delegate the building and running of certain MiFID II related IT systems to ESMA, while an IT hub solution is being developed for derivative trade reports under EMIR. As a result, we are becoming core to the systems infrastructure of European capital markets and indeed the market itself. We will need to continue to upgrade our IT capability further, building on our successful IT project delivery. It is these common systems and approaches to data collection, publication and regulatory usage which lie at the heart of truly integrated markets and of common supervisory solutions.

One final technological, and communications, improvement towards the end of 2015 was the launch of a revamped website. Our approach to designing and building the website involved engaging with our external stakeholders to ensure that the new design met their needs as users in terms of its usability and content. The result, I hope you will agree, is a more accessible and informative resource for our stakeholders.

To allow ESMA to continue playing its full role and meet its many challenges, we need to have a strong and stable organisation, which is dependent on ESMA staff. This is why I want to thank all my colleagues for their tireless efforts in 2015. We can be proud of what has been achieved and that is thanks to the personal commitment and dedication of everyone in the organisation to achieving ESMA's objectives.

I am also very grateful to my colleagues in the Management Board and Board of Supervisors, who have continued to support the authority in 2015. We have ambitious objectives for the coming years and I am looking forward to continuing our excellent cooperation with fellow supervisors and regulators and our strong engagement with other stakeholders.

Verena Ross
Executive Director
European securities and markets authority

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1 • ESMA's Mission and Objectives

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1. ESMA's Mission and Objectives

The European Securities and Markets Authority (ESMA) is an independent EU Authority, established under the ESMA Regulation [1], charged with enhancing the protection of investors and promoting stable and orderly financial markets. As an independent authority, ESMA achieves these aims by assessing risks to investors, markets and financial stability; completing a single rulebook for EU financial markets; promoting supervisory convergence; and directly supervising specific financial entities.

ESMA forms part of the European System of Financial Supervision (ESFS) a decentralised, multi-layered system of micro- and macro-prudential authorities established by the European institutions in order to ensure consistent and coherent financial supervision in the EU. This system consists of the European Systemic Risk Board (ESRB) and the three European Supervisory Authorities, ESMA based in Paris, the European Banking Authority (EBA) based in London and the European Insurance and Occupational Pensions Authority (EIOPA) based in Frankfurt along with the national competent authorities (NCAs) of the Member States. ESMA, along with the EBA and EIOPA, forms part of the Joint Committee which works to ensure cross-sector consistency and joint positions in the area of supervision of financial conglomerates and on other cross-sector issues.

ESMA is accountable to the European Parliament and the European Council and works in close liaison with the European Commission (Commission).

Mission and Objectives for 2015

ESMA's mission, based on the ESMA Regulation [2], is to enhance the protection of investors and promote stable and orderly markets in the European Union.

Sound and effective regulation of securities markets is key to the integrity, efficiency and growth 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 works to improve harmonisation in both regulation and supervisory practices.

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

[1] ESMA Regulation 1095/2010
[2] ESMA Regulation 1095/2010

The Annual Report is an important tool in providing accountability regarding ESMA's delivery against its objectives and annual Work Programme.

ESMA's role can be better understood through three objectives, namely:

1. Investor protection: to have the needs of financial consumers better served and to reinforce their rights as investors while acknowledging their responsibilities;

2. Orderly markets: to promote the integrity, transparency, efficiency, and well-functioning of financial markets and robust market infrastructures; and

3. Financial stability: to strengthen the financial system in order to be capable of withstanding shocks and the unravelling of financial imbalances while fostering economic growth.

The three objectives are inter-linked: for example, investor protection and orderly markets feed into overall market stability. At the same time, increased financial stability supports orderly markets and investor protection.

The four activities that help ESMA achieve its mission and objectives are:

I. Convergence

The purpose of promoting supervisory convergence is to ensure a level-playing-field of high quality regulation and supervision without regulatory arbitrage or a race to the bottom between Member States. The consistent implementation and application of rules ensures the safety of the financial system, protects investors and ensures orderly markets.

Supervisory convergence implies sharing best practices and realising efficiency gains for both NCAs and the financial industry. This activity is performed in close cooperation with NCAs. ESMA's position in the ESFS makes it qualified to conduct peer reviews, set up EU data reporting requirements, conduct thematic studies and common work programs, draft opinions, guidelines and Q&As but also build a close network that can share best practices and train supervisors.

ESMA's participation in supervisory colleges for Central Counterparties (CCPs) contributes to supervisory convergence for this specific area. ESMA actively supports international supervisory coordination and convergence, for example through its participation in IOSCO.

II. Risk monitoring and analysis

The purpose of assessing risks to investors, markets and financial stability is to spot emerging trends, risks and vulnerabilities, and where possible identify opportunities, so that they can be acted upon in a timely fashion. ESMA uses its unique position to identify market developments that threaten financial stability, investor protection or the orderly functioning of the European financial markets.

ESMA's risk assessments build on and complement risk assessments made by the other ESAs and NCAs, and contribute to the systemic work undertaken by the ESRB, which increasingly focuses on stability risks in financial markets. Internally, the output of the risk assessment function feeds into ESMA's work on the single

rulebook, supervisory convergence and the direct supervision of specific financial entities.

Externally, we promote transparency and investor protection by making information available to investors via our public registries and databases and, where needed, by issuing warnings to investors. The risk analysis function closely monitors the benefits and risks of financial innovation in European financial markets.

III. Single Rulebook

The purpose of completing a single rulebook for EU financial markets is to enhance the EU Single Market by creating a level-playing-field for investors and issuers across the EU. ESMA contributes to strengthening the quality of the single rulebook for EU financial markets by developing Technical Standards and by providing advice to EU Institutions on legislative projects. This standard setting role was ESMA's primary task in its first years of activity delivering numerous technical implementing details covering the entire span of European securities markets.

IV. Supervision

ESMA is the direct supervisor of specific financial entities: Credit Rating Agencies (CRAs) and Trade Repositories (TRs). These entities form essential parts of the EU's market infrastructure. The supervision of CRAs helps to enhance the integrity, responsibility, good governance and independence of credit rating activities. ESMA's supervision therefore ensures the quality of ratings and helps to protect investors' interests. ESMA's TR supervision helps to ensure that TRs comply on an on-going basis with all EMIR requirements, thereby enabling authorities to have access to data and details of derivative contracts in order for them to fulfil their respective missions. ESMA's TR supervision therefore is key for ensuring data quality and providing transparency on derivatives markets.

ESMA's four activities are closely linked. Insights gained from risk assessment feed into the work on the single rulebook, supervisory convergence and direct supervision, and vice versa. We consider supervisory convergence to be the manifest implementation and application of the single rulebook. The direct supervision of CRA and TRs benefits from and also feeds into our risk assessment and the single rulebook activities.

ESMA Governance and Organisation

Governance and Management

Two decision-making bodies govern ESMA: the Board of Supervisors (BoS) and the Management Board. In addition to the Chair of ESMA, the BoS is composed of the heads of the 28 NCAs responsible for securities regulation and supervision [1] with one observer from the EC, a representative each of the EBA and EIOPA and one representative of the ESRB. In addition, Norway, Iceland and Liechtenstein attend as permanent observers. The Executive Director attends the Board.

[1] Where there is more than one national authority in a Member State those authorities will agree which of their heads will represent them.

The Board guides the work of the Authority and has the ultimate decision-making responsibility regarding a broad range of matters including the adoption of ESMA standards, opinions, recommendations, guidelines and the issuance of advice to the EU institutions. The Board is supported by a number of ESMA standing committees and working groups who are dealing with technical issues.

The current Members of the Board and summaries of the 2015 meetings of the Board of Supervisors can be found on ESMA's website [1].

Since 2011, ESMA's full-time Chair is Steven Maijoor and its Executive Director is Verena Ross. Both are based at ESMA's premises in Paris and were appointed for a five-year term which may be extended once. In 2015, both the Chair and the Executive Director were given a second mandate of five years.

The Chair is responsible for preparing the work of the BoS and chairs both its meetings and those of the Management Board. He also represents the Authority externally. In 2015, Carlos Tavares was Alternate Chair, and was succeeded in that capacity by Anneli Tuominen in January 2016.

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.

Management Board

In addition to the ESMA Chair, the Management Board is composed of six members selected from the BoS by its members. The Executive Director, the Vice-Chair, 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 Management Board is to ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with the ESMA Regulation and in particular focuses on the management aspects of the Authority, such as the development and implementation of a multi-annual Work Programme, as well as budget and staff resource matters.

The current Members of the Management Board and summaries of their meetings in 2015 can be found on ESMA's website. [2]

[1] Board of Supervisors
[2] Management Board

ESMA's Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA Regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. The members represent financial market participants and their employees', consumers and other users of financial services and small and medium sized enterprises. ESMA consults the SMSG on all its draft technical standards and guidelines in order to ensure input from stakeholders.

Each SMSG, made up of 30 members, serves a term of two and a half years. The current group is chaired by Jesper Lau Hansen, a law professor at the University of Copenhagen. He is supported by joint Vice-Chairs Judith Hardt and Peter de Proft, both representing financial market participants. The Group held seven meetings in 2015, two of which were held together with the ESMA Board of Supervisors. The Group has issued numerous pieces of advice, opinions and reports in 2015 on issues such as asset management, market abuse and proxy advisors, all of which concern ESMA's policy-making activities. Summaries of its meetings can be found on ESMA's website [1].

The membership of the group will be renewed in the course of 2016.

Board of Appeal

The Board of Appeal is a joint body of the European Supervisory Authorities (ESAs), and it has been introduced to effectively protect the rights of parties affected by decisions adopted by the Authorities.

Although its secretariat is supported by the Authorities, the Board of Appeal is fully independent. The Board of Appeal is composed of six members and six alternates, who were appointed by EBA, ESMA and EIOPA respectively in 2011, as required by the ESAs' Regulations.

The members are individuals with a proven track record of professional experience in the fields of banking, insurance, occupational pensions and securities markets or other financial services, and with the necessary legal expertise to provide expert legal advice in relation to the activities of the Authorities.

Current staff of the national competent authorities, or other national, or Union institutions involved in the activities of the ESAs are not eligible for service on the Board of Appeal. In 2012, the Board of Appeal elected William Blair as President and Juan Fernández-Armesto as Vice-President, in accordance with the ESAs' Regulations.

[1] Securities Markets Stakeholders Group

2 • ESMA's achievements against its 2015 objectives

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2. ESMA's achievements against its 2015 objectives

2.1. Convergence

ESMA, along with other supervisory bodies, was set up to foster supervisory convergence by reducing regulatory arbitrage resulting from different supervisory practices across the EU. The reason was that such different practices may have the potential to undermine not only the integrity, efficiency and orderly functioning of markets but ultimately also financial stability and investor protection.

ESMA aims to carry out its convergence work by, amongst other initiatives, issuing guidelines and recommendations in areas where difference of application exist, providing Q&A to accompany the implementation of legislation and facilitating the exchange of experience between national competent authorities, the coordination of supervisory activity, the development of effective supervisory approaches, the assessment of supervision by national competent authorities through peer reviews, and the identification of barriers to convergent supervision.

Effective supervision of financial markets is a complex task, and currently there is room for increased convergence of supervisory practices and approaches amongst national competent authorities. ESMA will be working with the national competent authorities to improve and to make practices converge, ensuring the best use of limited resources.

The overall aim is to achieve high, consistent standards of supervision throughout the EU.

In 2015, ESMA reflected the new focus of its work by creating a supervisory convergence standing committee, which will permanently lead the convergence agenda. ESMA's achievements in the area of supervisory convergence included issuing of guidelines to further the consistent application of MiFID II/ MiFIR and for the Market Abuse Regulation (MAR). To increase convergent regulatory action, ESMA coordinated temporary bans under the Short-Selling Regulation and ESMA assessed the convergence of CCPs' supervisory colleges.

Also in the area of asset management, ESMA helped to further harmonise rules fur hedge funds (AIFMD) and exchange-traded funds (ETFs) as well as furthering the application of Key Investor Information Documents (KIID). ESMA also proposed to extend the AIFMD passport to entities of certain third-countries.

Helping to increase supervisory convergence also meant to advance the policy agenda by preparing the entry-into-force of the Central Securities Depository Regulation (CSDR), promoting a harmonised application of the Transparency Directive (TD) as well as contributing the development of accounting (IFRS) and audit rules while providing common enforcement priorities.

Last but not least, there were numerous work streams that were conducted jointly with EBA and EIOPA on cross-sector convergence, within the Joint Committee of the ESAs, as to ensure regulatory approaches converge between banking, insurance and securities markets. In 2015, this entailed work on issues such as securitisation, anti-money laundering, financial conglomerates and the provision of robo-advice in financial services.

ESMA establishes Supervisory Convergence Standing Committee

In line with the ESMA 2016-2020 Strategic Orientation, the shift towards more convergence activities is reflected by the establishment of the Supervisory Convergence Standing Committee (SCSC), and the repeal of the Review Panel. The first meeting took place in late 2015 and the Terms of Reference of the new Supervisory Convergence Standing Committee were approved by the Board of Supervisors in January 2016. This new standing committee is responsible for promoting a common framework within ESMA on supervisory convergence, identifying topics for, and conducting peer reviews, dealing with cross-cutting supervisory convergence issues and overseeing the implementation of the supervisory convergence work programme

The methodology [1] of the former Review Panel will continue to govern peer reviews. High-level representatives with a good overview of the national supervisory activity of national competent authorities constitute the Supervisory Convergence Standing Committee.

MiFID II – Investor protection

The review of the Markets in Financial Instruments Directive (MiFID II) represents probably the most far-reaching overhaul of European securities markets legislation in the past decade and is one of the EU's key responses to the financial crisis.

MiFID II/MiFIR introduces changes that will have a large impact on the EU's financial markets, these will lead to:

- more transparency for a broader range of asset classes;
- on-venue derivatives trading;
- sound algorithmic and HFT trading; and
- new supervisory tools for commodity derivatives.

It will also strengthen protection for retail investors through:

- limits on the use of sales' commissions;
- new provision of independent investment advice;
- stricter organisational requirements for product design and distribution;
- product intervention powers for regulators; and
- the disclosure of costs and charges.

The new MiFID II framework intends to make EU markets safer, more transparent and efficient and to level the playing field for market participants across the Union.

[1] (ESMA/2013/1709)

The co-legislators came to a political agreement in early 2014. MiFID II will become applicable to market participants from January 2018.

ESMA issues guidelines to further consistent application of MiFID II/MiFIR

In 2015, ESMA increased its efforts to ensure the consistent application of the new MiFID/MiFIR framework. In the area of investor protection, ESMA has delivered several important guidelines on complex products, knowledge and competence and cross-selling which will result in greater standards of services to clients, a higher degree of investor protection and an overall reduction in client detriment. ESMA has also started working, together with EBA, on guidelines on the management bodies of investment firms which will be continued in 2016.

ESMA provides guidelines on complex products

Under MiFID II, investment firms are allowed, subject to certain conditions, to provide investment services that only consist of execution or reception and transmission of orders without obtaining client information necessary to assess the appropriateness of the service or product for the client (known as "execution-only"). One of the conditions is that the services relate to products which are "non-complex". The ESMA Guidelines provide guidance with respect to the identification of certain complex products for which execution-only services cannot be provided (including in the area of structured deposits, a category of products brought under the scope of MiFID II because of their features making them comparable to other investment products covered under the directive); this includes bonds, other forms of securitised debt and money market instruments incorporating a structure which makes it difficult for the client to understand the risk involved or structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term.

ESMA provides MiFID II guidelines for the assessment of knowledge and competence

Investment firms are required to ensure and demonstrate to competent authorities that natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients possess the necessary knowledge and competence to fulfil their relevant obligations under MiFID. The Guidelines aim at specifying criteria for the assessment of knowledge and competence of investment firms' personnel.

Next steps

Both Guidelines – on complex products and knowledge and competence – have been published on the ESMA website and will be translated into the official EU languages. The publication of the translations will trigger a two-month period during which NCAs must notify ESMA whether they comply or intend to comply with the guidelines once MiFID II enters into application.

MiFID - Peer Reviews

ESMA facilitates supervisory convergence and dialogue on MiFID I

ESMA has supported high, consistent standards of supervision throughout the EU, in close cooperation with NCAs, and through its work on targeted peer reviews like the review on compliance with MiFID I suitability rules. Also, the cooperation with several NCAs has enabled ESMA to play a facilitation role in identifying and working on areas which could benefit from more convergent approaches between NCAs.

ESMA reviews compliance with the MiFID I suitability requirements

The scope of this Peer Review was twofold: firstly, on the way NCA's monitor the approach by firms to identify situations where investment advice or a personal recommendation is being provided. Secondly, the peer review covers NCA's approaches to the oversight by firms of the relevant suitability provisions.

While special emphasis is sometimes given to the recommendation of more complex products to clients, it is important for investment firms to have in place policies and procedures and to apply suitability tests when recommending an instrument whatever is the complexity or risk profile of the instrument. The procedures and arrangements for the assessment of suitability are the necessary basis to assess compliance with requirements in this area irrespective of the products proposed to clients. These procedures and arrangements, and the corresponding firms' behaviours, will have then to be adapted depending on the characteristics of the different products (vanilla products or more complex/risky ones) and of the clients.

This peer review focuses, therefore, on establishing, whether NCAs have adequate resources and organisational framework to supervise and enforce compliance with the MiFID suitability provisions; whether the current degree of convergence in the application of the suitability provisions and in supervisory practice and whether any existing practices developed by some NCAs' may benefit from wider application to other NCAs.

The Peer Review will also assess the effectiveness of supervisory practices put in place in order to assess compliance with the provisions of the requirement for firms to ensure that when providing investment advice or portfolio management they obtain the necessary information on clients' knowledge and experience to ensure the product/service are suitable to ensure that firms properly verify that the recommended product/service meets the objectives of the relevant client; that the client is able to financially bear any investment risks and that the client has the necessary experience and knowledge to understand the investment risks attached to the product or portfolio.

The final report is expected to be finalised and published by mid-2016.

Next steps

The report with the key findings of the peer review as well as possible recommendations will be finalised and published in 2016.

ESMA facilitates cooperation in the implementation of MiFID requirements

As a result of the current low interest rate environment many investors looking to enhance their returns consider investing in complex speculative products, including financial contracts for difference (CFDs), binary options, and rolling spot forex. Although these are complex products and it may be difficult for many retail investors to understand the risks involved, CFDs and other speculative products are advertised to the retail mass market, often via online platforms.

ESMA has been working with NCAs on the marketing and sale of financial contracts for difference and similar products to retail clients, often provided cross border, in order to strengthen investor protection.

This common work comprises the analysis of key issues arising from the provision of CFDs and other speculative products to retail clients, such as binary options, as well as increased cooperation between competent authorities for the supervision and enforcement of firms operating within Europe on a cross-border basis.

Next steps

ESMA will continue its work to facilitate consistent application of MiFID requirements. The sharing of information and ongoing cooperation between home and host competent authorities is an important aspect of this work stream of an on-going nature.

Post-Trading - EMIR

ESMA assesses convergence in CCP supervision

Pursuant to Article 21 of EMIR, ESMA shall fulfil a coordination role between competent authorities and across colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes.

First of all, ESMA pursues the above objectives through its active participation in CCP colleges. In accordance to article 18(2)(a), ESMA is a member in every CCP college. ESMA has played an active role in facilitating the work of CCP colleges and ensuring the consistent and correct application of EMIR.

Moreover, for the purposes of its coordination role, ESMA is required, at least annually, to conduct a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of central counterparties in accordance with Article 30 of Regulation (EU) No 1095/2010 (ESMA Regulation).

Accordingly, ESMA carried out a first review at the end of 2014 focusing on the supervisory activities of competent authorities in relation to the authorisation of CCPs under EMIR, which was published in a first report in January 2015.

The review report provides an overview of ESMA's contribution to the work of CCP colleges and presents ESMA's assessment of the degree of convergence reached by NCAs in the authorisation of CCPs. The report also identifies best practices

developed by some NCAs in this context. This review analysis does not consider NCAs' activities in relation to the on-going supervision of CCPs, as that process has only recently commenced. Finally, this report does not cover the effects in terms of actual resources available at different CCPs and whether the application of the same EMIR requirements has led to material differences among CCPs, which might result in unfair competition. This very relevant topic will be the object of specific reviews by ESMA once all CCPs have gone through authorisation.

Pursuant to EMIR, CCPs shall obtain the validation of ESMA before adopting any significant changes to their models and parameters. In 2015 ESMA has positively validated 2 significant changes of risk models.

Next steps

In 2016 ESMA will carry out a peer review of all NCAs for CCPs focusing on the provisions of Articles 41 (margin requirements) and 46 (collateral requirements) of EMIR and related RTS. ESMA will also carry on its EU CCP college activity and validate significant model and parameter changes EU CCPs are planning to implement.

