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Steven Maijoor

CHAIR
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Chair's foreword

Putting in place the architecture for one of the greatest changes to financial markets, marked 2017 as a milestone in the history of ESMA. While the preparations for the implementation of MiFID II/MiFIR shaped much of last year, ESMA's core mission of enhancing the protection of investors and promoting stable and orderly financial markets remained the bedrock of our work.

Implementing changes contributing to our mission requires that ESMA delivers on its key priorities. In 2017, ESMA continued to build towards a common supervisory culture. Through coordinating and facilitating the consistent application of rules across the EU, we have made significant progress in the further integration of European capital markets.

ESMA's supervisory convergence work addresses the fundamental question for any European supervisory authority, how to improve the functioning of the internal market, and ensure sound, effective and consistent supervision. Supervisory convergence implies for example sharing best practices and ensuring that the EU internal market works effectively, by removing barriers, creating a level-playing field and preventing regulatory arbitrage.

In a year defined by the preparation for MiFID II/MiFIR, ESMA prioritised preparing markets and NCAs to ensure convergent supervision of MiFID II/MiFIR. In 2017, ESMA published a variety of Guidelines, Q&As and Opinions from its supervisory toolbox to support the correct and sound application of MiFID II/MiFIR, while supporting the implementation by financial market participants. Ahead of the starting date, ESMA published opinions on commodity derivative position limits, Transitional Transparency Calculations, and issued 239 opinions on waivers from pre-trade transparency.

In parallel ESMA continued to assess risks to investors, and financial stability in the financial markets within its remit. ESMA continues to identify emerging trends, risks and vulnerabilities, and where possible opportunities, in a timely fashion so that they can be acted upon. No item defined this approach more in 2017 than the rapid growth of Initial Coin Offerings (ICOs) and the strong increase in the value and number of virtual currencies. These developments prompted ESMA to analyse the relevant risks and resulted in two public statements on ICOs, notably highlighting the potential risks to investors of investing in ICOs. ESMA also laid the groundwork for product intervention measures regarding CFDs and binary options that were implemented in the first half of 2018.

The vastly expanded requirements to report, collect and disclose data bring about new opportunities and challenges. ESMA is committed to enlarging the scope of its data management and analysis to support all of our activities. The approval of the Data Strategy Implementation Plan for 2018-2022 represented a significant step forward, as it envisages a more intense and efficient use of data by ESMA and the NCAs.

Especially our work on MiFID II/MiFIR includes significant preparation and maintenance of related IT and data collection systems.

2017 also saw further development and consolidation of ESMA's single rulebook, which aims at strengthening regulation and creating a level-playing field across the EU. ESMA finalised one of the key elements of MiFID II/MiFIR with the delivery of the draft Technical Standard regarding the trading obligation for derivatives. We also published three consultation papers to develop the draft Technical Standards ESMA needs to deliver for the Securitisation Regulation. ESMA's preparation for another key implementation date saw us publish 12 draft technical standards under the Benchmarks Regulation.

ESMA as the sole supervisor for credit rating agencies (CRAs) and trade repositories (TRs) made concerted efforts in the development and use of supervisory tools in achieving its objectives regarding direct supervision. ESMA's commitment to address supervisory issues also require it, when necessary, to take enforcement action. In 2017, ESMA levied its largest fines to date, totalling €1.24 million, for infringements of the CRA Regulation. We also developed new tools to improve the risk assessment process and framework, allowing ESMA to better identify and evaluate supervisory risks. Looking forward to 2018, ESMA will continue to engage with CRAs and TRs regarding strategy, governance, operational matters, and preparations for when the United Kingdom (UK) leaves the EU.

Political developments have demanded that we adequately prepare for a new relationship between the UK and EU. While it is yet unclear what shape this future relationship will take, ESMA has worked to ensure a consistent supervisory approach to safeguard investor protection, the orderly functioning of financial markets and financial stability ahead of any final agreement. In 2017, ESMA published four Brexit-related opinions in order to supplement the legislative and regulatory framework and set up a network in order to provide a forum for reporting and discussion among NCAs regarding UK market participants seeking to relocate entities, activities or functions to the EU27.

Looking towards another issue that will greatly influence ESMA's future, the European Commission's review of the operations of the European Supervisory Authorities (ESAs) resulted in a legislative proposal in 2017. ESMA remains committed to prepare and execute any future mandates resulting from this proposal.

ESMA maintains an open dialogue with, and is accountable to, the EU institutions – the European Parliament and the Council – including attending regular scrutiny hearings at the Economic and Monetary Policy Committee (ECON) of the Parliament.

2017 was another productive year for the ESA's. A particular highlight was the Joint ESAs Consumer Protection Day, which facilitated the ESAs to engage with key – and new – stakeholders, especially consumers' representatives, on important issues facing retail investors and consumers across the EU. Moreover, the ESAs conducted preparation and implementation work, including issuing Q&As, ahead of the arrival of the PRIIPs KID.

ESMA plays an important role in international cooperation on regulatory and supervisory matters. In 2017, ESMA concluded 7 MoUs with 10 different authorities and recognised 9 additional Third Country-CCPs. It is important that ESMA continues to influence and shape the global supervisory and regulatory agenda through our participation in IOSCO and the FSB. We continued our active participation in the IOSCO Board, several IOSCO policy committees as well as its European Regional Committee. ESMA and IOSCO joined forces in 2017 in order to prepare for GDPR and to allow for a continuation of exchanges of information.

I want to thank my colleagues from the EU national authorities, the Board of Supervisors and the Management Board. Real achievement for ESMA comes from coordination and cooperation with others, and I want to pay tribute to the invaluable role they play in ensuring ESMA can meet its objectives. Their support will be crucial in the period ahead. I also want to acknowledge the excellent cooperation we have with our fellow authorities in the Joint Committee, and with the European institutions – Commission, Parliament and Council – and the contributions made by our stakeholders.

My final word of appreciation goes to ESMA's staff. Everything that ESMA achieved in 2017 is down to their hard work, dedication and commitment to the mission and aims of this organisation.

Steven Maijoor

Chair
European Securities and Markets Authority

Verena Ross

EXECUTIVE DIRECTOR
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Executive Director's foreword

The preparations for the implementation of MiFID II/ MiFIR, one of the greatest changes to European financial markets, represented a unique challenge that demanded the very best of our resources and organisation throughout 2017. ESMA remained throughout committed to its objectives of investor protection, orderly markets and financial stability.

2017 marked the year that ESMA became a truly integral part of EU capital markets infrastructure through data reporting and associated IT systems, built to ensure that MiFID II/MiFIR drives positive change for the market.

For MiFID II to succeed in 2018, it was crucial that ESMA effectively prepared markets, NCAs and our own IT systems and processes throughout 2017. The underlying IT infrastructure that is pivotal to the implementation of MiFID II / MiFIR demanded ESMA's full attention. With the increased scope of regulatory requirements on reporting entities in the areas of reference data, transparency, double volume cap and transaction reporting, it was crucial that ESMA undertook the groundwork in 2017 to ensure a smooth transition into the reporting regimes under MiFID II. To assist market participants with the new reporting requirements, ESMA released technical requirements and templates providing detail about the relevant reporting requirements and began data collection in 2017.

Going beyond MiFID II/ MiFIR, ESMA has made a significant contribution to ensuring the sound, efficient and consistent implementation of new EU legislation, while maintaining a strong emphasis on all aspects of supervisory convergence. ESMA's work on supervisory convergence in 2017 has covered a wide range of topics ranging from investor protection, convergence in the supervision of EU CCPs to improving the quality of data collected by NCAs.

Across all of ESMA's responsibilities, data and how it is reported, analysed and used drove an extremely busy year, with EU IT projects remaining a key undertaking. These regulatory projects aim to develop IT systems that support supervisory convergence and exchange of financial data amongst NCAs and between NCAs, ESMA and the public. The provision of these systems demands substantial time and resources. At the end of 2017 ESMA was managing 40 applications (+33% compared to 2016) and 237 virtual servers. Last year, work continued on two major IT projects delegated to ESMA by the NCAs, FIRDS and TRACE, which strive to assist the coherent implementation of key EU legislation. Full implementation of FIRDS, one of the MiFID related projects, was finalised during 2017, with the first collection of financial instruments reference data taking place towards the end of the year. The TRACE project was also completed in 2017, and now offers a single point of access for authorities querying and retrieving data from Trade Repositories (TRs).

Reliable data is a prerequisite to fair play and transparency in financial markets. In 2017, ESMA carried out a variety of activities aimed at enhanced data quality, focusing first of all on completeness and subsequently on the quality of the data reported. ESMA is harmonising data reporting rules across different regulations, thus facilitating firms' reporting and the supervisory use of data, including promoting common data reporting standards and identifiers. ESMA pays particular attention and allocates dedicated resources to ongoing monitoring of data quality and its improvement.

In undertaking our wide-ranging activities, ESMA is mindful of the limited resources available. Nevertheless, each year ESMA challenges itself to ensure that it constantly delivers its objectives effectively and efficiently. To ensure that ESMA continues to mature as an organisation, we have implemented a number of actions to further enhance our operational effectiveness in 2017. For example, ESMA advanced considerably in terms of digitalisation of its administrative processes through paperless and e-administration tools, and made important progress in the fields of IT security, cybersecurity and business continuity.

ESMA's record of accomplishment is built upon several fundamental principles. As an organisation we adopt a high level of transparency and engage regularly with European and international stakeholders. In 2017, we have for example enhanced stakeholders' access to ESMA guidance with the launch of a new Q&A tool, providing easy access for stakeholders to consult existing Q&A's and submit new questions.

Being a transparent organisation means opening our doors to many visitors. In 2017, ESMA organised 742 meetings and workshops within ESMA's premises and received 8,056 external participants to these meetings. In October, ESMA hosted its first ever conference, focusing on *The State of European Financial Markets*, in which political decision makers, global regulators and high-profile financial industry leaders gathered to discuss the current state of EU financial markets. The event was also streamed free online.

Where exactly ESMA will open its doors in the future is the ultimate question behind the launch of a key new multi-annual project: ESMA 2020 Premises. This project aims to ensure that ESMA will have suitable, cost-efficient and duly approved premises at the beginning of 2020 after the expiration of our current lease contract on 31 December 2019.

Finally, ESMA is a forward-looking organisation. 2017 has increased the responsibilities of this organisation, not just with the implementation of MiFID II /MiFIR. We have also prepared for possible future changes by closely monitoring the proposals put forward by the Commission in September 2017 in the ESAs review. What ESMA has achieved and learnt as an organisation over the last years, and has further built on in 2017, will prove invaluable in the years ahead. Putting us in a stronger position to meet our objectives of enhancing the protection of investors and promoting stable and orderly financial markets, whatever the co-legislators will decide on the various legislative proposals that are currently under consideration.

In this important and challenging year, the commitment and professionalism of all my ESMA colleagues has been for me the defining theme of 2017. I want to thank everyone who has contributed to delivering this extremely busy agenda, in a year that truly demonstrated the capabilities, strengths and commitment of this organisation and its staff.

Verena Ross

Executive Director
European Securities and Markets Authority

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 multi-layered system of micro and macro-prudential authorities established by the European institutions to ensure consistent and coherent financial supervision in the EU. This system consists of the three European Supervisory Authorities (ESAs): 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, together with the EBA and EIOPA, forms part of the Joint Committee of the ESAs[2] (Joint Committee) which works to ensure cross-sector consistency and joint positions in the area of the supervision of financial conglomerates and other cross-sector issues. The European Systemic Risk Board complements the ESFS.

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

1.1. Mission, objectives and activities

ESMA's mission, based on its Regulation, is to enhance the protection of investors and promote stable and orderly markets in the European Union (EU).

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.

1 ESMA Regulation 1095/2010

2 Joint Committee of the European Supervisory Authorities.

In order to achieve harmonised rule implementation throughout the EU, ESMA serves as a standard setter in relation to securities markets 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.

The Annual Report is an important accountability tool describing ESMA's delivery against its objectives and Annual Work Programme[3].

ESMA's role can be better understood through its three objectives.

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.
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 interlinked: for example, investor protection and orderly markets feed into overall financial stability. At the same time, increased financial stability supports orderly markets and investor protection.

ESMA achieves its mission within the ESFS through active cooperation with NCAs as well as with the EBA and EIOPA, both individually and through the Joint Committee. ESMA has a unique position within the ESFS, focusing on the securities and financial markets dimension and the overarching European aspects of these objectives.

The four activities that help ESMA achieve its mission and objectives are the following.

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 all market participants across the EU. ESMA contributes by developing technical standards and by providing advice to EU institutions on legislative projects.

3 ESMA/2016/1419 2017 Work Programme

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, to identify opportunities so that they can be acted upon in a timely fashion. ESMA uses its unique position to identify market developments that pose a risk to financial stability, investor protection or the orderly functioning of the European financial markets.

Supervisory convergence: this is the consistent implementation and application of the same rules using similar approaches across the EU Member States. 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.

Supervision: ESMA is the direct supervisor of specific financial entities: CRAs and TRs. These entities form essential parts of the EU's market infrastructure. ESMA's CRA supervision ensures the quality of ratings and helps to protect investors' interests, while ESMA's TR supervision is key to 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 CRAs and TRs benefits from and also feeds into our risk assessment and the single rulebook activities.

1.2. ESMA's key priorities for 2017

In 2017 ESMA focused on delivering the following key priorities that had been agreed in its 2017 annual work programme:

- Supervisory convergence: implementation of MiFID II and MiFIR.
- Assessing risks: focus on data quality.
- Single rulebook: Benchmarks and Capital Markets Union.
- Direct supervision: supervision of CRAs and TRs and their ancillary activities.

1.3. Governance and organisation

Governance and management

Two decision-making bodies govern ESMA: the Board of Supervisors (BoS) and the Management Board.

Board of Supervisors

In addition to ESMA's Chair, the BoS is composed of the heads of the 28 EU Member State NCAs who are responsible for securities regulation and supervision,[4] while the authorities from Iceland, Liechtenstein,

4 Where there is more than one national authority in a Member State, authorities will agree on which of their heads will represent them.

Norway and the EFTA Surveillance Authority[5] are also members, since October 2016, albeit without voting rights. In addition, an observer from the Commission and representatives from the EBA, EIOPA and the ESRB also attend. The Executive Director attends the BoS.

The BoS 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, the issuance of Advice to the EU institutions, and taking authorisation and enforcement decisions. The BoS is supported by a number of Standing Committees and working groups that deal with technical issues.

The BoS' current members and the summaries of its 2017 meetings can be found on ESMA's website.[6]

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 commenced their second mandate of five years during the course of 2016.

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 January 2016, Anneli Tuominen of the Finnish Financial Supervisory Authority (FIN-FSA) was appointed Vice-Chair.

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 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 of 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. It focuses in particular on the management and supervisory 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 Management Board's current members and the summaries of its 2017 meetings are available on ESMA's website.[7]

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, academics and small and medium-sized enterprises (SMEs). ESMA consults the SMSG on all its draft Technical Standards and Guidelines in order to ensure input from stakeholders.

The members of the SMSG, made up of 30 individuals, serve a term of two and a half years. The current composition of the group began its mandate on 1 July 2016 and is chaired by Professor Rüdiger Veil, Chair for Private Law and Business Law, Munich Centre for Capital Markets Law at the *Ludwig-Maximilians-Universität*. He is supported by joint Vice-Chairs Christiane Hölz, who represents users of financial services, and Jarkko Syyrilä, who represents financial market participants. The SMSG held seven meetings in 2017, two of which were held together with the BoS.

The Group issued advice, opinions and reports in 2017 on issues such as the MiFID II, product governance, big data, the ESAs review, suitability, prospectuses and SMEs, all of which concern ESMA's activities. Their reports as well as the summaries of the group's meetings can be found on ESMA's website.[8]

Day-to-day management

The Executive Director and the Heads of Department are responsible for ESMA's day-to-day management and for forming the management team. ESMA had seven departments in 2017 and the heads of each department are responsible for the activities in their respective business areas. Planning and monitoring of activities are a crucial part of the management team's role and contribute to ESMA's internal control system.

The Chair, Executive Director and management team meet weekly to discuss the preparations of the Board meetings, strategic activities and cross-organisational issues.

5 EFTA Surveillance Authority website on 02/05/2017.

6 Board of Supervisors.

7 Management Board

8 Securities and Markets Stakeholder Group.

2 ESMA's achievements against its 2017 objectives

2.1. Promoting supervisory convergence

ESMA is required, under its Regulation, to foster supervisory convergence in order to improve the functioning of the internal market, including a sound, effective and consistent supervision. The Regulation specifies a number of tools ESMA can use to achieve this aim, and enables it to devise additional tools where necessary.

Supervision by the NCAs, together with supervisory convergence fostered by ESMA, is important to ensure that the EU internal market works effectively by creating a level playing field and preventing regulatory arbitrage or a race to the bottom.

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, amongst others through a dedicated Standing Committee set-up to deal with transversal supervisory convergence matters. 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 programmes, draft opinions, guidelines and Q&As, but also to build a close network to exchange views on day-to-day supervisory issues, share best practices and train supervisors.

ESMA works to ensure the consistent and correct application of EMIR through its active co-ordination across CCP colleges.

ESMA actively supports international supervisory co-ordination and convergence, for example through its participation in IOSCO.

Key deliveries and successes

Protecting EU consumers from speculative financial products

In recent years ESMA and several NCAs have observed a rapid increase in the marketing, distribution and sale of contracts for differences, including rolling spot forex contracts for difference (CFDs) and binary options to retail investors across the EU.

The inherent complexity and risk associated with these products, the marketing, distribution and sale through online channels and the associated aggressive marketing techniques used by a number of firms have led to significant investor protection concerns. Several NCAs have also conducted analyses or studies showing that between 74% and 89% of clients trading in these products lose money.

In 2017, ESMA continued to co-ordinate the activities of a *Joint Group* of host NCAs and the Cyprus Securities and Exchange Commission (CySEC) in its capacity as home NCA. The work of the group focused on issues arising in relation to 24 Cyprus-based investment firms offering CFDs, binary options and other speculative products to retail clients throughout the EU on a cross-border basis. ESMA had the opportunity to present the objectives pursued through the work of this group in a hearing before the European Parliament in July 2017.

Through the work of the Joint Group and the execution of CySEC's own Supervisory Action Plan, CySEC has introduced and implemented a significant number of changes to the supervision of conduct of business of Cyprus Investment Firms. This is alongside supervisory actions which include the imposition by CySEC of pecuniary sanctions of over €3 million on some firms, and the withdrawal of 3 firms from their marketplace.

Product intervention, CFDs and binary options

Further to the risks identified in past years in relation to CFDs, binary options and work in the context of the Joint Group, ESMA issued an Opinion in January 2017 regarding the scope of the product intervention powers under the MiFIR. Both NCAs and ESMA can exercise these powers from 3 January 2018. The powers will only apply to MiFID investment firms marketing products that pose risks to retail investors, market integrity and financial stability in the EU, but they do not cover Undertakings for Collective Investment in Transferrable Securities (UCITS) management companies and Alternative Investment Fund Managers (AIFMs). ESMA was concerned about the potential for regulatory arbitrage and the potential reduction in effectiveness of future intervention measures, and believed that the EU institutions should address this issue.

