



Annex to the Statement
by Steven Maijor, Chair of ESMA
to the ECON hearing, 9 October 2017

Facts and figures
from October 2016 to September 2017

ESMA enhances investor protection and promotes stable and orderly financial markets through

- (1) developing a single rulebook for EU financial markets;
- (2) supervising financial entities;
- (3) promoting supervisory convergence; and
- (4) assessing risks to investors and financial stability.

1. Developing a single rulebook for EU financial markets

In relation to ESMA's statutory objective of building a single rulebook for the EU and ensuring its effective implementation, the Authority has undertaken the following work since October 2016:

- **23 draft technical standards** (TS) including draft Regulatory Technical Standards (RTS) and draft Implementing Technical Standards (ITS), and **4 reviews of TS**:
 - 10 RTS and 2 ITS under the Benchmark Regulation;
 - 4 RTS and 3 ITS under the Securities Financing Transaction Regulation (SFTR);
 - 1 RTS on non-equity tape under MiFID II/MiFIR;
 - 1 RTS on trading obligation for derivatives under MiFID II/MiFIR;
 - 1 RTS on package orders under MiFID II/MiFIR;
 - 1 ITS on cooperation under Market Abuse Regulation (MAR);

- 4 reviews of RTS under EMIR:
 - Review of RTS on the clearing obligation for FCs with a limited volume of activity;
 - Review of RTS on the details of the application for registration as a Trade Repository (TR);
 - Review of the RTS on the access levels by authorities under Article 81;
 - Review of RTS on data to be made public by TRs under article 81.

- 1 Technical Advice (TA) to the European Commission under the Benchmarks Regulation;

- 1 TA to the European Commission under the SFTR;

- 1 Opinion to the European Commission, Parliament and Council on the Commission's legislative proposal on CCP Recovery & Resolution.

2. Direct supervision of financial entities by ESMA

ESMA is responsible for the supervision of both TRs and Credit Rating Agencies (CRAs).

- **Supervision of TRs:**

- Under EMIR, ESMA has direct responsibilities regarding the registration, supervision and recognition of TRs, which constitute one of the key elements of the post-crisis regulatory reform with the aim to create a more stable and transparent OTC derivatives market. ESMA aims to ensure that TRs comply on an ongoing basis with all EMIR requirements, thereby enabling various regulators to access data and details of derivative contracts in order for them to fulfil their respective mandates.

- The 7 TRs registered by ESMA since November 2013 continue to collect the derivative trades under EMIR. One additional TR application for registration with ESMA is under assessment.

- There are more than 40 EU regulatory authorities that have access to at least one TR as of June 2017. They include NCAs, national central banks, ESRB, ECB, EIOPA and EBA.

- As of early September 2017, a total of more than 17 billion new trades have been reported to the TRs (since the beginning of reporting in February 2014). The number of overall submissions including trades and lifecycle events exceeds 60 billion.
- For the last 6 months, there has been on average more than 350 million trade reports submitted on a weekly basis to TRs.
- ESMA has continued work on its main priorities of TR data quality and access, governance and internal controls, financial and technology risk through day-to-day supervision, thematic reviews and individual investigations. This has resulted in a number of remedial actions regarding data access by authorities, confidentiality, IT systems and IT functions outsourcing.
- On data quality in particular, in accordance with its Data Quality Action Plan, ESMA is continuing to put considerable effort into the overall improvement of the data quality at the TRs, and is cooperating closely with NCAs, who are the supervisors of the counterparties submitting data to the TRs. ESMA's focus under the Data Quality Action Plan is on:
 - The data validations applied by TRs;
 - The completeness and accuracy of the trade state and trade activity reports provided to ESMA and other authorities;
 - The inter-TR reconciliation process;
 - The data quality issues that are reported by authorities using the data;
 - The System re-architecture and software development projects that directly affect data quality; and
 - The priorities, efforts and resources allocated to data quality improvements by TRs.
- On financial risk and more general business strategy and governance, ESMA has started to focus on the pricing practices of TRs. More specifically, an important deliverable for 2017 is the development of a supervisory strategy that sets out how ESMA intends to supervise the requirement that fees charged by TRs should be cost-related and access to TR services should be non-discriminatory.
- ESMA has finalised an investigation into:
 - The Information Technology (IT) system's operational reliability and data integrity, and confidentiality.