CCP colleges: ESMA issues opinion on composition of colleges

Whilst a first opinion had been drafted to clarify some aspects of CCP college voting in 2014, the introduction of some direct supervisory power to the ECB for clearing members established in the Euro Area in November 2014 raised further questions especially since EMIR does not expressly address certain aspects of the representation of a central bank of issue represented by multiple central banks (like in the case of the Eurosystem), in particular with respect to the voting rights assigned to Eurosystem central banks.

In order to ensure the efficient, effective and consistent functioning of the CCP colleges through uniform procedures and approaches, ESMA has adopted an opinion on the composition of CCP colleges under EMIR on 7 may 2015 to clarify, being the ECB and the Eurosystem ultimately governed by the same decision-making body, that the ECB shall be assigned a single vote where it participates in a CCP college under the dual role of clearing members' direct supervisor and as representative of the central bank of issue (as per Article 18(2) (c) and (h) of EMIR).Consistently, where in a college, the ECB participates under the role of clearing members' supervisor but another Eurosystem national central bank represents the Eurosystem as central bank of issue, that national central bank shall not cast a separate vote.

Next steps

ESMA will monitor the application of this opinion in CCP colleges when NCAs will review the composition of the CCP colleges and when a vote under Article 19 is required.

EMIR Q&As promote consistent implementation

Since the adoption by the Commission of the first ESMA regulatory and implementing technical standards developed under EMIR, ESMA has been publishing and maintaining a Questions and Answers (Q&As) document to ensure the consistent

application of EMIR by promoting common supervisory approaches and practices. The Q&A document provides responses to questions posed by stakeholders and competent authorities as well as clarity on the implementation of EMIR requirements.

The first version of the Q&A document was published on 20 March 2013 and ESMA has issued 13 new versions since, the 14th and latest version was released on 1 October 2015. This document will continue to be updated to promote supervisory convergence and a consistent application of EMIR.

Next steps

In 2016, ESMA will continue using the Q&As document as a practical convergence tool and update it or enrich it further based on NCAs' and stakeholders' requests for clarification.

ESMA clarifies pension scheme arrangements

Pension scheme arrangements benefit from a temporary exemption from the clearing obligation for the OTC derivative contracts that reduce 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 2015, ESMA conducted preliminary work in cooperation with EIOPA and NCAs, including the establishment of templates and procedures.

Next steps

Following the entry-into-force of the first RTS on the clearing obligation on 21 December 2015, ESMA is expected to issue opinions in 2016 on the pension scheme exemption and to publish the list of exempted entities, as foreseen by EMIR.

ESMA monitors settlement discipline and fails

In 2015, ESMA continued the voluntary collection of data on settlement fails from NCAs and used the template for the reporting of settlement fails as a basis to develop the draft technical standards [1] under Article 7 of CSDR regarding the monitoring of settlement fails.

Next steps

In 2016, ESMA will continue monitoring settlement fails on a bi-weekly basis and prepare for the mandatory reporting of settlement fails set out under CSDR which will depend on the entry-into-force of the CSDR technical standards on settlement discipline.

[1] (ESMA/2016/174)

Post-Trading - CSDR

ESMA prepares entry-into-force of CSDR requirements

ESMA has started preparing for the implementation of CSDR, by elaborating templates for the various notifications that ESMA has to receive from the Member States. These include, *inter alia,* the list of competent authorities designated under CSDR, and the list of key relevant provisions of the corporate or similar law of the Member States, under which securities are constituted.

Next steps

ESMA will continue to publish and maintain the list of competent authorities designated under CSDR, and the list of key relevant securities law of the Member States. In 2016, ESMA will also start developing Q&As in order to clarify and support a consistent understanding and application of CSDR requirements.

ESMA prepares CSDR guidelines

ESMA has agreed with the NCAs to first focus its work on the guidelines that are necessary in the context of the authorisation process, *i.e.*:

- the process for collection and calculation of the indicators on substantial importance,
- the access by a CSD to a CCP or a trading venue,
- the cooperation between authorities,
- the determination of relevant authorities for all CSDs, and
- participants' default rules and procedures.

Other guidelines relating to internalised settlement reporting and settlement discipline shall be drafted in a second phase.

Next steps

ESMA will set up a new dedicated task force including an equal number of securities regulators and central bank experts to assist it in the drafting of the guidelines. It will also launch a consultation on the guidelines relating to participants' default rules and procedures.

ESMA cooperates on TARGET2 Securities (T2S)

TARGET 2-Securities (T2S) is the European platform for securities settlement in central bank money.

On 20 June 2015 T2S became operational. Four central securities depositories (CSDs) from Greece (BOGS), Malta (Malta Stock Exchange), Romania (Depozitarul Central) and Switzerland (SIX SIS) were connected to T2S. On 31 August 2015, the Italian CSD (Monte Titoli) also started using the T2S platform.

In its role of coordinator of competent authorities for the supervision of CSDs, in 2015 ESMA cooperated with the Eurosystem, in which the ECB has primary responsibility

vis-à-vis T2S. Furthermore, ESMA leads and coordinates the national competent authorities supervising CSDs participating in T2S in their activity related to T2S. For this purpose, ESMA, the ECB, the overseers of CSDs participating in T2S, the central banks of issue for currencies settled in T2S and the competent authorities for the supervision of CSDs participating in T2S are cooperating and coordinating the assessments of T2S.

Next steps

In 2016 ESMA will continue to cooperate with other authorities in the context of supervision and oversight of TARGET2 Securities (T2S), focusing, inter alia, on the assessment of the areas where T2S would need to facilitate the observance of CSDR and related level 2 measures by CSDs joining T2S.

Post-Trading - International Cooperation

ESMA contributes to implementation of CPSS-IOSCO principles for financial market infrastructures

In 2015, ESMA contributed to the work plan of the CPMI-IOSCO on the PFMIs implementation monitoring and on the development of further guidance on how to comply with PFMIs. In particular, ESMA has contributed to the development of guidance on cyber resilience for FMIs and to the work on further granular guidance on CCP resilience and recovery. ESMA also and took part of the Implementation Monitoring Team which performed the Level 3 PFMIs assessment for five global and five local CCPs of jurisdictions members of CCPMI-IOSCO.

Next steps

ESMA will monitor the consistent implementation of the Guidelines and therefore of the PFMIs through its participation in CCP colleges. ESMA will also continue to be involved in CPMI-IOSCO assessments of PFMIs and the development of granular guidance related to CCP resilience.

ESMA participates in the OTC Derivatives Regulators Group

In 2015, ESMA continued to contribute to the work of the OTC Derivatives Regulators Group (ODRG). Since 2011, the ODRG has sought to identify and resolve cross-border issues associated with the implementation of the G20's OTC derivatives reform agenda agreed in Pittsburgh in 2009. This past year, the ODRG published a report that focused in particular on the issue of deference in the context of CCPs. In addition, the report also detailed the further substantial and bilateral progress in addressing cross-border issues amongst ODRG members.

Next steps

In 2016, ESMA will continue to take an active role within the ODRG with the objective to support efforts to address cross-border issues and facilitate international consistency in OTC Derivatives reforms to the extent possible.

Market Integrity

ESMA drafts guidelines on Market Abuse Regulation

The Market Abuse Regulation requires ESMA to issue three sets of guidelines in relation to:

persons receiving market soundings;

a non-exhaustive indicative list of information expected or required to be published in relation to commodity derivatives; and

a non-exhaustive indicative list of legitimate interests for delays by issuers in the disclosure of inside information and of situations when omission is misleading.

ESMA refocused its activities of the second half of 2015 on the preparation of the Consultation Papers on these three sets of guidelines.

Next steps

Further to the public consultation to take place in the first months of 2016, ESMA will finalise the guidelines in the course of 2016.

ESMA updates its MAD Q&As

In November 2015 ESMA updated its Q&As on the common application of the current Market Abuse Directive with the intention to recall some key elements of the market abuse regime, including the need for the public to be correctly informed. The new Q&A issued addresses, in the context of the Supervisory Review and Evaluation Process (SREP) to be conducted in accordance with Article 97 of Directive 2013/36/EU (CRD IV), the evaluation that a credit institution subject to the market abuse regime is expected to perform when it is made aware of the results of the exercise.

Short-selling Regulation: ESMA maps compliance for market making activities

This Peer Review was carried out by an Assessment Team appointed by the Board of Supervisors of ESMA and aimed at assessing how NCAs apply the exemption for market making activities foreseen in Article 17 of the Short-Selling Regulation (the SSR).

Exempted market makers are not subject to the restrictions on uncovered short sales nor are they subject to the reporting and public disclosure obligations of significant net short positions in shares or sovereign debt. The Assessment Team scrutinised in particular whether the NCAs are applying the general principles and criteria of eligibility for the exemption in compliance with the corresponding ESMA Guidelines.

The review also aimed to identify good practices and to inform future discussions on the upcoming evaluation of the SSR to be conducted by the Commission.

The Peer Review focused on those markets with the highest number of market makers benefiting from the exemption, and the markets in which market makers have notified the highest number of instruments. For practical reasons and in view of

resource constraints, the Peer Review was limited to five authorities: Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin, DE); Commissione Nazionale per le Società e la Borsa (Consob, IT); Financial Conduct Authority (FCA, UK); Finansinspektionen (FI, SE) Magyar Nemzeti Bank (MNB, HU).

Next steps

The report was published on 05 January 2016.

ESMA coordinates temporary bans under the Short-Selling Regulation

ESMA has continued to operate the data publication, market monitoring and handling of emergency procedures under the Short-Selling Regulation (SSR).

The second half of 2015 was particularly active for ESMA in terms of its coordination role assigned by the SSR in issuing opinions on the emergency measures intended to be introduced by national authorities. ESMA issued 11 opinions between the end

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of June and the end of December all of which related to the introduction and the renewals of emergency measures by the Greek regulator (HCMC).

The initial measures introduced on the last day of June 2015 and renewed five times over the summer consisted in a ban on short positions on instruments traded in Greek exchanges meant to complement the other measures decided by the Greek authorities to tackle the Greek financial system crisis, such as the capital control and the closing of the stock market. In all cases ESMA issued a positive opinion.

In light of the developments on the Greek financial markets, the HCMC announced at the end of August the introduction of new emergency measures, i.e. a ban on short-selling on Greek shares and ETFs (see attachment), replacing the ban on net short positions.

At the end of September 2015, the HCMC proposed to introduce a ban on short-selling but limited to the five Greek credit institutions undergoing a process of recapitalization. These measures were renewed three times. ESMA issued positive opinions on the introduction and renewals of these measures. The last renewal was partial and limited to the last credit institution under recapitalization; it should have expired on 11th January 2016 [1].

Furthermore, Article 23 of the SSR grants NCAs powers to introduce temporary measures in a financial instrument which is traded on a trading venue under their supervision, where the price of a financial instrument has fallen significantly during a single trading day. These powers are given in order to prevent a disorderly decline in the price of the financial instrument. In line with the SSR, ESMA has played its coordination role in three instances in 2015, when the Italian supervisor, Consob, as well as the Portuguese supervisor, CMVM, adopted short term bans on short sales of specific shares on their respective markets.

ESMA prepares implementing measures for future Benchmarks Regulation

In September 2013, the Commission issued a proposal of regulation on benchmarks to improve the functioning and governance of benchmarks produced and used in the EU and to ensure they are not subject to manipulation. In February 2015, the Council's general approach to the Benchmarks Regulation was agreed and the European Parliament's legislative report was issued in May. On that basis and taking into account the Trilogue negotiations between the EP, the Council and the EC, ESMA decided to initiate preliminary work on the possible technical standards and the technical advice on delegated acts ESMA is likely to be asked to, respectively, develop and submit.

A preliminary political agreement on a compromise text of the Benchmarks Regulation was reached on 24 November 2015. This text requires ESMA to draft 10 RTSs and 3 ITSs with a timeline for delivery to the EC expected to be 12 months from the entry-into-force of the Benchmarks Regulation.

[1] On 11th January 2016, the HCMC notified ESMA of its intention to renew the ban on short-selling for this remaining credit institution until after the trading of the new shares resulting from the capital increase that had been successfully completed. On the same day, ESMA issued a negative opinion on the renewal of the measures, concluding that the measure to be renewed was not proportionate and appropriate to address the remaining threat stemming from risks of price volatility of the market of the concerned credit institution.

As a first step in the preparation of the implementing measures, ESMA prepared a draft Discussion Paper in order to gather input from interested stakeholders on the key elements of the upcoming draft technical standards. This draft Discussion Paper also covers 5 topics for Delegated Acts to be adopted by the EC and for which ESMA is expected to receive a formal request for advice.

Next steps

ESMA will consult publicly on the Discussion Paper in the first months of 2016. Taking into account the expected shorter timeline for delivering the Technical Advice to the EC, ESMA will first develop a Consultation Paper on this matter. After the public consultation, ESMA expects to finalise the Technical Advice in the second half of 2016. In the course of 2016, ESMA will also develop a Consultation Paper on the draft technical standards.

Investment Management

ESMA clarifies AIFMD, ETF and KIID rules

Throughout 2015 ESMA continued its work to clarify the application of the Alternative Investment Fund Managers Directive (AIFMD), the Regulation on Key Investor Information (KII) for UCITS and the guidelines on ETFs and other UCITS issues (ETF guidelines). This led to the Q&A on the AIFMD being updated on seven occasions, and the Q&As on the AIFMD and KII once each. Such Q&As are important tools in promoting convergence among supervisors on the day-to-day application of the relevant rules.

Convergence of rules on reporting, collateral management and past performance

The updates to the Q&As covered a range of topics, including collateral management by UCITS, disclosure of past performance information in the KII and the AIFMD reporting rules. The latter was the topic on which the relevant Q&A was updated most frequently, reflecting the strong demand for clarification from external stakeholders.

Next steps

ESMA will continue to update its Q&As as issues arise which require clarification or on which there is a need for greater convergence. With respect to UCITS in particular, ESMA will issue a consolidated Q&A bringing together four other Q&A documents with a view to having a single set of material in relation to the UCITS framework.

After a period of intense legislative and policy activity in previous years, the main focus for ESMA in the fund management sphere in 2014 centred on the implementation of the AIFMD as well as issues around social entrepreneurship and venture capital funds.

ESMA advises on extension of AIFMD passport to third-country entities

The Alternative Investment Fund Managers Directive (AIFMD), which has been in place since July 2013, introduced a passport for EU alternative investment funds (AIFs) and their managers (AIFMs). Non-EU AIFMs and non-EU AIFs managed by

EU AIFMs are, meanwhile, subject to the national private placement regime of each of the Member States where the AIFs are marketed or managed. The AIFMD requires ESMA to submit to the Commission, the European Council and the European Parliament:

an opinion on the functioning of the passport for EU AIFMs pursuant to Articles 32 and 33 of the AIFMD and on the functioning of the national private placement regimes (NPPRs) set out in Articles 36 and 42 of the AIFMD.

advice on the application of the passport to non-EU AIFMs and AIFs in accordance with the rules set out in Article 35 and Articles 37 to 41 of the AIFMD.

ESMA submitted the advice and opinion to the institutions on 30 July 2015.

Opinion on the functioning of the EU passport and NPPRs

The opinion on the functioning of the EU passport and the NPPRs contained ESMA's preliminary assessment of the operation of these two mechanisms. Its preliminary view was that, given the short time period that has elapsed since the implementation of the AIFMD in Member States, a definitive assessment of their functioning was difficult and would recommend preparing a further opinion after a longer period.

ESMA advice: extension of AIFMD Passport to non-EU AIFMs and AIFs

The advice related to the possible extension of the passport, currently only available to EU entities, to non-EU AIFMs and AIFs which are currently subject to EU NPPRs. ESMA conducted a country-by-country assessment, as this allowed it flexibility to take into account the different circumstances of each non-EU jurisdiction regarding the regulatory issues to be considered i.e. investor protection, competition, potential market disruption and the monitoring of systemic risk.

ESMA assessed six jurisdictions – Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the United States of America (USA) – which were selected based on a number of factors including the amount of activity already being carried out by entities from these countries under the NPPRs, EU national authorities' knowledge and experience of dealing with their counterparts and the efforts by stakeholders from these countries to engage with ESMA's process.

The Advice concludes that no obstacles existed to the extension of the passport to Guernsey and Jersey, while Switzerland would remove any remaining obstacles with the enactment of pending legislation. No definitive view was reached on the other three jurisdictions due to concerns related to competition, regulatory issues and a lack of sufficient evidence to properly assess the relevant criteria.

Next steps

In the light of feedback on the advice from the Commission, ESMA aims to finalise the assessments of Hong Kong, Singapore and the USA, as well as on a further group of non-EU countries, by the end of June 2016.

ESMA cooperates with EBA and EIOPA on Key Information Documents for PRIIPs

The Regulation on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs) was finalised in November 2014. The KID, once finalised and implemented, aims to provide EU retail investors with consumer-friendly information to enable retail investors to understand and compare packaged retail and insurance-based investment products (PRIIPs) across the EU, whether offered by banking, insurance or securities firms.

ESAs consult on PRIIPs key information for EU retail investors

In November the Joint Committee of the ESAs – EBA, EIOPA and ESMA – launched a Joint Consultation Paper (CP) on PRIIPs Key Information Documents to gather stakeholder views on proposed rules on the content and presentation of the KID.

The CP set out details on the proposed requirements to be included in the preparation of the KID, including:

- a common mandatory template for each KID, including the texts and layouts to be used;
- a summary risk indicator of seven simple classes for the risk and reward section of the KID;
- a methodology to assign each PRIIP to one of the seven classes contained in the summary risk indicator, and for the inclusion of additional warnings and narrative explanations for certain PRIIPs;
- details on performance scenarios and a format for their presentation, including possible performance for different time periods and at least three scenarios;
- costs presentation, including the figures that must be calculated and the format to be used for these i.e. in both cash and percentage terms;
- specific layouts and contents for the KID for products offering multiple options that cannot be effectively covered in three pages;
- the revision and republication of the KID, to be done at least annually; and
- the KID must be provided sufficiently early for a retail investor to be able to take its contents into account when making an investment decision.

The ESAs also held a Public Hearing on the KID for PRIIPs in Frankfurt on 9 December in support of the consultation.

Next steps

In the light of feedback from stakeholders to the consultation, ESMA will work with the other ESAs to finalise draft RTS on the PRIIPs KID with a view to submitting them to the Commission by 31 March 2016.

ESMA conducts follow-up peer review on Money Market Funds Guidelines

ESMA finalised another peer review on the Money Market Funds Guidelines, which was published on April 15, 2013. The Guidelines 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.

As a number of Competent Authorities had not implemented in full or in part the Guidelines, ESMA decided to carry out a follow-up peer review covering the period from 1 May 2014 to 1 May 2015.

Out of the eight jurisdictions subject to this follow-up peer review assessment, in seven countries the Guidelines are now (BG, LI, LT, LV, MT, PT) or have been after the above period in December 2015 (CY) fully applied - which confirms the benefit of conducting follow-up reviews.

The report on the follow-up peer review provides an update on the findings of the first peer review and sets out the result of this second assessment by peers. It was adopted by the Board of Supervisors on 27th January 2016 and is to be published on the ESMA website.

Corporate Finance

ESMA reviews compliance with Prospectus Directive

ESMA is conducting a peer review to assess the compliance with the Prospectus Directive (PD). This peer review focuses on the quality and consistency of the prospectus approval process of NCAs. In particular, the review focuses on compliance with the provisions of the PD, notably Articles 5, 7, 8, 11, 12 and 13, together with compliance with the Prospectus Regulation.

The objectives of this peer review are firstly, to assess the effectiveness of the application of the Prospectus regime, the efficiency of the approval process as well as the proportionality of the resource allocation to prospectus scrutiny; and secondly, to assess the nature and consistency of prospectus approval processes employed by NCAs, both internally and on a cross-NCA basis.

The peer review process on Prospectus includes a questionnaire to NCAs followed by six on-site visits, as well as interaction with stakeholders in four jurisdictions. 12 stakeholders took part in the on-site visits to exchange information with the ESMA visiting team.

An interim progress report was prepared in June 2015 in order to inform the Commission for the work undertaken in the scope of the revision of the Prospectus Directive.

Data so gathered have contributed to the review and possible re-cast of the Prospectus Directive and Prospectus Regulation.

ESMA increases its focus on sound, efficient and consistent scrutiny of prospectuses

In March of 2015, ESMA concluded its first thematic study in relation to the scrutiny of financial information in prospectuses. While revealing a largely convergent approach among supervisors, the study also brought to light a number of areas of supervisory divergence. An action plan was put in place in order to move towards a more consistent application of the regime, which will ultimately result in the issuance of a supervisory briefing to NCAs.

ESMA will also continue to maintain its Q&As and develop opinions, particularly in relation to the implementation of the Omnibus II RTS which it delivered to the EC on 1 July 2015.

Next steps

The supervisory briefing in relation to the scrutiny of financial information in prospectuses is expected to be finalised in the second quarter of 2016. Following the publication of the outcome of the peer review on prospectuses, ESMA will also take into account the results and encourage greater convergence in prospectus review methodologies through the sharing of good practices. The output of the peer review exercise will also feed into the EC's development of delegated acts as part of the revision of the prospectus regime.