ESMA issued a statement in December 2017 on its preparatory work on contracts for difference and binary options and other speculative products to retail investors. ESMA has been concerned about the risks to retail investors for some time and therefore had been conducting ongoing monitoring and supervisory convergence work in this area. The statement indicated that ESMA may consider taking action using its product intervention powers under MiFIR in 2018.

Ensuring convergent supervision of MiFID

A priority for ESMA in 2017 was to prepare the markets and NCAs for the application of the Markets in Financial Instruments Directive II (MiFID II) and the Markets in Financial Instruments Regulation (MIFIR), which took place on 3 January 2018. ESMA published supervisory tools (Guidelines, Q&As, Opinions) to drive the correct and sound implementation of MiFID II/MiFIR, including updating and following up on previous publications. ESMA also facilitated agreements between NCAs for the delegation of powers or tasks.

Product governance

Requirements on product governance were introduced under MiFID II to enhance investor protection by regulating all stages of the life cycle of products or services in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests. Following a Consultation Paper issued in 2016, ESMA published the 2017 final report on product governance guidelines regarding the target market assessment by manufacturers and distributors of financial products. To ease the application of the guidelines, further practicalww examples were provided in the annex.

MiFID II Guidelines

In addition to the Guidelines on product governance, ESMA also issued two other sets of MiFID II Guidelines in 2017, one on the calibration of circuit breakers and the publication of trading halts and the other on the management body of market operators and data reporting service providers. These guidelines represent another vital component ensuring the successful application of MiFID II from 3 January 2018.

ESMA published opinions on pre-trade transparency waivers

ESMA issued 239 opinions on waivers from pre-trade transparency under MiFID II to NCAs. These opinions are a convergence tool used in MiFID II to ensure that the pre-trade waiver framework is applied in a consistent way from day one of the MiFID II application. ESMA will continue processing the Opinions in 2018.

ESMA published first Opinions on commodity derivative position limits

One of the key new features of MiFID II is the introduction of limits to the positions market participants may hold in commodity derivative contracts, subject to some exemptions. Whereas a default automatic limit applies to illiquid contracts, NCAs are responsible for setting bespoke limits for liquid contracts.

ESMA published a first set of 13 opinions on the bespoke position limits notified by the relevant NCAs. The purpose of ESMA's opinions is to ensure that the limits set comply with the defined methodology and are consistent with the objectives of preventing market abuse and supporting orderly pricing and settlement conditions. ESMA's opinions on position limits also contribute to supervisory convergence by ensuring that consistent limits are applied to similar contracts based on the same underlying.

Assessing the position limits notified was new territory for ESMA, which has been working in close co-operation with NCAs to produce this first set of opinions on agricultural, metal and oil derivative contracts.

Transitional transparency calculations

A substantial share of activities has been concentrated on ensuring a smooth transition between MiFID and MiFID II. This transition was associated with an enlarged scope of responsibilities for ESMA, both directly coming from the legislation or after delegation by NCAs. In that respect, in 2017 ESMA computed and published the transitional transparency calculations that have been applicable since 3 January 2018. In addition, ESMA already planned and has started to manage the new data coming through the dedicated data systems in 2018, as the supporting IT system became available and public during 2017.

Collecting data on transaction reporting

MiFID II and MiFIR increase the scope of regulatory requirements on reporting entities in the areas of reference data, transparency, double volume cap and transaction reporting. In order to ensure a smooth transition from the current reporting regimes under MiFID I, ESMA began data collection in 2017, before the 3 January 2018 date of application of MiFID II and MiFIR. In order to assist market participants with the new reporting requirements, ESMA released technical requirements and templates providing further helpful details about the relevant reporting requirements.

Peer reviews to assess compliance and convergence levels in the EU

ESMA's role includes continued assessment of the levels of compliance by NCAs with the rules and guidance in force as well as seeking information on the levels of supervisory convergence among NCAs in the EU. One of the tools to carry out this work is a peer review carried out by an assessment group made up of NCA and ESMA experts.

Guidelines on the enforcement of financial information

In July 2017 ESMA published a peer review report related to some of the Guidelines on the enforcement of financial information.[9]

The report identifies areas where further supervisory convergence is deemed necessary and makes recommendations to support these improvements.

While ESMA acknowledges the high level of convergence in the supervision and enforcement of individual cases, the report identifies that improvements are needed in relation to:

- how issuers are selected to examine their financial information;
- the depth of inquiries into financial statements going beyond correcting disclosure; and
- the financial and human resources allocated by NCAs to the enforcement of financial information.

In particular, five of the jurisdictions — Malta, Portugal, Romania, Sweden and the UK —were found to not fully comply with all of the Guidelines under review. In some jurisdictions there is a risk that insufficient resources are allocated to enforcement, and that some issuers are not eligible to be selected for scrutiny. Additionally, in some jurisdictions there is a tendency to focus on disclosure issues instead of in-depth inquiries into valuation issues.

Guidelines on certain aspects of the compliance function under MiFID

The Guidelines cover NCAs' supervision of investment firms' compliance functions, particularly how those functions carry out risk assessments, monitor compliance obligations, report to senior management and fulfil their advisory role. The work involved assessing the approaches of 31 European Economic Area (EEA) NCAs to supervising investment firms' compliance functions against the Guidelines' requirements

The Peer Review[10] concluded that there is a high level of compliance by the majority of EEA NCAs with the Guidelines, although significant weaknesses were identified in the supervisory approaches of Cyprus, Iceland and the Netherlands. ESMA will follow up regarding the points of insufficient compliance and partial compliance with the relevant NCAs.

In addition, the Review identified a number of good practices by a number of NCAs in their supervision, including:

- the pre-screening by NCAs of compliance officers;
- clear communications by NCAs of expectations to the compliance function at the authorisation stage; and
- NCAs undertaking on-site visits shortly after the firm's authorisation, in particular for riskier firms.

Follow-up to the peer review on MiFID conduct of business rules relating to fair, clear and straightforward information

ESMA's Chair sent a number of follow-up letters to NCAs where deficiencies had been identified in the previous peer review. The assessment concluded that six out of the ten NCAs which were found to be not fully applying certain commonly identified ESMA good practices have addressed all deficiencies identified. For the remaining four NCAs, one (Denmark, Estonia and Greece) or more (Cyprus) deficiencies remain, although significant efforts have been made by Cyprus and Greece.

9 ESMA42-111-4138 Peer Review on Guidelines on Enforcement on Financial Information

10 ESMA42-111-4285 Peer review on certain aspects of the compliance function under MiFID I

Central counterparties

ESMA conducted a peer review covering the supervision by NCAs of CCPs default management procedures (DMPs), including simulation exercises assuming the default of a clearing member (fire drills). Overall, ESMA found that NCAs supervise DMPs adequately and that most EU CCPs have performed fire drills. However, the published report[11] on the peer review highlighted areas where divergences emerged in NCAs' supervisory approaches related to reviewing and testing of DMPs and fire drills. The report also identified areas where supervisory convergence could be further enhanced, and highlighted existing good practices. A possible case of non-compliance with EMIR was also identified with respect to the frequency of the comprehensive review of DMPs and fire drills, which will require further follow-up in 2018.

Supervisory convergence work related to Brexit

Following the vote of the UK on withdrawing from the EU on 23 June 2016, it notified the European Council on 29 March 2017 of its intention to withdraw from the EU. In this context, given the prominent role of the UK in the EU single market, ESMA has worked to ensure a consistent supervisory approach to safeguard investor protection, the orderly functioning of financial markets and financial stability.

In 2017 ESMA, against this backdrop, published four opinions in order to supplement the legislative and regulatory framework and set up a network in order to provide a forum for reporting and discussion among NCAs regarding market participants seeking to relocate entities, activities or functions to the EU27, with the objective of promoting consistency in the decision-making of NCAs.

ESMA Opinions

ESMA published four Brexit-related opinions in 2017: one general opinion and three sectoral opinions addressed to NCAs. They address regulatory and supervisory arbitrage risks that arise as a result of increased requests from financial market participants seeking to relocate to the EU27. Without prejudice to any specific arrangements that may be reached between the UK and the EU, the opinions assumed that the UK would become a third country after its withdrawal from the EU.

The general opinion12 was published on 31 May 2017 and contained nine general principles to support supervisory convergence in the context of the UK withdrawing from the European Union.

The sectoral opinions were published on 13 July and were related to areas of investment firms[13], secondary markets[14] and investment management[15]. They supplement the principles set out in the cross-sectoral opinion by addressing regulatory and supervisory risks in their respective areas.

Supervisory Coordination Network

In order to provide an appropriate supervisory framework for market participants seeking to relocate activities or functions into the EU27, ESMA has established a Supervisory Coordination Network (SCN).

The SCN aims at ensuring a high level of consistency in supervision and at protecting the integrity of the EU single market. Composed of senior technical experts, it facilitates supervisory coordination between the EU27, with the objective of enhancing mutual understanding between the EU27 NCAs through information exchange, sharing of good practices and in-depth discussion of key issues arising from relocation.

In six meetings in 2017, the SCN focused on different themes arising from authorisation requests or requests for extension of existing authorisations of investment firms, asset managers and trading venues seeking to relocate from the UK, in particular as regards outsourcing or delegation arrangements.

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11 ESMA70-151-812 2017 CCP Peer Review Report

12 ESMA42-110-433 General principles to support supervisory convergence in the context of the UK withdrawing from the EU.

13 ESMA35-43-762 Opinion to support supervisory convergence in the area of investment firms in the context of the United Kingdom withdrawing from the European Union

14 ESMA70-154-270 Opinion to support supervisory convergence in the area of secondary markets in the context of the United Kingdom withdrawing from the European Union

15 ESMA34-45-344 Opinion to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union

2.1.1. Corporate finance

Objective for 2017	Achieve measurable improvements in the level of convergence regarding the application by NCAs of the EU legislation on corporate finance matters, with a particular focus on the development and application of practices in the prospectus and transparency areas and greater exchange of experience in the areas of corporate governance and takeover bids.

Prospectuses

ESMA published its annual report on the number of prospectuses approved and passported by the NCAs of the EEA within the EU prospectus regime in 2016. ESMA found that the number of prospectus approvals across the EEA fell by around 8.5% from 2015 to 2016, continuing the overall decreasing trend seen since the start of the financial crisis. The purpose of making prospectus data available is to provide information about trends within the prospectus regime in terms of general approval and passporting activity as well as the structure of approved prospectuses and the types of securities they cover.

Transparency

The Transparency Directive (TD) requires investors to notify issuers when they acquire or dispose of shares admitted to trading on regulated markets, resulting in their total voting rights crossing certain set thresholds. As a minimum harmonisation directive, the TD allows EEA countries some discretion as to how they transpose the rules into national law. To help market participants identify their notification obligations under national law in accordance with the TD, ESMA published a practical guide to national rules on major holdings notifications across the EEA.

2.1.2. Corporate reporting

Objective for 2017	Increase supervisory convergence in the area of the enforcement of accounting standards in particular by completing the peer review of Guidelines on the enforcement of financial information, and increase co-operation between accounting and auditing enforcers.

The work on the peer review report of the Guidelines on the enforcement of financial information is reported above in the *Key deliveries and successes* section.

ESMA published its annual report on the enforcement and regulatory activities of accounting enforcers within the European Union in 2016. It also published enforcement decisions to inform market participants about which accounting treatments European national enforcers consider as complying with International Financial Reporting Standards (IFRS). Understanding the decisions and the rationale behind them contributes to a consistent application of IFRS in the EEA. ESMA also issued a statement of European common enforcement priorities for 2017 annual financial reports, underlining that listed issuers must focus on the new IFRS standards and the necessary transition disclosures.

ESMA also published a fact-finding exercise on disclosure of the impact of the new accounting standards (IFRS 9 *Financial Instruments* and IFRS 15 *Revenue from Contracts with Customers*) in the 2016 annual and 2017 interim IFRS financial statements, with the objective of assessing the level of transparency and effectiveness of disclosure on the impact of the implementation of the new standards.

ESMA contributed to the post-implementation review on IFRS 13 carried out by the International Accounting Standards Board by conducting a desktop review of a sample of 2015 annual reports and of evidence from enforcement actions taken. The financial statements in the sample generally incorporated the IFRS 13 requirements well, but compliance and comparability could still be improved and the accounting standard itself could be clarified in selected areas.

2.1.3. Investment management

Objective for 2017	Achieve measurable improvements in the level of convergence regarding the application by NCAs of the EU legislation on investment management.

ESMA continued to seek improvements in convergence on investment management legislation in 2017, in particular by publishing two opinions. The first opinion concerned the extent to which different types of units or shares (share classes) of the same UCITS fund can differ from one another. The opinion, addressed to national regulators, sets out four high-level principles that UCITS must follow when setting up different share classes in order to ensure a harmonised approach across the EU. The second opinion sets out suggestions to the EU institutions for possible clarifications of the legislative provisions under the Alternative Investment Fund Managers Directive (AIFMD) and the UCITS Directive relating to asset segregation requirements and the application of depositary delegation rules to central securities depositaries.

Moreover, ESMA published several Q&As to promote common supervisory approaches and practices in the application of the AIFMD and UCITS Directive and their implementing measures. These concerned, inter alia, the AIFMD remuneration-related disclosure requirements, the AIFMD marketing requirements, the AIFMD and the Securities Financing Transaction Regulation (SFTR) reporting requirements, the UCITS issuer concentration limits, the notification of the provision of services relating to the UCITS management company passport, the application to UCITS of the exemption for intra-group transactions under EMIR and the UCITS requirements relating to the independence of management boards and supervisory functions.

2.1.4. Investor protection and intermediaries

Objective for 2017	Promote the consistent application of MiFID and MiFID II (and their respective implementing measures) and MiFIR (collectively known as the 'MiFID framework') and co-ordination between NCAs in the area of investor protection and intermediaries' regulation.

Most of the work undertaken to protect investors under MiFID is reported above in the *Key deliveries and* *successes* section. It includes supervisory convergence work through the adoption of Guidelines and Q&As on various topics in order to provide necessary guidance to market participants and to facilitate a successful start into the MiFID II/MiFIR regime as well as to work to address risks to investor protection arising from the sale of CFDs and binary options to retail clients. A peer review and follow-up work on a previous peer review on investor protection and intermediaries is also included.

Management body members and key function holders

Working with the EBA, ESMA published joint guidelines to assess the suitability of members of management bodies and key function holders. The guidelines aim to harmonise and improve suitability assessments within the EU financial sectors and to ensure sound governance arrangements in financial institutions in line with the Capital Requirements Directive (CRD IV) and MiFID II. When appointing members of the management body, institutions should ensure that the members have the reputation, knowledge, experience and skills necessary to safeguard proper and prudent management of the institution.

2.1.5. Market integrity

Objective for 2017	Provide guidance to market participants and NCAs on the application of the Markets in Financial Instruments Regulation (MiFIR), Market Abuse Regulation (MAR), Short Selling Regulation (SSR) Benchmarks Regulation (BMR) and on the Securities Financing Transactions Regulation (SFTR).

Benchmarks Regulation: critical benchmarks and L3 measures

In June 2017 the Euro OverNight Index Average (EONIA) was added to the list of critical benchmarks, which already included Euribor. In the same month, ESMA published a methodological framework to assist NCAs and colleges of critical benchmarks in using the power of mandatory contribution. The framework, which applies to all Interbank Offered Rates (IBORs) and to EONIA, provides criteria for the selection of supervised entities to be compelled to contribute input data to a critical benchmark when the representativeness of such a benchmark becomes at risk. Mandatory contribution to critical benchmarks is the main power of the NCAs and colleges under the BMR, and the publication of ESMA's methodological framework ensures that this crucial power is applied consistently throughout the Union.

To provide market participants with further clarification on the most relevant issues that will affect them when applying the BMR for the first time, ESMA published a set of ten Q&As prior to the BMR applicability starting date of 1 January 2018.

Market Abuse Regulation implementation

MAR provides for an exemption from the general prohibition of market manipulation for activities carried out for legitimate reasons and in accordance with a market practice accepted by a competent authority (AMP). MAR describes the non-exhaustive factors that a competent authority should take into account before deciding whether to establish an AMP, and requires ESMA to issue a prior opinion on the proposed AMP. With a view to ensuring a more uniform application of the MAR regime across the EU, ESMA published points for convergence[16] setting out conditions and limits that competent authorities should take into account when establishing AMPs on liquidity contracts. ESMA then issued a positive opinion in relation to the AMP on liquidity contracts notified by the Comissão do Mercado de Valores Mobiliários (CMVM), the Portuguese securities markets regulator[17].

ESMA also published several Q&As to promote common supervisory approaches and practices in the application of MAR and its implementing measures on, among others, the disclosure of inside information, the managers' transactions regime, the market sounding regime and the scope of the insider list requirements.

Short Selling Regulation

Under the SSR, ESMA published an opinion agreeing to a restrictive measure proposed by the Comisión Nacional del Mercado de Valores (CNMV), the Spanish securities markets regulator, in relation to a Spanish bank[18]. This long-term ban temporarily prohibited any transactions resulting in new net short positions or in increasing existing ones in the bank's shares. This net short position ban lasted for one month and was renewed twice before

16 ESMA70-145-76 Points for convergence in relation to MAR accepted market practices on liquidity contracts

17 ESMA70-145-171 Opinion on the intended accepted market practice on liquidity contracts notified by the CMVM

18 ESMA70-146-10 Opinion on the CNMV emergency measure under the Short Selling Regulation being lifted by the CNMV in November 2017. For each renewal, ESMA issued a positive opinion.[19]

2.1.6. Post-trading

Objectives for 2017	Provide guidance to market participants and NCAs on the application of the European Market Infrastructure Regulation (EMIR) and Central Securities Depositories Regulation (CSDR).
	Contribute to financial stability through enhanced resilience of European Central counterparties (CCPs). Enhance the consistent application of EMIR and the convergence of supervisory practices by active participation in CCP colleges, by conducting peer reviews and by initiating, co-ordinating and conducting EU-wide stress tests for CCPs.

ESMA has the direct responsibility to participate in all colleges of EU CCPs. As a member of the colleges of CCPs established in the EU, ESMA fulfils a co-ordination role between competent authorities and across colleges in order to facilitate the consistent and correct application of the EMIR, 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.

19 ESMA70-146-13 Opinion on CNMV renewal of emergency measure under Short Selling Regulation
ESMA70-146-15 Opinion on CNMV short selling ban on Liberbank

Central Counterparties

In addition to the peer review on the supervision by NCAs of CCPs' default management procedures reported above in the *Key deliveries and successes* section, ESMA issued an opinion regarding the implementation of portfolio margining requirements for CCPs under EMIR. The opinion helps ensure consistent implementation of the requirements in the CCPs portfolio margining practices, i.e. how CCPs provide for margin offsets when margining together a range of instruments that are significantly and reliably correlated.