- **Supervision of CRAs:**

- Since September 2016, no new credit rating agency has been registered. One applicant withdrew its application for registration and ESMA is currently assessing a number of applications.
- In March 2017 Feri EuroRating Services AG (Germany) was de-registered following its acquisition by Scope Ratings AG (Germany), a registered CRA, as it no longer performed credit rating activities and no longer existed as a separate legal entity.
- ESMA now supervises 25 CRAs and 4 certified CRAs. Amongst the 25 registered CRAs, three operate under a group structure, totalling 17 legal entities in the EU, which means that the total number of CRA entities registered in the EU is now 39.
- ESMA has continued to work on its main priorities as identified in the 2017 Work programme: quality of credit ratings; IT and internal controls; strategy and governance and risk assessment and data. In addition, ESMA has identified a few areas of focus across CRAs and TRs, which include internal controls and cloud computing.
- An important deliverable for 2017 has remained the development of a supervisory strategy that sets out how ESMA intends to supervise the requirement that fees charged by CRAs should be non-discriminatory and based on actual costs.
- In addition to its work in these areas, ESMA continues to improve its internal IT tools and external systems such as the European Rating Platform (ERP).
- Through its ongoing supervision, ESMA has further worked on:
 - analysis of CRAs' periodic information;
 - monitoring the effectiveness of the implementation of the remedial actions undertaken by CRAs following ESMA's investigations;
 - assessment of applications for and withdrawal of exemptions;

- notification of new methodologies and changes to methodologies;
 - assessment of compliance with the general disclosure obligations.
- Throughout the year, ESMA has assessed the information it has received through the dedicated “Whistleblower corner” of its webpage which was launched in 2017.
 - In addition, ESMA is engaging on an ongoing basis with various functions in different CRAs on topics related to internal control, compliance, governance, analytical work, methodologies, organisational set-up, staffing, conflicts of interest etc.
 - In terms of investigations, ESMA has finalised its investigations into:
 - The conflicts of interests presented by shareholders and the internal controls over the prohibitions and disclosure requirements established in the CRA Regulation to prevent and address such conflicts of interests (large size CRA);
 - The process to issue, review and monitor ratings of securities, which are linked to an issuer, ratings and the control mechanisms over those processes (large size CRA);
 - The independence of the ratings and methodologies’ development processes from the influence of business development (medium-size CRA). This was the first unannounced investigation launched by ESMA;
 - The organisational structure, decision-making procedures, and internal controls that the senior management of a CRA had employed to ensure the sound and prudent management of the company, and the independence, continuity and regularity of its credit rating activities (small-size CRA). This was also an unannounced investigation.

Sanctions:

As a result of ESMA’s first enforcement action taken against registered entities of Moody’s group, ESMA issued a public notice in respect of two infringements negligently committed by Moody’s Deutschland GmbH (Germany) and Moody’s Investors Service Limited (UK):

The public announcements of nineteen ratings of supranational entities issued between June 2011 and December 2013 failed to indicate the principal methodology used for the ratings decisions and failed to refer to any comprehensive descriptions of the methodology used.

The methodology used in each of these nineteen ratings was not the subject of any separate public disclosure either before or after the public rating announcements. This infringement continued for more than six months.

ESMA therefore fined Moody's a total of €1,24 million.

The failures concerned ratings of nine supranational entities including the European Investment Bank, the European Investment Fund, the European Stability Mechanism, the European Financial Stability Facility and the European Union.

Appeals:

In January 2017, the ESAs Board of Appeal received an appeal from Financial Craft Analytics Sp. z o.o. (formerly named Global Rating Sp. z o.o.) against ESMA's CRA registration refusal decision in December 2016.

In its appeal, Global Rating challenged every reason provided by ESMA for refusing registration and requested the Board of Appeal to register it as a CRA.

In July 2017 the Board of Appeal unanimously dismissed the appeal and confirmed ESMA's registration refusal decision.

Brexit preparations:

Currently, ESMA is engaging with CRAs and TRs on Brexit and requested contingency planning of the relevant TR/CRA in order to ensure that potential risks are adequately identified and managed.