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ESMA promotes harmonised application of the Transparency Directive

During 2015, ESMA undertook a mapping exercise with the aim of understanding how Member States apply certain TD definitions and assessing the current level of harmonisation. On the basis of this exercise, ESMA has updated the Q&A document to bring-it-up-to date with the amended Transparency Directive. In total, 7 new Q&As have been added, 4 revised and 10 deleted.

In addition, ESMA developed a standard form for the notification of major holdings. Adoption of the standard form by NCAs is not mandatory. However, its use is expected to facilitate the notification process for persons subject to the notification obligation and provide market participants with a comparable set of information on major holdings.

Finally, ESMA developed a standard form for the disclosure by issuers of their home Member State. Under the amended TD, an issuer is required to disclose its home Member State to the NCA of the home Member State, the NCAs of the host Member States and the NCA where the issuer has its registered office. In that regard, ESMA considers that use of a single document simplifies the filing procedure while providing to NCAs the necessary information for the application of the TD provisions.

Next steps

In 2016, ESMA will continue to update the Q&As as necessary in order to provide further clarity on the application of TD provisions. ESMA also plans to review whether the standard form for the notification of major holdings and the standard form for the disclosure of home MS have been adopted by NCAs. In addition, ESMA will progress the work on a thematic convergence study in the area of major holdings, expected to be finalised by the third quarter of 2016.

ESMA maps rules and practices concerning the disclosure of directors' remuneration in listed companies

ESMA has continued following the developments of the legislative process for a revision of the Shareholder Rights Directive (SRD). In this context, ESMA is developing a mapping on the disclosure of directors' remuneration in listed companies. In mid-2015, ESMA prepared a questionnaire and received answers from 29 NCAs. Based on an analysis of the responses, the report will contain an assessment of the level of convergence between national rules and practices and will draw some conclusions in order to provide input for possible future work in this area under the revised SRD.

Next steps

The report will be approved in Q1 2016 and communicated to the Commission.

Corporate Reporting

ESMA works on issues related to financial reporting, audit, period reporting and storage of regulated information. In particular, it contributes towards the consistent application of International Financial Reporting Standards (IFRS) and building of a common supervisory culture among accounting standards enforcers throughout Europe.

ESMA contributes to enforcement of financial reporting

Convergence of IFRS enforcement activities

ESMA published the final Guidelines on enforcement of financial information, which entered into force by the end of 2014 and applied to all NCAs as well as any other bodies in the EU undertaking enforcement responsibilities under the Transparency Directive. Therefore, 2015 was the first year of their effective application by European enforcers and as a result of their application, the number of accounting issues discussed before European enforcers take decisions increased significantly, which enhanced the level of supervisory convergence in the enforcement of financial information.

The discussion of accounting topics with the overall objective of strengthening supervisory convergence in the field of corporate reporting take place through the European Enforcers Coordination Sessions (EECS), the forum in which European enforcers exchange views and discuss experiences and decisions relating to the enforcement of financial reporting standards and IFRS in particular.

As in previous years, in order to promote consistent application of IFRS, ESMA, together with the NCAs, identified and published in October 2015 common financial reporting topics which they believed were particularly significant for European IFRS listed companies on the basis of the recurrence of issues and the economic and market situation. Those priorities for the 2015 annual financial statements focus on:

- the impact of the financial markets conditions on the financial statements;
- the statement of cash flows and related disclosures; and
- the fair value measurement of non-financial assets and related disclosures.

Furthermore, ESMA issued its opinion on the Application of the IFRS requirements in relation to the cash contributions to Deposit Guarantee Schemes (DGS) after identifying divergence in the application of IFRS requirements related to accounting for ex-ante non-refundable cash contributions to DGS for which the obligating event is identified at a single point in time.

Finally, ESMA published the Public Statement "Improving the quality of disclosures in the financial statements". The statement was a response of ESMA and the European Enforcers to the concerns expressed by users of financial information about the overload, lack of completeness or relevance of the information provided in the financial statements.

In the report on the activities of the IFRS enforcers in 2015 [1], ESMA provides an overview of all accounting-related activities of enforcers in greater detail.

[1] (ESMA/2016/410)

Next steps

Supervisory convergence work will continue to be the main focus for 2016 through the monitoring of the application of the guidelines on enforcement of financial information. That will be supported by continuing regular EECS meetings (nine meetings planned), publication of regular extracts, and where necessary statements and/or opinions.

In 2016, ESMA, together with EU NCAs, will continue to monitor the level of transparency of issues identified and communicated in 2015 in the common enforcement priorities or in other reviews. It will also continue to actively contribute to the development of IFRS. ESMA will also monitor the application and enforcement of the ESMA's opinion on DGS and the ESMA's statement on Improving the quality of disclosures in the financial reporting.

ESMA contribution to the development of IFRS

ESMA intensified its monitoring and contributions to IFRS developments, had bilateral meetings with the IASB and IFRS IC representatives in which issues of IFRS application were discussed. ESMA provided eleven comment letters on Exposure Drafts and other pieces of work open for consultation, including the Exposure Draft: Conceptual Framework for Financial Reporting, the IASB's Agenda Consultation and the Trustees' Review of Structure and Effectiveness of the IFRS Foundation.

ESMA also participates as an observer at the IFRS Advisory Council, the formal advisory body to the IASB and the Trustees of the IFRS Foundation which meets regularly to give its opinion on the technical agenda and project priorities.

In addition, ESMA continued to actively contribute to the endorsement of the IFRS in Europe. ESMA participated as an official observer in the activities of the European Financial Reporting Advisory Group (EFRAG) where it presented its views on enforceability of IFRS and shared experience of European enforcers on the application of IFRS. In 2015, ESMA provided 13 comment letters to EFRAG, commenting on draft EFRAG comment letters, draft endorsement advices and other pieces of work open for consultation. ESMA also provided specific input to the draft endorsement advice on IFRS 9 *Financial Instruments* in the area of investor protection and financial stability.

ESMA publishes Guidelines on Alternative Performance Measures (APMs)

ESMA published the final Guidelines on APMs, which aim to contribute to the publication of transparent, unbiased and comparable information on the financial performance of issuers in order to provide users with a comprehensive understanding of issuers' performance.

These Guidelines will apply to issuers or persons responsible for the prospectus disclosing APMs when publishing regulated information or prospectuses on or after 3 July 2016 and to NCAs who should monitor and where relevant take action to ensure whether issuers comply with them. All competent authorities confirmed in writing their status of compliance with the Guidelines to ESMA, which published a compliance table on its website identifying 16 countries which comply and 13 countries which intend to comply, mostly by the date of its application, i.e. 3 July 2016.

ESMA monitors developments in the new regulation on audit

This audit legislation adopted in 2014 brought significant changes to the statutory audit directive and introduced a regulation giving ESMA responsibilities related to the technical assessment of public oversight systems of third countries and to the international cooperation between the EU audit oversight authorities and third countries.

In 2015, ESMA established the Audit Working Group in order to monitor developments with impact on financial reporting and auditing as well as discus on areas of common interest for accounting enforcers and audit oversight bodies and tasks assigned to ESMA by the Audit Regulation.

Next steps

In 2016, ESMA will contribute to the work performed by the Committee of the European Audit Oversight Bodies (CEAOB) and will chair a permanent sub-group for the purpose of carrying out technical assessment of public oversight systems of third countries and facilitating the international cooperation between Member States and third countries in this area.

NCAs ask ESMA to build central IT facilities

The new IT Delegated Projects Programme marked 2015 as being a major strategic turning point: for the first time in ESMA's history, 27 NCAs delegated two important IT projects to ESMA – the MiFIR Financial Instruments Reference Data System (FIRDS) and a portal for access to Trade Repositories data (TRACE).

These tasks are legally binding on NCAs, that should have – according to the legislation – all set up a system to collect instruments reference data from trading venues, execute transparency calculations (for the FIRDS project), or connect to the Trading Repositories to collect data.

FIRDS is designed to collect, store and publish data on all EU financial instruments, as well as calculate and publish the transparency and liquidity thresholds (thresholds upon which specific transparency requirements apply when trading such an instrument). This project will collect data directly from approximately 100 trading venues across the EU or from the NCAs, which will send the data to ESMA, which will then perform and publish the necessary transparency and liquidity threshold calculations.

TRACE is intended to provide a single access point to trade repositories data under EMIR, Trade Repositories being new infrastructures that play an important role in bringing transparency and regulatory access to data about derivatives transactions. This project will provide ESMA and 27 NCAs with quick access, through a single platform, to the 300 million weekly reports on derivatives contracts received from 5,000 different counterparties across the EU trade repositories.

For the first time, NCAs decided that, rather than developing 27 different systems in line with the legislation, they could ask ESMA to build only one system, executing the same task for all NCAs. This allowed reducing costs for NCAs, and ultimately optimising the usage of public funds, while at the same time maximising efficiency. To implement this, NCAs formally delegated to ESMA some tasks that are required of them according to MiFIR and EMIR.

These projects will allow ESMA to collect data directly from market infrastructures (trading venues or trade repositories) in a more efficient and harmonised manner and make them available to NCAs and to the public through a centralised system. In turn these also represent a real cost savings, compared with building similar systems in each country, which will mean a lower burden for the financial system and EU taxpayers.

ESMA's Board of Supervisors decided on 17 December 2014 to launch these two IT delegated projects. The delegation agreements for these projects were signed by all the participating NCAs and ESMA by 19 February 2015.

The ESMA Corporate Programme supports ESMA in building its internal efficiency. In 2015, ESMA developed a system allowing the analysis of all databases of ESMA in a single harmonised tool used in supervision and economic analysis. For further details, please refer to earlier in Chapter 3 – ESMA's organisation.

Cross-sector Convergence: The Joint Committee of the ESAs

In 2015, the Joint Committee continued its work as a forum for cross-sector coordination and exchange of information between the ESAs. Under the chairmanship of ESMA, the Joint Committee focused in particular on consumer protection and cross-sector risk assessment. In addition, the ESAs have also made significant progress in those areas of the Single Rulebook which require cooperation across the banking, insurance and markets sectors, such as credit rating mappings, securitisation and anti-money laundering.

ESAs promote cross-sector consumer protection

In the area of consumer protection, the work focused on the regulatory mandate on the development of draft RTS pursuant to the Regulation on Key Information Documents (KID) for Packaged Retail Investment and Insurance-based products (PRIIPs). The Joint Committee published in June 2015 a technical Discussion Paper and in November a comprehensive Consultation Paper. The latter addressed the presentation and content of the KID, including methodologies for the calculation and presentation of risks, rewards and costs within the document, as well as the conditions for fulfilling the requirement to provide the KID in good time. It also addressed the review and revision of the KIDs. The KID will help retail investors in the EU better understand and compare PRIIPs across the EU.

The ESAs continued their policy work on Cross-Selling practices. In view of legal issues, the ESAs decided to abstain from issuing joint guidelines on Cross-Selling practices and to inform the Commission about the issues encountered. Nonetheless, the joint work carried out paved the way for the adoption of ESMA guidelines as required by MiFID II.

In 2015 the ESAs started work on the automation of financial advice which focuses on the characteristics of automated financial advice tools; potential benefits and risks associated with increasing automation of financial advice for consumers and financial institutions. In December 2015 a Discussion Paper was launched for public consultation to assess possible actions to harness the potential benefits of this innovation and mitigate its risks.

In addition, the ESAs held their 3rd Joint Consumer Protection Day on 3 June 2015 hosted by EIOPA in Frankfurt with Commissioner Jonathan Hill as key note speaker.

The event attracted over 300 consumer representatives, academics, legal and financial consultants, national supervisors, experts from the EU institutions and financial services industry (banking, securities, insurance and pensions).

ESAs' analysis of cross-sector risks

The Joint Committee produced two bi-annual cross-sector reports which focused on the identification of key risks and vulnerabilities in the EU financial system. The reports were submitted at the April and August 2015 meetings of the Economic and Financial Committee of the Council (EFC-FST) and also to the ESRB, and subsequently published on the ESAs' websites. They provided an overview of the main cross-sector risks identified in the EU financial system and recommended concrete policy actions to mitigate them. The main risks identified over the past year included weak economic growth in the EU, low interest rates environment, high volatility of financial markets, decreasing structural market liquidity and low profitability of financial institutions.

ESAs' work on anti-money laundering and counter-terrorist financing

The ESAs continued their work on anti-money laundering and counter-terrorist financing and the Joint Committee focused on the ESAs' regulatory mandates under both the new fourth Anti-Money Laundering Directive and the Anti-Money Laundering Regulation.

In the second half of 2015, the Joint Committee consulted on guidelines on risk-based anti-money laundering and counter-terrorist financing supervision, on guidelines on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions. Both guidelines provide competent authorities and credit and financial institutions with a common understanding of the risk-based approach to anti-money laundering and counter-terrorist financing and how it should be managed. They are therefore central to the EU's anti-money laundering and counter-terrorist financing regime.

ESAs work on supervision of financial conglomerates

The Joint Committee published its updated annual list of identified Financial Conglomerates in December 2015. The list shows 78 financial conglomerates with the head of the group in an EU/EEA country, one with the head of the group in Australia, one with the head of the group in Switzerland, and two with the head of the group in the United States.

ESAs work on acquisitions and increases of holdings in the financial sector

The Joint Committee has continued its review of the joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. The Commission requested the ESAs to review the Guidelines from 2008 in order to ensure a common, uniform and consistent application of the Directive on acquisitions and increase of holdings in the financial sector (2007/44/EC). A public consultation paper was published in July 2015 for a three months period.

ESAs assess the initial margin models under EMIR

In early 2015, the ESAs started to assess the compliance of the different initial margin models to the requirements of the draft joint RTS under EMIR and the BCBS-IOSCO framework, and to give some clarification on the supervisory expectations on the models provided to the developers, in order to improve the models. In June 2015, the ESAs launched a second consultation on draft RTS outlining the framework of EMIR with regard to those OTC derivative transactions that will not be subject to central clearing.

Board of Appeal of the ESAs

The ESAs continued to provide operational and secretarial support to the Board of Appeal. The Board of Appeal held its annual meeting in September at the ESMA premises in Paris, decided on one appeal case in 2015 and progressed on another one lodged in autumn 2015.

Joint Committee report on securitisation

In light of the wide scope of application for the disclosure requirements on SFIs in the CRA Regulation, ESMA was appointed to chair a Joint Committee task force on securitisation in order to examine and identify any inconsistencies in EU law regarding requirements concerning SFIs. This task force has focused on requirements related to due diligence, disclosure and supervisory reporting and risk retention rules. In May 2015 [1] the task force published its final report recommending that

- due diligence requirements should be harmonised within the EU;
- (ii) standardised investor reports should reflect the dynamics of SFIs and be stored in a centralised public space;
- (iii) all type of investors should be empowered to effectively conduct their own stress tests; and
- (iv) a harmonised due diligence and disclosure framework should be complemented with a comprehensive regime for supervision and enforcement.

This report, and in particular the reference to the need to build up at EU level common rules for due diligence, retention and disclosure requirements, served as the basis for the Commission proposal for a Regulation laying down common rules on securitisation.

Joint Committee report on the mapping of corporate credit ratings

In accordance with the requirements of CRR and Solvency II ESMA has actively contributed to the preparation of the Joint Committee draft Implementing Technical Standards (ITS) on the mapping of credit ratings issued by External Credit Assessment Institutions (ECAIs) with the aim at creating a safe, consistent and sound regulatory framework in the EU. Pursuant these ITSs, only credit ratings issued by EU registered CRAs (or assigned by central banks under the CRA Regulation) can be used for calculating capital requirements of financial institutions and insurance undertakings.

[1] The report is available here: https://www.esma.europa.eu/sites/default/files/library/2015/11/jc_2015_022_-_final_jc_report_on_securitisation.pdf

The ESAs developed a working method establishing a common methodology for the mapping between credit ratings and the credit quality steps defined in the EU prudential regulation for banking (Capital Requirements Regulation – CRR) and insurance (Solvency II Directive). The standards [1] were submitted to the Commission for endorsement on 11 November 2015.

Next steps

ESMA will closely follow up the endorsement of the draft ITS by the EC in coordination with the two other ESAs during 2016.

Mapping of structured finance ratings

ESMA also participated in drafting the EBA draft ITS on the mapping of structured finance ratings. The goal of this exercise is to specify the mapping between structured finance ratings and credit quality steps that shall determine the allocation of appropriate risk weights to credit ratings..

Next steps

ESMA will continue to follow-up on the endorsement of the draft ITS by the EC closely in coordination with EBA during 2016.

ESMA publishes overview of NCAs compliance with EU rules

In 2015, ESMA started publishing different tables showing the level of NCAs' compliance with different ESMA guidelines. These lists are an important tool to show the level of convergence achieved and flag areas for further improvements. These can be found on ESMA's website under National Implementation of Guidelines.

2.2. Risk monitoring and analysis

Assessing risks to investors, markets and financial stability is key in order to spot emerging trends, risks and vulnerabilities, and where possible opportunities, in a timely fashion so that they can be acted upon. ESMA uses its unique position to identify market developments that threaten financial stability, investor protection or the orderly functioning of financial markets. ESMA's risk assessments build on and complement risk assessments made by the other ESAs, and contribute to the systemic work undertaken by the ESRB, which increasingly focuses on stability risks in financial markets. Internally, the output of the risk assessment function feeds into ESMA's work on the single rulebook, supervisory convergence and the direct supervision of specific financial entities. Externally, we promote transparency and investor protection by making information available to investors via our public registries and databases and, where needed, by issuing warnings to investors. The risk analysis function closely monitors the benefits and risks of financial innovation in EU financial markets.

[1] The final report is available: https://www.eba.europa.eu/documents/10180/1269185/Final+Draft+ITS+on+ECAIs%27%20Mapping.pdf/3f4b46bb-825e-4211-b199-519b6b3bf865
The consultation is available here: https://www.eba.europa.eu/documents/10180/1065442/EBA-CP-2015-08+CP+on+ITS+on+Mapping+of+ECAIs+Credit+Assessments.pdf

In 2015, ESMA monitored trends, risks and vulnerabilities in EU securities markets also contributing to risks assessments of the ESAs and the European Systemic Risk Board (ESRB). ESMA also alerted investors of very high market risks in mid-2015 and continued to conduct in-depth research projects on issues such as investment funds, shadow banking and bond market liquidity all of which may impact systemic risk.

In 2015, ESMA also prepared its first pan-European CCP stress test exercise by developing methodologies, defining the procedure and gathering data.

In addition, ESMA implemented its European Rating Platform which will become a helpful tool to monitor and compare rating activities. This was complemented by a report on the feasibility of mapping credit ratings.

ESMA also monitored financial activities, innovation and retail investor trends in order to keep pace with financial innovation entailing the Authority to assess risks and rewards of new trends and products. Among the issues covered were virtual currencies and structured finance. Linked to this, 2015 saw ESMA preparing for the product intervention powers the Authority will receive under MiFID II – ranging from warnings to possible product bans.

ESMA monitors trends, risks and vulnerabilities

ESMA carries out financial surveillance through its regular reporting activity to identify markets trends and developments and assesses the main risks and vulnerabilities. In 2015, the Authority further extended and deepened its regular market surveillance through its semi-annual Trends, Risks and Vulnerabilities reports and the quarterly Risk Dashboards. In the same vein, it contributed to the work of the ESRB and to risk reports in collaboration with the other ESAs, in particular through the semi-annual ESA Joint Committee reports on risks and vulnerabilities in the EU.

ESMA alerted investors of very high market risks in mid-2015

The first half of 2015 was characterised by increasing concerns regarding market risk. These concerns were driven by large volatility fluctuations, especially in fixed income markets, sustained market valuations ahead of fundamental values, search for yield strategies in a low-interest rate environment, and rising concerns of sudden risk-reassessment. Building on its wide range of risk metrics, ESMA raised its indicator for market risk to the highest level, alerting investors at an early stage to the growing risks in an increasingly fragile economic and market environment.

ESMA anticipated substantive market corrections towards year-end

In the course of the second half of 2015, ESMA's market risk alert was corroborated as valuation risks in equity markets materialised, together with a resurgence of volatility. This development was accompanied by growing uncertainties about economic growth, especially in Emerging Markets, and the expectation of diverging monetary policy, which weighed on foreign exchange market and commodity prices. The drop in oil prices especially coincided with increased tensions in global financial markets. Regarding bond markets, there were ongoing concerns regarding potentially lower liquidity and increased credit risk premia, which may increase the potential for a market correction. Issuance activity was sustained, with capital market financing still exceeding net new bank lending. Nevertheless, there is a strong case

for strengthening the latter, with a view to a more diversified financing base for the EU economy, and especially SMEs.

Next steps

ESMA continues its market surveillance, based on further ongoing refinements in its risk metrics, analytical approaches, and methodologies.