Furthermore, it is important to note that ESMA also conducted a series of follow-ups to maximise the benefits of these supervisory convergence exercises and to make the most out of their findings. Notably, following the previous peer review report, ESMA conducted a survey of competent authorities to identify the take-up of the recommended best practices, developed Q&As where the report had identified topics for which further guidance could be beneficial, and identified a co-ordinated focus area that NCAs could consider in their supervisory plans. A survey was also conducted amongst competent authorities to demonstrate the adoption by CCPs of the guidance developed in the opinion on portfolio margining following its publication.

EU-wide CCP systemic risk stress test

Safe CCPs are one of the bedrocks of derivative reforms. To that effect, in the EU, EMIR details the high standards and the conditions CCPs need to meet to be authorised or recognised to offer services.

The first EU-wide stress test exercise on CCPs in 2016 showed that EU CCPs were overall well equipped to

face the counterparty risk associated with the stress scenarios. Building on this, ESMA made changes to the methodology and launched the second EU-wide stress test exercise on CCPs in 2017.

The refined methodology included a number of key changes, adding a liquidity stress test and strengthening the validation process in order to increase the data quality assurance. The ESRB provided the three market stress scenarios and CCPs were provided with detailed instructions on how to translate the common shocks for their own portfolios.

ESMA reconciled part of the results with each CCP via the relevant NCA in an effort to reconfirm their robustness. The EU-wide CCP Stress Test Report[20] was published in early 2018.

Central Securities Depositories Regulation (CSDR)

The CSD authorisation procedure was launched in September 2017. ESMA organised a seminar for the authorities on the authorisation procedure in July 2017, published a series of Q&As on CSDR, and developed and published five sets of guidelines on access to the trading feeds, on determining the authorities to be involved in the authorisation and supervision of CSDs, and on close co-operation between authorities.

In co-operation with the Eurosystem, ESMA also co-ordinated the NCAs supervising CSDs settling securities transactions on the TARGET 2-Securities (T2S) platform, the pan-European platform for securities settlement in central bank money.

Portability of data between trade repositories

ESMA issued final guidelines on data transfer between TRs authorised under EMIR. There are currently eight authorised TRs operating in the European Union and data portability is essential for data quality, competition between TRs and risk monitoring by authorities.

2.1.7. Secondary markets

Objective for 2017	Providing guidance to market participants and NCAs on the application of the MiFID II/MiFIR framework.

Most of the work undertaken in the area of secondary markets to contribute to the successful implementation of the MiFID II and MiFIR regime ahead of its 3 January 2018 launch is reported above in the *Key deliveries and successes* section.

MiFID II/MiFIR Q&As

In 2017 ESMA continued to issue guidance under MiFID II/MiFIR to promote convergence in the application of the rules across the EU, in particular in the form of Q&As. Following the receipt of a significant number of questions from stakeholders, ESMA has notably issued guidance on issues related to transparency (such as the trading obligation for shares and the quoting obligations for systematic internalisers), market structure (such as the concept of organised trading facilities and direct electronic access) and commodity derivatives (such as on the implementation of position limits and position reporting and on the ancillary activity exemption). These Q&As were of high importance for providing market participants with the necessary guidance and for ensuring a successful start into the MiFID II/MiFIR regime.

Additional steps contributing to the smooth implementation of MiFID II/MiFIR

ESMA published information on the different national implementations of the supplementary deferral regime for non-equity instruments on its website. To further assist market participants with the implementation of the MiFID II position limit framework, on its website ESMA also published, as early as mid-2017, a list of liquid commodity derivatives identified as such by the relevant NCAs that would receive bespoke limits. ESMA also undertook all the preparatory work to ensure that the weekly commitment of trader reports and position management controls by trading venues were available on its website by the time of the MiFID II application.

2.1.8. Horizontal supervisory convergence work

Enforcement Network

An Enforcement Network was created in 2017 to provide enforcement officers at the national securities markets regulators with an opportunity to exchange experiences, information and good practices, as well as to identify barriers to convergent enforcement approaches. Information is shared on investigative

20 ESMA70-151-1154 EU-wide CCP Stress Test 2017

techniques and approaches to investigations, changes in technology and its impact on enforcement work across the Union, and issues related to sanctioning, among others.

Complaint investigation

In 2017, ESMA received over 400 complaints about NCAs' potential violations of EU acts. A large number of complaints were inadmissible, but it was interesting to note an increasing trend in complaints related to fraud schemes (i.e. binary options).

Of the admissible complaints, a large part of them concerned an NCA that purportedly failed to supervise an investment firm offering CFDs and binary options throughout the Union. After an in-depth assessment of all the complaints received in relation to this matter, ESMA's Chair recommended not to open a formal breach of Union law investigation because significant supervisory work and regulatory actions had already been taken by the concerned NCA.

As for the own initiative cases, on 6 December 2017 ESMA's Chair decided to initiate a breach of Union law investigation concerning the policy of the CSSF to allow UCITS to invest in certain undertakings for collective investment (UCIs) that did not comply with the eligibility requirements set out by the UCITS Directive[21].As a result of the investigation, the CSSF decided to change its policy[22] in a manner that fully addressed ESMA's concerns and, therefore, the investigation was closed without the need for ESMA's Board of Supervisors to adopt a formal recommendation. The changes took effect immediately and no new investments in the concerned UCIs were allowed; UCITS which had invested in the relevant UCIs under the old CSSF's policy had to disinvest from these UCIs as soon as possible, taking into account the best interests of the investors.

Compliance with guidelines by NCAs in 2017

In 2017, ESMA published nine compliance tables[23] showing the compliance reported by NCAs on Guidelines issued by ESMA. 76% of the notifications reported compliance by NCAs with the Guidelines in question and 24% indicated an intention to comply. Intentions to comply indicate that the relevant national measures are in the process of being incorporated into the national legal framework to ensure compliance. ESMA follows up with NCAs periodically in respect of these intentions to comply in order to update their compliance status.

In only one case (out of the new 274 NCA notifications of 2017) did an NCA indicate that it was not in compliance with the relevant Guidelines; this was the Danish authority in relation to the Guidelines on sound remuneration policies under the UCITS Directive. In cases of non-compliance, ESMA publishes the notification and the reasons given by the NCA in question for such non-compliance in the compliance table. In all cases of non-compliance, ESMA considers the status of the NCA and what steps should be taken to ensure that in the future it complies with the Guidelines in question.

Training provided to NCAs

In 2017, ESMA organised 17 training events for the NCAs. Most of these events took place within ESMA's premises with 633 participants, not including 64 speakers (who in some cases were also participants), coming from 32[24] European countries. Six of the events focused on the key areas of MiFID II and

21 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

22 2018/PR1802 UCITS Change of Policy

23 Compliance tables:
1. ESMA32-67-184 Compliance table for the Guidelines on Alternative Performance Measures
2. ESMA34-32-316 Compliance table for the Guidelines on sound remuneration policies under the AIFMD
3. ESMA34-43-352 Compliance table for the Guidelines on sound remuneration policies under the UCITS Directive
4. ESMA70-145-66 Compliance table on MAR Guidelines for persons receiving market soundings
5. ESMA70-145-67 Compliance table for MAR Guidelines on delay in the disclosure of inside information
6. ESMA70-145-153 Compliance table for the MAR Guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives
7. ESMA70-151-727 Compliance table on the Guidelines on CSD Access to the trading feeds of CCPs and trading venues
8. ESMA70-151-732 Compliance table on the Guidelines on participant default rules and procedures under Regulation (EU) No 909/2014
9. ESMA70-156-177 Compliance table on the Guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II.

24 28 EU countries, 3 EEA countries and Gibraltar

MiFIR; other areas covered included UCITS/AIFMD and CSDR.

The average number of participants per event was 37: similar to 2016 but significantly higher than in the 2011-2015 period.

Regulatory IT projects

As part of its supervisory convergence activity, ESMA works with NCAs and other stakeholders to produce IT projects that are mandated by EU legislation. The projects below are at different stages of scoping, development and implementation.

Regulatory IT projects completed in 2017

Activity	Sub-activity	Project	Description
Supervisory convergence	Secondary markets	Double Volume Cap	The system enables the collection and publication of volumes of trading across Europe per equity instrument, and the percentage of trading under certain transparency waivers.
Supervisory convergence	Secondary markets	Upgrade of the Transaction Reporting Exchange Mechanism (TREMM II)	Upgrade of the Transaction Reporting Exchange Mechanism, which included the implementation of new and enhanced MiFID II/MiFIR requirements for transaction data reporting between NCAs.
Supervisory convergence	Secondary markets	Commodity Derivatives - Weekly Position Reports (MiFID Art. 58)	ESMA receives weekly aggregated position reports from all trading venues that are trading commodity derivatives and emission allowances. The reports are published on the ESMA website.
Supervisory convergence	Secondary markets	Upgrade of the ESMA Register of Authorised and Registered Entities	Upgrade of the Authorised and Registered Entities Registers with new requirements stemming from different regulations (i.e. MiFIR, UCITS V, MAR, CSDR, EMIR).
Direct supervision	Credit rating agencies	Risk assessment framework	Study and proof of concept of a new tool supporting the supervisory risk assessment and analysis, based on data collected from supervised entities.
ESMA corporate	Horizontal services	Public Key Infrastructure (PKI)	Deployment of a new encryption mechanism, the adaptation of affected systems and rollout to the NCAs.
Delegated projects		Financial Instruments Reference Data System (FIRDS)	Implementation of an IT solution that collects data on financial instruments from trading venues and/or NCAs, which are stored, processed and published by ESMA. The IT solution also performs transparency calculations and the management of suspensions from trading.
Delegated projects		Access to Trace Repositories (TRACE) — Second phase	The system enables a single point of access for querying and retrieving EMIR data from TRs. The second phase included the implementation of ad hoc queries.

Ongoing regulatory IT projects that will continue in 2018

Activity	Sub-activity	Project	Description
Direct supervision	Credit rating Agencies	Consolidation of CEREP and RADAR databases	The old ratings statistics database, CEREP, will consolidate with the new ratings statistics database, RADAR.
Supervisory convergence	Secondary markets	Securities Financing Transactions Regulation (SFTR)	The first phase of the project includes the development of harmonised data reporting template for information exchange under this new regulation. In 2018, the implementation work will commence as a delegated project, extending the existing TRACE system and enabling querying and retrieving of SFT data.
Supervisory convergence	Secondary markets	Commodity derivatives — Position limits and management (MiFID Art. 57)	The regulation requires NCAs to submit data of position limits and position management controls for Commodity Derivatives reporting. ESMA will publish and maintain on its website a database with summaries of those position limits.
Supervisory convergence	Post-trading	Central Securities Depositories Regulation (CSDR)	Article 7 CSDR covers the monthly reporting by central securities depositories to the NCAs and relevant authorities (central banks) regarding data on settlement fails. Article 9 CSDR covers reporting by Systematic Internalisers to NCAs regarding data on internalised settlements on a quarterly basis.
Supervisory convergence	Secondary markets	Upgrade of the ESMA Sanctions Register	Upgrade of the Sanctions Register with new requirements stemming from different regulations (i.e. MiFIR, UCITS V, MAR, CSDR, EMIR).
Supervisory convergence	Investor protection and intermediaries	Registration and publication of third-country firms (MiFIR, Art. 46)	Registration and publication of third-country firms allowed to provide investments services and activities in the European Union.
Supervisory convergence	Investor protection and intermediaries	Register of Administrators and Benchmarks	Establish and maintain a public Register of Administrators and Benchmarks, required by the new BMR.

2.2. Assessing risks to investors, markets and financial stability

ESMA was created as part of an EU-wide response to a financial and economic crisis that posed risks to the stability of the financial system and the functioning of the internal market. In pursuit of this goal, ESMA continues to strengthen its activities in analysing developments, systemic risks and structures in the financial markets within its remit. ESMA aims to continue and build its co-operation with the EU institutions, the other ESAs, the European Systemic Risk Board (ESRB) and international organisations in this field. ESMA conducts these activities to support the risk and impact assessment of NCAs' and ESMA's regulatory activities.

Assessing risks to investors, markets and financial stability is key to identifying 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 by the other ESAs and by the NCAs at national level, 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[25] 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.

Key deliveries and successes

Initial Coin Offering statements

Early in the year, ESMA identified the growing phenomena of Initial Coin Offerings (ICOs), which typically allowed users to exchange virtual currencies (VCs) for some form of 'token' while employing the distributed ledger technology (DLT) as the mechanism of underlying exchange. The rapid growth of ICOs and attendant strong increase in the value of underlying VCs prompted ESMA to analyse the risks, which resulted in two public statements on ICOs in November 2017. One statement highlighted the potential risk to investors of investing in ICOs, while the other alerted promoters of ICOs of the existing regulations that may apply to them.

Data strategy

In 2017, the BoS approved a Data Strategy and its Implementation Plan for 2018-2022. The strategy and the plan envisage a more intense and efficient use of data for core activities, by both ESMA and the NCAs, and takes into account all stakeholders in the process.

The Strategy is comprehensive and plans different actions that need to be taken concurrently to ensure effective implementation. The main areas are concentrated in the governance of data activities, the standardisation of the regulated data and the technical implementation to allow less costly use of the data, including the use of the most modern techniques (e.g. big data solutions).

2.2.1. Data and statistics

Objective for 2017	Enhanced, centralised data management and statistical analysis.

ESMA is committed to enlarging the scope of its data management and analysis activities to support all of its activities. These additional efforts and outcomes were backed by the increase in the data available to ESMA, the dedicated human resources and the infrastructure.

EMIR

ESMA increased the depth of EMIR data analysis in order to support risk assessment analysis. This work stream, different from the one dedicated to the direct supervision of TRs, supported the publication of statistical information on derivatives markets by ESMA and provided assistance for the single rulebook activity

25 This includes supporting ESMA's work on the stress testing of CCPs.

by contributing to the guidelines for TRs to calculate aggregate positions by counterparties. In the derivatives area, ESMA also computed and published estimates of trading activities in commodity derivatives relevant for the determination of ancillary activities under MiFID II.

Single rulebook, supervisory convergence and direct supervision

In addition, data analysis in ESMA supported the review process of the short selling regulation and made significant contributions to the new regulations governing data provisions in the area of money market funds, prospectus and securities financing transactions.

The direct supervision of CRAs was supported by the production of in-depth and efficient analysis, allowing continuously updated access to key metrics to analyse the activities of these supervised entities.

Information on ESMA registers' content was provided to support the work in the area of supervisory convergence. In addition, during 2017, ESMA developed an interim register to fulfil the transparency requirements of the benchmark regulations.

Statistical production for regular reports and internal operations

ESMA continued its efforts to increase the efficiency of its data processing by implementing internal procedures for data handling and rationalising expenditure dedicated to the purchase of external data. This data provides important support to ESMA's risk assessment activities, which uses multiple internal and external databases in order to produce the periodic reports like the Trends Risks and Vulnerabilities report, the Risk Dashboard and specific research projects.

2.2.2. Financial innovation and product risk analysis

Objective for 2017	Achieve a co-ordinated approach to the regulation and supervisory treatment of new or innovative financial activities and provide advice to the EU institutions, market participants or consumers.
	Develop a framework for the use of the product intervention powers provided by MiFIR.

The pace of financial innovation accelerated in 2017, driven forward by advances in financial technology (FinTech). ESMA employs a financial innovation scoreboard to analyse and prioritise the wave of innovations. It serves as a proactive means of identifying both existing and future risks to ESMA's objectives.

FinTech

The Commission released a consultation paper entitled *FinTech: a more competitive and innovative financial sector*. ESMA welcomed the initiative to conduct a stocktake of the EU's FinTech industry. ESMA had conducted a survey on regulated investment-based crowdfunding platforms in the EEA and included this in its response to the consultation, providing an overview of current activities and trends. ESMA stated that it sees FinTech as a positive evolution overall as long as business models aim at improving financial consumer experiences and facilitating financial inclusion.

Assessment on Distributed Ledger Technology

ESMA issued a report on Distributed Ledger Technology (DLT) to set out ESMA's view on possible DLT applications, benefits and risks and how it maps to existing EU regulation. ESMA's position is that regulatory action is premature at this stage, considering that the technology is still at an early stage.

Financial Innovation Day

In February 2017 ESMA held its third Financial Innovation Day for regulators, focusing on FinTech. FinTech is the fusion of finance with technology, and around 20 experts drawn from both the industry and regulatory authorities were invited to participate in four panels. The first panel set the scene by discussing the future of FinTech, with the following three panels each focusing on different aspects of FinTech that ESMA considers important and is monitoring: Artificial Intelligence and Big Data, DLT and market infrastructure, and FinTech's role in improving the consumer experience.

2.2.3. Market and infrastructure risk analysis

Objective for 2017	Identify financial market risks, report on them to the relevant institutions and conduct impact assessments of regulations.

ESMA monitors market developments in its remit in light of its objectives of promoting financial stability, orderly markets and investor protection. ESMA carries out financial surveillance through its regular reporting activity to identify markets' trends and developments, and assesses the main risks and vulnerabilities.

ESMA risk monitoring activities are centred around periodic reports to the EU institutions, which are publicly available on the ESMA webpage. In 2017 ESMA published two semi-annual Trends, Risks and Vulnerabilities (TRV) reports, four Risk Dashboards and, in this context, developed and implemented an enhanced monitoring of operational risk in its remit. ESMA also contributed to two Joint Committee risk reports (see Section 2.5.1) and to the ESRB shadow banking monitor. ESMA also participates actively in risk analysis and risk monitoring activities of international institutions, such as the ESRB, International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB).

Liquidity in sovereign bond markets

Measuring the liquidity of the sovereign bond market is of fundamental importance for market participants (for instance when hedging positions, correctly pricing other securities, etc.) and policymakers alike. Episodes of short-term volatility and liquidity stress across several markets over the past few years have increased concerns about the worsening of secondary market liquidity, in particular in the fixed income segment. A research piece in ESMA's first TRV of 2017 confirmed the deterioration of sovereign bond market liquidity during both the financial and sovereign crises. However, the report also showed that under a supportive monetary policy environment, market liquidity seems to have improved in the European sovereign bond segment.

Financial consumer complaints

The number of complaints regulators received in the first half of 2017 by financial consumers had increased. The three most common causes of complaints reported were on the execution of orders, the quality/lack of information and unauthorised business. One clear trend was an increase in the proportion of complaints relating to bonds and other debt securities, to become the most complained-about instrument. In contrast, complaints relating to investment advice had fallen markedly over recent years, which may be associated with measures taken by NCAs and ESMA.

Shadow banking

As part of its first TRV of 2017 ESMA provided a stocktake of the multi-trillion €-large market for securities financing transactions (SFTs) in the EU and firms' use of collateral haircuts. As one of the main sources of liquidity and high-quality collateral, SFTs are an essential component of the EU financial system. Public authorities analysing the risks in SFT markets are hampered by the lack of granular data until the reporting obligation under the SFT Regulation starts. Amongst others, the SFTR aims at reducing financial stability risks arising from shadow banking activities, including SFTs.