- **Preparation for the supervision of Securities Financing Transactions and Securitisation Repositories:**

ESMA is preparing for applications under:

- the Securities Financing Transactions (SFT) Regulation. The registered entities will collect from counterparties reports with the details of SFTs and provide access to this data for the respective regulatory authorities; and
- the Securitisation Regulation. The Securitisation repositories will collect securitisation data (via standardised templates) and documentation from originators, sponsors and Securitisation Special Purpose Entities (SSPEs), and provide direct and immediate access free of charge to investors, potential investors, and a specific set of public authorities.

- **Recognition of third-country Central Counterparties (CCPs):**

Concerning CCPs, since September 2013, ESMA has been managing the application of 47 third-country CCPs (TC-CCPs) applying for recognition under EMIR.

Following the equivalence decisions for 14 third countries made so far by the European Commission, ESMA has completed this process for a total of 32 CCPs established in the jurisdictions corresponding to the countries covered by the scope of these equivalence decisions (11 of these TC-CCPs were recognised in the time period covered by this report).

3. Promoting supervisory convergence

As part of the ESMA Strategic Orientation, announced in June 2015, ESMA has significantly increased its activities in the area of supervisory convergence over the last years. The annual supervisory convergence work programme, counterpart of the regulatory and supervisory work programmes, gives a comprehensive overview of supervisory convergence activities and priorities across ESMA.

The following priorities have been identified for 2017:

- Ensuring the sound, efficient and consistent implementation of key new EU legislation by preparing for MiFID2/MiFIR and applying MAR, including the finalisation of the underlying IT infrastructure;
- Improving data quality through focusing on efforts of competent authorities to prepare for and to enforce compliance with various reporting requirements under EU legislation;
- Ensuring adequate investor protection in the context of cross-border provision of services; and
- Ensuring effective convergence in the supervision of EU CCPs.

ESMA has supported supervisory convergence, among others, by issuing Guidelines, Opinions, Questions and Answers (Q&As), conducting peer reviews and organising workshops and training sessions:

- **15 sets of Guidelines:**
 - 1 set of Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II;
 - 1 set of Guidelines on Trading Halts under MiFID II;
 - 1 set of Guidelines on management body of market operators and Data Reporting Service Providers under MiFID II;
 - 1 set of Guidelines on the assessment of the suitability of members of the management body and key function holders under MiFID II and CRD IV (jointly with the EBA);
 - 1 set of Guidelines on product governance requirements under MiFID II;
 - 1 set of Guidelines on commodity derivatives under MAR;
 - 1 set of Guidelines on validation and review of CRAs' methodologies;

- 1 set of Guidelines on Access by a CSD to the Transaction Feeds of a CCP or of a Trading Venue under CSDR;
 - 1 set of Guidelines on participant default rules and procedures under CSDR;
 - 1 set of Guidelines on the process for the calculation of the indicators to determine the most relevant currencies under the CSDR in which settlement takes place;
 - 1 set of Guidelines on the Substantial Importance of a CSD for a Host Member State under the CSDR;
 - 1 set of Guidelines on cooperation under articles 17 and 23 of the CSDR;
 - 1 set of Guidelines on portability of data under EMIR;
 - 1 set of Guidelines on sound remuneration policies under the UCITS Directive; and
 - 1 set of Guidelines on sound remuneration policies under the AIFMD.
- **108 Opinions, Advice and Decisions:**
 - 4 Opinions related to the Short Selling Regulation on the intention to introduce or renew emergency measures in exceptional circumstances:
 - 1 Opinion relating to CONSOB (Italy) measures, and
 - 3 Opinions relation to CNMV (Spain) measures;
 - 2 Opinions on Accepted Market Practice on liquidity contracts under MAR (1 by the CNMV and 1 by the CMVM Portugal);
 - 1 Opinion on Share classes under UCITS Directive;
 - 1 Opinion on the impact of the Exclusion of UCITS and AIF Management Companies from the scope of product intervention powers;
 - 1 Opinion on asset segregation and application of depository delegation rules to CSDs;
 - 1 Opinion on CCPs Portfolio Margining;
 - 1 Opinion on procedure re significant changes to CCP services;