ESMA conducts in-depth research projects

ESMA conducted a wide range of analytical projects in 2015 in support of the core functions of the Authority, including regulatory impact assessments, contributions to stress-testing activities, as well as quantitative research on risks to investor protection, orderly markets, and financial stability. Publicly available results of our work include:

I. Investor protection: risks around alternative indices and smart beta strategies (1)

Alternative index products have grown rapidly since the financial crisis. While they minimise certain weaknesses of traditional market capitalisation-based indices, they expose investors to different risks, including more concentrated sector exposure and increasing the overall investment risk. Alternative index products are not necessarily riskier than traditional models, but they are often more opaque. A low level of transparency makes it difficult for investors to understand the risk-return profile of alternative indices. The main risks are related to the limited transparency of their constituents, weights, methodology and simulated past performance.

II. Investment funds engaging in loan participation and loan origination (2)

The growth of funds investing (or "participating") in loans is one of the most consistent latter-year trends in the EU fund industry, with assets under management multiplying fivefold in the last two years, albeit from a low base. Whilst these funds do provide an alternative asset class in which to invest and offer a portfolio diversification opportunity, they also expose investors to credit and liquidity risk, calling for sophisticated risk-assessment. From an economic policy perspective, loan origination funds could contribute directly to the financing of SMEs, especially when traditional banking or market channels become impaired, as at present. But they might also introduce new sources of risk if not subject to adequate macro- and micro-prudential regulation. In two articles, ESMA enquires the need for a harmonised framework and risk mitigants available to supervisors, and looks at the loan participation fund market in the U.S. for key conclusions to draw about the market segment in the EU.

III. Financial stability: ESMA develops measures to monitor systemic risk in the hedge fund sector (3)

ESMA published a working paper which proposes new measures for systemic risk in the hedge fund sector. These measures are based on the ability of hedge funds to

(1) https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-efs_trv_1-15_526.pdf
(2) https://www.esma.europa.eu/sites/default/files/library/2015_esma_-_1290_-_trv_2_2015.pdf
(3) https://www.esma.europa.eu/sites/default/files/library/esma_wp-2015-2_working_paper_no.2_2015_monitoring_systemic_risk_in_the_hedge_fund_sector.pdf

influence or be influenced by the performance trend of the entire hedge fund sector. The proposed measures display a high ability to identify periods of financial distress and deliver an innovation in the monitoring of systemic risks in the fund industry.

IV. ESMA contributes to a better understanding of shadow banking (1)

Discussions in the regulatory and academic world on how to define the shadow banking sector have been ongoing in 2015. One of the open questions is to which extent asset management activities are part of the shadow banking sector. To shed some light on this question, ESMA has carried out analysis on a focused approach to measuring the shadow banking system. The analysis provides explanations whether and which parts of the asset management industry perform traditional asset management activities and which parts engage in bank-like activities.

V. Orderly markets: sovereign bond market liquidity as a key concern

One of the key risks in the public discussion around capital markets is a perceived lack of liquidity in secondary bond markets. To bring evidence into the debate, ESMA has analysed the impact of primary dealers' financial constraints on the liquidity and pricing of sovereign bonds for nine European countries before and during the financial crisis as well as during the sovereign crisis. The evidence in this article shows that primary dealers' funding costs matter for sovereign bond liquidity. The article also highlights that primary dealers' financial constraints may generally lead to less liquid sovereign bond markets, though these effects depend on the time-period, the issuer and the dealers' origin.

Next steps

ESMA continues its work in the areas of regulation supervision, and supervisory convergence by means of topical analyses, and will present key findings in our publication series "Trends, Risks, and Vulnerabilities", "Economic Reports", and "Working Papers".

ESMA centralises data management activities

In order to concentrate ESMA's activities around data management and also to further enhance data quality and statistical analysis, as part of its new strategic focus ESMA has centralised its data management activities. Further increasing the data use across the board is crucial for providing the analytics and expertise necessary which will allow EMSA to peruse its agenda. This will be achieved by enriched datasets which complement the information content of individual ones and increasing the overall use and awareness of data and quantitative tools within the Authority.

This information collected and processed by ESMA supports its own activities, as well it being shared – under supporting regulations – with other European financial authorities (ESAs and ESRB) and NCAs. In addition, to enhance transparency and investor protection, ESMA provides public EU-wide information to market participants, authorities and the general public through the publication of Registers and other key information in ESMA website

(1) https://www.esma.europa.eu/sites/default/files/library/2015_esma_-_1290_-_trv_2_2015.pdf

ESMA collects data under relevant regulatory frameworks, coming from both supervised entities and NCAs, as well as from commercial vendors and publicly available data. The number, variety, size and complexity of the databases increased in 2015 – including the final implementation of AIFMD database – and this upward trend will remain for the following years leading to the need to implement more powerful tools solutions for the existing and incoming data assets.

In 2015, the new operational structure allowed ESMA to undertake a comprehensive stocktaking of existing proprietary databases and registers, the bundling of expertise from different units, establishing the initial governance arrangements in the new concentrated setup, and establishing up the general data tools to be used for data management, while maintaining operational continuity and data and service quality for ESMA's stakeholders. In addition, the work on refining our data and statistical capabilities continued, including our support to the setting up of the new system for data reporting by CRAs (RADAR System), the new data management and visualization system and the automatization of quantitative analysis that are used in ESMA reports *Trends, Risks, and Vulnerabilities* and the *Risk Dashboard*.

Next steps

ESMA will progress towards a comprehensive data management framework for the Authority, codifying our operational, safety, continuity, confidentiality, and accessibility standards and, thereby, laying the basis for a single, efficient and safe approach towards the growing data needs and responsibilities of ESMA.

ESMA prepares CCP stress testing

ESMA must, under both the EMIR and ESMA regulations, on at least an annual basis, in cooperation with the ESRB, initiate and coordinate a European-wide assessment of the resilience of CCPs to adverse market conditions. As a result of the implementation of EMIR, CCPs are expected to play a continuously increasing role in the financial system in Europe and the assessment of their stability is a key component for assessing the resilience of the wider financial system.

In 2015, ESMA has collected, in close cooperation with the NCAs, data on the exposures of European CCPs in case of clearing members' default under extreme market conditions. A framework was developed for the stress exercise that allows on the basis of the provided data the assessment of the impact of multiple simultaneous clearing member defaults under different types of market stress scenarios also at a European wide level.

The interlinkages between different CCPs due to common clearing participants and the potential impact of different clearing entities belonging to the same group of companies are also considered in order to identify potential systemic risk and create a European wide picture of the sufficiency of the available financial resources to cope with extreme events. The analysis and assessment of the results will be concluded in 2016.

Next steps

In 2016, ESMA will finalise the stress exercise and issue the necessary recommendations if the final assessment exposes shortcomings in the resilience of one or more CCPs.

Credit Rating Agencies

ESMA implements its European Rating Platform

Following publication of the RTS for the presentation of information that CRAs make available to ESMA, in 2015 ESMA started implementing the IT system needed to establish the European Rating Platform (ERP) required by Article 11a of the CRA Regulation. The objective of the ERP is to provide investors, issuers and other interested parties with access to up-to-date rating information and the ability to easily compare all credit ratings that exist with regard to a specific rated entity or financial instrument. ESMA has designed the ERP so as to meet the requirements and objectives laid down in the CRA Regulation and the related regulatory technical standard.

ESMA reports on feasibility of mapping credit ratings

ESMA published, as required in Article 21(4b) of the CRA Regulation, on 2 October 2015 a report to the Commission on the feasibility of establishing one or more mappings of credit ratings published on the ERP. In this report, ESMA recommended that a separate mapping exercise of is not carried out for the ERP as it would risk concealing or misrepresenting differences in methodology and performance between CRAs.

Next steps

ESMA expects the European Rating Platform to go live in July 2016.

Update on Q&A regarding the solicitation status of credit ratings

In response to queries raised by CRAs about the reporting of solicited and unsolicited credit ratings through the Central Repository (CEREP) ESMA issued in December 2015 an update to its Q&A on the implementation of Regulation 462/2013 on credit rating agencies on this issue. The Q&A highlights that a solicited credit rating is issued following a request from the rated entity, issuer or the related third party.

Financial Innovation

ESMA monitors financial activities, innovation and retail investor trends

ESMA has developed the skills and tools to better monitor financial activities and innovation. The monitoring employs three primary sources of information: firstly, a range of contacts to generate intelligence on market activities; secondly, quantitative metrics on market movements from a variety of data sources; thirdly, active interaction with NCAs in Europe and other regulators in major financial centres outside Europe.

ESMA analyses Virtual Currencies (VCs) and Distributed Ledger Technology (DLT)

In July 2015, ESMA concluded a public Call for Evidence to better understand the breadth and depth of financial instruments with VCs as an underlying as well as the anticipated applicability of DLT within securities markets pre and post-trading. After analysing the results of the Call, ESMA formed a task force composed of certain Member States to pursue the potential uses of the DLT technology within securities markets and any risks the technology may pose to the existing regulatory environment.

Next steps

ESMA will continue to analyse the potential for the technology within securities markets as well as any risks it may introduce.

ESMA continues to assess developments within the crowdfunding sector

In December 2014, ESMA published an Opinion to NCAs on supervising investment-based crowdfunding platforms. In 2015, ESMA formed a supervisory forum made up of Member States to continue to monitor developments within the crowdfunding sector both a regulatory and market standpoint.

Next steps

ESMA will continue to monitor developments in the crowdfunding sector and share results and feedback within the ongoing crowdfunding supervisory forum.

ESMA monitors retail investor trends

In 2015, ESMA gathered data on retail investor trends from a variety of sources. These included surveys Member State completed, commercially available analytical data, and meetings with retail investor representatives. The results of the analysis are regularly reported in ESMA's Trends, Risks and Vulnerabilities document.

Next steps

ESMA continues to improve the insights gained on monitoring retail trends and will share the results on an ongoing basis through its Trends, Risks and Vulnerabilities document.

Private and bilateral transactions for structured finance instruments

Following the publication of the RTS on disclosure requirements for structured finance instruments (SFIs), on 9 March 2015 ESMA published a Call for evidence on the extension of these disclosure requirements to private and bilateral transactions for SFIs [1]. The purpose was to serve as an input for the "phase-in approach" on the extension of the disclosure requirements to those instruments. This work

[1] Call for evidence on the extension of the disclosure requirements to private and bilateral transactions for structured finance instruments (2015/558) available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-558_call_for_evidence_on_private_and_bilateral_sfis.pdf

stream is currently on hold with the EC proposal for creating a European framework laying down common rules for securitisation and creating simple, transparent and standardised securitisation products on 30 September 2015 [1].

Next steps

This work will be pursued in 2016 pending the final adoption of the Regulation laying down common rules on securitisation

ESMA prepares for EU product intervention powers

MiFIR's product intervention provisions seek to strengthen the supervision of products and services by introducing the possibility:

for Competent Authorities to set permanent bans on financial products or activities or practices (and ESMA is to perform a facilitation and co-ordination role in relation to action taken by Competent Authorities); and

for ESMA to set temporary bans on products, practices and services which could consist of a prohibition or restriction on the marketing, distribution or sale of certain financial instruments or on financial instruments with certain features or on a type of financial activity or practice.

[1] The Commission proposal is available here: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0472.

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ESMA prepares implementation of intervention powers

In the first phase of the preparation for the implementation date, the ESMA accomplished the following activities. First, it developed procedures and guidance materials to ensure powers are used in conformity with legislative requirements. Second, it outlined the scope and potential implications of the powers as they relate to risks to investor protection, market integrity and financial stability. Third, it designed an ongoing market monitoring survey. Fourth, ESMA developed an analytical framework for the assessment of issues and how best to prioritize.

Next steps

2016 marks Phase 2 for the implementation of the product intervention powers with the following activities planned. First, launch and analyse a one-off market monitoring techniques survey. Second, launch pilot ongoing market monitoring survey. Third, disseminate the guidance materials to a wider range of NCAs. Fourth, establish a pipeline of potential product intervention issues. Fifth, expand preparatory work to a wider range of NCAs.

2.3. Single rulebook

The financial crisis exposed the negative effects that unevenly applied legislation can have for financial markets, its consumers and the economies at large. Therefore, it was felt necessary to introduce effective instruments to establish more harmonised applications of EU law. In order to foster more coherence in securities legislation and its application, ESMA can issue RTS and implementing technical standards (ITS) to ensure a level-playing-field and adequate protection of investors, which further detail and clarify the Level 1 EU legislation.

Those TS 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 is responsible for developing technical standards for those legal texts framing the European securities markets (MiFID), their infrastructure (EMIR) and orderly functioning (short-selling, MAD), but also for key financial market participants such as CRAs and investment funds (UCITS, AIFMD).

In 2015, delivering the single rulebook for securities markets entailed ESMA developing the MiFID II's implementing framework through technical standards. These tackled issues such as a new transparency regime for equity and non-equity and requirements for venues, firms and on financial consumer protection and intermediaries,

A key achievement in building a single rulebook for post-trading entailed work on both EMIR and the CSDR. In 2015, ESMA shifted its focus towards sound implementation of EMIR by introducing validation rules for trade reporting and reading clearing obligations for interest rate and credit default swaps as well as for NDFs. ESMA also provided input on how to improve the EMIR legal framework. Another important milestone was ESMA's preparation of the implementation of the CSDR by delivering technical standards on CSD requirements and internalised settlement.

The Authority clarified the framework for venture capital and social entrepreneurship funds and ESMA called on the Commission to modify the UCITS Directive.

Regarding credit rating agencies, furthering the single rulebook meant looking into the areas that need improvements in order to increase competition and choice in the CRA industry.

Regarding market integrity, ESMA provided implementing measures for MAR in order to increase integrity and investor protection. In addition, ESMA prepared implementing measures for the future Benchmarks Regulation and reviewed principles for providers of shareholder voting research and analysis.

MiFID II

The MiFID review represents probably the most far-reaching overhaul of European securities markets legislation in the past decade and is one of the EU's key responses to the financial crisis.

MiFID II/MiFIR introduces changes that will have a large impact on the EU's financial markets, these include transparency requirements for a broader range of asset classes; the obligation to trade derivatives on-exchange; requirements on algorithmic and HFT and new supervisory tools for commodity derivatives. It will also strengthen protection for retail investors through limits on the use of commissions; conditions for the provision of independent investment advice; stricter organisational requirements for product design and distribution; product intervention powers; and the disclosure of costs and charges.

The new MiFID II framework intends to make EU markets safer, more transparent and efficient and to level the playing field for market participants across the Union. The co-legislators came to a political agreement in early 2014, the MiFID II package entered into force in July and it will apply from January 2018.

ESMA develops MiFID II framework for secondary markets

In the course of 2015, ESMA consulted and finalised the main bulk of the mandates received from MiFID II. Following the public consultation of the first set of technical standards in December 2014, ESMA published an addendum to that consultation focused only on transparency of specific instruments (foreign exchange derivatives, credit derivatives, other derivatives, and contracts for difference). ESMA had to process more than 5,000 pages of responses and the early legal review from the Commission legal services. Both elements were used to refine the final technical standards, published on the ESMA's website on 28 September 2015.

ESMA also published in August a further consultation paper regarding a number of implementing technical standards: on suspension and removal of financial instruments, on forms, templates and procedures in relation to data reporting services providers and about position reporting. Following this round of consultation, ESMA finalised the draft technical standards and published them on its website in December 2015. All these technical standards (both September 2015 and December 2015 packages) were sent to the Commission for endorsement.

ESMA designs new transparency framework under MiFID II

With respect to the transparency-related technical standards, ESMA delivered in September 2015 its draft proposals which are updating the existing MiFID pre-trade and post-trade transparency regime for shares as well as developing new transparency obligations for equity instruments similar to shares and a multitude of other non-equity instruments. ESMA has been working intensively over the past year on the calibration of this new transparency regime, building on the responses received to the December 2014 (with an addendum published in February 2015) consultation paper and carrying out a comprehensive data analysis to ensure that transparency improves without damaging the orderly functioning of the financial markets.

This has involved, in particular, the challenging task of setting thresholds for assessing the liquidity of all non-equity financial instruments captured by MiFID II as well as calibrating the different waivers for pre-trade transparency and deferrals to post-trade transparency which are of particular relevance to protect large size transactions in liquid instruments from predatory trading and, hence, avoid unintended consequences of the new transparency regime on liquidity. In its draft RTSs sent for endorsement to the Commission, ESMA has decided, rather than relying on static thresholds, to introduce a system allowing periodic reassessments of the liquidity status of non-equity financial instruments and of the thresholds to be used for pre-trade transparency waiver and post-trade deferrals.

Next steps

After having sent its draft RTSs to Commission for endorsement, ESMA will now concentrate its efforts on the implementation of transparency-related RTSs and in particular issues linked to the transitional provisions and the setup of appropriate IT infrastructures.

ESMA's works on organisational requirements for trading venues

ESMA has delivered a set of technical standards regarding the obligations of regulated markets with respect to the admission of financial instruments to trading; the suspension and removal of financial instruments from trading (from two different perspectives: the identification of which derivatives should be considered as related or referenced to another financial instrument and the format and timing of the publication of a suspension or removal); the information needed to authorise a multilateral trading facility or an organised trading facility and the format in which that information has to be provided; and finally, about the forms, templates and procedures related to the authorisation of market participants providing data reporting services.

Next steps

ESMA shall prepare guidelines on the management body of regulated markets and the suitability of the members of the management body of data reporting services providers. ESMA will also facilitate the practical implementation of the set of technical standards once they are approved by the Commission.

Future provisions on data publication and open access

ESMA finalised the draft technical standards following feedback from the consultation paper. The set of technical standards that were submitted to the Commission specify the circumstances under which access to a trading venue by a CCP or by a trading venue to a CCP could be denied and the conditions that should be respected when granting access, the conditions for CCPs and trading venues to access benchmarks, the offering of pre-trade and post-trade transparency data (data disaggregation), and the authorisation, organisational requirements and publication of transactions for data reporting services providers, including forms, templates and procedures.

Next steps

In 2016 ESMA will develop one remaining technical standard on the scope of the non-equity tape, and will continue working on the implementation of MiFID II by providing further guidance in form of Q&As and/or guidelines.

ESMA details MiFID's micro-structural issues

Regarding the MiFID II provisions on algorithmic trading, ESMA revised its draft technical standards following the responses received to the consultation paper along the main following lines: the scope of the proposal for tick sizes was narrowed down to shares, depositary receipts and ETFs (and within this category, only those ETFs which have as underlying instruments covered by the regime); the cases in which having in place a market making scheme is mandatory were made explicit and also the different conditions and consequences of market making strategies, market making agreements and market making schemes were clarified; the procedure to calculate the effective order-to-transaction ratio incurred by market participants (as opposed to the maximum order-to-trade ratio) was determined; the provision of co-location services was regulated and the requirements to ensure that the fee structures of trading venues do not create incentives for disorderly trading conditions or market abuse were made explicit; finally, ESMA approved an overhaul of the organisational requirements for investment firms and trading venues engaged in algorithmic trading that expanded the work advanced in 2012's ESMA Guidelines on systems and controls in an automated trading environment.

Next steps

ESMA shall prepare guidelines on the calibration of trading halts. ESMA will also facilitate the practical implementation of the set of technical standards once they are approved by the Commission.

ESMA looks into commodity derivatives

ESMA has delivered to the Commission its technical standards in relation to the definition of ancillary activity and to the new position limits regime, i.e. on the specification of a number of elements which are necessary for applying the position limits regime and on the definition of the methodology for calculating the limits themselves. ESMA has also published its proposal to the Commission on the implementing technical standards about the formats of the public weekly reports, the submission and centralised publication of those position reports by ESMA, as well as

the format of the daily position reports to be sent by investment firms to competent authorities.

ESMA also published in May a set of Guidelines on the application of the definitions in Sections C6 and C7 of MiFID I.

Next steps

ESMA will facilitate the practical implementation of the set of technical standards once they are approved by the Commission.

ESMA delivers standards on financial consumer protection and intermediaries

In 2015, ESMA has continued its remarkable task under MiFID II and MiFIR by finalising the technical standards mandated in the area of investor protection and intermediaries:

- RTS and ITS on cooperation and exchange of information between competent authorities and consultation prior to granting an authorisation of an investment firm;
- RTS and ITS on information to be notified by investment firms when providing investment services in another Member State under the freedom to provide investment services or the right of establishment;
- RTS on information to be provided to ESMA by third-country firms in the context of the MiFIR third-country regime;
- RTS and ITS on the information to be exchanged and the templates, standards and procedures for competent authorities when cooperating in supervisory activities, on the-spot-verifications, and investigations;
- ITS on procedures and forms for submitting information on sanctions and measures;
- RTS on best execution.

The topics of authorisation, establishment of a branch and third-country firms are important to create convergence among Member States and to make sure that the same level of scrutiny is applied when investment firms enter the market regardless of the Member State. The RTS on best execution set out the details of information to be published by investment firms and execution venues in respect of execution quality. Investment firms will also be required to publish information on the order flow of client orders. This will lead to increased visibility of execution quality being achieved by investment firms and aims to improve execution outcomes for investors.

The standards have been published on ESMA's website and have been submitted to the Commission for endorsement.