Impact of charges on mutual fund returns

In October 2017, the European Commission (EC) issued a mandate to the ESAs to issue recurrent reports on the cost and past performance of the main categories of retail investment, insurance and pension products. Ahead of the EC mandate, ESMA had already published an article in its second 2017 TRV report on the impact of charges on mutual fund returns, which included a preliminary analysis of the impact of ongoing fees, one-off charges and inflation on the returns of mutual funds. On average these reduced the returns available to investors by 29% of gross returns between 2013 and 2015. Despite the impact of fees and charges on the net outcome to investors, they did not seem to be reflected in investor choices.

EU market in derivative contracts

For the first time, ESMA produced data on the size of the interest rate, credit, equity, commodity and foreign exchange derivatives markets in the EU based on the weekly data it receives from TRs. Based on the data available on 24 February 2017, the size of the EU's derivatives markets across all asset classes was estimated as having a notional value of about €453 trillion and around 33 million transactions.

2.3. Completing a single rulebook for EU financial markets

ESMA's single rulebook work is aimed at strengthening regulation and creating a level playing field across the EU. Working closely with the NCAs through its Standing Committees, ESMA delivers technical advice on legislation to the Commission, draft regulatory and implementing technical standards and issues advice and guidelines on the application of EU law.

The financial crisis exposed the negative effects that unevenly applied legislation can have for financial markets, its consumers and the economies at large. As a result, reforms were introduced to provide effective instruments to ensure the harmonised application of EU law. ESMA, in fostering more coherence and consistency in securities legislation and in its application, can issue regulatory technical standards (RTS) and implementing technical standards (ITS). These detail and clarify Level 1 EU legislation, thereby ensuring a level playing field and adequate protection for investors. Those Technical Standards aim at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing an EU single rulebook applicable to all financial market participants in the internal market.

Published in 2016, the Annual Work Programme 2017[26] outlined the areas where ESMA intended to progress in further developing and consolidating the single rulebook. In addition to producing new technical standards ESMA also commits every year to reviewing certain technical standards to ensure that the Single Rulebook remains up to date. In 2017, ESMA reviewed two ITS under MiFID on position reporting; on EMIR it reviewed technical standards related to TR public data.

Key deliveries and successes

ESMA finalises MiFID II trading obligation for derivatives

In 2017 ESMA finalised draft legislation specifying the derivatives that should be subject to the trading obligation. The trading obligation for derivatives goes back to a commitment of the G20 leaders following the financial crisis requiring that standardised derivatives be traded on a trading venue. MiFID II/MiFIR therefore introduces the regulatory framework for the trading obligation for derivatives. In order for this obligation to take effect, MiFID II/MiFIR empowers ESMA to determine which classes of derivatives should be subject to the trading obligation and which date the trading obligation should take effect.

The trading obligation for derivatives is one of the key elements of MiFID II/MiFIR, which set out various criteria that have to be met in order to require the mandatory trading of derivatives on trading venues. Those criteria include that the derivative (i) is subject to the trading obligation; (ii) is traded on at least one trading venue; and (iii) is sufficiently liquid.

Following initial work in 2016, ESMA submitted to the Commission its proposal for the derivatives that should be subject to the trading obligation on 29 September 2017. The proposal suggested to make certain interest rate swaps and index credit default swaps subject to the trading obligation. However, in light of feedback provided by stakeholders, ESMA slightly extended the scope of these derivatives. Furthermore, the draft RTS proposed to introduce the trading obligation for those market participants who are already subject to the clearing obligation for derivatives as from 3 January 2018, i.e. the application date of MiFID II/MiFIR. For other market participants, ESMA suggested to introduce the trading obligation at the same time as the clearing obligation; these proposals were subsequently endorsed by the EU institutions.

Securitisation Regulation

In 2017, ESMA published three consultation papers on draft technical standards implementing the Securitisation Regulation (SR). The Regulation, which was published at the end of 2017, establishes a general framework for securitisation and creates a specific framework for simple, transparent and standardised (STS) securitisation.

The SR requires certain information to be reported on securitisations to repositories, including details of their underlying exposures, details of the securitisation structure itself, and information on securitisation cash flows. ESMA's first consultation paper covered the contents and format of these disclosures as well as the operational standards for providing these reports to securitisation repositories and for accessing this information from

26 ESMA/2016/1419 2017 work programme.

securitisation repositories. Lastly, the paper sought stakeholder views on draft technical standards regarding the specific conditions for the entities specified in the SR to access information from securitisation repositories.

Elsewhere, the ST stipulates that securitisations seeking to be designated as STS must fulfil additional criteria and must notify ESMA of it. Accordingly, ESMA's second consultation paper presented draft technical standards on the content and format of the notification to ESMA of a securitisation's STS status.

Lastly, the SR enables third-party entities to seek authorisation by an NCA to assess the compliance of securitisations with the STS criteria. To this end, ESMA's third consultation paper set out its proposals for technical standards on the application requirements for firms seeking such authorisation.

In addition to preparing final reports on these sets of technical standards, ESMA will publish further consultation papers in line with its mandates as set out in the SR.

Prospectus Regulation

Consultation on technical advice to the European Commission

ESMA published three Consultation Papers containing draft technical advice on the format and content of the prospectus, on the EU growth prospectus and on scrutiny and approval.

On the format and content of the prospectus, ESMA proposed a number of targeted alleviations in order to reduce the burden and costs on issuers. ESMA also developed requirements for the new Universal Registration Document and proposed reduced disclosure in case of secondary issuances in order to take greater account of existing publicly available information.

On the EU Growth prospectus ESMA's draft technical advice included minimum disclosure requirements adapted to the issuers' size and to the complexity of their operations.

The final set of draft technical advice on scrutiny and approval proposed the adoption of standard criteria for scrutiny of the prospectus while allowing NCAs a certain level of flexibility, which in ESMA's view is necessary to ensure investor protection.

Draft technical standards

ESMA consulted on draft Regulatory Technical Standards (RTS) under the new Prospectus Regulation covering some key elements, namely the key financial information in the summary of the prospectus, advertisements, supplements, the publication of a prospectus and the data for the classification of prospectuses in the ESMA register.

Benchmarks Regulation

12 draft technical standards to ensure the integrity of EU financial benchmarks

The objective of the Benchmark Regulation (BMR), which has applied from 1 January 2018, is to improve the governance and control over the provision of benchmarks, thereby ensuring their reliability and protecting users.
In March 2017 ESMA published a final report containing the draft standards under the BMR. These draft standards establish a common regulatory framework under which benchmarks are provided, produced and used, which will help to restore trust both in benchmarks and in financial markets more generally. The draft standards further specify, among other things, the functioning and composition of the oversight function that each benchmark administrator has to establish, the content of the documents that administrators have to publish in relation to the benchmarks they provide, and the way input data should be selected and corroborated.

Co-operation with third countries

Additionally, in June 2017 ESMA published a second final report containing draft standards on co-operation arrangements with third country authorities to be used under the BMR equivalence and recognition regimes.

2.3.1. Corporate finance

Objective for 2017	Contribute to the development of Level 2 measures in relation to the revised prospectus regime and evaluate the implementation of the amended Transparency Directive[27]. Support the finalisation of the securitisation legislation.

Most of the work under the Prospectus Directive and the Securitisation Regulation is reported above in the *Key deliveries and successes* section.

The new Prospectus Directive in 2017 requests technical advice from ESMA and requires it to draft RTS. ESMA began this work in 2017 by publishing three consultation papers on draft technical advice that proposed simplifications for prospectuses and by launching a consultation on the draft RTS. The work will be finalised in 2018. In addition, a second set of technical advice addressing an exemption in case of takeovers, mergers or divisions has been started.

2.3.2. Corporate reporting

Objective for 2017	Contribute to the set-up of high-quality accounting standards through providing enforcers' views on new pronouncements.

ESMA contributes actively to the accounting standard setting and endorsement in the EU through its observer role at EFRAG. In addition, ESMA contributes to the International Accounting Standards Board (IASB) in charge of developing those global standards. ESMA continued to provide comment letters throughout 2017 on a variety of issues relating to enforceability of International Financial Reporting Standards (IFRS).

Starting from 2020, all issuers should use the new European Single Electronic Format (ESEF) to prepare their annual financial reports. ESMA drafted an RTS specifying the ESEF, in which annual financial reports have to be prepared. In order to prepare the standard ESMA had held a workshop and carried out field tests with interested stakeholders. The introduction of the new reporting format in 2020 will make financial statements more accessible and more easily comparable for investors across the EU, supporting transparency and contributing to increased investor protection.

2.3.3. Investment management

Objective for 2017	Deliver high-quality technical standards on all obligatory empowerments and technical advice in the area of asset management when mandated by the Commission.

ESMA published a final report on the Money Market Funds Regulation (MMFR) containing the technical advice, draft ITS, and guidelines on scenarios for the stress tests to be carried out by managers under the regulation. The key requirements of the technical advice relate to asset liquidity and credit quality, while the technical standards focused on the establishment of a reporting template. ESMA's work forms part of the detailed rules required for the implementation of the new regulatory framework aimed at ensuring the stability and integrity of money market funds in the EU.

2.3.4. Investor protection and intermediaries

Objective for 2017	Contribute to the development of a single rulebook in the area related to the provision of investment services (MiFID framework) by co-ordinating with EU/EEA national authorities, EU institutions, EBA-EIOPA and other international organisations.

ESMA has assisted the Commission in the endorsement process of the MiFID II RTS and ITS prepared by ESMA in the area of investor protection and intermediaries.

ESMA has also begun the internal preparatory work for the set-up of the register of third-country firms required by MiFIR.

27 ESMA prioritised work on the Prospectus Directive and the Securitisation Regulation because of their importance for the Capital Markets Union. The evaluation of the amended Transparency Directive has therefore been postponed.

2.3.5. Market integrity

Objective for 2017	Contribute to orderly markets through having defined standards for benchmarks, reporting and an improved market abuse regime.

Market Abuse Regulation

Market abuse can take many forms and concerns different markets at the same time. As markets' integration is further increasing, smooth co-operation between NCAs is important in order to bear down on abusive behaviour. Therefore, ESMA published Implementing Technical Standards setting out procedures and forms for NCAs on how to exchange information under MAR and to assist each other if need be.

Short Selling Regulation

The SSR lays down a common regulatory framework with regard to the requirements and powers relating to short selling and credit default swaps and ensures greater co-ordination and consistency between Member States.

In December 2016 in response to a mandate received by the Commission, ESMA issued Technical Advice analysing specific parts of the SSR and proposing a number of amendments on controversial areas to improve its effectiveness and efficiency. The topics where ESMA's advice was sought covered three main areas: the definition of market-making activities and the revision of the relevant exemption; the procedure to impose short-sale bans under Article 23 of the SSR; and the notification and disclosure of net short positions. After publicly consulting, ESMA submitted its technical advice to the Commission in December 2017.

2.3.6. Post-trading

Objective for 2017	Contribute to more orderly markets and financial stability through the development of post-trading-related technical standards.

EMIR review and sanctioning powers

In the context of the ongoing review of EMIR, ESMA wrote to the Commission in January 2017 to express its concern on a number of issues related to its supervisory and sanctioning powers under EMIR as well as to highlight certain issues faced during the implementation of EMIR. The letter followed up on the Commission's report on the EMIR Review, for which ESMA had submitted four reports in August 2015.

Securities Financing Transactions Regulation

Transparency on the use of securities financing transactions (SFT) allows the identification of risks associated with the collateral and its reuse. In this respect, in 2017 ESMA published a final report on standards implementing the SFTR, which aims to increase the transparency of securities financing. ESMA's final standards provided detailed provisions on SFT reporting, data collection and availability, defined access levels, registration and extension of registration of TRs, and exchange of data on sanctions between authorities. In addition to the SFTR, ESMA proposed amendments to the existing standards implementing EMIR to ensure a level playing field for market participants with regard to registration and access rules.

Fees for trade repositories

TRs have to pay fees for specific administrative actions, such as registration, extension of registration or recognition, and an annual fee for ongoing supervision, which is proportionate to the level of the turnover of the TRs. ESMA proposed final Technical Advice to the European Commission on fees for TRs under the SFTR. It also advised simplifying the way of determining the turnover of TRs for the purposes of calculating the annual supervisory fees by including revenues only and excluding activity figures.

Aggregation and publication of derivatives data

ESMA issued final RTS regarding the aggregation and publication of derivatives data by TRs. The RTS ensure that the market activity in derivatives traded both on and off venue is correctly identified and aggregated. In order to ensure that the end users are able to aggregate and compare the position data published by TRs, ESMA's RTS establish general rules by defining the frequency and timeliness of publication; the general technical aspects of aggregation for the purposes of publication; and the details of aggregations for the purposes of benchmarks' and commodities' thresholds.

2.3.7. Secondary markets

Objective for 2017	Deliver technical standards specifying which classes of derivatives should be subject to the trading obligation as per Article 32 of MiFIR.

MiFID II/MiFIR

Delivery of new RTS and amendment of an ITS

ESMA delivered draft technical standards specifying the treatment of package orders and the scope of the consolidated tape for non-equity instruments. The Commission endorsed both technical standards in 2018. Furthermore, ESMA proposed an amendment to a draft ITS on position reporting with regard to the format of position reports by investment firms and market operators.

Proposed amendment of RTS 1

In November 2017, ESMA launched a public consultation proposing an amendment to Commission Delegated Regulation (EU) 2017/587 (RTS 1) specifying the transparency obligations for equity instruments. The suggested amendment aims at clarifying that the quotes of systematic internalisers should reflect the price increments applicable to EU trading venues, thereby contributing to a level playing field between systematic internalisers and trading venues.

2.3.8. Credit rating agency policy

Objective for 2017	Continue to contribute to the establishment of a robust regulatory framework for credit rating agencies (CRA) in smooth co-operation with the supervisory activities of ESMA.

Eligibility of third-country jurisdictions for endorsement and equivalence

The CRA 3 Regulation (CRA 3) introduced a number of new requirements for EU-registered CRAs. These new requirements will enter into force for the purposes of the equivalence and endorsement regimes under the CRA Regulation on 1 June 2018. To ensure it could fully reflect these new provisions in its equivalence decisions, the Commission requested ESMA to provide updated advice on the equivalence of all third-country jurisdictions that had previously been assessed as meeting the requirements of the EU regime. ESMA provided its Technical Advice on nine jurisdictions to the Commission on 17 November 2017.

Endorsement regime for third-country credit ratings

The endorsement regime provided by the CRA Regulation allows, under specific conditions, an EU CRA to assume full responsibility for (endorse) a credit rating issued by a third-country CRA, thereby enabling the use of this credit rating for regulatory purposes in the EU. The entry into force of CRA 3, and the associated introduction of new requirements to endorsed ratings in 2018, provided an opportunity for ESMA to review its Guidelines on the application of the endorsement regime (Guidelines on endorsement).

On 4 April, ESMA published a Consultation Paper with a proposal to update its Guidelines on endorsement and, on 17 November, ESMA published the final report updating them. It introduced a number of changes and clarifications, focusing on the obligations of the endorsing CRA, the conduct of the third-country CRA and the third-country legal and supervisory framework and clarified ESMA's supervisory powers over endorsed credit ratings as well as the notion of objective reasons.

Encouraging competition in the CRA market

The CRA Regulation aims to encourage competition in the CRA industry, in particular Article 8(c) and (d) requires issuers or related third parties to consider appointing a smaller CRA when they intend to appoint two or more CRAs for the rating of an issuance or entity. However, implementation of this article was hindered by a lack of clarity in a number of areas. On 6 April 2017, ESMA issued a supervisory briefing to national Sectoral Competent Authorities to assist them with their supervision and enforcement of these provisions and to promote supervisory convergence through the adoption of a common supervisory approach.

In addition, on 20 December 2017 ESMA published a redesigned annual market share calculation in order to provide a better overview of the market for CRAs in the EU and to further improve the implementation of these Articles.

2.4. Direct supervision of specific financial entities

ESMA is the sole supervisor for credit rating agencies (CRAs) and trade repositories (TRs) – data warehouses that collect, store and make available data on derivatives contracts – in the EU. ESMA adopts 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 of enhancing investor protection. This approach requires the analysis of information from a variety of sources and the application of multiple supervisory tools, including thematic reviews, regular meetings with different functions of the supervised entities, on-site inspections and dedicated investigations. ESMA has a number of such tools available to it in carrying out its mission in this area and is committed to appropriately using all of them in addressing supervisory issues, including taking enforcement action when necessary.

Key deliveries and successes

Preparation for Brexit

Currently, ESMA supervises six CRAs and five TRs established in the UK. Following ESMA's General Opinion of 31 May 2017[28] - setting out general principles aimed at fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the UK - ESMA established a strategic direction for the entities falling directly under its supervisory powers. This resulted in a letter sent to UK-based CRAs and TRs, providing key messages and clarifications with regard to ESMA's expectations and addressing queries raised by supervised entities. ESMA also requested and received CRAs' and TRs' contingency plans for certain scenarios, including the scenario where there will be: (i) no transitional arrangement between the EU27 and UK; and (ii) no third-country regime applicable (hard-Brexit scenario). During 2017, Brexit was a key supervisory priority for ESMA, whose objective in this respect is to ensure that, in case a CRA or TR intends to continue its operations in the EU, their set-up post-Brexit in the EU is: (i) as strong as it was pre-Brexit; (ii) proportionate to the activities performed in the EU27; and (iii) complies with all requirements of EMIR and the CRA Regulation. If a CRA or TR does not intend to maintain its EU registration post-Brexit, the contingency plan needs to include a proper withdrawal process.

Fees and ancillary services

During 2017, ESMA continued its work on the fees and ancillary services project launched in 2016 with the purpose of clarifying its expectations regarding the provisions relating to fees in the CRA Regulation and EMIR. ESMA conducted a review through analysis of information, a roundtable with supervised entities and regular engagement with users of credit ratings and TR services. Following the conclusion of its supervisory review, ESMA published on 11 January 2018 a thematic report on fees charged by CRAs and TRs, setting out its concerns with transparency and disclosure of fees, the fee-setting process and the CRAs' and TRs' interaction with related entities.[29]

Moody's fined €1.24m for credit ratings breaches[30]

During 2017, ESMA also took enforcement action, most notably by levelling a fine of €1.24m on Moody's Investors Service Limited and Moody's Deutschland GmbH for negligent infringements of the CRA Regulation. The infringements related to the presentation of credit ratings and the disclosure of methodologies. Regarding the former, the ESMA BoS found that the press releases in question (i) failed to indicate the principal methodology or version of methodology, (ii) failed to refer to the comprehensive description of the methodology, principal methodology or version of methodology used to determine each of the ratings concerned, and (iii) did not include a comprehensive description of the methodologies concerned. Regarding the disclosure of methodologies the ESMA BoS found that the methodology used with respect to the ratings in question was not the subject of any separate prior public disclosure either before or after the public rating announcements. Moreover, none of the press releases in respect of the relevant ratings made full disclosure of the methodology used in each instance.