- 4 Decisions on validations of CCP risk model changes;
 - 1 EBA/ESMA Report on the functioning of CRR with the related obligations under EMIR;
 - 1 Statement on Variation Margin Requirements under EMIR (together with EBA and EIOPA);
 - 2 Opinions on 3rd Country Venues under MiFID II/MiFIR;
 - 1 Opinion on the Traded on a Trading Venue concept under MIFID II/MIFIR;
 - 1 Opinion on market size calculation regarding ancillary activity under MIFID II/MIFIR;
 - 81 Opinions on waivers from pre-trade transparency under MIFID II/MIFIR;
 - 3 Opinions on position limits for commodity derivatives under MIFID II/MIFIR;
 - 1 Statement on European Common Enforcement Priorities in the area of financial information (IFRS); and
 - 2 Statements on the implementation of 2 new major accounting standards: IFRS 9 (Financial Instruments) and IFRS 15 (Contract with Customers).
- **320 Questions and Answers (Q&As):**
 - 6 Q&As on Benchmarks Regulation;
 - 24 Q&As on MAR;
 - 74 Q&As on MiFID II investor protection and intermediaries topics;
 - 29 Q&As on MiFIR data reporting;
 - 33 Q&As on transparency topics under MIFID II/MIFIR;
 - 64 Q&As on market structure topics under MIFID II/MIFIR
 - 41 Q&As on commodity derivatives topics under MIFID II/MIFIR
 - 1 Q&A on MiFIR post trading;

- 7 Q&A on Guidelines on Alternative Performance Measures;
 - 5 Q&As on the UCITS Directive;
 - 7 Q&As on the AIFMD;
 - 25 Q&As on CSDR; and
 - 4 Q&As on EMIR.
- **Peer reviews:**
 - ESMA published the outcome of two peer reviews on:
 - Supervision of CCPs' margin and collateral policies: It focused on supervisory activities of NCAs on CCPs with respect to margin and collateral requirements set out in EMIR. It included assessment of conduct in relation to authorisations, validation of significant changes to risk model and parameters, and regular reviews under on-going supervision.
 - Guidelines on Enforcement of financial information (GLEFI): Through the alignment of supervisory approaches and procedures, the formalisation of yearly common enforcement priorities and discussion of enforcement cases, GLEFI has contributed to increasing consistent application and enforcement of financial information in Europe. As part of the peer review work, ESMA carried out seven individual onsite visits to national competent authorities.
 - ESMA has launched a peer review on the Guidelines on certain aspects of the MiFID compliance function requirements. On-site visits to five competent authorities have taken place, while one authority objected to such a visit.
 - ESMA has also carried out three follow-up reviews to earlier peer reviews focusing on the areas where shortcomings were noted previously:
 - Best Execution under MiFID: while the 2015 report found low level of convergence of supervisory practices, the follow-up report identified clear improvements, one country has even modified national legislation. For ten authorities some of the deficiencies remain to be addressed.
 - MiFID Conduct of Business rules relating to fair, clear and not misleading information: the 2014 report found overall a high degree of compliance with the identified ESMA good practices. The follow-up showed improvement of

practices by several competent authorities, but deficiencies remain for four of them.

- A range of actions were carried out by ESMA following the report on supervision of CCPs' margin and collateral policies, including a survey on the take-up of recommendations from the report, as well as the development of further supervisory convergence measures such as Q&As on an ongoing monitoring of collateral adequacy.

- **Other supervisory convergence actions:**

In relation to the UK's withdrawal from the European Union

- ESMA issued an Opinion on general principles to support supervisory convergence in light of the United Kingdom withdrawing from the European Union (May 2017);
- ESMA published three Opinions setting out sector-specific principles in the areas of investment firms, investment management and secondary markets, aimed at fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the United Kingdom (July 2017);
- ESMA has set up a supervisory coordination network made up of senior representatives of competent authorities in order to enhance mutual understanding through information exchange, sharing of good practices and discussions of key issues arising from relocation of firms in the context of the UK's withdrawal from the EU. The network meets on a monthly basis and discussions of concrete cases between members promotes supervisory convergence among supervisors;
- ESMA conducted a thematic study among NCAs on notification frameworks and home-host responsibilities under UCITS and AIFMD with a view to promoting smooth operation of the EU passports for marketing and management, looking at the notification frameworks contained in the UCITS Directive and AIFMD.