Next steps

ESMA's technical standards have been submitted to the EC to consider their endorsement as delegated or implementing regulations under MiFID II and MiFIR.

EBA and ESMA advise Commission on prudential regime for investment firms

The prudential regulation that governs the exercise of investment services stems from the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR). Depending on the services they exercise, and their combination or size, some of the investment firms are exempt from prudential regulation, some are subject to lighter prudential regulations, and others are subject to the full CRD/CRR rules.

In this context, EBA and ESMA have considered the suitability of certain aspects of the prudential regime for investment firms. The report presents a granular overview of the categorisation of investment firms, a detailed analysis of the risks faced by investment firms and the prudential requirements they are subject to and makes certain recommendations that should lead to a more proportionate and risk-based prudential regime for investment firms.

MiFIR: ESMA delivers standards on post-trade matters

MiFIR also included requirements addressing some aspects related to post-trading infrastructures. In particular, MiFIR included three sets of mandates related to post-trading matters:

- requirements to ensure certainty of clearing;
- requirements to ensure a wider but still protected access to clearing via indirect clearing arrangements; as well as
- requirements to ensure open access to CCPs.

In the latter case, this work was integrated into a larger set of requirements discussed in the MiFID II/ MiFIR section.

In the first case, MiFIR aims at certainty of clearing through straight through processing (STP) requirements. MiFIR extends the clearing obligation to exchange traded derivatives and then requires all cleared derivatives, OTC or exchange-traded, to be submitted and accepted for clearing as quickly as technologically practicable. The sooner quicker trades are cleared, the smaller is the time window when the counterparties have bilateral exposure between them. However, not all trades are executed the same way, for instance trades executed electronically can be processed more quickly than voice trades. ESMA took all these elements in consideration to draft technical standards that set realistic time requirements throughout the processing lifecycle of cleared derivative transactions.

In the second case, MiFIR mirrored the objectives set in EMIR for indirect clearing arrangements. Indirect clearing services enable counterparties to access clearing when they are not or can't be a direct member of a CCP or the direct client of a clearing member, thus widening access to CCPs to a larger set of counterparties. This access to clearing in general underpins the ability of these counterparties to access trading of certain derivatives. MiFIR thus recognises the importance of indirect clearing for these counterparties and aims at ensuring an appropriate level of protection, i.e. an equivalent level of protection as referred to in EMIR.

Both the draft STP requirements as well the draft indirect clearing requirements were included in the MiFIR consultation paper of December 2014. Following the analysis of the responses from stakeholders and an early legal review with the Commission, the finalised draft RTS on STP requirements was delivered with the rest of the MiFIR package on 28 September 2015, and a new consultation paper on the

possible modifications to the draft indirect clearing requirements was published. The new consultation paper on indirect clearing was a joint consultation under the EMIR and the MIFIR mandates, in line with the mandate for consistency between the two.

Next steps

In 2016, the responses to the new consultation on indirect clearing will be analysed in order to finalise the draft RTS that will be submitted to the Commission.

Post-Trading - CSDR

ESMA prepares implementation of CSDR

The Central Securities Depositories Regulation (CSDR), which entered into force on 17 September 2014, harmonises the authorisation and supervision of CSDs within the EU. It provides organisational, conduct of business and prudential requirements to ensure CSDs are safe, efficient and sound. It also introduces a settlement discipline regime, including measures to prevent and address settlement fails, such as a mandatory buy-in and cash penalties as well as reporting requirements for internalised settlement.

On 18 December 2014, ESMA launched three consultations on:

- draft technical standards on CSD requirements, internalised settlement and settlement discipline;
- draft technical advice on the level of cash penalties for settlement fails and on the substantial importance of a CSD; and
- draft guidelines on the access to CCPs or trading venues by CSDs,

These ended on 19 February 2015 and ESMA held a public hearing on 13 January 2015. Following these interactions with stakeholders, ESMA sent first draft technical standards for early legal review by the EC. This new process and the need to analyse and discuss the comments received explain why the standards were, in agreement with the EC, not delivered in June but September 2015.

ESMA delivers standards on CSD requirements and internalised settlement

On 28 September 2015, ESMA published and delivered draft Technical Standards on CSD requirements and on internalised settlement to the EC, covering:

- harmonised requirements applicable to CSDs:
- requirements for EU CSDs covering risk monitoring tools, record keeping, investment policy, reconciliation measures;
- requirements regarding non-discriminatory access to CSDs by participants, issuers, CCPs and trading venues, or between CSDs, as well as access by CSDs to CCPs and trading venues;
- cooperation requirements among authorities;
- requirements for the recognition of third-country CSDs, ensuring a level-playing-field; and
- internalised settlement reporting requirements, *i.e.* how to report internalised settlements to national regulators in order to allow for proper risk monitoring.

Next steps

The EC is currently assessing ESMA's draft technical standards in order to endorse them. Once endorsed, both the European Parliament and the Council have an objection period. The entry-into-force of the technical standards on prudential requirements for CSDs delivered by the EBA to the EC on 16 December 2015 will trigger the authorisation process for CSDs.

In 2016, ESMA will start working on the related guidelines and Q&As that are necessary for the purposes of the authorisation process. The application of the standards on internalised settlement reporting will be subject to a two-year phase-in after their entry-into-force. In 2016, ESMA will start drafting related guidelines and Q&As in order to support the implementation of these requirements which will require important technological adjustments.

ESMA advises on the level of penalties and substantial importance

On 4 August 2015, ESMA published and delivered to the EC the Technical Advice on the level of penalties for settlement fails, and the substantial importance of a CSD for the functioning of the securities markets and the protection of the investors in a host Member State, as well as the related impact assessment, further to the mandate received from the Commission.

Next steps

The EC is currently assessing ESMA's Technical Advice in order to adopt delegated acts required under CSDR.

ESMA finalises standards on settlement discipline

ESMA conducted a third consultation under CSDR focusing on the operation of the buy-in process from 30 June to 6 August 2015. This consultation was launched in order to determine in particular who should be the party liable for the execution of the buy-in for OTC transactions not cleared by a CCP.

Given the need to analyse the responses received and to continue discussions with the EC on the legal feasibility of the options considered regarding the entity responsible for the execution of the buy-in, the delivery of the draft technical standards on settlement discipline has been delayed.

Next steps

ESMA expects to deliver its final draft technical standards on settlement discipline to the EC early 2016. Once endorsed by the EC, both the European Parliament and the Council have an objection period.

EMIR

ESMA shifts focus towards sound implementation of EMIR

EMIR constitutes an essential part of the European response to the financial crisis and to the G20 objectives of the 2009 Pittsburgh summit, along with MiFID II. Under EMIR, ESMA was mandated to develop a series of technical standards to specify the practical details of the requirements that would ensure the objectives defined in EMIR come to fruition.

Now that this rulemaking work is almost complete, the focus of the NCAs and ESMA in particular is moving from developing a single rulebook to ensuring supervisory convergence when implementing these rules. Indeed, having a consistent application within the EU is key in ensuring that the overall objectives of EMIR are met and a level-playing-field for all market participants.

The following paragraphs detail the important efforts made to reach the end of the rulemaking phase for EMIR, as well as the increasing activities now related to the successful implementation of EMIR.

ESMA finalised details for start of clearing obligation

With the overarching objective of reducing systemic risk, EMIR establishes the obligation to clear with Central Counterparties (CCP) certain OTC derivative contracts (the clearing obligation). The mandate of ESMA in this context is to determine which classes of OTC derivative contracts are appropriate to mandatory central clearing, based on a number of criteria defined in the regulation, such as liquidity and standardisation.

The clearing obligation procedure begins when a CCP is authorised under EMIR, or when ESMA has accomplished a procedure for recognition of a third-country CCP.

At the end of 2015, 16 CCPs were authorised, including eleven CCPs clearing OTC derivatives, hence triggering the "bottom-up" clearing obligation process, which requires ESMA to analyse and determine the set of classes of OTC derivatives to be subject to the clearing obligation amongst all the classes covered by the CCP authorisations.

In 2015, ESMA has continued its analysis of OTC derivatives and has proposed a clearing obligation for some of them. In particular:

Clearing obligation for interest rate swaps

Following the delivery to the Commission on 1 October 2014 of a final report on draft RTS proposing a clearing obligation on OTC interest rate swaps denominated in some of the most liquid currencies (i.e. EUR, GBP, JPY and USD), the Commission notified ESMA on 18 December 2014 of its intention to endorse it with amendments.

As a result, on 6 March 2015 ESMA published an opinion with amended draft RTS - the amendments introduced differed dates of application of the frontloading provision and a new provision on the treatment of non-EU intragroup transactions. The

corresponding regulation [1] entered into force on 21 December 2015, with dates of application phased-in from June 2016 to December 2018.

On 10 November 2015, ESMA published a final report with draft RTS proposing the clearing obligation for interest rate swaps denominated in additional currencies with a European focus, i.e. NOK, PLN and SEK.

Clearing Obligation for index credit default swaps (CDS)

On 1 October 2015, ESMA published a final report on draft RTS proposing the clearing obligation for certain index CDS based on European entities. The classes on which mandatory clearing is proposed do not materially differ from those upon which stakeholders were consulted on 11 July 2014. However the phase-in periods were slightly adjusted to take into account the number of CCPs available to clear those classes.

Clearing Obligation for foreign-exchange non-deliverable swaps (NDFs)

Following the analysis of the responses to the consultation paper published in October 2014, ESMA issued a feedback statement (on 4 February 2015) concluding that the clearing obligation for NDFs was not considered at this stage. Additional time is needed to take into consideration the relatively limited experience of counterparties with the central clearing of NDFs, the number of CCPs clearing them and the implementation schedule of the clearing obligation at international level.

Next steps

In 2016, the Commission is expected to endorse the RTS on interest rate swaps denominated in NOK, PLN and SEK, as well as the RTS on index CDS. ESMA will also continue analysing other classes of OTC derivatives for the purpose of the clearing obligation.

Consequently, as foreseen in EMIR, to ensure that stakeholders are adequately informed, ESMA will continue to publish and maintain all information related to the clearing obligation in the Public Register *available on ESMA's website.*

Looking ahead, the EMIR review

While some important obligations stemming from EMIR have been fulfilled, EMIR is already undergoing a review. Given ESMA's statutory role and various mandates in EMIR, ESMA has been actively contributing to the review. Indeed, ESMA has gained valuable insights on the many benefits, and some of the challenges, of this Regulation.

Specifically, in 2015, ESMA drafted a report on the extension of EMIR provisions on interoperability to derivatives. After detailing the concept of interoperability and its general EU regulatory framework, the report provides a mapping and a description of the current interoperability arrangements between EU CCPs for different product types. Finally, it examines the reasons for extending the current EMIR framework to derivatives taking into account the corresponding costs and benefits to then conclude

[1] **Commission Delegated Regulation (EU) 2015/2205, OJ L 314, 1.12.2015, p. 13.**

on the opportunity of such extension and its scope, i.e. restricted to ETDs and not yet to OTC derivatives. The report was submitted to the Commission on 1 July 2015.

ESMA drafted four other reports on EMIR that were submitted to the Commission on 13 August. Three reports were in response to a request from the Commission, and the corresponding mandate included in the review clause of EMIR, on three specific topics. The fourth report was on additional issues and was a response to the public consultation the Commission ran from May to August 2015.

First of all, in the first EMIR Review Report on the systemic importance of non-financial counterparties (NFC), the main findings are around the definition of NFC and on the application of the hedging criteria in the calculation of the thresholds, which is prone to differences of interpretation. The report proposed some changes to ensure a level-playing-field and the proper measure of the systemic relevance of NFCs.

In relation to the second EMIR Review Report on procyclicality, the report analyses the different options adopted by CCPs to cope with procyclicality and recommends further specifying the rules for implementing the counter-cyclical tools for margins and collateral, including regular testing and transparency on the results.

The third EMIR Review Report covered collateral margining and securing arrangements but primarily the arrangements related to segregation and portability. In particular, the report elaborated on the issue of conflict of laws with regard to insolvency, in relation to which it suggests to clearly indicate the rights attached to each account structure and to use different margin periods of risk to incentivise more secure account structures.

ESMA also drafted a fourth EMIR Review Report that elaborated on many different matters ESMA has faced during the implementation of EMIR. In particular, it highlighted particular concerns and possible improvements related to the clearing obligation, the process of recognition of third-country CCPs as well as the necessary changes to ensure a more effective supervision and enforcement for trade repositories.

Next steps

ESMA will continue to stay engaged on such an important piece of regulation, and possible amendments to this regulation, for which it has a lot of expertise and responsibilities.

ESMA reviews some of its EMIR standards

Beyond the four reports published in the context of the EMIR Review, ESMA has also consulted in 2015 on the possible amendments to three different EMIR RTS and one EMIR ITS. The ITS and the first RTS relates to the trade reporting requirements, the second one to the liquidation period defined in the CCP requirements and the third one relates to indirect clearing arrangements.

With regard to the first RTS, ESMA submitted on 13 November 2015 to the Commission a draft RTS and ITS amending the RTS and ITS on trade reporting requirements under Article 9 of EMIR. The most significant improvements to reporting rules introduced by the revised technical standards include: clarification on how complex trades should be reported, reporting of details of collateral exchanged

between counterparties, clarification on how valuation should be performed for non-cleared contracts, refinement of definitions and formats for data fields to ensure that data is reported in a consistent manner. Furthermore, acknowledging the importance of consistent and robust identification of relevant parties involved in a trade, use of Legal Entity Identifiers (LEI) has been imposed for all the parties that are eligible for LEIs. In addition to that, RTS and ITS incorporate a series of provisions based on the already existing Q&As, most importantly on reporting of notional, collateralization and clearing, generation of Unique Trade Identifiers and the rules to be followed for determining whether the counterparty is a buyer or seller.

In relation to the second RTS, on 27 August 2015, ESMA, through the publication of a Discussion Paper, launched a revision process of the RTS No 153/2013 on CCP requirements regarding the minimum liquidation period to be applied by European CCPs on client accounts in order to consider introducing a one-day gross account structure. This aims notably to ensure a level-playing-field with the third countries regulatory framework recognised as equivalent to EMIR which have similar types of accounts. On 14 December 2015, ESMA published a consultation paper on the draft amended RTS.

Finally, with regard to the third RTS, on 5 November 2015, ESMA launched a consultation on a set of possible amendments to the RTS (EU) No 149/2013 on indirect clearing arrangements for OTC derivatives. The objective was to address the issues encountered since its initial entry-into-force leading to a lack of indirect clearing services being developed and offered, and as well to enable consistency between this RTS and the RTS being drafted under the MiFIR mandate on indirect clearing arrangements for exchange-traded derivatives.

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Next steps

With respect to possible amendments to RTS that had been developed by ESMA under EMIR, ESMA will analyse the responses to the consultations and will decide on the way forward.

ESMA introduces validation rules for trade reporting

Trade Repositories are expected to validate the reports submitted by the reporting entities with the objective of ensuring that reporting is performed according to the EMIR regime, including the specifications of the Technical Standards. In order to ensure the consistent application of the validations ESMA has developed and published Validation rules. First set of validation rules ("Level 1 validations") specifying which fields are mandatory in all circumstances and under what conditions fields can be left blank or include the Not Available (NA) value, was already implemented in December 2014.

The Level 2 validations refer to the verification that the values reported in the fields comply in terms of format and content with the rules set out in the technical standards. Where applicable, the logical dependencies between the fields are taken into account to determine the correct population of the fields. ESMA finalised its work on the definition of Level 2 validations and published the validation rules in April 2015. Since then, and prior to the implementation in November 2015, ESMA received from market participants and TRs further specific queries related to the validation of some fields. Those queries were carefully assessed resulting in a small number of further minor amendments necessary to refine the validations. Updated versions of the validation rules were published in July and November 2015.

Next steps

ESMA will review the validation rules with a view to adjust them to the revised reporting standards, as well as to provide further clarity in the areas where it may be required.

ESMA works on technical standards on bilateral margining

In September 2013, the BCBS-IOSCO Working Group on Margin Requirements (WGMR) finalised its report on margin requirements, and subsequently published revisions to the framework on 18 March 2015. During 2015, ESMA, together with EBA and EIOPA, continued their work on the development of draft RTS on bilateral margins in line with the agreed international technical standards.

For those OTC derivative transactions that will not be subject to central clearing, the draft RTS prescribe the regulatory amount of initial and variation margin that counterparties should exchange as well as the methodologies for their calculations. In addition, these draft RTS outline the criteria for the eligible collateral and establish the criteria to ensure that such collateral is sufficiently diversified and not subject to wrong-way risk.

As a result, the ESAs published a second Consultation Paper on draft RTS that have been revised in line with the newly agreed international standards. The consultation ended on 10 July 2015.

Next steps

In 2016, the ESAs will submit their final draft RTS to the Commission for endorsement.

Investment Management – Fund regulations

ESMA clarifies framework for venture capital and social entrepreneurship funds

The Regulations on European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) started to apply in July 2013. In May 2014 the Commission requested technical advice from ESMA on the content of the delegated acts foreseen by the two Regulations.

Advice on definition of social objective and measurement of social impact

The advice submitted to the Commission in February reflected the structure of the Commission's original request and covered the following areas:

- the types of goods and services, methods of production for goods and services and financial sup-port embodying a social objective;
- conflicts of interest of EuSEF and EuVECA managers, respectively;
- the methods for the measurement of the social impact; and
- the information that EuSEF managers should provide to investors.

Throughout the advice, the underlying intention was to design a framework which facilitates the take-up of these products by the industry while ensuring there are tailored and proportionate requirements in place.

Next steps

ESMA will provide input to the Commission as necessary in view of the adoption of the delegated acts based on the technical advice.

ESMA calls for modification of UCITS Directive

In July 2014 ESMA published a discussion paper (DP) on the calculation of counterparty risk by UCITS for OTC financial derivative transactions subject to clearing obligations. That discussion paper distinguished between different clearing arrangements. For each of those clearing arrangements, ESMA analysed the impact of a default of the clearing member and the client for the calculation of the counterparty risk by UCITS. ESMA followed up that DP with the submission of an opinion to the European Parliament, Council and Commission in May 2015.

Under EMIR, certain OTC financial derivative transactions are subject to the clearing obligation. Questions had arisen as to how the limits on counterparty risk in OTC financial derivative transactions that are centrally cleared should be calculated by UCITS and whether UCITS should apply the same rules to both OTC financial derivative transactions that are centrally cleared and exchange-trade derivatives (ETDs).

ESMA's Opinion

ESMA believes that the UCITS Directive should no longer distinguish between OTC financial derivative transactions and ETDs. Instead, the distinction should be between cleared and non-cleared OTC financial derivative transactions. For OTC financial derivative transactions that are not centrally cleared, ESMA is of the view that there is no need to modify the UCITS Directive and the current counterparty risk limits of Article 52 of the UCITS Directive should continue to apply.

ESMA's opinion is that counterparty risk limits should be calibrated to the different types of segregation arrangements taking into account elements such as the portability of the position in the case of a default of the clearing member. In particular, ESMA set out its view that under individual segregation, UCITS should not apply counterparty risk limits to clearing members whereas under omnibus client segregation UCITS should apply some counterparty risk limits.

Moreover, ESMA believes that UCITS' counterparty risk limits to EU CCPs and some non-EU CCPs recognised by ESMA should take into account the relatively low counterparty risk of these entities.

Next steps

ESMA will liaise with the Commission in view of a possible revision of the UCITS Directive to address the points highlighted in the opinion.

Credit Rating Agencies

Competition and choice in the CRA industry

In accordance with Article 39 of the CRA Regulation, on 2 October 2015 ESMA published Technical Advice to the Commission covering a wide range of issues concerning the market for Credit ratings and Credit Rating Agencies. In particular, this Technical Advice provided an assessment of the impact and effectiveness of some of the provisions of the CRA Regulation regarding conflicts of interest, competition and structured finance instruments.

The Technical Advice found that while the EU CRA Regulation has improved the governance and operation of CRAs it is too soon to comprehensively assess the impact of measures regarding competition and conflicts of interest given their only recent entry-into-force in 2013. The Technical Advice also found that of the 24 registered CRAs, only the largest offer credit ratings for all asset classes throughout the EU and that the high fees charged and regular fee increases could indicate limited competition for the provision of credit ratings in some specific markets within the EU. The Technical Advice concluded that the measures to stimulate competition in the markets for ratings of structured finance instruments have had little impact to date. For example, the rotation requirement for CRAs rating re-securitisations has not yet been applied in practice, as these markets have not recovered in Europe since the financial crisis.

ESMA works on reducing reliance on credit ratings

On 2 October 2015, ESMA published its Technical Advice on Reducing Sole and Mechanistic Reliance on credit ratings in accordance with Article 39b of the CRA

Regulation. The areas discussed included steps already taken at EU and International level to reduce reliance on ratings, a discussion on the use of ratings across certain member states as well the views of market participants on potential alternative indicators. To illustrate how market participants might reduce sole and mechanistic reliance on credit ratings some working examples of an internal assessment and alternatives to credit ratings were also provided.