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28 ESMA42-110-433 General principles to support supervisory convergence in the context of the UK withdrawing from the EU.

29 ESMA80-196-954 Thematic report on fees charged by CRAs and TRs

30 ESMA41-137-1005 Decision of the Board of Supervisors to adopt a supervisory measure and impose fines with respect to infringements by Moody's Deutschland GmbH and Moody's Investors Service Limited.

Development of supervisory tools

ESMA developed new supervisory tools in 2017. Most of the resources were spent on tools to develop and further improve the risk assessment process and framework. This allows ESMA to better identify and evaluate supervisory risks and facilitates decision-making and the allocation of supervisory efforts in line with ESMA's risk-based framework. ESMA also spent considerable resources on further improving and implementing the various credit ratings databases. Extensive work was done to integrate the CEREP and RADAR databases and to improve the quality of the data received by ESMA through its RADAR reporting system.

2.4.1. Credit rating agencies

Objectives for 2017	Ensure that registered CRAs comply with the CRA Regulation and, where applicable, refer cases to the Independent Investigation Officer (IIO) where there are serious indications of potential infringements of the CRA Regulation.
	Protect investors by ensuring that only registered CRAs issue credit ratings in the Union.
	Enhance effectiveness and a lasting impact of supervisory activities at the individual CRA level by intensifying our risk-based approach and by moving from a functional compliance/desk-based approach to a business/strategy-based approach of supervision.
	Strengthen ESMA's reputation through world-leading expertise.

Supervision of credit rating agencies

Registration

Over the course of 2017, ESMA registered one new CRA and one registration was withdrawn, keeping the number of CRAs registered by ESMA stable: 26 registered CRAs and four certified CRAs. An applicant from 2016 who was refused by ESMA subsequently appealed this decision to the Board of Appeal of the ESAs, which decided to dismiss the appeal and confirmed ESMA's decision refusing the registration as a CRA (see Section 2.5.6). The CRA industry in the EU remains focused around three large players. During the year a few smaller CRAs were able to slightly increase their market share and number of mandates.[31]

31 ESMA33-5-209 CRA Market Share Calculation 2017

Supervision

A significant part of ESMA's day-to-day supervision is dedicated to assessing the periodic information it receives from supervised entities, drawing up remedial action plans and monitoring their application. The larger CRAs are global in nature and, therefore, co-operation with other supervisory authorities is an important aspect of ESMA's supervision. ESMA actively participates in global supervisory colleges, which consist of ESMA and of the main CRA regulators outside the EU for the three largest and internationally operating CRAs. During 2017, ESMA also had bilateral interactions with regulators from third countries on smaller CRAs operating globally as well as on specific topics such as methodology disclosures and conflicts of interest in shareholdings.

Perimeter assessments

Entities who aim to issue credit ratings in the EU need to be registered with ESMA. In order to ensure a level playing field and identify market participants issuing credit ratings without being registered, ESMA performs perimeter assessments using a variety of information sources to identify companies that potentially provide credit rating activities without registration. Throughout 2017, ESMA assessed information from several companies to identify whether their activities fall within the scope of the CRA Regulation.

Quality of the rating process

The main objective of the CRA Regulation is to ensure that credit ratings are independent, objective and of adequate quality. Quality of ratings was therefore the main focus of ESMA's CRA supervisory activities in 2017. ESMA has worked on numerous areas to enhance the quality of credit ratings, including portfolio risk, validation of methodologies and the methodology development and rating process. In addition to a number of dedicated investigations in these areas, ESMA followed up on its thematic work into validation practices within CRAs and analyst rotation.

IT and internal controls

IT and internal controls were another important topic for ESMA in 2017, driven by the high levels of risk identified in these areas in the 2016 risk assessment. Improvements were seen in some of the IT and information security processes for a number of CRAs. At the same time, ESMA has noted recurring performance issues and errors in the rating process due to IT internal control failures. ESMA also monitored the implementation of a number of remedial action plans that were the result of investigations conducted in the past, some requesting significant changes to be made by CRAs due to the issues identified during the relevant investigation.

Governance and strategy of CRAs

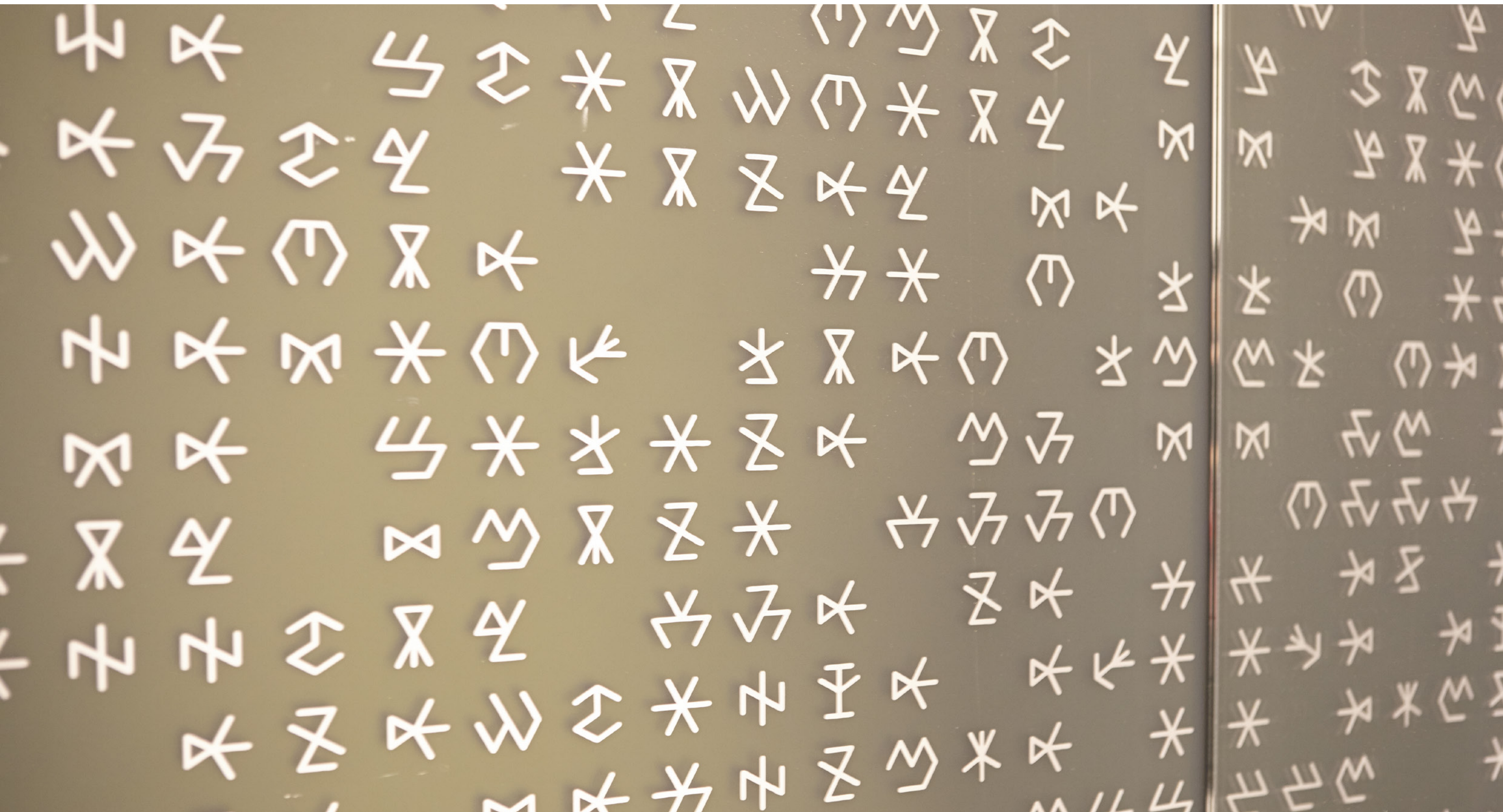
Brexit is driving some of the important strategic and governance decisions that CRAs are taking in the EU. The organisational set-up of some of the largest CRAs in the EU will be impacted by the UK leaving the EU. In addition, as set out in the 2017 work programme, some CRAs have been undergoing important reorganisations. ESMA continuously monitors their strategy and governance by assessing the periodic information submitted by CRAs to ESMA. ESMA also has regular interactions with senior management and (independent) board members of CRAs to understand and assess the strategic direction and governance of CRAs.

2.4.2. Trade repositories

Objectives for 2017	Enhance effectiveness and a lasting impact of supervisory activities at the individual TR level by intensifying our risk-based approach and by moving from a functional compliance/desk-based approach to a business/strategy-based approach of supervision.
	Further enhance the availability, maintenance of confidentiality and quality of reported data to ensure the proper functioning of the EMIR framework.
	New registration/extension of the registration under Securities Financing Transactions Regulation (SFTR).
	Fostering compliance to TRs, not only formal compliance with the letter of the Regulation but also with the fundamental spirit of EMIR.

Supervision of TRs

In 2017, ESMA registered two new TRs — the first since the end of 2013. Overall, the six existing TRs (excluding



the two approved in 2017) have maintained a similar market share to last year. Third-party intermediaries also played an important role by reporting on behalf of an increasing number of counterparties to TRs.

By the end of 2017, the eight TRs operating in the EU had collected nearly 65 billion reports in total. These reports do not only include new trades but also their modifications and other lifecycle events. During the course of this year, the level of reporting activity has stabilised at an average of around 400 million submissions per week.

Data quality and data access

TRs play an integral role in enhancing the transparency of derivative markets and in reducing risks to financial stability by providing quality data to regulators and researchers. Poor-quality data limits the capabilities of data users to identify and respond to systemic counterparty and financial system risk. In 2017, ESMA continued to monitor the data received from TRs via the monthly data quality dashboards. ESMA initiated a data quality log to further increase co-operation with NCAs and users of EMIR data regarding data quality issues in 2017. The log prevents the replication of effort for several NCAs and other users of EMIR data that may pursue similar issues with TRs in parallel, while also providing clarity to the data users as to why certain issues are getting priority. ESMA has improved overall TR data quality by performing a regular revalidation of the data made available by TRs, by working with TRs to improve reconciliation (average pairing rates in November 2017 rose to 87%, from 55% in November 2016) and ensuring that regulators and data users can access the data they are entitled to via TRACE (the IT system developed in 2016).

Governance and strategy of TRs

ESMA continued to actively engage with TRs regarding strategic, governance, and operational matters and preparations for when the UK leaves the EU. ESMA actively engaged with TRs through on-site visits that enhanced the understanding of the entity-specific governance and the strategic directions that TRs are taking. Throughout 2017, ESMA intensified its dialogue with supervised entities in line with their risk profile. ESMA issued the Guidelines on Portability in August 2017[32], which establish a consistent and harmonised approach to the transfer of data between TRs, setting the basis to allow for a competitive TR environment and to ensure high-quality data is available to authorities.

Adequacy of resources

Some TRs have increased their resources in terms of staff, budget and technological solutions; however, the level of resources dedicated to the TR business remains an area of concern for ESMA, particularly in light of upcoming regulatory changes such as the SFTR. ESMA expects TRs to increase resources if they choose to expand their business into new reporting regimes. In particular, ESMA has noticed some persistent concerns regarding the role of the compliance function across all TRs, such as insufficient resources and poor empowerment. In response, ESMA sent a letter outlining certain principles to each TR.

In 2017, ESMA continued to regularly monitor the financial situation of the registered TRs based on the submitted audited annual financial statements and interim financial statements. The analysis suggests that TRs have sufficient buffers for at least 6 months of operational costs.

IT, information security and cyber security

TRs are technology-based market infrastructures and the robustness and reliability of their IT systems is therefore an important driver of their ability to perform their duties under EMIR. In 2017, as part of its ongoing TR supervision, ESMA dedicated significant attention to the TRs' efforts towards achieving smooth and reliable systems operation. In addition, ESMA closely monitored the implementation and project governance aspects of material changes to certain TRs' systems architecture aimed at better supporting the introduction of the revised RTS on reporting, the improvement of existing data quality capabilities, as well as the achievement of cost efficiencies.

With respect to information and cyber security, ESMA periodically receives information about system and network penetration tests, security assessments, audits and vulnerability assessments performed by TRs. Any relevant incident is also notified to ESMA on an ad hoc basis. During 2017, the information collected by ESMA and reported by TRs was assessed and potential findings were followed up for further analysis or appropriate remedial action.

ESMA continued to monitor the book of work that was introduced in 2016. The book of work is a standardised template sent to ESMA by each TR outlining the scope, timeline and progress of both ongoing and planned IT

32 ESMA70-151-552 Guidelines on transfer of data between Trade Repositories projects. ESMA supervision has developed metrics and indicators to monitor the evolution and trends as regards the number of identified new fixes, the number of closed, cancelled and new issues, and the average time and effort needed to perform a fix within and across TRs, as well as the average time a software ticket remains open before being fixed. This tool is expected to provide ESMA supervision with early warnings on delays of fixes, inappropriate prioritisation or resource allocation issues.

2.4.3. Third-country CCPs

Objectives for 2017	
	Co-operation with third country authorities for recognition of third-country CCPs.
	Usage of third-country CCPs to fulfil the clearing obligation.

CCPs established in third countries (TC-CCPs) may provide clearing services to clearing members or trading venues established in the EU only where that CCP is recognised by ESMA. In addition, under the Capital Requirements Regulation (CRR)[33], credit institutions and investment firms may only benefit from preferential capital treatment with respect to their cleared derivatives transactions exposure, when the CCP they are facing is recognised by ESMA. This has led 47 TC-CCPs to apply for recognition to ESMA[20] (as of 31 December 2017).

One of the conditions to be fulfilled for a TC-CCP to be recognised is the adoption by the Commission of an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the EMIR requirements, the so-called equivalence decision. Another condition that needs to be respected is for ESMA to conclude cooperation arrangements with the relevant third-country authorities. Following the adoption by the Commission of equivalence decisions for India, Brazil, New Zealand, Japan Commodities CCPs, United Arab Emirates and Dubai International Financial Centre in December 2016, ESMA concluded seven memoranda of understanding[34] with 10 different authorities[35] and recognised nine additional TC-CCPs in March, May and September 2017. An additional US CCP was also recognised in March 2017.

Monitoring of Third Country-CCPs activity

Whilst ESMA does not have direct supervision powers over TC-CCPs as such, it has to monitor TC-CCP activity as stated in the ESMA Regulation and in the context of EMIR to ensure EU financial stability. In addition, ESMA should assess whether the classes of over-the-counter (OTC) derivatives cleared by recognised TC-CCPs should be subject to the clearing obligation. Therefore, following the recognition of a TC-CCP, ESMA has the obligation to regularly monitor the range of activities and services that the TC-CCP provides in the EU so as to be able to identify potential situations in which the recognition of the CCP should be reviewed. With regards to the equivalence decision related to the Commodity Futures Trading Commission CCP regime, ESMA also has to monitor the compliance of the relevant CCPs with the conditions set by the Commission in the respective decision.

33 Capital Requirements Regulation (CRR) - 575/2013

34 https://www.esma.europa.eu/regulation/post-trading/central-counterparties-ccps.

35 In some jurisdictions more than one authority is responsible for one CCP's supervision and in some federal countries each province/state has its own relevant authority or multiple authorities.

2.5. Joint Committee

In 2017, the Joint Committee continued to be a central point for coordination and exchange of information between the European Supervisory Authorities (ESAs) and with the European Commission and the European Systemic Risk Board. Progress in the field of Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) was in the spotlight of the Joint Committee work under the EBA Chairmanship.

2.5.1. Joint Committee — Forum for exchange on cross-sectoral risks

The three ESAs continued their efforts to identify potential risks to consumer protection and financial stability across the three sectors, with a view to support consistent approaches and clear convergent guidance to supervisors and market participants. Beyond being a cross-sectoral forum for exchange among its participants, the Joint Committee started to look at the potential risks triggered by Brexit. Here, a focus is on possible implications on the provision of financial services, the continuity of contracts, and on ensuring consistent EU approaches to oversight of cross-border groups and activities, including possible relocations. The two Joint Committee Risk Reports, published in spring (JC 2017 09) and autumn (JC 2017 46), convey the ESAs' preliminary analysis on this issue.

Beyond that, both Joint Committee Risk Reports discuss the persistent low profitability of banks and insurers in a low growth and yield environment, valuation risks with risks of a reversal of risk premia, as well as interconnectedness, in particular via asset price contagion and direct financial exposure. The reports moreover address challenges arising from rapid developments in information technology, including Fintech, and its impact across the three sectors.

2.5.2. Progress in the ESAs' mandate in the fight against money laundering and terrorist financing

The fight against money laundering and terrorist financing has been a key priority for the Joint Committee over the last year, as the ESAs sought to create a common understanding, by AML/CFT competent authorities and credit and financial institutions, of the risk-based approach to AML/CFT, and how it should be applied.

To this end, the ESAs published guidance on ML/TF Risk Factors, which provide institutions with the tools they need to make informed, risk-based decisions on the effective management of ML/TF risk and help competent authorities assess whether institutions' ML/TF risk assessment and management systems and controls are adequate. Together with the Risk-based AML/CFT Supervision Guidelines (published in 2016) and a Joint Opinion on the ML/TF risk affecting the internal market that was published in February, the Risk Factors Guidelines provide a framework for the consistent application of EU AML/CFT legislation, and transform the way European supervisors and firms discharge their AML/CFT functions. Consequently, the Commission, in its 2017 supranational risk assessment, recognises the ESAs' pivotal role in raising the EU's capacity to meet AML/CFT challenges across the financial sector.

The ESAs complemented their work on the fundamental aspects of the risk-based approach with training for AML/CFT supervisors, and guidance and standards on specific aspects of Europe's AML/CFT regime, including guidelines on managing ML/TF risk in transfers of funds that set out what payment service providers should do to identify and manage fund transfers with incomplete information on the payer or the payee; draft Regulatory Technical Standards (RTS) on Central Contact Points to facilitate the AML/CFT supervision of, and AML/CFT compliance by, payment service providers and e- money institutions that are established in different Member States; draft RTS on the management of ML/TF risk in situations where a third country's law prevents the application of robust group-wide AML/CFT policies and procedures; and a joint opinion on the use of innovative solutions for customer due diligence (CDD) compliance purposes.

This Opinion sets out the factors competent authorities should consider when assessing, on a case-by-case basis, whether the use of innovative solutions for CDD purposes is appropriate, with a view to promoting the responsible use of innovation in the AML/CFT context in line with the ESAs' wider work on financial innovation.

2.5.3. Protecting consumers

Consumer protection and financial innovation continue to figure prominently on the Joint Committee's agenda. The Joint Committee continued its work on the PRIIPs Regulation, with the three ESAs putting forward Technical Advice on PRIIPs with environmental and social objectives (JC 2017 43), concluding that specific and standalone obligations for PRIIPs targeting these objectives would not be proportionate. Moreover, the Joint Committee published three sets of Q&As on PRIIPs (JC 2017 49) which inform stakeholders on the application of rules and promote common supervisory approaches and practices in the implementation and supervision of the key information document (KID).