Mediation

ESMA has continued to coordinate (since mid-2015) the activities of a group comprising a number of host national competent authorities and the Cyprus Securities and Exchange Commission (CySEC), in its capacity as home supervisor under MiFID. The work of this group has focussed on issues arising in relation to a number of Cyprus-based investment firms offering CFDs, binary options and other speculative products and that are operating throughout Europe on a cross-border

basis. In 2017, ESMA requested CySEC to seek to increase regulatory protections for investors in these markets.

- ESMA has not been involved in formal procedures on binding mediation under Article 19 of the ESMA Regulation.

Other actions

- ESMA monitors competent authorities' declared compliance with guidelines and publishes tables of compliance declarations for each set of Guidelines on its website. These lists are an important tool to show the level of convergence achieved and flag areas for further improvements. Six compliance tables were published in the given period;
- ESMA monitors and assesses complaints received within the breach of Union law framework (Article 17 of ESMA Regulation). ESMA received 121 new complaints between 1 January 2017 and 30 September 2017. During this period, ESMA closed 110 complaints (including 102 which were considered as inadmissible). The assessment by ESMA is on-going in 28 cases (some relating to complaints received before 2017). For the purposes of this assessment, ESMA has been in contact with a number of national competent authorities and in particular, it sent 3 requests for information under Article 35 of the ESMA Regulation;
- ESMA has published the transitional transparency calculations for derivatives and bonds with regards to LIS and SSTI thresholds under MIFID II/MIFIR;
- ESMA published a Practical Guide for Major Shareholding Notifications under the Transparency Directive;
- ESMA published a Methodological Framework for the selection of supervised entities for mandatory contribution under the Benchmarks Regulation;
- ESMA organised between October 2016 and September 2017: 21 training sessions, gathering 913 participants on topics such as MiFID II/MiFIR, UCITS, AIFMD, CCP supervision, IFRS, Major shareholdings, Corporate Governance, ESFS and Benchmarks Regulation. ESMA has also offered about 400 e-learning courses for 310 users.



4. Assessing risks to investors and financial stability

Over the last 12 months, ESMA has:

- issued two reports on Trends, Risks and Vulnerabilities in the EU, including in-depth topical analyses of EU sovereign bond market liquidity, complaints data as a means to monitor retail markets, haircuts in EU securities financing markets, the impact of charges on mutual fund returns, EU derivatives markets and key implementation challenges of DLT;
- published four Risk Dashboards, featuring a clear and intuitive categorisation of risk levels for (retail) investors to better understand risks they are exposed to, based on sophisticated, state-of-the-art risk metrics;
- participated in the drafting of two ESAs Joint Committee Risk Reports;
- developed, within the ESAs Joint Committee, a Report on automation in financial advice;
- published a Report on Distributed Ledger Technology;
- published a Working Paper on Collateral Scarcity Premia;
- commenced work related to the European Commission's CMU project on the cost and past performance of the main categories of retail investment, insurance and pension products;
- issued a response to the European Commission's consultation on Fin Tech;
- put in place a Product Intervention framework for ESMA and the Member States in the context of MiFID II/MiFIR implementation;
- held a Financial Innovation Day attended by over 100 regulators from across the Member States; and
- held, jointly with EBA and EIOPA, the Joint Consumer Protection Day.

5. ESMA's role in the field of international cooperation

ESMA, as part of its remit, has worked extensively with IOSCO in its position as an observer to the IOSCO Board. Other IOSCO work includes an active participation in Committee 6 on CRAs, in the European Regional Committee, and in the Risks Committee as well as in the Committee on Payment and Settlement Systems (CPSS-IOSCO). Since 2015 ESMA has joined several policy



committees as an observer and contributes from time to time to their policy work. ESMA also participates in some of the work of the Financial Stability Board.

ESMA has further contributed to the international work for the development and maintenance of global data standards. In particular, ESMA is involved in the Legal Entity Identifier Regulatory Oversight Committee (LEI ROC) and in the CPMI-IOSCO work on Harmonisation of OTC derivatives data for the purpose of global aggregation of data reported to Trade Repositories (Harmonisation WG).