The report concluded that the process of reducing the reliance on ratings by market participants remains an ongoing process and that further steps at a European level should do so in a coordinated and complementary manner with the already completed work of global standard setting bodies.

Next steps

The Commission is considering ESMA's Technical Advice and in the course of 2016 it will issue its own reports to the European Parliament and Council on whether all references to credit ratings would be removed from EU law for regulatory purposes and on the implementation of provisions of the CRA Regulation relating to competition, conflicts of interest and structured finance products.

Market Integrity

ESMA provides MAR implementing measures to increase market integrity and investor protection

The new market abuse regime was introduced, inter alia, in order to keep pace with new trading platforms and technologies in financial markets, which, besides offering new opportunities, may also result in new possibilities for abusive behaviour. Such abusive behaviours can result in losses for consumers and investors or distortion of the real economy if investors trade on inside information or manipulate markets notably by spreading false or misleading information.

In order to prevent market manipulation and increase the level of investor protection, ESMA has to develop 15 technical standards for the implementation of the new MAR framework which will become applicable in July 2016 as well as to issue three sets of Guidelines. Furthermore, ESMA was requested to provide technical advice on possible delegated acts and a possible implementing act under MAR. These technical standards and technical advice should specify the application of MAR to new products, venues and trading techniques and address transparency and governance issues.

ESMA advises Commission on MAR implementation

On 21 October 2013 and 2 June 2014 ESMA received two formal requests from the EC for technical advice on, respectively, possible delegated acts and a possible implementing act in five areas concerning MAR expected to be submitted by 3 March 2015.

Taking into consideration the comments received from the public consultation undertaken in the second half of 2014, ESMA finalised the technical Advice in early 2015. The technical Advice was sent to the EC on 2 February 2015 and covered the following areas:

Specification of the indicators of market manipulation, in the form of an indicative and non-exhaustive list of examples of practices pointing to potential market manipulation.

Minimum thresholds of carbon dioxide equivalent (CO2eq) and a minimum threshold of rated thermal input to be determined for the purposes of application of the exemption from the obligation to publicly disclose inside information for certain participants in the emission allowance market.

Determination of the competent authority to which issuers should notify delays in public disclosure of inside information.

Specification of the types of transactions triggering the duty for persons discharging managerial responsibilities and persons closely associated to them to notify their transactions in the shares or debt instruments of that issuer or in derivatives or other instruments linked to them and disclosure duties; and of the circumstances under which trading during a closed period by a person discharging managerial responsibilities may be permitted by the issuer.

Reporting of infringements, a practice commonly referred to as "whistleblowing" and addressed for the first time in the European regulatory framework for market abuse. The advice specifies the procedures competent authorities should have in place for the receipt of reports of infringements, including the setting up of appropriate communication channels, and for the protection of reporting and reported persons, with respect to their identity and their personal data, for which both Union and national legislation apply.

ESMA delivers technical standards on MAR

In the course of 2015, ESMA finalised the main bulk of the mandates received from MAR to draft technical standards by 3 July 2015.

Taking into consideration the comments received from the public consultation undertaken in the second half of 2014 and from the EC legal service further to the process of early legal review, ESMA delivered six RTS and five ITS relating to the following:

- the notifications and list of financial instruments (RTS and ITS);
- the conditions, restrictions, disclosure and reporting obligations in relation to transactions in buyback programmes and stabilisation measures for not being considered as market abuse;
- the arrangements, procedures and record keeping requirements for persons conducting market soundings and the systems and notification templates to be used in market soundings and the technical means for appropriate communication;
- the establishment, maintenance and termination of accepted market practices;
- the arrangements, systems, procedures and notification templates to report suspicious orders and transactions;
- the technical means for the public disclosure of inside information and its delay;
- the specific formats for drawing up and updating insider lists;
- the format and template for the notification of managers' transactions; and

- the technical arrangements for the objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest (RTS).

All these technical standards were sent on 28 September 2015 to the Commission for endorsement.

ESMA prepares technical standards on cooperation

After the delivery of the technical standards, ESMA has continued its work on MAR implementing and RTS relating to the procedures and arrangements for cooperation under MAR.

Next steps

In 2016, ESMA will finalise the four remaining draft technical standards on cooperation.

ESMA will also facilitate the practical implementation of the set of technical standards delivered in 2015 once they are approved by the EC.

Corporate Finance

ESMA delivers second set of standards under Prospectus Directive

In June of 2015, ESMA finalised the drafting of the RTS in accordance with the mandates in the Omnibus II Directive [1] and delivered these to the EC by the deadline of 1 July 2015. The goal of the RTS, which was the final deliverable under the existing level 1 regime, was to increase the level of harmonisation as regards the approval process for prospectuses, the publication of prospectuses and the dissemination of advertisements related to public offers and applications for admission on regulated markets.

ESMA also conducted an informal evaluation of the prospectus regime and provided its feedback to the EC through a response to their consultation on the review of the Prospectus Directive. In its response, ESMA recommended that the revision of the regime focus on the genuine purpose of the prospectus and ensure that the prospectus regime is aligned with the needs of the real economy while continuing to deliver effective investor protection.

ESMA also updated its assessment of the equivalence of the Israeli prospectus regime.

Next steps

ESMA will begin preparing the ground work for mandates it is likely to receive in the context of the revision of the prospectus regime.

[1] Directive 2014/51/EU

ESMA reviews principles for providers of shareholder voting research and analysis

As foreseen in the 2013 Final Report on the proxy advisory industry, ESMA has prepared a Follow-up Report on the development of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis (BPP), published by members of the proxy advisory industry in March 2014. This document assesses the impact which the BPP have had so far by analysing whether the areas identified in the 2013 Final Report as needing improvement have been addressed, both on paper and in practice. To perform this work, ESMA conducted bilateral discussions with BPP signatories in March and a roundtable with a broad range of stakeholders in July. The Follow-up Report was sent to the Commission and published on the ESMA website in December 2015.

Next steps

ESMA will continue monitoring initiatives in this area and assess whether action is required.

Corporate Reporting

ESMA contributes to information access under the Transparency Directive

ESMA completed work to ensure clarification and proper implementation of the amendments to the Transparency Directive and published an updated Questions & Answers. Furthermore, the amended Transparency Directive gives ESMA responsibility to develop and submit to the EC RTS in two areas related to financial reporting.

ESMA submitted the Final Report and draft RTS on the European Electronic Access Point (EEAP) to the Commission for endorsement which include the RTS on the operation of the EEAP, search criteria and unique identifier for each issuer to be used by the Officially Appointed Mechanisms established at national level.

ESMA also pursued its work on the development of the draft RTS specifying the European single electronic reporting format (ESEF) in which the preparation of annual financial reports should be mandatory with effect from 1 January 2020. ESMA published a Consultation Paper on ESEF and sought views on the preliminary cost-benefit analysis of the ESEF.

Next steps

In 2016, ESMA will analyse the responses received and progress the work on the RTS on the ESEF and intends to submit it to the EC before 31 December 2016.

2.4. Supervision

ESMA is the sole supervisor for credit rating agencies (CRAs) in the EU. The same approach was chosen for trade repositories (TRs) – those data warehouses that collect, save and make available data on derivatives contracts– for which ESMA took on supervisory responsibility in 2013. By supervising pan-EU financial market participants, who may have an impact on the integrity of the EU's markets, ESMA contributes to safe and sound financial markets, which in turn supports investor protection.

In 2015, the key achievements in ESMA's supervisory activity can be seen in the adoption of a risk-based approach to supervision. For the CRA supervisions this meant, amongst other issues, a strong focus on CRAs' governance, risk management and internal decision making procedures in order to ensure good quality ratings.

The TR supervision in 2015 focused much on data quality and reporting. By the end of 2015 almost 27 billion reports had been received by TRs, with an average of around 330 million trade reports submitted per week. ESMA's work also focused on enhancing and improving user access, including access by regulatory authorities which need TR data to support their supervisory responsibilities.

ESMA adopts risk-based approach to supervision

In 2015, ESMA has adopted a risk-based approach to the supervision of CRAs and TRs in accordance with its overall objectives of promoting financial stability and orderly markets and enhancing investor protection. This risk-based approach requires the analysis of information from a variety of sources and the application of multiple supervisory tools including:

- day-to-day supervision;
- cycle of engagement meetings with supervised entities:
- on-site inspections and;
- dedicated investigations.

In order to build on the expertise that ESMA has developed through its supervision of CRAs and TRs, ESMA created a single Supervision Department in November 2015. ESMA intends to draw on the best practices identified from the supervision of both types of entity to further enhance its supervisory effectiveness in future.

CRA supervision during 2015

In 2015, ESMA assessed seven applications for registration in accordance with the CRA Regulation. Following these assessments, ESMA registered three new CRAs, bringing the total number of CRAs registered in the European Union (EU) to 26. In addition, four CRAs are certified by ESMA.

The risk assessment exercise conducted in 2014 identified that the areas of highest risk for CRAs related to CRAs' governance and strategy. For this reason, in 2015, ESMA focused on the supervision of CRAs' governance, risk management, internal decision making and business development processes. ESMA's work on governance, risk management and internal decision making included examining the functioning of CRAs' boards and their deliberations and increasing its interaction with CRAs' Independent Non-Executive Directors (INEDs). This has helped to empower boards and embed INEDs' responsibilities for monitoring and oversight.

As a part of its review of CRAs' internal decision making processes, ESMA concluded an investigation into the validation and review of CRAs' methodologies which resulted in the publication of a discussion paper in November 2015. ESMA also performed a risk assessment of the larger CRAs' IT and information security systems. This identified a number of risks of importance for all CRAs, which will inform ESMA's future work in this area. 6 In 2015 ESMA took enforcement action against one CRA in respect of a number of infringements of the requirements of the CRA Regulation regarding governance and compliance. These infringements, which were identified during a 2012 review of the CRA's compliance practices, resulted in the issuance of a public notice. The failing relating to the requirement to keep records also resulted in the imposition of a fine against a CRA for the first time. This case highlighted the need for CRAs to put in place effective compliance functions and to ensure that these are adequately resourced in order to promote a culture of compliance. To improve its understanding of CRAs' business development processes, ESMA investigated the credit rating process and business development practices followed by a number of CRAs.

ESMA also began examining CRAs' provision of ancillary and non-credit rating services and the fees charged for credit ratings and ancillary services. Through its work in this area, ESMA identified concerns regarding the use of support staff in the process of issuing credit ratings and reminded CRAs of the requirements of Article 7(4) of the CRA Regulation, that staff involved in the production of credit ratings must have appropriate skills and experience to carry out their duties.

As regards the production of ancillary services, ESMA also raised concerns about the impact of providing ancillary services on CRAs' resources and highlighted the need for CRAs to implement processes to assess the potential conflicts of interest arising from the preparation of ancillary services and from analysts' interactions with clients of ancillary services.

In 2015, ESMA also focused its resources on further enhancing its risk-based approach to supervision. ESMA invested in developing the Ratings Data Reporting tool (RADAR) and the European Rating Platform and started developing specific tools to improve data centralisation and enhance its capacity for information analysis. In order to encourage uniform reporting by CRAs, ESMA published guidelines on the periodic information to be submitted by CRAs and Q&As on the application of the CRA Regulation as amended. The risk assessment exercises carried out during the course of 2015 continued to identify high levels of governance and strategy risk in the CRA industry. These exercises also identified high levels of operational risk, which raises particular concerns for ESMA about the ability of CRAs to compete and to expand their businesses without this having a negative impact on the quality of the credit ratings they issue and the credit rating activities they conduct.

Next steps

For these reasons, in addition to the assessment of applications for registration and its ongoing investigations and enforcement work, the key areas ESMA will focus on in the supervision of CRAs in 2016 include CRAs' governance and strategy and the quality of CRAs' credit ratings and credit rating activities. In this context, ESMA will specifically examine the application of credit rating methodologies, the validation of models and methodologies, and IT issues specific to individual CRAs

TR supervision in 2015

The supervision of TRs by ESMA started in 2013 with the registration of TRs in accordance with EMIR. ESMA had registered six TRs by November 2013, which triggered the trade reporting obligations to TRs set out in EMIR. ESMA's supervisory work requires close cooperation with NCAs in the EU Member States as they are responsible for supervising the counterparties reporting to TRs. NCAs are also the key users of TR data.

Trade reporting to TRs began in February 2014. By the end of 2015 almost 27 billion reports had been received by TRs, with an average of around 330 million trade reports submitted per week. ESMA has observed increasing interest in the TR business and is currently assessing two applications for registration. In addition, ESMA notes that registered TRs are looking to expand their businesses into new areas, for example by offering other reporting services. The risk assessment exercise carried out in 2014 identified that the highest risks facing the TR industry related to their data and systems. Following the launch of trade reporting, it became clear that TRs needed to ensure that their systems could receive and process data efficiently, but also that the data received was of sufficient quality and could be made available to users in a timely and proper manner. For these reasons, ESMA's supervisory priorities for TRs during 2015 included the quality of the data submitted to TRs, access to data held by TRs and the operation and performance of TRs' systems. During 2015, ESMA's supervision of data quality focused on the implementation of ESMA's data quality action plan, carrying out validation exercises to check on data quality as well as the supervision of inter-TR reconciliation and of the harmonisation and comparability of data made publicly available by TRs. Specifically, on validation, ESMA progressed from data-completeness to data-content re-validation. These actions allowed ESMA to ensure that TR reporting increased the transparency of derivatives markets, which is one of the main objectives of EMIR. ESMA's work on access to TR data focused on enhancing and improving access by authorities which need TR data to support their supervisory responsibilities. In the execution of the data quality action plan, ESMA works closely together with the NCAs as the reporting obligations of counterparties are within their mandate.

ESMA also facilitated third-country authorities' access to TR data by establishing Memoranda of Understanding. As regards data quality and data access, ESMA carried out several specific supervisory activities regarding systems' operation and performance, including addressing incidents regarding data availability and accuracy, confidentiality and system availability, which were triggered by technical issues faced by TRs. Addressing those incidents required significant changes to some TRs' systems. ESMA has also started to consider TRs' resilience to potential cyber-attacks and effective business continuity during the course of 2015.

The broad spectrum of ESMA's supervisory focus and ESMA's ability to monitor market developments and respond promptly to incidents is starting to show lasting improvements in each of these areas. The risk-based assessment performed in 2015 was updated to identify the highest risks related to the operation of TRs and their compliance with EMIR. This exercise resulted in the identification of similar risks for 2016 as for 2015.

However, the key risks have been further refined in this year's assessment so that the main priorities for TR supervision in 2016 will include data quality, data access and information security risks. During 2016 ESMA will also focus on financial risk for TRs, which will include TRs' costs and fee structures.

Areas of common supervisory focus

ESMA identified a number of supervisory areas in 2016 which are common to all supervised entities, such as their approaches to information security and the fees charged to customers. ESMA will make use of all the supervisory tools at its disposal to achieve its objectives and will, in particular, seek to make increased use of investigations and to publish thematic reports to outline its views and clarify its expectations on issues of interest in appropriate cases. These thematic reports may be an effective means of encouraging the development of a culture of compliance within supervised entities, and may provide useful information of a general nature to market participants and other stakeholders.

Third-country CCPs recognition

CCPs established in third countries may provide clearing services to clearing members or trading venues established in the Union only where that CCP is recognised by ESMA. In addition, under the Capital Requirements Regulation (CRR), credit institutions and investment firms may only benefit from advantageous capital treatment with respect to cleared derivatives transactions, when the CCP they are facing is recognised by ESMA.

This has led 42 third-country CCPs to apply for recognition to ESMA, as of 31 December 2015.

One of the conditions to be granted recognition is the adoption by the Commission of a so-called "equivalence decision" determining, inter alia, that the legal and supervisory arrangements of the third-country in which the CCP is established are equivalent to the EMIR requirements.

Following the adoption by the Commission of equivalence decisions for Australia, Hong Kong, Japan and Singapore in October 2014, ESMA recognised eleven third-country CCPs in April and September 2015 and published the list of recognised third-country CCPs. Before adopting the recognition decisions, ESMA concluded cooperation arrangements with the relevant third-country authorities, and consulted the EU authorities which have a stake therein.

Next steps

Following the adoption of equivalence decisions for Canada, Mexico, the Republic of Korea, South Africa and Switzerland in November 2015, ESMA is expected to recognise additional third-country CCPs in 2016, and to continue its assessment of the pending applications.

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3 • ESMA organisation

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3. ESMA organisation

In 2015, the key achievements of ESMA as an organisation included the continued improvement of the Authority's internal processes and its reorganisation in order to reflect its new strategy.

Besides these overall achievements, centralised IT projects remained a key area of activity and continued success in implementing these. These projects included projects related to CRA supervision (CRA III), the Short Selling Regulation, EMIR, MiFIR and MAR. The IT Delegated Projects Programme was by far the most important where National Competent Authorities delegated specific tasks under EMIR and MiFIR to ESMA. Other IT projects related to improving ESMA's support functions internally.

In addition, ESMA continued to develop its Human Resources function and to further its management and internal control.

Day-to-day Management

The Executive Director and the Heads of Department are responsible for ESMA's day-to-day management. ESMA has six Departments. The Heads are responsible for the activities in their respective business areas. ESMA has introduced team leader positions in a number of areas to assist the Heads and coordinate work within the Departments. EMSA's decision taking bodies, the Management and the Board of Supervisors, are further detailed on pp. 9, chapter 1.

ESMA's management meets on a weekly basis to discuss ESMA's activities and cross-ESMA issues and agree on solutions where necessary. Planning and monitoring of activities are a crucial part of the role of the management team and contribute to the internal control system of ESMA.

An Annual Work Programme is adopted every year in September for the following year by the Board of Supervisors. This is building on multi-annual planning, including a multi-annual staff policy plan. The Work Programme is monitored internally throughout the course of the year, with progress on its implementation being reported to the Management Board on a quarterly basis.

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

ESMA's internal processes continued to improve

In 2015, ESMA continued to take on new tasks. Against a background of changing regulatory environment for EU agencies, ESMA continued to improve its processes by adopting new implementing rules, policies and procedures, notably in HR, finance and procurement, but also in facility management and ICT.

This was also an opportunity to gain process efficiency, for example by joining several procurement procedures of the Commission. When synergies are identified, procurement collaboration of this kind can be leveraged so ESMA can benefit from economies of scale and reduced administrative burden.

New HR policies and procedures were implemented (see further detail below). A new document management system was implemented in two departments, with the on-boarding of the rest of ESMA planned for 2016. This is a key element which will help refine the way we work together in a collaborative way and secure availability and easy traceability of documents internally.

New e-workflows for certain processes were tested in different support functions of the organisation, notably in finance, procurement and facility management, with a view to be implemented and further extended in 2016. This will improve efficiency, security, and by using less paper, save on physical storage space.

To increase efficiency within the organisation, ESMA reinforced its focus on project management. This meant systematically applying the project methodology of the EU institutions (PM2) to IT projects and further enhancing the approach to project management beyond IT, including for other support areas of ESMA and increasingly for significant business projects. The systematic use of common project tools helped to streamline the many cross-organisational projects that ESMA is currently undertaking.

The new and revamped website has become a key communication tool, proposing new features and an improved search engine. At the same time, the content structure has been revised to align with ESMA's new strategic orientation, according to which more prominence is given to our work on Supervision and Supervisory Convergence. In addition, IT solutions for the secure exchange of documents and enhanced data analysis - both supporting ESMA's core activities – were delivered in 2015.

The finance project related to defining an activity-based costing (ABC) model that begun in 2014 was continued in 2015. This allowed ESMA to show in a more transparent way how much its activities cost. Additionally, and for the first time this year, ESMA was able to apply this model to monitor the alignment between the fees collected from the Credit Rating Agencies (CRAs) and the Trade Repositories (TRs) that the Authority supervises and the relevant supervisory costs.

A changed security environment compelled ESMA to reinforce its physical security, by installing alarm systems and new surveillance cameras. Access control was also increased in the interest of staff safety and in the interest of the 7,860 visitors in 2015 from all over Europe who came to participate in meetings and workshops organised by ESMA.

Waste management is another area in which ESMA continued to work by adding a second phase to the recycling project started in 2014, when a specialized company was contracted for the management of waste, paper, confidential documents, cans and plastic bottles. This phase was launched in the summer of 2015 and covered the management of old and obsolete IT equipment and furniture. It was accompanied by several communication efforts aimed at ESMA staff to increase awareness of *thinking green.*

These actions allowed ESMA to recycle 17.5 tons of paper in 2015, which contributed to reduce the cutting of 298 trees, reduced the use of 350 200 litres of water, saved energy consumption (17 510 litres of oil) and reduced the ejection of 44 t of carbon dioxide.

ESMA's reorganisation to reflect its new strategy

In May 2015, ESMA agreed its new 2016-2020 Strategy. In support of this new direction we embarked on an internal reorganisation which would reflect, and support, the activities identified as helping us achieve our statutory objectives, namely risk assessment, the single rulebook, supervisory convergence and supervision.