In the field of financial innovation, the Joint Committee continued its work on Big Data in analysing the potential benefits and risks for consumers and financial institutions linked to the use of big data analytics and processes. The final report will encourage the adoption of good practices by financial institutions, and an accompanying consumer information sheet will inform consumers about the use of big data.

Work initiated in 2016 on cross-border supervision of financial services continued, with a view to preparing a general mapping of the rules for the different financial firms operating in three sectors and analysing any issues experienced by supervisors.

The Joint ESAs Consumer Protection Day 2017, which took place in Prague, Czech Republic, facilitated the ESAs to engage with key — and new — stakeholders, especially representatives of consumers, on important issues faced by consumers and investors across the EU.

2.5.4. Financial conglomerates

In December 2017, the Joint Committee published its annual list of Financial Conglomerates showing the location of 80 financial conglomerates with the head of group in the EU/EEA area. In addition to that, the Joint Committee started to work on reporting templates in this field and will continue doing so in 2018.

2.5.5. ESAs' advancement in the single rulebook and ensuring a level playing field

Since the adoption of two Implementing Regulations on credit assessments by External Credit Assessment Institutions (ECAIs) based on the draft Implementing Technical Standards (ITS) submitted by the Joint Committee, five additional ECAIs have been recognised and one ECAI has been deregistered. The Joint Committee has updated the Implementing Regulations to reflect these changes.

In addition, the ESAs submitted draft amendments to the RTS on risk mitigation techniques for OTC derivatives not cleared by a CCP under EMIR to align the treatment of a variation margin for physically settled FX forwards with the supervisory guidance applicable in other key jurisdictions after being made aware of certain challenges. The amendments reiterate the commitment to apply the international standards and require the exchange of variation margin for physically settled FX forwards in a risk-based and proportionate manner.

2.5.6. Board of Appeal

The ESAs continued to provide operational and secretarial support to the Board of Appeal. In 2017, there was one appeal case brought by FinancialCraft Analytics Sp. Z o.o. against a registration decision by ESMA. The Board of Appeal unanimously dismissed the appeal in July 2017, thereby confirming ESMA's decision of 8 December 2016 refusing FinancialCraft Analytics Sp. z o.o.'s registration as a credit rating agency.

2.6. ESMA as an organisation

2.6.1. Governance services

2.6.1.1. Corporate affairs

Objective for 2017	Ensure compliance with standards, support the organisation's governance, manage stakeholder relations and internal and external communications activities.

ESMA engages with many European and international stakeholders, adopting a high level of transparency. On 17 October 2017 ESMA hosted its first conference '*The State of European Financial Markets'* in which political decision-makers, global regulators and high-profile stakeholders gathered to discuss the current state of EU financial markets.

European Union institutions

ESMA maintains an open dialogue with, and is accountable to, the EU institutions — the European Parliament and the Council — including attending regular scrutiny hearings at the Economic and Monetary Policy Committee (ECON) of the Parliament. In addition, ESMA co-operated closely with the Parliament's Budget Committee and Budgetary Control Committee with the aim of obtaining a Budgetary Discharge for the preceding year. ESMA regularly participates in the Council's Financial Services Committee and attends twice a year the Financial Stability Table of the Economic and Financial Committee, contributing to strategic reflections on financial services issues. ESMA has also worked on building its co-operation with the Single Supervisory Mechanism (SSM) and the European Central Bank in areas of mutual interest such as market infrastructures and financial stability.

International organisations and non-EU regulators

A key element in ESMA's work continues to be its membership of, and cooperation with, international organisations, such as IOSCO and the FSB, in important areas related to, inter alia, financial stability, shadow banking, credit rating policy and the regulation of financial benchmarks. It maintained its input to EU regulatory dialogues with third countries, playing a central role in assessing the equivalence of third-country supervisory regimes and provided technical advice on various issues to the Commission and opinions to the institutions on a range of topics within its area of competence.

ESMA and IOSCO joined forces in 2017 in order to explore possible safeguards to be put in place by third-country authorities to allow for a continuation of exchanges of information, including of personal data, under the upcoming EU General Data Protection Regulation (GDPR). Further to guidance provided by the Working Party 29, ESMA and IOSCO have made significant progress in developing a draft administrative arrangement for the transfer of personal data between EU securities markets regulators and third-country regulators; finalisation is expected in 2018.

2.6.1.2. Legal

Objectives for 2017	Enhance the legal drafting and soundness of legal acts adopted by ESMA, minimise the risk of legal challenge for ESMA and proactively handle complaints/ appeals/actions against ESMA.
	Provide clarity on our legal toolbox and easy access to all applicable acts elaborated by ESMA (for our own track record and as part of stakeholder management).

Easy access to ESMA's technical standards and guidance

To facilitate stakeholders' access to ESMA guidance, which is essential to foster the consistent and effective implementation of the same rules and the use of supervisory approaches leading to similar outcomes, ESMA launched a new Q&A tool, providing easy access to stakeholders to consult existing Q&As and submit new questions. The tool is available on the ESMA website[36], which contains an overview of all Q&As developed by ESMA per legislative act and instructions on submitting new questions to ESMA.

ESMA has also produced an interactive single rulebook[37], an online tool that, when finished, will provide a comprehensive overview of and easy access to all technical standards and guidance adopted in relation to a given directive or regulation in the securities markets area. ESMA's objective is to provide an interactive version for each key level 1 text under ESMA's remit over time, starting with the UCITS Directive.

36 Q&A tool

37 Interactive Single Rulebook

European Ombudsman complaints against ESMA

In 2017, the European Ombudsman (in charge of investigating potential instances of maladministration in EU agencies) decided to close three complaints submitted against ESMA further to a formal enquiry.

In particular, two cases concerned complaints made by customers of Iron FX about ESMA's alleged failure to take action in this matter against CySEC and the Financial Services Ombudsman (FSO) in Cyprus. The European Ombudsman accepted ESMA's position that it has no role in relation to the Cyprus FSO as it is not a competent authority or supervisory authority within the meaning of Article 1(2) of the ESMA Regulation. With regards to CySEC, ESMA explained all the measures taken so far with respect to investments in complex financial products by retail investors as well as the supervisory action plan put in place by CySEC under the co-ordination of ESMA. The European Ombudsman took a decision on one of the two cases in February 2017, when ESMA was still assessing whether a breach of union law investigation should be opened against CySEC in this particular case[38]. The European Ombudsman decided that no further inquiries were justified at that stage. There is, however, another complaint in relation to this matter (submitted at a later date) which is still open.

In addition, as regards another complaint lodged with its Office against ESMA, the European Ombudsman did not find any grounds for inquiring into ESMA's practices of not translating Q&A documents into the 24 EU official languages and decided to close the complaint. According to the European Ombudsman, the linguistic rights of EU citizens have to be reconciled with the necessity of ensuring administrative efficiency and protecting the EU budget.

2.6.2. Corporate services

In 2017, still supporting an increased number of tasks and staff, ESMA continued to improve its internal processes. The emphasis remained on providing improved support and working conditions to the staff, in their daily work, and to stakeholders, in their interaction with ESMA.

Practicalities around meetings, where much of ESMA's work is carried out with numerous stakeholders coming from all over the EU, continued to be improved with the greater use of online, audio, video and web conferencing tools. These tools facilitate meeting registration and group work, improve traceability and reduce costs.

Project management was still a key priority to continuously improve the functioning of ESMA as an organisation. Internal projects completed in 2017 ranged from going paperless to e-administration, from a new mission tool to a contract database in SharePoint, from language e-learning for 30 EU agencies to new lower-cost medical services, and from the reorganisation of the different service desks to the updating of the human resources system or the transitional updating of the activity-based management (ABM) system, as described in more detail below.

In 2017, ESMA also launched a key new multi-annual project: entitled *ESMA 2020 Premises*, aimed at ensuring ESMA will have suitable, cost-efficient and duly approved premises at the beginning of 2020 after the expiration of its current lease on 31 December 2019.

ESMA advanced considerably in 2017 in terms of the digitalisation of its administrative processes with its Paperless project: more than 30 processes were digitalised during the year, especially in the fields of finance, procurement and human resources. This has led to a general improvement of these activities, notably in terms of speed and reliability, while also reinforcing traceability and, last but not least, contributing to a greener environment by reducing paper consumption.

Important progresses were also made in the fields of IT security, cybersecurity and business continuity, while these topics were becoming even more important in a changing and riskier general environment.

Additionally, the EU IT projects remained a key area of activity of ESMA in 2017. These regulatory projects aim to develop IT systems that support supervisory convergence and exchange of financial data amongst NCAs and between NCAs, ESMA and the public. They are further detailed below.

2.6.2.1. Facility management

Objective for 2017	Provide proactive support to ESMA: ensure the smooth running of the facilities of the Authority and the acquisition of goods and services, in accordance with the EU public procurement rules and procedures; ensure the health and safety of ESMA staff and visitors.

38 As indicated, since then and after an in-depth assessment of all the complaints received in relation to this matter, ESMA's Chair recommended not to open a formal breach of EU law investigation because significant supervisory work and regulatory actions had already been taken by the concerned NCA (see Section 2.1.8).

In 2017, ESMA organised 742 meetings and workshops within ESMA premises and received 8,056 external participants to these meetings. A new paperless mission tool was implemented in 2017 to improve and speed up the related process, replacing a paper-based system.

ESMA also successfully managed the extension of its premises to part of the ground floor of the building it occupies, notably providing needed additional meeting rooms for staff and external visitors. This extension was necessary because of the increases in the number of staff and tasks.

In 2017, ESMA kept working on its recycling activity and on the Eco-Management and Audit Scheme (EMAS) project launched in 2016, a project aiming to evaluate, report and improve environmental performance while involving staff members and stakeholders. The objective is to evaluate how ESMA makes use of environmental systems, to assess the situation of the scheme's implementation in its premises and to aim at a reduction of the direct environmental impact of ESMA's activities in two fields: the core activity of ESMA (e.g. policymaking and development of IT databases); and the day-to-day activities of ESMA: energy, mobility, waste, natural resources (paper, water) and public procurement. In 2017, ESMA recycled 17.8 tons of paper, which represented the saving of 304 trees and 3.86 tons of carbon dioxide.

2.6.2.2. Finance and procurement

Objective for 2017	Further align the financial and procurement function to the needs and strategy of ESMA with the following objectives: enhance the efficiency of all financial and procurement processes for the benefit of all ESMA actors involved; re-engineer processes to maximise the user friendliness towards our internal clients without compromising compliance with the rules.

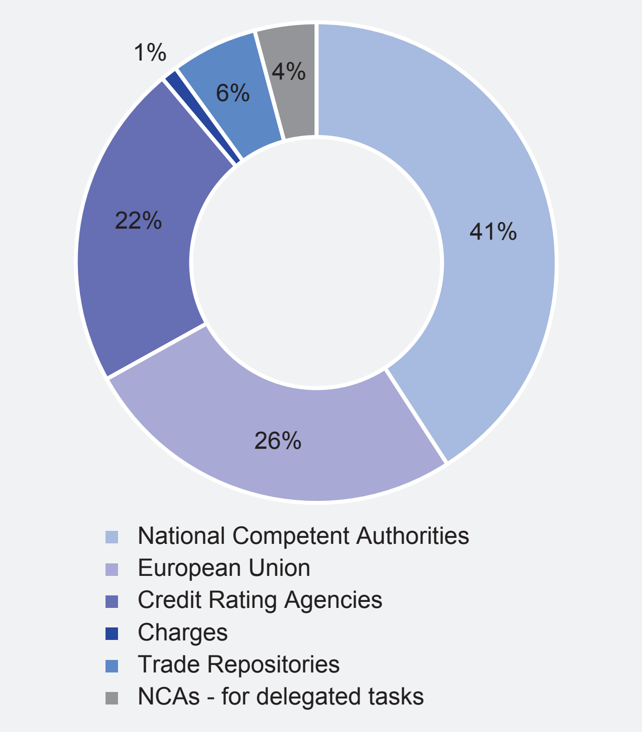
ESMA's 2017 budget

In 2017, ESMA's core budget increased by €3.5m compared to the previous year, from €36.9m in 2016 to €40.4m in 2017. In addition, the core budget was complemented by a delegated budget of €1.5m in order to perform NCAs' delegated tasks.

By the end of 2017 ESMA had received revenues from six separate streams of income.

- the NCAs of the Member States – €17.4m, representing 41% of the total revenues (€16.9m from NCAs of Member States and €0.5m from EEA NCAs);
- the European Union - €11.0m, representing 26%;
- fees charged to credit rating agencies - €9.4m, representing 22%;
- fees charged to trade repositories - €2.5m, representing 6%;
- NCAs' contribution for delegated tasks - €1.5m, representing 4%; and
- charges (participation charges for ESMA's conference) - €0.1m representing less than 1%.

2017 revenues by source



2017 — Overall financial indicators

- 100.0% of the budget was committed.
- 89.8% of the budget was paid within the year.
- 96.5% of the 2016 budget credits carried forward to 2017 were paid within the year.

Improvements of finance and procurement processes

ESMA fully benefited in 2017 from its project completed in 2016 related to defining an activity-based management (ABM), activity-based budgeting (ABB) and activity-based costing (ABC) models. This allows ESMA to accurately and transparently plan and report on the allocation of its resources.

A major milestone in 2017 was the digitalisation and process optimisation of all financial and procurement processes, with the implementation of the Paperless system described above.

2017 again saw a high volume of procurement activity resulting in framework contracts which provide administrative stability in the medium and long term. In 2017, ESMA managed 14 procurement procedures.

2.6.2.3. Human Resources

Objective for 2017	To deliver top-class HR services enabling ESMA to attract, deploy and retain the talents required to achieve its objectives and ensuring efficient HR administration while at the same time fulfilling the regulatory requirements of an EU authority.

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, its budget and the Programming Document.

In the area of personnel administration, in 2017 39 newcomers joined ESMA and 22 staff members left the service. The staff turnover rate for the year amounted to 6.5% (target <10%).

In the area of recruitment, in 2017 ESMA published 16 vacancy notices of which 11 were for Temporary Agent (TA) posts, three were for Contract Agent (CA) posts, one was for a position of Seconded National Expert (SNE) and one was for trainees. The Authority received a total of 1,422 applications or an average of 89 applications per vacancy. 202 candidates were interviewed.

In the area of staff development, in 2017 ESMA's internal staff (TAs, CAs and SNEs) attended a total of 560 days of training or an average of 2.5 days per internal staff member. 74% of these days corresponded to trainings organised by ESMA (in-house trainings). These figures do not include e-learning courses. The categories of internal training were the following:

- technical skills;
- non-technical skills;
- IT for end users;
- management and leadership.

Moreover, a language-learning policy (adopted in 2015) gives guidelines to ESMA's staff on the different language-training tools and methods available at ESMA.

Overview of staff data in 2017

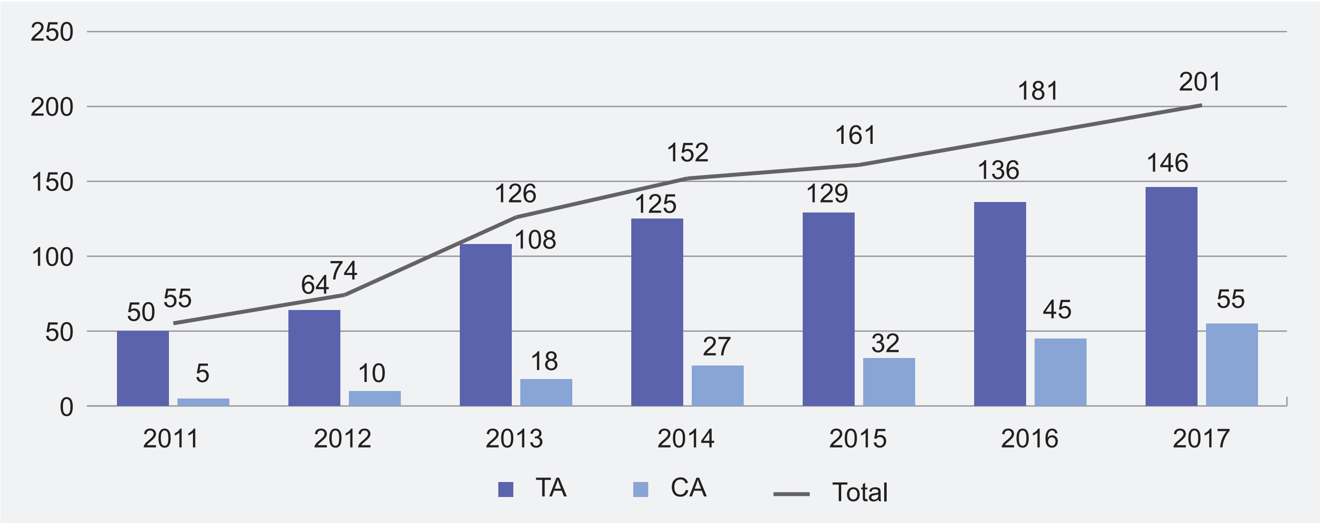
ESMA employs different categories of staff:

- Temporary Agents (TA)[39],
- Contract Agents (CA) and
- Seconded National Experts (SNEs).

At the end of 2017, a total of 224 staff (TA/CA/SNE) was employed, a 10% increase compared to one year before. Within that number, on 31 December 2017 ESMA employed 201 statutory staff members, 146 TAs and 55 CAs, whereas the Human Resources Staffing Plan

39 Posts for Temporary Agents are listed in the establishment plan of ESMA, and in the EU budget.

Statistical staff population (TA & CA) - year-end view



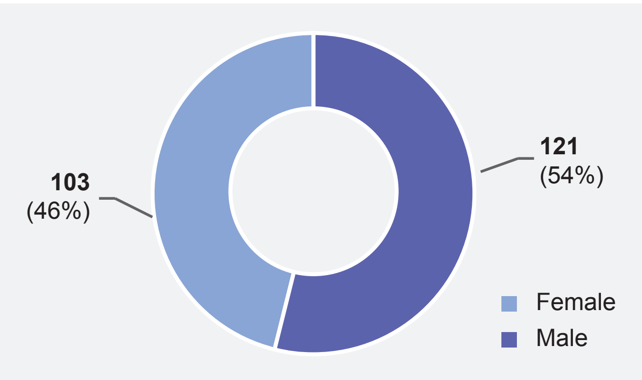
2017 targeted 205 statutory staff members (98% of the current implementation rate). This was 20 more statutory staff members than one year before, or an 11% increase.

In addition, at the same date, 23 SNEs were working at ESMA (the same number as one year before), bringing the total number of ESMA staff to 224, versus 204 one year before or a 10% increase.