ESMA's own international work has seen it focus on equivalence assessments, developing and concluding cooperation agreements, as well as significantly contributing to the extension of the AIFMD passporting regime. During the last year ESMA negotiated and concluded agreements between EU securities regulators and their global counterparts with responsibility for the supervision of CCPs and TRs:

- ESMA signed 6 MoUs with non-EU authorities that are responsible for the supervision of the TC-CCPs from the countries that have applied for recognition under EMIR;
- ESMA is negotiating 1 MoU related to ongoing CRA supervisory and enforcement cooperation;
- ESMA signed 1 MoU related to ongoing TR supervisory and enforcement cooperation; and
- ESMA is negotiating 1 MoU related to access by third country authorities to trade repository data.

As an organisation responsible for the development of regulations affecting the EU's financial markets and for the supervision of key market participants (CRA and TR), ESMA is closely involved in day to day cooperation with its regulatory and supervisory counterparts in third country jurisdictions. ESMA is also committed to contribute to development of the regulatory framework on the global level and thus coordinate the European position in the relevant organisations as appropriate.

In addition, in view of the upcoming application of the General Data Protection Regulation (GDPR), ESMA has taken over a key coordination role regarding implementation of the new rules applying to the exchanges of personal data between EU and non-EU securities regulators. In particular, ESMA, on behalf of EU NCAs, has been negotiating with non-EU regulators associated within IOSCO so called Administrative Arrangements, which should ensure continues and GDPR-compliant data transfer for enforcement and supervisory purposes.

6. ESMA as an organisation:

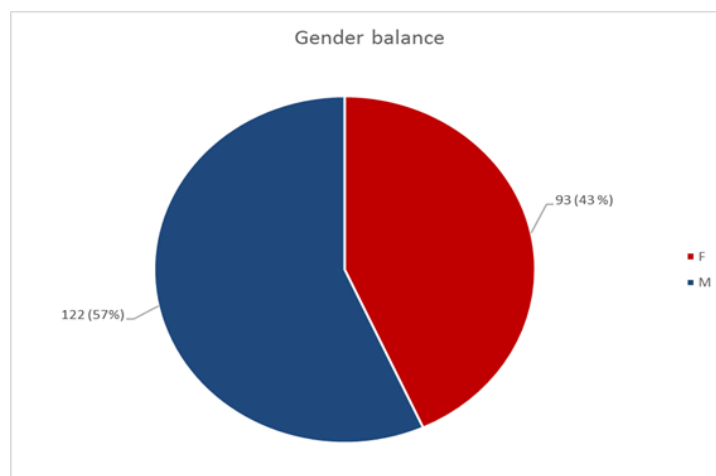
Years	Number of staff
2011	56
2012	83
2015	139
2014	153
2015	186
2016	194
2017*	215

(*number of Staff as of 31/08/2017)

Staff per type (status on 31/08/2017):

	Total staff
TA	143
CA	50
SNE	22
Total	215

Gender balance (status on 31/08/2017):



Staff by nationality (status on 31/08/2017):

Country	Number of staff
AT	2
BE	3
BG	6
CZ	2
DE	19
DK	3
ES	11
FI	1
FR	53
GB	16
HU	3
IE	12
IT	32
LT	2
LV	1
NL	6
NO	1
PL	7
PT	3
RO	12
SE	3
SK	2
EL	13
MT	1
AU	1
Total	194

Professional secrecy and Conflict of interests policy

With a view to further safeguard the Authority's integrity, independence and robust governance, ESMA adopted new Rules of Procedure on Professional Secrecy for non-staff. The new rules build on the experience acquired and provide that all non-staff involved in ESMA's activities (including but not limited to Members of the Board of Supervisors) should abide by the duty of professional secrecy, which entails the obligation not to disclose information received in this official



capacity, unless it is explicitly permitted. Should the obligation of professional secrecy be breached by a person who is subject to the Rules, ESMA should be able to take proportionate action in order to minimize the possibility that such a breach occurs again.

Moreover, and in line with a recommendation of the European Court of Auditors (ECA) as of December 2016, ESMA's policy on Conflict of interests and ethics for staff has been amended to ensure a systematic escalation to the Management Board of all matters relating to the application of that policy to ESMA's senior management.