The reorganisation took place in November 2015 with the main organisational changes being the creation of a cross-cutting Risk Analysis and Economics Department, the concentration of our supervision activities into a single Supervision Department and the establishment of a new Corporate Affairs Department to provide a transversal unit in support of our governance, planning and outreach activities. In the area of supervisory convergence, we created a small central team to coordinate the significant supervisory convergence work that is going on all across the organisation. In the new structure we will expect to see more multidisciplinary project working which will draw on different areas expertise to ensure we are capable of dealing with the challenges ahead.

Over the next 12 months we will work at embedding the new organisational structure and working practices which will require a continued effort and focus from all staff to ensure its success.

Planning

ESMA continued developing the Multi-Annual Work Programme covering the period 2016-2019, which details the main activities and priorities and the corresponding deliverables. The ESMA Annual Work Programme outlines the key activities of the Authority as they are planned to take place during the year, including, where necessary, new fields of activities where capacity building continues.

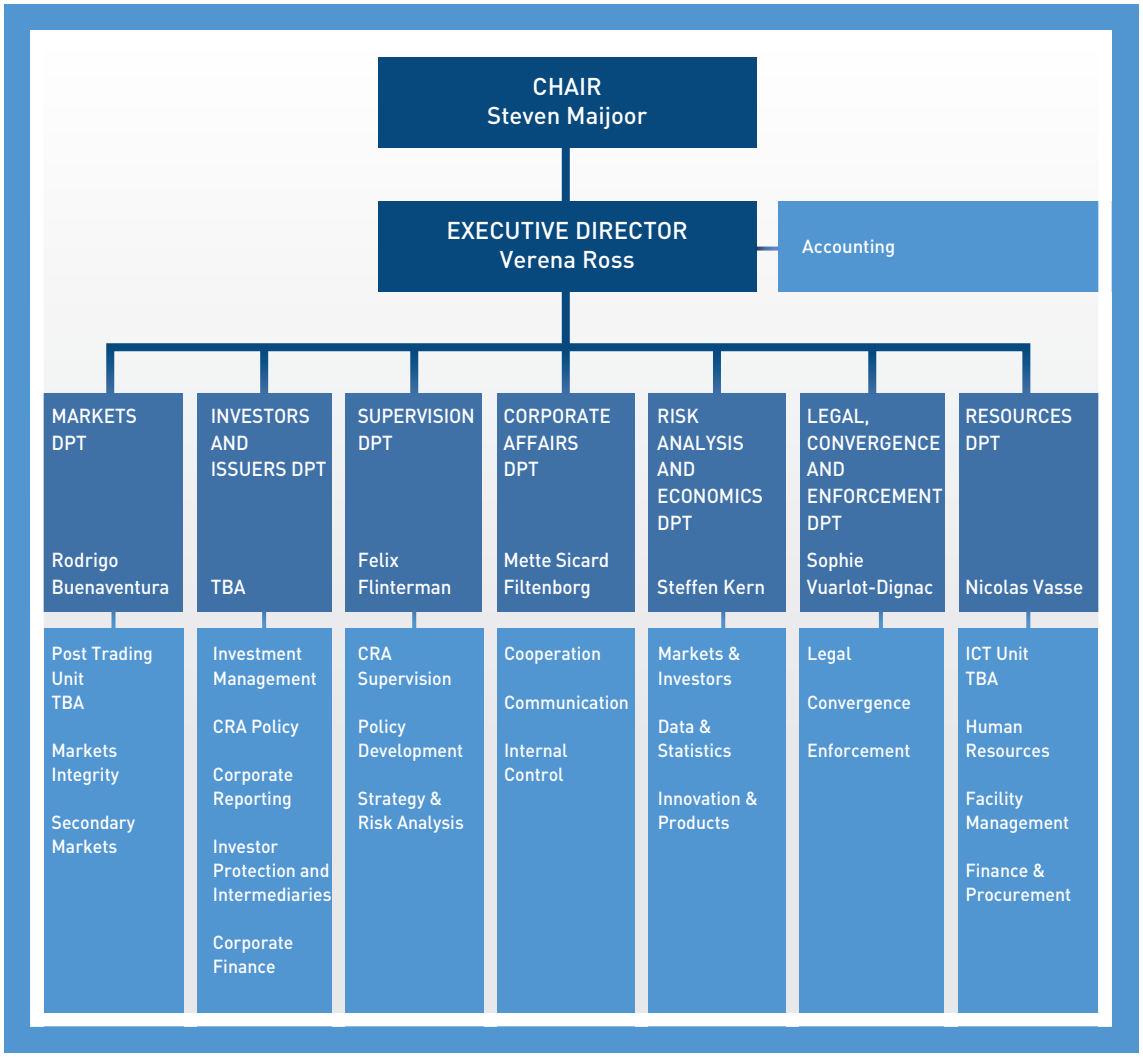
The Annual Work Programme provides a breakdown of the overall activities into individual tasks. In addition to the Annual Work Programme, ESMA also publishes annually a Regulatory Work Programme that outlines the regulatory and policy deliverables and a Supervisory Work Programme. The Work Programme also includes estimation of human (full time equivalents) and financial (budgetary expenditure) resources per area of activity as well as key performance indicators.

The delivery against the Annual Work Programme and Regulatory Work Programme is monitored on a regular basis, with quarterly reports being provided to the Management Board. ESMA has also been working on developing its first Supervisory Convergence Work Programme, which will be based on the Annual Work Programme, and complement the Regulatory and Supervisory work programmes. It expects to publish the Supervisory Convergence Work Programme in early 2016.

Next steps

ESMA expects to publish its Supervisory Convergence Work Programme in Q1 2016 which details why it will refocus its activities on supervisory convergence, its priorities for 2016 and how it will go about focusing on supervisory convergence.

ESMA organisational chart March 2016



ESMA's IT projects

ESMA's IT activity represents two main categories:

- The support to ESMA as an organisation; and
- The EU IT projects, aiming to support supervisory convergence and exchange of financial data amongst NCAs and between NCAs, ESMA and the public.

ESMA is currently running four IT programmes, out of which three programmes are related to EU IT projects.

Information Technology

The provision of pan-EU IT systems is a key ESMA activity which is reflected in its budget. In 2015, an IT budget of €1.3m was allocated for the development of new systems, of €3.4m for maintenance and change of existing systems, and of €3.1m for the development of delegated projects. These amounts were in addition to the €2.4m

dedicated to the regular IT-related infrastructure. In total IT expenses therefore amounted to €10.2m or 28% of ESMA's total budget.

An IT Management and Governance Committee (ITMG) oversees pan European IT projects. A business owner within ESMA has been assigned for each 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. The pan-EU IT projects are those projects that are carried out to exchange data with external stakeholders, e.g. mostly the national authorities but also CRAs. These projects are steered by both an ESMA Standing Committee in charge of the regulatory aspects and by the ITMG, which includes IT experts from the national authorities. Both groups report to the Board of Supervisors.

As the number of IT deliverables has increased significantly in the last years, ESMA developed an IT strategy which, along with a new programme management approach to multi-annual IT planning and the adoption of the project methodology of the EU institutions (PM^2), has given a robust structure to how ESMA prioritises and manages the systems it develops.

In December 2015, the Management Board and the Board of Supervisors approved the report on the 2011-2015 IT implementation plan, the 2016-2018 multi-annual IT Work Programme and the 2016-2020 IT strategy.

In 2015, ESMA worked on the following IT programmes:

- **CRA III Programme**: projects related to CRA supervision;
- **Markets Programme**: projects related to Short Selling Regulation, EMIR, MiFIR and MAR;
- **IT Delegated Projects Programme**: projects related to tasks delegated by National Competent Authorities to ESMA – particularly in the field of EMIR and MiFIR;
- **ESMA Corporate Programme**: projects related to improving the support to ESMA as an organisation (see earlier in Chapter 3 – ESMA's organisation).

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The CRA Programme aims to support Credit Rating Agency (CRA) supervision and investor protection (through the collection and publication of large data sets). In 2015 the focus was on the development of a system called the European Rating Platform (ERP), which aims to publish data on the individual ratings of all CRAs under ESMA's supervision on ESMA's website.

The Markets Programme contains the projects related to MiFIR, MAR and Securities Financing Transactions Regulation and has two main objectives:

Support the development of new regulatory technical standards in these areas, especially in terms of harmonisation of data exchange, and

Develop systems to organise reporting of data from the trading venues to NCAs on financial instruments, commodity derivatives position reporting and position limits. Several of these data sets will be published on ESMA's website once MiFIR will enter into force.

The new IT Delegated Projects Programme marked 2015 as being a major strategic turning point: for the first time in ESMA's history, 27 NCAs delegated two important IT projects to ESMA – the MiFIR Financial Instruments Reference Data System (FIRDS) and a portal for access to Trade Repositories data (TRACE).

Projects completed in 2015

In 2015, ESMA delivered the following five systems:

System name	Description
Alternative Investment Fund Managers Database	The AIFMD reporting system collects and stores data on Alternative Investment Funds and Managers. The system was developed as required by AIFMD and applies to all AIFMs who manage or market alternative funds within the EU. The collected data includes information related to fund's investment portfolios, exposures, leverage ratios, liquidity and risk analysis.
Suspensions and Removals of instruments from trading register	This system collects and publishes on ESMA's website data on suspensions or removals of a financial instrument from trading on one or more EEA regulated markets (art. 41 MiFID). It also allows coordination amongst the NCAs when suspensions happen to limit regulatory arbitrage across the EU.
Financial Instruments register	This system collects and publishes on ESMA's website data on shares admitted to trading on a regulated market in Europe and exempted shares under the Short Selling regulation (having their principle trading venue located in a third country).
Trade Actors register	This system collects and publishes on ESMA's website data on central counterparties (CCPs), multilateral trading facilities (MTFs), regulated markets (RMs), and systematic internalisers (SIs) in respect of shares admitted to trading on a regulated market.
EMIRN Intragroup transaction notifications	The Intragroup Notifications system allows ESMA and National Competent Authorities (NCAs) to exchange notifications on exemptions on exchange of collateral and the clearing obligations under EMIR.

Projects still under development at the end of 2015

IT Delegated Projects:

The major projects still ongoing are those on FIRDS and TRACE as outlined above in more details. Both projects are funded separately from ESMA's main budget lines, exclusively by the concerned NCAs, with a 2015 budget of €3.1m.

Project name	Description
Financial Instruments Reference Data System (FIRDS)	This system aims to collect and publish financial instruments reference data from trading venues. This project will also perform transparency calculations and the management of suspensions from trading under MiFIR / MiFID II.
Access to Trade Repositories Information (TRACE)	The system aims to set up a single point of access for querying and retrieving data from Trade Repositories.

Next steps

The projects are currently being developed by ESMA, with FIRDS expected to go live in 2018, and TRACE in 2016 for its first phase.

At the end of 2015, the following other projects were also still under development:

Project name	Description
Credit Rating Agencies III – European Rating Platform and Fees (CRA III - ERP and Fees)	The system aims to make the performance of CRAs more transparent via two means: - The European Rating Platform (ERP) collects and publishes data on rating activity of all registered or certified CRAs. - The Fees system collects data on fees policy of all registered or certified CRAs.
Volume Cap Mechanism	The system aims to collect and publish data on volume of trading across Europe per equity instrument, and percentage of trading under transparency waivers.
Weekly Commodities Derivatives positions	The system aims to collect and publish data on weekly aggregated position reports from all trading venues trading commodity derivatives and emission allowances.
Transaction Reporting Exchange Mechanism (TREM) Upgrade	The system aims to facilitate exchange of transaction reports between NCAs and define reporting instructions for investment firms to report to NCAs.
Prospectus Final Terms	The system aims to facilitate exchange of notifications of prospectus final terms between NCAs and ESMA.

Maintenance of systems launched before 2015

In addition to these projects, ESMA also maintains 10 systems developed before 2015 allowing the collection, exchange and sometimes publication of financial data such as credit ratings, decisions, investment firms' information, UCITS information, prospectuses, sanctions etc.

All these data can be accessed via a single search engine on https://registers.esma.europa.eu

Securing ESMA's data

In 2015, ESMA finished the implementation of the Security Plan. Following the 2014 procedure on the handling of classified documents, ESMA implemented the protection of data, encrypting servers, laptops, and mobile devices; deployed a secure communications platform and performed disaster recovery tests to test the resilience of its IT infrastructure. Implementing the security governance model (approved in 2014) included ESMA's Security Committee which began its regular meetings in January 2015.

Following the standards and best practices, ESMA implemented a security awareness program to improve its staff member's awareness towards security.

ESMA operations, budget and structure

ESMA's 2015 budget

In 2015 ESMA's core budget increased by €0.7m compared to the previous year, from €33.3m in 2014 to €34.0m in 2015. In addition, the overall budget was increased by €2.7m with the launch of delegated tasks.

ESMA is financed by five separate streams of income:

- the NCAs of the Member States - €14.6m in 2015, representing 40% of the total revenues;
- the European Union - €9.7m, representing 26%;
- fees charged to Credit Rating Agencies - €7.6m, representing 21%;
- fees charged to Trade Repositories - €2.1m, representing 6%; and
- NCAs' contribution for delegated tasks - €2.7m, representing 7%.

Annual accounts

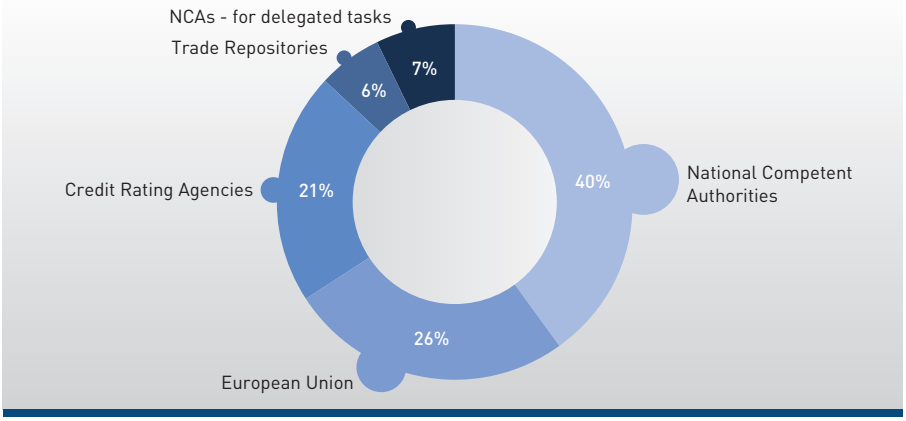
The annual accounts of ESMA have been established in accordance with the Financial Regulation of ESMA. A new Financial Regulation was adopted by the Management Board on 19 June 2014 in line with the new Framework Financial Regulation[1] of the European Parliament and Council.

2015 - overall budget

- €34.0m - overall budget for 2015 (C1 credits)
- €33.9m or 99.6% of the budget was committed
- €28.8m or 84.5% of the budget had been spent to end December 2015
- The remaining €5.1m will be paid in 2016

[1] (Commission Delegated Regulation (EU) No 1271/2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012.

2015 revenues



ESMA continued to develop its Human Resources function

Staff allocation and development

The allocation and recruitment of staff is based on the Authority's Establishment Plan, the Authority's budget and the Single Programming Document.

In 2015 ESMA has adopted the following implementing rules under the new Staff Regulations:

- implementing rules on working time - "flexitime" which implements the registering of working hours, and give a possibility of recuperation of additional hours worked over 40 hours per week;
- implementing rules on the engagement and use of temporary agents under Article 2(f), and
- implementing rules on measures concerning unpaid leave for temporary and contract agents (which extend the maximum duration of unpaid leave for temporary agents with a contract of indefinite duration from twelve months to twelve years).

In the area of recruitment, ESMA amended its recruitment guidelines, outlining the various steps in the recruitment process and addressing several recommendations from the European Court of Auditors and other audit reviews. Following the new implementing rules on engagement of temporary agents 2(f), several vacancies have been advertised also internally, thus giving an additional opportunity for mobility and transfer of staff within the organisation.

In the area of personnel administration, 39 newcomers have been welcomed at ESMA and 17 staff members left the service. The staff turnover rate for 2015 was at 8.9% (target <10%). The new traineeship policy was adopted, aiming for more transparent selection of trainees and simplifying the rules on traineeship grants.

In the area of staff development, a language learning policy was adopted in 2015, which gives guidelines to ESMA's staff on the different language training tools and methods available at ESMA.
In 2015, the Authority carried out its annual appraisals of staff in line with its performance appraisal policy and performed the third reclassification exercise of

staff, including the establishment of a Joint Reclassification Committee. Mandatory training to all staff with management responsibilities was organised.

Next steps

ESMA developed in 2015 a concept paper on internal mobility for staff. The new policy is planned to be adopted in 2016.

Overview of staff data in 2015

ESMA employs different categories of staff:

- Temporary Agents (TA) [1],
- Contract Agents (CA) and
- Seconded National Experts (SNEs).

At the end of 2015, a total of 186 staff (TA/CA/SNE) was employed.

ESMA's staff population 2015 (all categories of staff)

Staff population		Headcounts as of 31.12.2014	Authorised under EU Budget 2015 [2]	Headcounts as of 31.12.2015
Officials	AD	n/a	n/a	n/a
	AST	n/a	n/a	n/a
	AST/SC	n/a	n/a	n/a
TA	AD	112	122	116
	AST	13	15	13
	AST/SC			
Total TA		**125**	**137**	**129**
CA		27	44	32
SNE		16	21	25
TOTAL		**168**	**202**	**186**

2

[1] Posts for temporary agents are listed in the establishment plan of ESMA, and in the EU budget.
[2] Number of posts for officials and TAs. Estimated FTE budget for CAs and SNEs.

ESMA's establishment plan 2015 (temporary agents)

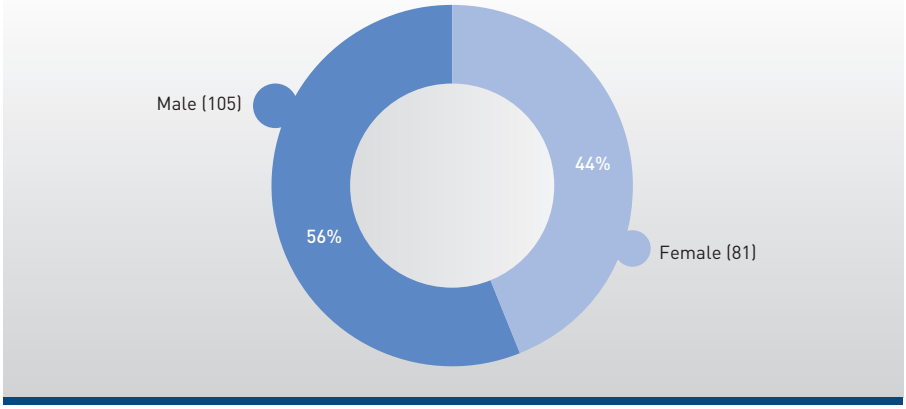
Category and grade	Establishment plan in EU Budget 2015	Filled as of 31.12.2015	Modifications in 2015 in application of flexibility rule	Establishment plan in EU Budget 2016	Modifications in 2016 in application of flexibility rule	Establishment plan in Draft EU Budget 2017 [1]	Establishment plan 2018 [2]	Establishment plan 2019 [3]
AD16				1		1	1	1
AD15	1	1		1		1	1	1
AD14	1	1						
AD13				2		2	2	3
AD12	3	2		4		5	6	7
AD11	5	3		7		8	8	9
AD10	6	1		10		13	16	17
AD9	14	16		22		26	29	30
AD8	27	26		29		28	28	28
AD7	27	36		24		26	26	29
AD6	22	14		17		14	14	14
AD5	16	16		10		13	14	11
Total AD	**122**	**116**		**127**		**137**	**145**	**150**
AST11								
AST10								
AST9	1							
AST8						1	1	1
AST7				2		2	2	2
AST6	1			2		3	3	4
AST5	2	2		4		4	4	4
AST4	6	1		4		3	3	2
AST3	2	6		1				
AST2	3	1						
AST1		3						
Total AST	**15**	**13**		**13**		**13**	**13**	**13**
AST/SC6								
AST/SC5								
AST/SC4								
AST/SC3								
AST/SC2								
AST/SC1								
Total AST/ SC								
TOTAL	**137**	**129**		**140**		**150**	**158**	**163**

[1] Additional 10 posts requested in 2017 (5 x AD5, 5 x AD7).
[2] Additional 8 posts requested in 2018 (4 x AD5, 4 x AD7).
[3] Additional 5 posts requested in 2019 (3 x AD5, 2 x AD7).