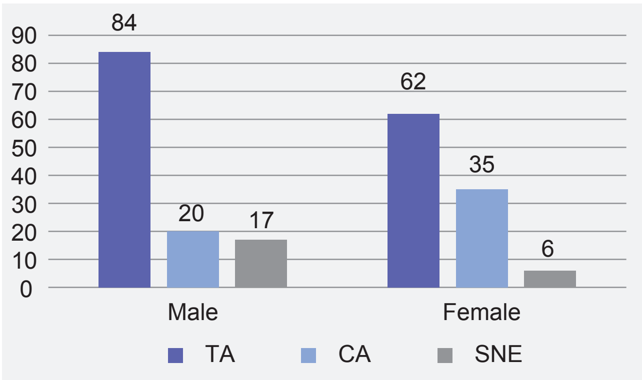
Gender balance

ESMA tries to reach the best possible gender and geographical balance during its recruitment process. The global gender balance amongst ESMA staff (TAs, CAs and SNEs) was 54% (male) and 46% (female) in 2017.

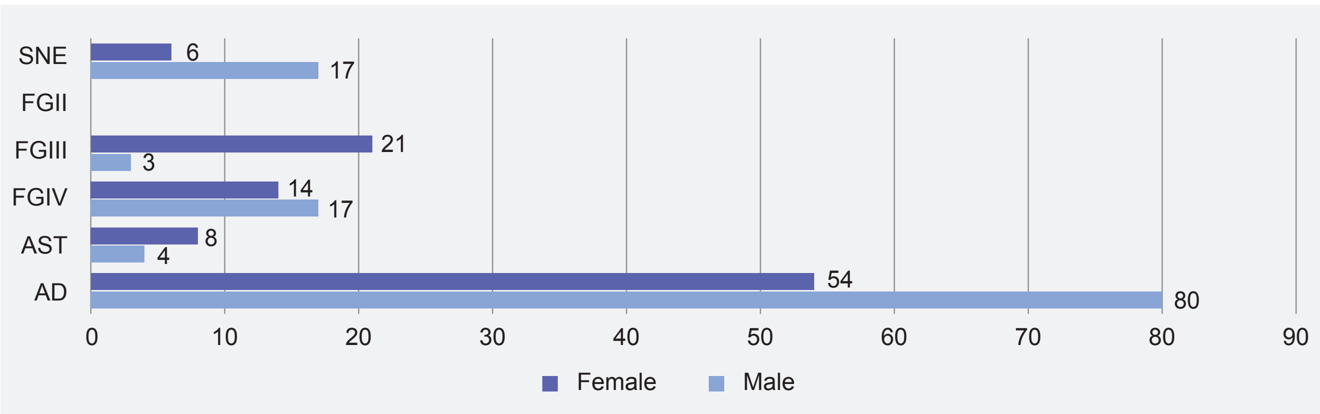
Gender distribution at ESMA



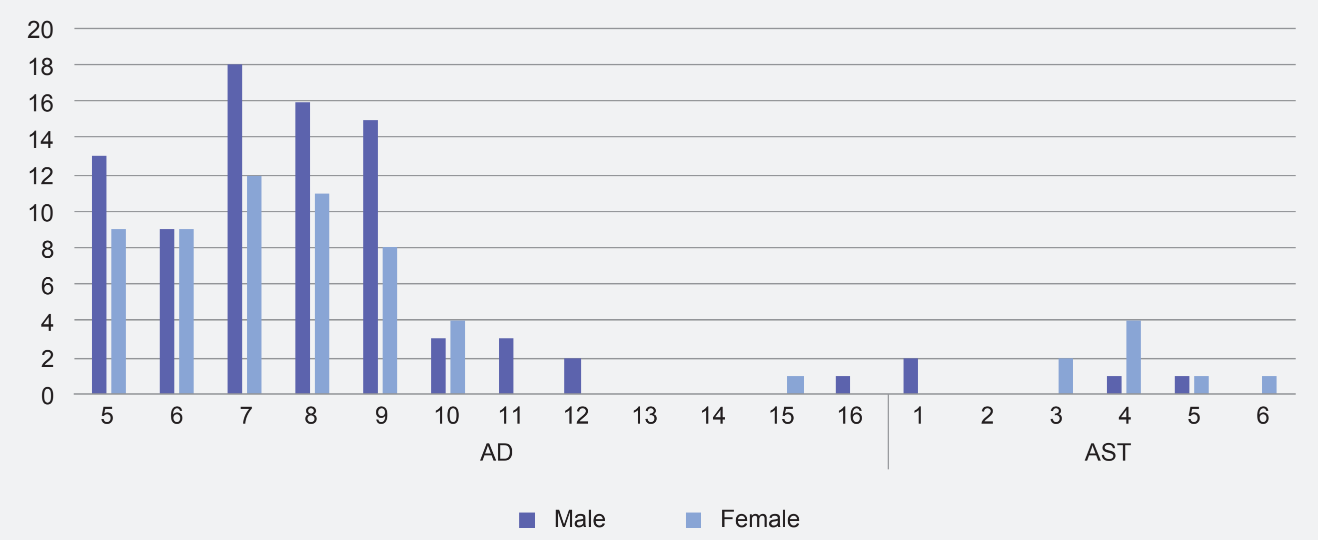
Gender distribution per category



Gender distribution per category



Distribution of temporary agents by grade and gender

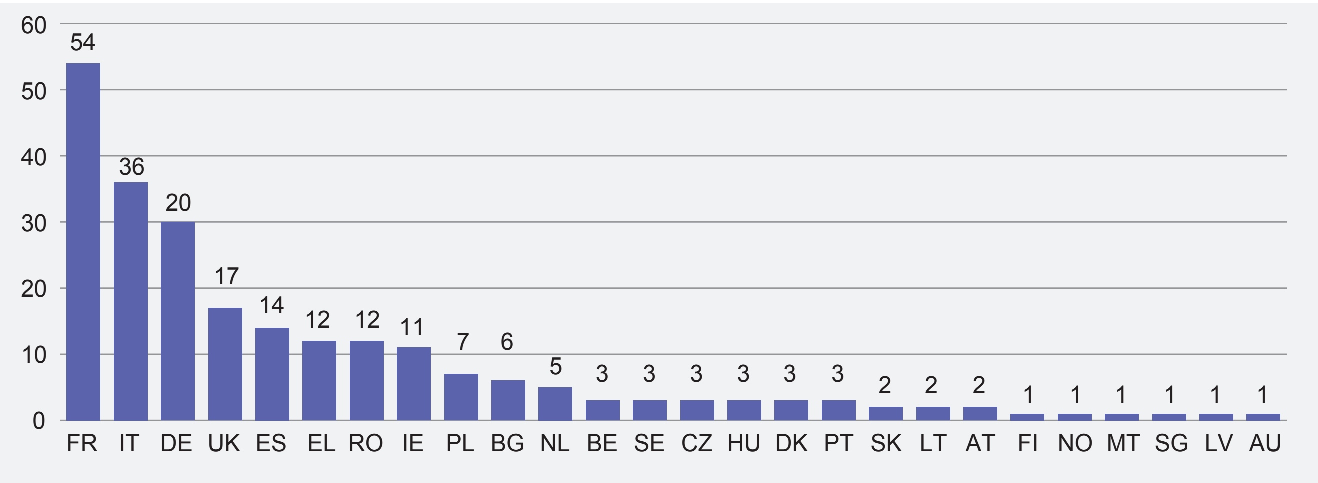


Geographical balance

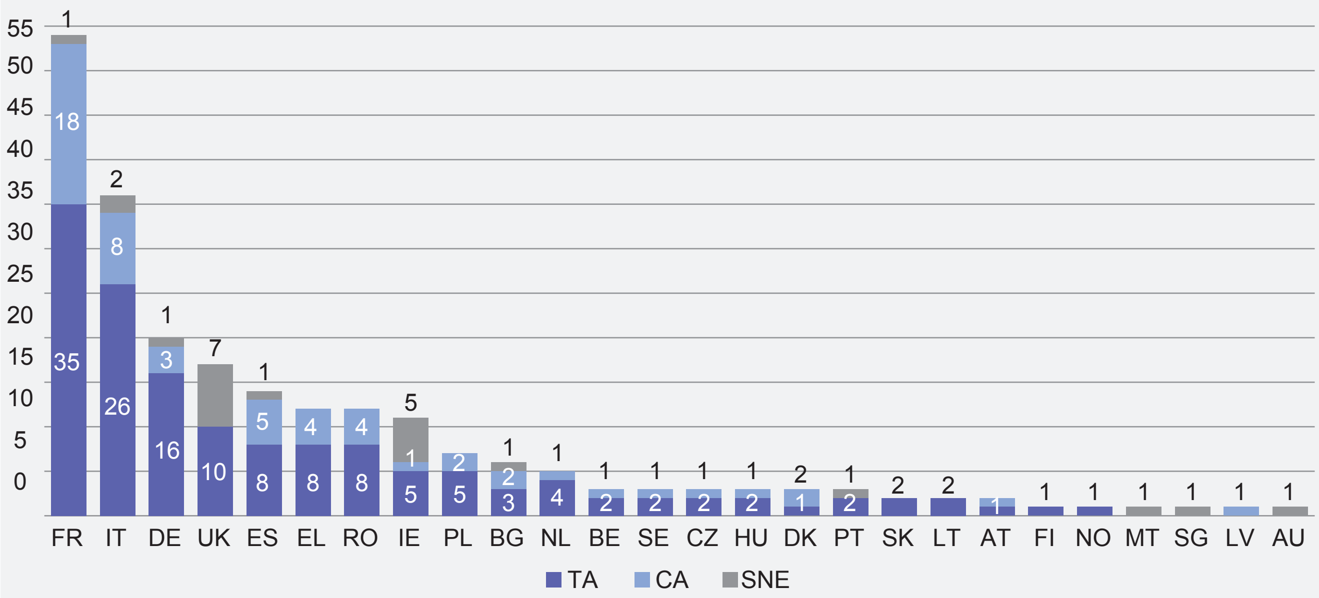
At the end of 2017, ESMA staff (TAs/CAs/SNEs) included nationals from 23 different EU Member States, one national from the European Economic Area (Norway), one Australian and one Singaporean (SNEs). The following table shows, by alphabetical order, the distribution of nationalities per contract type and function group.

	AT	AU	BE	BG	CZ	DE	DK	EL	ES	FI	FR	HU	IE	IT	LT	LV	MT	NL	NO	PL	PT	RO	SE	SG	SK	UK	Total
TA	1		2	3	2	16	1	8	8	1	35	2	5	26	2			4	1	5	2	8	2		2	10	146
CA			1	2	1	3	2	4	5		18	1	1	8		1		1		2		4	1				55
SNE	1	1		1		1			1		1		5	2			1				1			1		7	23
Total	**2**	**1**	**3**	**6**	**3**	**20**	**3**	**12**	**14**	**1**	**54**	**3**	**11**	**36**	**2**	**1**	**1**	**5**	**1**	**7**	**3**	**12**	**3**	**1**	**2**	**17**	**224**
%	**1%**	**0%**	**1%**	**3%**	**1%**	**9%**	**1%**	**5%**	**6%**	**0%**	**24%**	**1%**	**5%**	**16%**	**1%**	**0%**	**0%**	**2%**	**0%**	**3%**	**1%**	**5%**	**1%**	**0%**	**1%**	**8%**	**100%**

ESMA nationalities



Nationality distribution by staff category at ESMA



ESMA staff per department (as of 31.12.2017)

	SMG	CAD	MKT	INI	SUP	RAE	LCE	RES	Total
Temporary Agents (TA)	4	10	26	21	25	14	13	33	146
Contract Agents (CA)	1	2	5	4	6	13	5	19	55
Seconded National Experts (SNE)		2	7	4	3		4	3	23
Total	**5**	**14**	**38**	**29**	**34**	**27**	**22**	**55**	**224**

Below are the acronyms of the relevant departments:

- SMG: Senior Management;
- CAD: Corporate Affairs;
- MKT: Markets;
- INI: Investors and Issuers;
- SUP: Supervision;
- RAE: Risk Analysis;
- LCE: Legal, Convergence and Enforcement; and
- RES: Resources

Improvement of human resources processes

In 2017, a medical services contract was established whereby pre-recruitment and annual medical check-ups may all be conducted in Paris instead of Brussels, which results in a saving of both the mission budget for ESMA and time for staff members. Additionally, ESMA now has a medical advisor in Paris.

ESMA also implemented in 2017, within the organisation EU-LEARN, the new training and learning management tool from the European Commission, extending the training resources available to its staff members.

Additionally, ESMA adopted its internal policy on whistleblowing on 30 January 2017. This policy constitutes an important step in ensuring sound fraud identification, reporting and management through confidential and safe channels for staff. This policy is applicable to everyone working in ESMA, irrespective of their administrative position or status, i.e. TAs, CAs, SNEs, on-site consultants, temporary workers (interim staff) and trainees.

Lastly, ESMA successfully led an inter-EU Agency open tender procurement procedure for language e-learning, making an online learning platform for European languages available to staff. Thirty EU Agencies joined this procedure.

2.6.2.4. Information and communication technologies

Objective for 2017	Provide proactive support to ESMA: prepare and implement ESMA's IT strategic programme as well as ensure the implementation and maintenance of the IT systems and networks of the Authority.

ESMA's IT projects

ESMA's ICT activity represents two main categories:

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

The vast majority of the resources working in the ICT Unit works for the core activity of ESMA. As an indication, out of the 25 internal (TAs/CAs/SNEs) full-time equivalents working in the ICT Unit at the end of 2017, most of them were working for the EU IT projects that are detailed in the tables in the supervisory convergence section.

Last, it should be noted that some resources — for example the helpdesk — provide support for both staff working at ESMA and external users (users of ESMA's systems in the NCAs or supervised entities, for example).

ESMA is currently running five IT programmes, of which four are related to EU regulatory IT projects. In addition, ESMA provides operational support to a growing number of end users and carries out maintenance activities of the existing IT systems in use.

Information technology

The provision of EU IT systems is a key ESMA activity, which is reflected in its budget. In 2017, a budget of €2.3m was allocated for the development of new IT systems and the enhancement of the existing systems, of €5.4m for the maintenance of existing IT systems, and of €1.5m for the development and maintenance of delegated IT projects. These amounts were in addition to the €0.3m dedicated to IT office equipment. In total, IT expenses therefore amounted to €9.5m or 23% of ESMA's total budget.

An IT Management and Governance Committee (ITMG) oversees the EU IT projects. A business owner is assigned to each IT system. The EU IT projects

are those that are carried out to exchange financial data with external stakeholders, such as the NCAs, the CRAs and the TRs. These projects are steered by both an ESMA Standing Committee in charge of the regulatory aspects and by the ITMG. Both groups report to the BoS.

In 2017, ESMA fully benefited from the implementation the year before of a new IT tool for project and portfolio management (PPM), thus enhancing the maturity and quality of the multi-annual IT planning. ESMA also kept using the project management methodology of the EU institutions (PM²)[40], a methodology systematically applied by the Authority since 2015 to all of its IT projects.

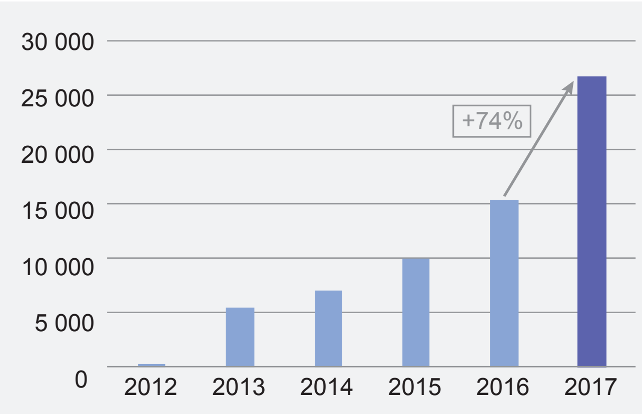
Support to ESMA as an organisation

At the end of 2017 ESMA was managing 40 applications (+33% compared to one year before) and 237 virtual servers.

ESMA's ICT helpdesk managed 26,727 tickets (i.e. requests for support) in 2017, a massive +74% increase compared to 2016, after an already large increase between 2015 and 2016 (+54%).

Annual evolution of the total number of tickets managed by ESMA since 2012.

Number of tickets



ESMA continued to upgrade its workplace tools, notably with the arrival of the collaboration tool Skype for telephony and video conferencing.

40 Project Management Methodology (PM2)

2.7. Management

2.7.1. Assessment of the audit results during the reporting year

European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA). 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.

The ECA conducted its annual audit of ESMA's 2016 accounts. In its Statement of Assurance 2016, the ECA expressed the following opinions:

- ESMA's annual accounts present fairly, in all material respects, its financial position as at 31 December 2016, and the results of its operations and its cash flows for the year in accordance with the provisions of its Financial Regulation, and the accounting rules adopted by the Commission's accounting officer;
- Transactions, underlying the annual accounts for the year ending on 31 December 2016, are legal and regular in all material respects.

The ECA audit of the 2017 annual accounts is ongoing. There has been no preliminary finding following the first mission on the regularity of the transactions. The draft report will be available by mid 2018.

Internal Audit Service

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

In 2017 IAS performed an audit on Peer Reviews of National Competent Authorities. The final report was received on 12 September 2017.

IAS concluded that the audited peer review processes are generally adequate, effective and efficient. ESMA has established a procedural framework adapting it to the needs of stakeholders, and it adequately plans and monitors the process of peer reviews. The Authority established an effective input collection from NCAs through questionnaires and on-site visits, as well as an independent and professional assessment of the information collected. ESMA implements the process in a collaborative manner to ensure an impartial and accepted result. To maximise the impact of Peer

Reviews ESMA performs follow-ups of the past engagements to monitor how previously identified deficiencies have been addressed.

IAS made four recommendations for the improvement of the process, though none of them are critical or very important.

IAS started another audit in 2017 on revenues and activity based management, which is still ongoing.

2.7.2. Follow-up of recommendations and action plans for audits

ESMA follows up and reports to the Management Board on all audit findings and recommendations on a quarterly basis.

Internal Audit Service

Neither critical nor very important recommendations were open as of 31 December 2017.

2.7.3. Follow-up of observations from the Discharge Authority

On 18 April 2018, the European Parliament voted positively on the discharge of ESMA's 2016 accounts. This is the final approval of the budget implementation for 2016, and the decision is based on a review of the annual accounts and the ECA annual report.

2.8. Assessment of the effectiveness of the Internal Control Systems

2.8.1. Risk management

ESMA operates in an environment of growing uncertainty. To assist the Authority in visualising, assessing and mitigating the risks that threaten the delivery of its mission, ESMA has developed a regular process to identify, assess and manage risks across the organisation.

The annual organisational risk assessment consists of identifying, assessing and mitigating organisational risks; it is performed in two exercises:

- bottom up: identification of risks at department level;
- top down: management assessment and evaluation of strategic risks considering the input from departments.

Significant risks are then reviewed by the ESMA Management Board, which endorses the risks and action plans.

Top risks, identified during the assessment, are summarised and included in the ESMA Single Programming Documents. The top risks identified for 2017 were:

1. the potential consequences of Brexit on EU securities markets and on ESMA as an organisation;
2. difficulties and potential unexpected consequences of MiFID implementation;
3. data availability and quality at ESMA, NCAs, supervised entities and/or other stakeholders; and
4. reputational risk for ESMA in case of mis-selling scandals (consumer protection).