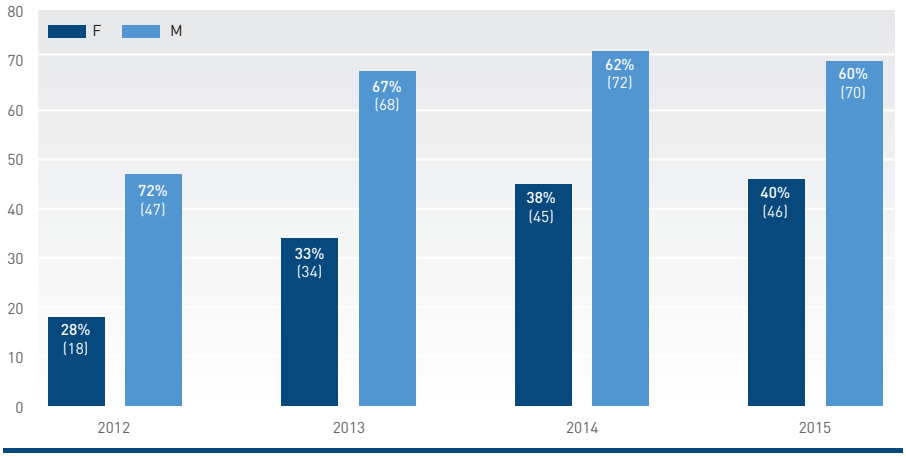
Gender balance

ESMA tries to reach the best possible gender and geographical balance during its recruitment process. The global gender balance amongst ESMA staff (TA, CA and SNE) is 56% (male) – 44% (female).

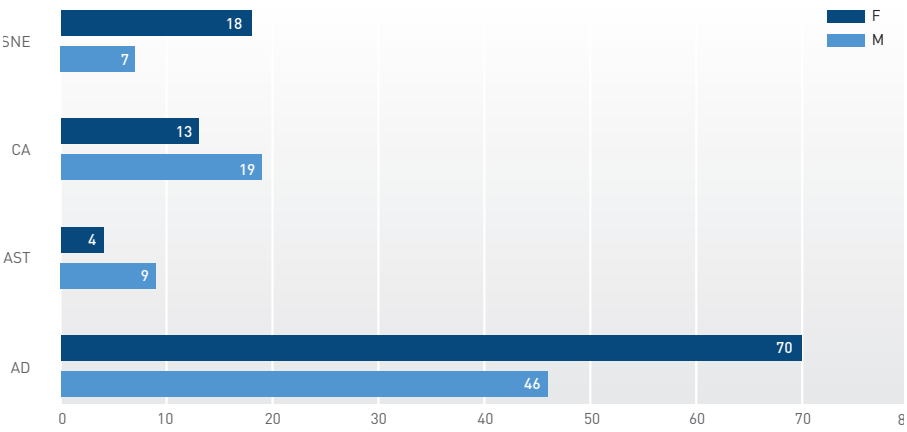
Gender distribution at ESMA



Gender distribution within AD function group



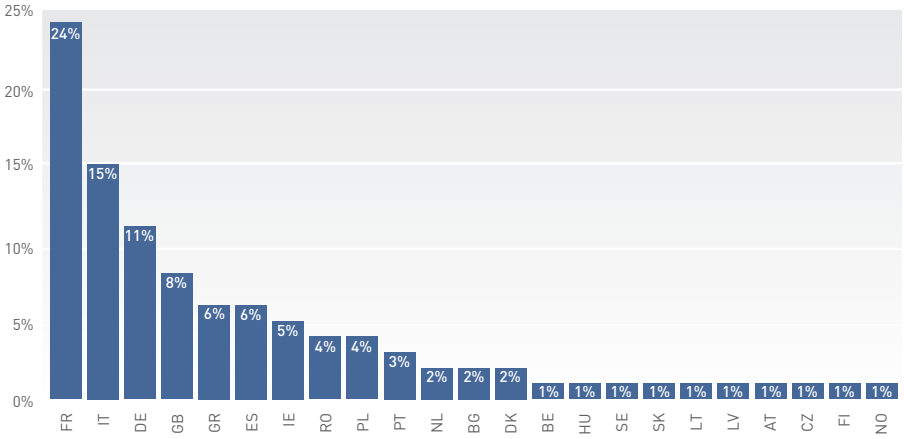
Gender distribution per category



Geographical balance

ESMA staff includes 22 different EU nationalities, and 1 national from the European Economic Area (Norway). The following table shows the distribution of nationalities per contract type and function group: Temporary Agents (AD/AST), Contract Agents, and Seconded National Experts.

Gender distribution within AD function group



	AT	BE	BG	CZ	DE	DK	ES	FI	FR	GB	GR	HU	IE	IT	LT	LV	NL	NO	PL	PT	RO	SE	SK	Total
AD	1	2	2	1	15		8		26	8	9	1	5	19	2	1	3	1	4	1	4	2	1	**116**
AST			1		2			1	4	3				1									1	**13**
CA						2	2		12		2	1		5		1			3		4			**32**
SNE					3	1	1		2	4	1		5	2			1			5				**25**
Total	**1**	**2**	**3**	**1**	**20**	**3**	**11**	**1**	**44**	**15**	**12**	**2**	**10**	**27**	**2**	**2**	**4**	**1**	**7**	**6**	**8**	**2**	**2**	**186**
%	1%	1%	2%	1%	11%	2%	6%	1%	24%	8%	6%	1%	5%	15%	1%	1%	2%	1%	4%	3%	4%	1%	1%	

ESMA staff per Department (as of 31/12/2015)

	SUP	RAE	INI	LCE	MKT	RES	SMT	CAD	Total
CA	6	8	4	1	2	11			32
SNE	3	1	7	3	6	3		2	25
TA	21	11	19	12	23	29	5	9	129
Total	**30**	**20**	**30**	**16**	**31**	**43**	**5**	**11**	**186**

Benchmarking against previous year results [1]

The table below outlines the results of the second job screening exercise conducted in ESMA and in all EU regulatory agencies. The exercise is based on Articles 29(3) and 38(1) of the Framework Financial Regulation. The methodology has been designed by a working group including representatives from different EU agencies (including

[1] Reference date: 12/12/2014.

ESMA) and of the EC (DGs Budg. HR, SG). It has been generated as an adaptation, refinement and clarification of the Commission Job Screening methodology, which the Commission has implemented for several years. It has been approved by the network of Heads of EU Agencies at the meeting held in Vienna on 16-17 October 2014.

Job Type (sub) category	Year 2014 (%)	Year 2015 [1] (%)
Administrative support and Coordination	**16.6%**	**15.7%**
Administrative Support	12.1%	12.0%
Coordination	4.5%	3.7%
Operational	**76.7%**	**78.5%**
General operational activities	9.4%	12.8%
Programme management and implementation	56.1%	55.0%
Top operational coordination	2.7%	2.5%
Evaluation & Impact assessment	8.5%	8.3%
Neutral	**6.7%**	**5.8%**
Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control	6.7%	5.8%
Linguistic activities	0%	0%

Management and internal control systems

Internal control standards (ICS)

On 5 November 2012, the Management Board adopted the Internal Control Framework in ESMA. The Framework covers 16 Internal Control Standards. The Internal Control Standards are indispensable in order to define the internal control framework, foster clear accountability of the management, and ensure oversight of the internal control system by the Management Board.

The Internal Control Standards 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.

In 2015, ESMAs Management performed an assessment of the implementation of internal controls standards (ICS), which concluded that ESMA has achieved the baseline for all standards but that the process of implementing ICS is still ongoing.

[1] Reference date: 31/12/2015.

Three standards were selected as areas to focus during 2016: HR development, document management and business continuity.

ICS 1 - Mission

The mandate and tasks of the Authority are summarized in ESMA's mission statement, derived from the Founding Regulation and described in a number of key documents, most importantly the ESMA single programing document and annual work programme, but also in this document – the Annual Report. It is also available on the home page of ESMA's external website.

ESMA has developed its Strategic Orientation 2016-2020, encompassing three objectives that are achieved through four main activities. ESMA has also defined its six main characteristics.

ICS 2 - Ethics and conflict of interests

The adoption of a Code of good administrative behaviour with general rules when dealing with the public and a Decision on professional secrecy, adopted in 2011 and

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its accessibility to all staff, together with the Staff Regulations, assures availability of a practical guide on ethical conduct and reporting of irregularities.

In order to promote and strengthen the principles and practice of ethics and organizational values among its staff, ESMA has designated two staff members as Ethics Officer and his/her Deputy respectively. This allows for the development of a strong in-house expertise and prompt response and reaction to ethics issues. This organisation was labelled as a best practice by the Internal Audit Service of the Commission.

An Intranet page on Ethics and Integrity is in place since 2013 to give staff members a clear indication of what to do, or whom to ask when in doubt of being in presence of a conflict of interest.

In 2015, ESMA implemented a policy on conflict of interest for non-staff, including the members of the Board of Supervisors, Management Board and Board of Appeal. The policy was developed using the recommendations from the European Court of Auditors Report 15/2012, the conclusions of the workshop on "Better avoidance of conflict of interest" organised by the European Parliament in February 2013, as well as the draft guide-lines for a Common Approach on decentralized EU agencies received via the Inter Agency Legal Network. The curriculum vitae and declarations of interest of all the board members and senior management of ESMA are published on ESMA website.

ESMA also implemented the policy on conflict of interest for staff in 2015, adapted from the existing Ethics Guide. It provides clear guidance on conflict of interest and contact with stakeholders among others. All staff members are required to fill out an annual declaration regarding potential conflicts of interest and are bound to request clearance for dealing in financial instruments.

Specific measures for avoiding conflicts of interest are taken during recruitment procedures and procurement selection panels.

Concerning the collaboration with the European Antifraud Office (OLAF), and according to Article 22 of the Council Regulation establishing ESMA, the Management Board approved in January 2011 a decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interest. ESMA is also part of the Inter-Institutional Agreement of 25 May 1999 concerning internal investigations by OLAF.

In January 2015, the Management Board of ESMA adopted the ESMA Anti-Fraud Strategy 2015-2017, the implementation of which will enhance ESMA's capabilities in preventing, detecting, investigating and sanctioning potential fraud cases.

ICS 3 - Risk management

In order to ensure identification and assessment of potential risks in the annual planning phase that could negatively influence the achievement of ESMA's objectives and effective execution of activities, ESMA adopted in 2013 Risk Management Guidelines, aimed at giving guidance on how to analyse and evaluate risks, decide upon and implement further actions and controls to minimise or mitigate the risks.

ESMA conducted its 2015 corporate risk assessment exercise, including both a bottom up and a top down exercise with senior and middle management. The

result was a risk register and an action plan with assigned responsibilities and set deadlines, which was embedded in the Annual Work Programme. Risks were categorised according to their significance and actions are taken to reduce them to the acceptable risk level of ESMA.

ESMA setup a project in 2016, to enhance risk management activities at all levels of ESMA and to foster synergies across the different risk activities of the Authority.

ICS 4 - Operations and control activities

The current organisation of ESMA aims at optimising the way the Authority can deliver on the tasks delegated to it through the Founding Regulation.

In 2015, ESMA performed an internal reorganisation to support its Strategic Orientation 2016-2020, and created a new department, Corporate Affairs, to foster stakeholder relationships and provide effective support on planning, communication, cooperation and internal controls aspects across the organisation.

The Heads of Departments 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. Team leaders have mainly a coordination role within the departments and provide assistance to the Heads.

In 2015 the delegation structure was reviewed and additional delegations were included. The Executive Director, as the Authorising Officer (AO), delegated financial responsibility to heads of departments and team leaders up to limited amounts for the budget lines for which they are responsible.

For the expenditure of 2015, 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.

Management supervision in ESMA is supported by a system of meetings and reports covering all areas of the Authority. The two-layer structure of the Authority's top management with the Executive Director and the Chair enhances efficiency.

For coordination and decision-making, the senior and middle management of the Authority meets weekly in a policy and strategy meeting that focus on regulatory and supervisory convergence tasks. A management meeting is also organised bi-weekly with a focus on the administrative and organisational issues.

A separate monthly administration meeting is organised where a comprehensive set of reports on key activities such as recruitment and budget execution is provided to the Executive Director.

The reporting on the implementation of the ESMA Work Programme, notably the progress of the different tasks with expected products and timelines is organised on a quarterly basis and flows into the quarterly reporting to the Management Board.

The quarterly Activity Report, prepared for the ESMA Management Board, serves as one of the most important tools for regular management reporting. The report covers key areas such as budget and Annual Work Programme implementation, HR and recruitment, finance and procurement, external communication, and achievements and risks/issues per ESMA activity. In addition, the management reporting package is supported by supplementary reports when needed (e.g. staff turnover, budget transfers, procurement planning update).

ESMA has created and documented the bulk of the processes, procedures and workflows that constitute the core administrative framework in an EU body. This includes key items such as the financial circuits, recruitment procedures, reporting on exceptions, and ethics guidelines. An important set of new policies and procedures was adopted in 2015, including new implementing rules.

ESMA started developing its business continuity framework in 2012. The business impact assessment was reviewed during 2013 and a business continuity plan was drafted in 2014. There is an IT disaster and recovery plan in place. ESMA has two security officers and a stand-by office service has been created for emergencies. The review of the business continuity framework is planned for 2016.

In 2015, ESMA started deploying a new document management system that will be fully implemented in 2016.

ICS 5 - Information and financial reporting

The main channels of communication are the internal and external websites; the Intranet was launched in the beginning of 2013. ESMA has launched a new external website in 2015.

ESMA has an External Communication Strategy and an internal Crisis Management plan, which includes communication processes in the case of a crisis.

There is a procedure for launching public consultations and a decision regulating access to documents.

ESMA has strong IT governance in place. All of the IT projects that are carried out together with the national authorities are overseen by a Standing Committee and by ITMG, both of which report to the Board of Supervisors.

ESMA has implemented certain controls to ensure that accounting data and related information are accurate, complete and timely. These include controls ensuring the independence of the Accounting Officer and a process of financial reporting. The Accounting Officer is appointed by the Management Board and the appraisal appeal assessor is the ESMA Chair.

ICS 6 - Evaluation and audit

In line with the ESMA Founding Regulation (Articles 10 and 15), impact assessments on new regulatory tasks (technical standards and guidelines) are carried during the drafting of implementing technical standards, guidelines or recommendations and are published with the final product.

ESMA has not established an Internal Audit Capability. A charter with IAS according to the new Financial Regulation serves as the framework and terms of reference for the internal audit services provided to ESMA by the IAS.

In addition, ESMA performs annually finance ex-post controls. In 2015, ESMA signed an MoU with EIOPA for the execution of the ex-post controls. In addition, ESMA conducts regularly a risk assessment of the sensitive functions, a review of the ABAC access rights, an analysis of exceptions and an annual assessment of the implementation of the internal control standards.

For reporting the developments and progress on audit recommendations, the quarterly Activity Report to the Management Board has a dedicated section on audit follow up.

As a first evaluation of ESMA, the Commission prepared a general report on the experience acquired as a result of the operation of the Authority (Article 81 of the ESMA Founding Regulation). The report on the evaluation of the ESAs was published in 2014.

ESMA has an internal control function which has been integrated in the Corporate Affairs Department in 2015.

Building blocks of assurance

Follow up of audits and evaluations

European Court of Auditors

Financial audit

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 Agency and the legality and regularity of the transactions underlying them.

In ECA Statement of Assurance of 2014, it was indicated that ESMA accounts are reliable and the transactions underlying the accounts are legal and regular.

The ECA audit of the 2015 annual accounts is on-going. The draft report will be available by mid-2016. The first audit mission was performed in October 2015 and a desk review in February 2016.

In addition, the audit of the accounts 2015 is performed by a private company (Ernst & Young) and it was performed in February 2016.

The recommendations raised by ECA regarding the 2014 annual accounts are being addressed by ESMA.

Among others:

- ESMA has developed an activity based costing system for the calculation of the fees of supervised entities,
- ESMA has stopped using UGAP.

Performance audit on supervision

The European Court of Auditors performed an audit on Credit Rating Agencies supervision. The audit had started in June 2014 and the final report was published in February 2016.

In its report, ECA acknowledges that ESMA has laid down good foundations for carrying out supervision of the CRAs in the EU in a short period of time.

ECA also indicates that there still room for improvement and provides eight recommendations: the need to increase the traceability of the different supervisory processes, the need to further examining methodologies and conflict of interest, as well as the need to improve disclosures.

ESMA has setup an action plan following the audit and its implementation will be reported to the Management Board.

Internal audit service

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

IAS performed in 2015 an audit on Stakeholder Management and External Communication.

All critical or very important recommendations from previous years audits are closed.

Performance audit on Stakeholder Management and External Communication

IAS had started a performance audit on Stakeholder Management and External Communication in December 2014. The audit fieldwork was performed in January 2015.

ESMA received the report on 23 April 2015 and ESMA developed an action plan that was sent to IAS on 20 May and it was accepted by IAS on 5 June.

IAS issued five recommendations in the report:

a. Enhance strategy for interaction with stakeholders

b. Review governance and need of working groups, roundtables and workshops

c. Finalize implementation of secure platform and collaborative platform for the exchange of information with stakeholders

d. Update the procedural framework for external communication

e. Improve the process for handling requests

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.

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;
- the ex-ante and ex-post controls;
- the validation of the accounting systems;
- the analysis of 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.

The Executive Director

Date: 13 June 2016

2015 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 Annual Activity 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, 13 June 2016

(signed)

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 Standing Committees and Working Groups

Much of the Authority's work is supported by 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 for a limited time, depending on the issues handled and the mandate given. The groups are normally chaired by senior representatives of NCAs and supported by ESMA staff who act as rapporteurs.

More details can be found on www.esma.europa.eu

The ultimate decision-taking body of ESMA is the Board of Supervisors, whereas the Management Board deals with the management of the Authority.

ESMA's Boards and their 2015 composition

Members of the Management Board as at 31 December 2015

Member	Authority	Country
Steven Maijoor	ESMA	
Carlos Tavares	ESMA (Vice-Chair)	Observer
Martin Merlin	Commission	Observer
Cyril Roux	Central Bank of Ireland	Ireland
Lourdes Centeno	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Gérard Rameix	Autorité des Marchés Financiers (AMF)	France
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Marek Szuszkiewicz	Komisji Nadzoru Finansowego (KNF)	Poland

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Members of the Board of Supervisors as at 31 December 2015

Member	Authority	Country
Steven Maijoor Jean Paul Servais	ESMA Financial Services and Markets Authority (FSMA)	Belgium
Stoyan Mavrodiev	Комисията за финансов надзор (FSC)	Bulgaria
Pavel Hollmann	Česká národní banka (CNB)	Czech Republic
Birgitte Søgaard Holm	Finanstilsynet	Denmark
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Andre Nõmm	Finantsinspektsioon (FSA)	Estonia
Cyril Roux	Central Bank of Ireland	Ireland
Charalampos Gotsis	Ελληνική Επιτροπή Κεφαλαιαγοράς (HCMC)	Greece
Lourdes Centeno	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Gerard Rameix	Autorité des Marchés Financiers (AMF)	France
Petar-Pierre Matek	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Croatia
Guiseppe Vegas	Commissione Nazionale per le Società e la Borsa (CONSOB)	Italy
Demetra Kalogerou	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus
Kristaps Zakulis	Finanšu un kapitāla tirgus komisija (FKTK)	Latvia
Vytautas Valvonis	Lietuvos Bankas	Lithuania
Jean Guill	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg
László Windisch	Magyar Nemzeti Bank (MNB)	Hungary
Marianne Scicluna	Malta Financial Services Authority (MFSA)	Malta
Merel Van Vroonhoven	Autoriteit Financiële Markten (AFM)	Netherlands
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Marek Szuszkiewicz	Komisja Nadzoru Finansowego (KNF)	Poland
Carlos Tavares	Comissão do mercado de valores mobiliários (CMVM)	Portugal
Mișu Negrițoiu	Autoritatea de Supraveghere Financiară (ASF)	Romania
Miloš Čas	Agencija za trg vrednostnih papirjev (ATVP)	Slovenia
Ivan Barri	Národná Banka Slovenska (NBS)	Slovak Republic
Anneli Tuominen	Finanssivalvonta (FSA)	Finland
Martin Noréus	Finansinspektionen (FI)	Sweden
Tracey McDermott	Financial Conduct Authority (FCA)	United Kingdom

Observers to the Board

Name	Authority	Country
Unnur Gunnarsdóttir	Fjármálaeftirlitið (FME)	Iceland
Marcel Lötscher	Finanzmarktaufsicht (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	
Olivier Guersent	European Commission	

Other disclosures

ESMA reports on access to documents requests

Pursuant to Article 17(1) of Regulation (EC) No 1049/2001 (Access to Documents Regulation), a report has to be annexed to ESMA's annual report including (a) the number of access cases in which ESMA refused to grant access to documents; (b) the reasons for such refusals; and (c) the number of sensitive documents recorded in the register.

In 2015, ESMA received 6 requests for access to documents pursuant to Regulation (EC) No 1049/2001. In two cases ESMA granted full access to the requested documents. In one case it was not possible to provide the applicant with the requested document as ESMA was not in possession of it. In one case ESMA refused to grant access to the documents as they contained confidential supervisory information covered by professional secrecy.

On another two occasions ESMA decided to grant partial access to the documents; in particular, it was assessed that the disclosure of certain information would have undermined the protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

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