None of the risks identified in 2017 were considered critical.

2.8.2. Compliance and effectiveness of 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[41] standards.

The standards cover the areas of mission and values, human resources, planning and risk management processes, operations and control activities,

41 COSO website, viewed on 18 May 2017

information and financial reporting, and evaluation and audit. Each Internal Control Standard is made up of a number of requirements to be met.

ESMA reviewed the implementation of the internal control standards (ICS) in 2017.

The assessment concluded that the system in place is compliant with the all the standards, thus providing the Authority with reasonable assurance on the reliability of the internal control environment. The results of the assessment were sent to the European Court of Auditors.

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

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

In order to promote and strengthen the principles and practice of ethics and organisational values among its staff, ESMA has appointed three staff members as Ethics Officer and their deputies, respectively. This allows for the development of strong in-house expertise and a prompt response and reaction to ethics issues. The Internal Audit Service of the Commission labelled this organisation as a best practice.

Since 2015, ESMA has a policy in place on conflict of interest for non-staff, including the members of the Board of Supervisors, Management Board and the Board of Appeal. The curriculum vitae and declarations of interest of all board members and senior management of ESMA are published on ESMA's 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 on 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 Anti-Fraud Office (OLAF), and according to Article 22 of the regulation establishing ESMA, in January 2011 the Management Board approved 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 Interinstitutional Agreement

of 25 May 1999 concerning internal investigations by OLAF.

ESMA has developed a whistleblowing procedure for the internal reporting of cases of fraud or serious misconduct as well as rules on conducting administrative enquiries and disciplinary procedures, and has also set up a disciplinary board.

2.9. Management assurance

2.9.1. Review of the elements supporting assurance

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 European Court of Auditors (ECA) 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;
- the summary of OLAF activities.

In support of the annual activity report, all authorising officers are asked to sign a declaration of assurance for their areas of responsibility.

The purpose of these declarations is to confirm, on the basis of the facts in their possession, that the information contained in the report gives a true and fair view — except if otherwise specified in any reservations related to defined areas of revenue and expenditure — and that the resources assigned have been used for their intended purpose and in accordance with the principle of sound financial management.

The authorising officers by delegation confirmed their reasonable assurance that, overall, suitable controls are in place and working as intended, and identified risks are being appropriately monitored and mitigated.

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.

2.9.2. Reservations

Based on the assurance provided by the control system in place, the Executive Director sees no reason that would justify or require a reservation.

Materiality criteria used

In line with the suggestion of the guidelines on the preparation of the annual activity report, ESMA used the qualitative and quantitative materiality criteria described below to assess if the issues identified merit a reservation.

Qualitative criteria used

ESMA would consider significant the weaknesses in the internal control system that fall under the following qualitative criteria:

- significant errors detected during the control or supervision exercises;
- a significant weakness in the control system;
- situations where ESMA does not have sufficient evidence from internal control systems or audit coverage to be confident in providing the necessary assurance;
- situations where a major issue has been outlined by the ECA or the Internal Audit Service of the Commission (critical audit recommendations for underlying weaknesses) relevant to the area covered by the declaration of assurance that are not adequately addressed by other internal controls and where the materiality threshold is exceeded;
- situations revealed through own control work or audits where significant risks remain unmitigated;
- a significant reputational risk.

Quantitative criterion used

According to the Commission guideline on the preparation of annual activity reports, the Court of Auditors uses a 2% materiality threshold. ESMA has therefore set the quantitative criterion of materiality at 2% of its total budget.

2.9.3. Overall conclusions on assurance

Taking into account the review of the elements supporting assurance, the Executive Director is of the opinion that the management and control systems in place at ESMA are working as intended, risks are being appropriately monitored and mitigated, and necessary improvements and reinforcements are being implemented.

Based on all the facts presented in the report and in light of the opinions expressed by the Court of Auditors on the reliability of the accounts and on the legality and regularity of the transactions underlying the accounts, ESMA can conclude that the systems in place provide reasonable assurance that the resources under the responsibility of the Executive Director were used for their intended purposes and in accordance with the principles of sound financial management.

2017 Declaration of Assurance by the Executive Director of ESMA

I, the undersigned, Executive Director of the European Securities and Markets Authority,

In my capacity as authorising officer:

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in the 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 the self-assessment, ex-post controls, the work of the Internal Audit Service and the lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.

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

Paris, 14 June 2018

[Signed]

Verena Ross
Executive Director
European Securities and Markets Authority

Annexes

ANNEX I — Access to documents requests in 2017

ESMA, under Article 17(1) of Regulation (EC) No 1049/2001 (Access to Documents Regulation), must include a report in its annual report detailing: (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 2017, ESMA received six requests for access to documents pursuant to Regulation (EC) No 1049/2001. These requests concerned a variety of topics, such as: copies of registers of natural persons and SMEs considered qualified investors held by NCAs as per Article 2(3) of the 2003 Prospectus Directive[42]; information regarding the rental contract(s) of the building(s) ESMA occupies; documents containing information on the origin, nature and substance of a complaint against a German registered CRA; ESMA's note on the content of ESMA opinions on position limits on commodity derivative contracts; emails, letters and relating documents sent by a Member of the European Parliament to ESMA on MiFID II, MiFIR and PRIIPs and cybersecurity.

All the requests were processed by year end, except for one that was received at the very end of 2017. In one case ESMA did not possess the requested document. In another case ESMA provided full access to the requested document. In the remaining three cases ESMA decided to grant only partial access to the documents as, in the first case, the disclosure of certain information would have undermined the protection of the privacy and integrity of the individual, while in the second case a requested document contained confidential supervisory information which could not be disclosed. In the third case access was only partially granted, as disclosing some parts of the relevant document would have seriously undermined ESMA's decision-making process.

42 Replaced by Article 1(2)(b) of the revised Prospectus Directive

ANNEX II — Reporting on key performance indicators

ESMA has defined a list of key performance indicators that are regularly reported to the Management Board. ESMA's work programme in 2017 was measured against these indicators.

Activity	Key performance indicator	Results
Promoting supervisory convergence	Non-compliance with Guidelines and recommendations	17
	% of IT systems delivered compared to planned	95%
	Number of peer reviews conducted	2
	Number of opinions issued	160
	Number of questions addressed in ESMA's published Q&As	139
Assessing risks to investors, markets and financial stability	Number of risk topics analysed	9
Completing a single rulebook for EU financial markets	Number of adopted technical standards and technical advice approved by ESMA's Board of Supervisors	28 TS 5 TA
Direct supervision of specific financial entities	Number of thematic and individual investigations (opened in the year according to annual plan or individual strategies)	4/4 (100%)
	Number of applications for registration not assessed within the time limits	0
Organisational implications	Rate of implementation of commitment appropriations in ESMA's core budget[43]	100%
	Rate of budget outturn[44]	89.8%
	Average vacancy rate	3%
	Percentage of completion of the activities of the Annual Work Programme	90%
	Rate of external and accepted internal audit recommendations	93%

43 ESMA's core budget (C1 credits) does not include the external assigned revenue for the delegated tasks.

44 Level of payments versus level of commitments in ESMA's core budget for 2017 (C1 credits).

ANNEX III — ESMA's Boards and Standing Committees

The ultimate decision-making body of ESMA is the Board of Supervisors, whereas the Management Board ensures that the Authority carries out its mission and performs the tasks assigned to it.

ESMA's Boards and their 2017 composition

Members of the Management Board as at 31 December 2017

Member	Authority	Country
Steven Maijoor	ESMA (Chair)	
Gabriela Figueiredo Dias	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Sebastian Albella Amigo	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Anneli Tuominen	ESMA Vice-Chair (observer)	
Ugo Bassi	European Commission (non-voting Member)	EU
Verena Ross	Executive Director (non-voting Member)	

On 31 December 2017 there were two vacant Management Board positions.

Members of the Board of Supervisors as at 31 December 2017

Member	Authority	Country
Steven Maijoor	ESMA	
Jean-Paul Servais	Financial Services and Markets Authority (FSMA)	Belgium
Karina Karaivanova	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
Derville Rowland	Central Bank of Ireland	Ireland
Charalampos Gotsis	Ελληνική Επιτροπή Κεφαλαιαγοράς (HCMC)	Greece
Sebastian Albella Amigo	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Robert Ophèle	Autorité des Marchés Financiers (AMF)	France
Pierre Matek	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Croatia
Giuseppe Vegas	Commissione Nazionale per le Società e la Borsa (CONSOB)	Italy
Demetra Kalogerou	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus
Gunta Razāne	Finanšu un kapitāla tirgus komisija (FKTK)	Latvia
Vytautas Valvonis	Lietuvos Bankas	Lithuania
Claude Marx	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg
Gergő Szeniczey	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
Gabriela Figueiredo Dias	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Leonardo Badea	Autoritatea de Supraveghere Financiară (ASF)	Romania
Miloš Čas	Agencija za trg vrednostnih papirjev (ATVP)	Slovenia
Vladimír Dvořáček	Národná Banka Slovenska (NBS)	Slovakia
Anneli Tuominen	Finanssivalvonta (FSA)	Finland
Erik Thedéen	Finansinspektionen (FI)	Sweden
Andrew Bailey	Financial Conduct Authority (FCA)	United Kingdom

Non-voting members of the Board of Supervisors as at 31 December 2017

Name	Authority	Country
Unnur Gunnarsdóttir	Fjármálaeftirlitið (FME)	Iceland
Marcel Lötscher	Finanzmarktaufsicht (FMA)	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Adam Farkas	European Banking Authority (EBA)	EU
Fausto Parente	European Insurance and Occupational Pensions Authority (EIOPA)	EU
Francesco Mazzaferro	European Systemic Risk Board (ESRB)	EU
Ugo Bassi	European Commission	EU
Frank Buchel	European Free Trade Association (EFTA) Surveillance Authority	EFTA

Standing Committees and Working Groups

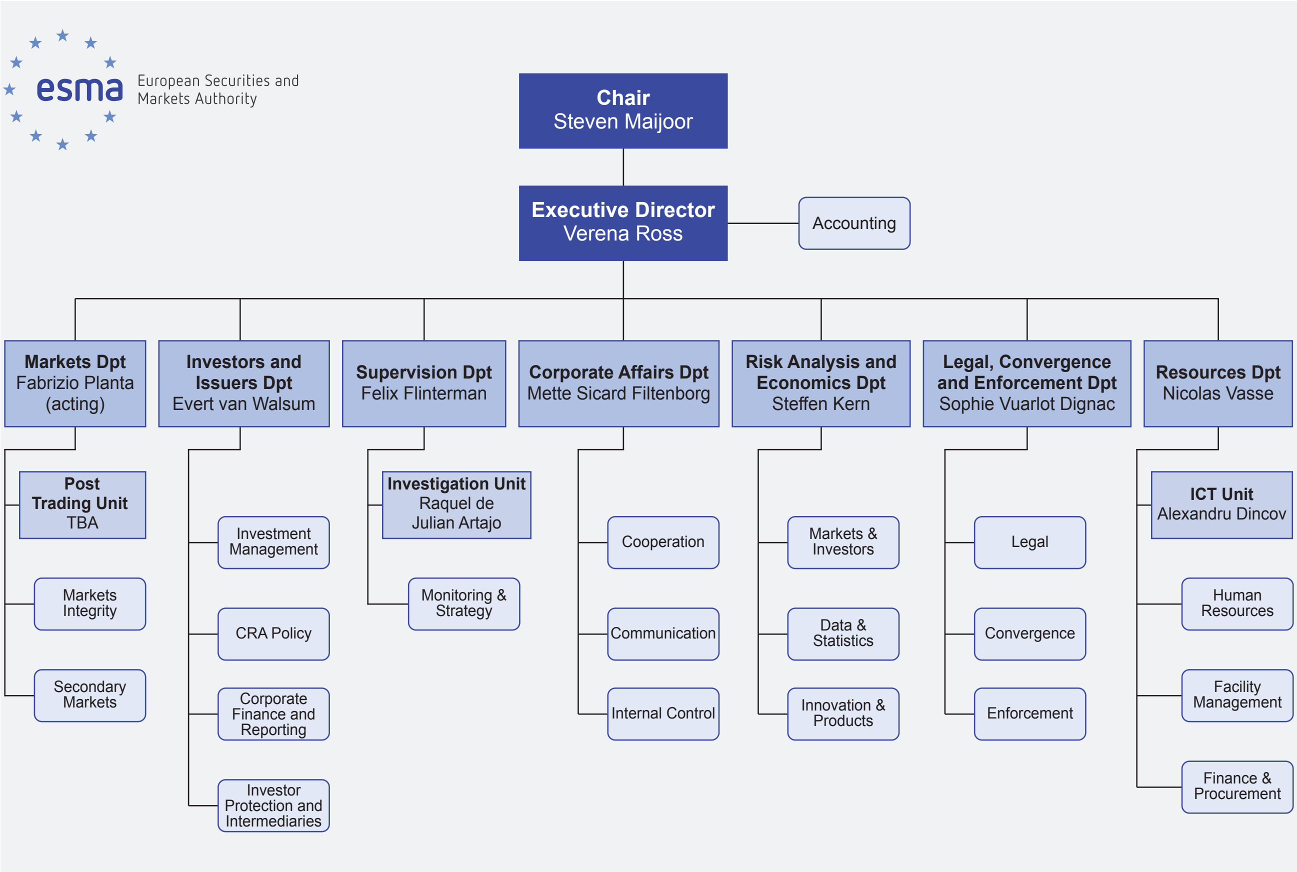
Much of ESMA's work is supported by Standing Committees (SC), working groups and task forces, which draw together senior experts from NCAs. The different ESMA SCs are established on a permanent basis. Each committee is chaired by a Board member and supported by ESMA staff as rapporteur. SCs also have consultative working groups made up of external stakeholder representatives.

ESMA's SCs prepare the technical work on all areas of ESMA's activities. However, the ultimate decision-making body of ESMA is the Board of Supervisors, whereas the Management Board ensures that the Authority carries out its mission and performs the tasks assigned to it.

A table of ESMA's SCs is set out below; more details can be found at www.esma.europa.eu, including the mandates of each SC.

Name of Standing Committee	Chair
Committee of Economic and Markets' Analysis	Steffen Kern (acting), ESMA
Commodity Derivatives Task Force	Edwin Schooling-Latter, FCA, United Kingdom
Corporate Finance Standing Committee	Benoit de Juvigny, AMF, France
Corporate Reporting Standing Committee	Ana María Martínez-Pina García, CNMV, Spain
Credit Rating Agencies Technical Committee	Verena Ross, ESMA
Financial Innovation Standing Committee	Jean-Paul Servais, FSMA, Belgium
Investment Management Standing Committee	Martin Moloney, Central Bank of Ireland
Investor Protection and Intermediaries Standing Committee	Merel van Vroonhoven, AFM, Netherlands
IT Governance and Management Group	Nicolas Vasse, ESMA
Market Data Standing Committee	Hannelore Lausch, BaFin, Germany
Market Integrity Standing Committee	Nicoletta Giusto, CONSOB, Italy
Post-Trading Standing Committee	Robert Ophèle, France
Secondary Markets Standing Committee	Elisabeth Roegele, BaFin, Germany
Supervisory Convergence Standing Committee	João Sousa Gião, CMVM, Portugal

ANNEX IV — 2017 organisational chart as at 31 December 2017



ANNEX V — Establishment plan and benchmarking exercise

ESMA's staff population 2017 (all categories of staff)

Staff population		Headcount as of 31.12.2016	Authorised under EU budget 2017	Headcount as of 31.12.2017
Officials	AD			
	AST			
	AST/SC			
TA	AD	123	137	134
	AST	13	13	12
	AST/SC			
Total		136	150	146
CA GFIV		22	30	31
CA GFIII		22	25	24
CA GFII		1		
CA GFI				
Total CA		45	55	55
SNE		23	24	23
TOTAL		204	229	224

ESMA’s establishment plan 2017 (Temporary Agents)

Category and grade	Establishment plan in EU budget 2017	Filled as of 31.12.2017
AD16	1	1
AD15	1	1
AD14		
AD13	2	
AD12	5	2
AD11	8	3
AD10	13	7
AD9	26	23
AD8	28	27
AD7	26	30
AD6	14	18
AD5	13	22
Total AD	**137**	**134**
AST11		
AST10		
AST9		
AST8	1	
AST7	2	
AST6	3	1
AST5	4	2
AST4	3	5
AST3		2
AST2		
AST1		2
Total AST	**13**	**12**
AST/SC6		
AST/SC5		
AST/SC4		
AST/SC3		
AST/SC2		
AST/SC1		
Total AST/SC		
TOTAL	**150**	**146**

Benchmarking against previous year results[45]

The table below outlines the results of the fourth 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 was designed by a working group including representatives from different EU agencies (including ESMA) and from the European Commission (DG Budget, DG Human Resources and Security and SG). It was generated as an adaptation, refinement and clarification of the Commission job-screening methodology, which the Commission had been implementing for several years.

Job type (sub)category	Year 2016 (%)	Year 2017[46] (%)
Administrative support and co-ordination	**15.5%**	**13.1%**
Administrative support	11.5%	9.1%
Co-ordination	4.0%	4.0%
Operational	**79.5%**	**83.2%**
General operational activities	11.5%	7.7%
Programme management and implementation	58.6%	69.8%
Top operational co-ordination	2.2%	1.7%
Evaluation and impact assessment	7.2%	4.0%
Neutral	**5.0%**	**3.7%**
Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control	5.0%	3.7%
Linguistic activities	0.0%	0.0%

45 Reference date: 12/12/2016.

46 Reference date: 31/12/2017.

ANNEX VI — 2017 Annual Accounts and Work Programmes

2017 Annual Accounts

The 2017 annual accounts of ESMA are produced in accordance with its Financial Regulation; they are adopted by ESMA's Management Board and Board of Supervisors and are published on ESMA's website.

2017 Work Programmes

As required by its new Financial Regulation, ESMA produced a programming document covering the period of 2018 to 2020; it set out a three-year work programme, a detailed annual work programme for 2018 and a budget and resourcing plan.

An annual work programme is adopted yearly in September for the following year by the Board of Supervisors. The Annual Work Programme provides a breakdown of the overall activities into various sub-activities and also includes an estimation of human (full-time equivalents) and financial (budgetary expenditure) resources per area of activity as well as key performance indicators. In addition to the Annual Work Programme, ESMA also publishes various specific work programmes providing more detail about its activities.

ESMA published five work programmes in 2017 which set out the work it intended to carry out as an organisation in general but also in specific areas. The work programmes that were published on ESMA's website in 2017 were:

- Annual Work Programme
- Risk Assessment Work Programme
- Regulatory Work Programme
- Supervisory Work Programme
- Supervisory Convergence Work Programme

The delivery against the work programmes is monitored on an ongoing basis, with progress on its implementation 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 European Securities and Markets Authority

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