

# Annex to the Statement by ESMA Chair to the ECON hearing

## Facts & figures

### from 1 October 2021 to 30 September 2022

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The European and Securities Markets Authority (ESMA) is an independent European Supervisory Authority (ESA), and pursuant to its Regulation it is legally accountable to the European Institutions, including the European Parliament. The Chair of ESMA appears before the Committee on Economic and Monetary Affairs (ECON) at their request for formal hearings, including the annual hearing of the Chairs of the ESAs.

In this context, and to accompany the Opening Statement of the ESMA Chair, the Annex hereby lists the deliverables that ESMA has published in the past 12 months, from 1 October 2021 to 30 September 2022.

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ESMA's mission is to enhance investor protection and promote stable and orderly financial markets in the European Union.

- **Investor protection.** Serve the needs of financial consumers and reinforce their rights as investors while acknowledging their responsibilities.
- **Orderly markets.** Promote the integrity, transparency, efficiency and good functioning of financial markets and robust market infrastructures.
- **Financial stability.** Strengthen the financial system so that it can withstand shocks and the unravelling of financial imbalances while fostering economic growth.

#### 1. Sound and orderly EU capital markets in light of adverse market developments

##### Response to Russia's invasion of Ukraine

- ESMA published a statement on its coordinating role and monitoring activities of financial markets following Russia's military aggression towards Ukraine.
- ESMA delivered two additional statements on the implications of Russia's invasion of Ukraine, one on half-yearly financial reports and another one on investment fund portfolios.
- ESMA issued a statement on prospectus supervision in the context of EU sanctions connected to Russia's invasion of Ukraine.

## EU carbon market

- Following a request by the European Commission, ESMA published a preliminary report on emission allowances and derivatives. It subsequently published a final report on the analysis of the trading of emission allowances in March 2022, including its recommendations to improve the functioning and transparency of the market.

## EU energy derivatives markets

- ESMA submitted to the European Commission and published draft regulatory technical standards proposing to increase the clearing thresholds for commodity derivatives, taking into account a number of factors, including the sharp increase in energy prices.
- ESMA submitted its response to the European Commission letter regarding the current level of margins and of excessive volatility in energy derivatives markets. In view of the market developments, ESMA and NCAs have been focusing and strengthening their respective market monitoring and surveillance activities on the energy derivatives markets.

## 2. Enabling sustainable finance

- ESMA published its sustainable finance roadmap 2022–2024 and started working on its implementation in line with the three priorities announced on promoting transparency and tackling greenwashing, capacity building as well as ESG market and risk monitoring.
- ESMA launched a call for evidence on the methodology to assess climate risk with a new stress testing framework for Central Counterparties (CCPs).
- ESMA delivered a supervisory briefing on sustainability risks and disclosures in the area of investment management.
- ESMA sent a letter to the European Commission providing its findings from the Call for Evidence to gather information on the market structure for Environmental, Social, and Governance (ESG) rating providers in the EU.
- ESMA submitted its responses to the public consultations of EFRAG on the European Sustainability Reporting Standards and of the International Sustainability Standards Board respectively.
- ESMA updated its guidelines on certain aspects of MiFID II suitability requirements to include guidance on the assessment of clients' sustainability preferences and launched a consultation on MiFID II product governance guidelines related to the ESG framework.
- As part of the Joint Committee of the European Supervisory Authorities, ESMA has contributed to the preparation of:
  - joint draft Regulatory Technical Standards (RTS) with regard to the content and presentation of Taxonomy-related product disclosures in October 2021;
  - an updated joint supervisory statement on the application of the Sustainable Finance Disclosure Regulation;
  - a joint statement providing clarifications on the ESAs' draft RTS;

- a joint report on the extent of voluntary disclosure of principal adverse impacts of investment decisions on sustainability factors; and
- joint draft RTS with regard to product disclosure of fossil gas and nuclear energy investments.
- ESMA integrated environmental risks into its regular risk assessment and monitoring framework to step up monitoring of developments in ESG markets.
- ESMA established its Consultative Working Group dedicated to sustainability, with 26 highly-qualified experts.
- ESMA has been actively involved in the work of the EC Sustainable Finance Platform and engaged in international activities, notably through contributions at International Organization of Securities Commissions (IOSCO), Financial Stability Board (FSB) and Network of Central Banks and Supervisors for Greening the Financial System (NGFS) levels.

### **3. Addressing the digital transformation**

#### **Distributed Ledger Technology Pilot Regime Regulation (DLTPRR)**

- ESMA has issued:
  - a Call for Evidence on the DLT Pilot Regime and review of MiFIR regulatory technical standards on transparency and reporting;
  - a report on the Call for Evidence on the DLT Pilot Regime and compensatory measures on supervisory data; and
  - a consultation paper on guidelines on standard forms, formats, and templates to apply for permission to operate a DLT market infrastructure.

#### **Joint Committee of the ESAs' work on the impact of digitalisation**

- As part of the Joint Committee of the ESAs, ESMA has contributed to the preparation of:
  - a joint statement warning consumers about the risks of crypto-assets;
  - a joint report on digital finance; and
  - a joint statement on ESRB recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities.

### **4. EU Acts under ESMA's remit**

#### **Prospectus Regulation / Access to public markets**

- ESMA responded to the European Commission's consultation on the Listings Act.



## **Alternative Investment Fund Managers Directive (AIFMD) and Undertakings for Collective Investments in Transferable Securities Directive (UCITSD)**

- ESMA has delivered:
  - a consultation paper on draft technical standards on the notifications for cross-border marketing and cross-border management of Alternative Investments Funds (AIFs) and UCITS;
  - 6 Q&As on AIFMD;
  - 7 Q&As on UCITS (5 answered by ESMA and 2 answered by the European Commission);
  - the annual reports on sanctions issued under UCITS and the AIFMD in 2021; and
  - a central database listing UCITS and AIFs notified for marketing in host Member States.

## **Benchmark Regulation (BMR)**

- ESMA has published:
  - a response to the European Commission's consultation on the regime applicable to the use of benchmarks administered in a third country;
  - a consultation paper on the review of the RTS on form and content of an application for recognition;
  - guidelines on methodology, oversight function and record keeping;
  - 3 Q&As; and
  - two recognition decisions for third-country benchmark administrators and the update of relevant ESMA's registers.

## **Credit Rating Agencies Regulation (CRAR)**

- ESMA has issued:
  - guidelines on disclosure requirements for initial reviews and preliminary ratings; and;
  - revised guidelines and recommendations on the scope of the CRAR.

## **European Crowdfunding Service Providers Regulation (ECSPR)**

- ESMA has published:
  - 8 RTS and 4 ITS that cover e.g. complaint handling, conflict of interest provisions and business continuity plans;
  - a Technical Advice (TA) to the European Commission on the possibility to extend the transitional period of the ECSPR; and



- 34 Q&As (25 answered by ESMA and 9 answered by the European Commission).

### **Investment Firm Directive (IFD)**

- As part of the Joint Committee of the ESAs, ESMA has contributed to joint guidelines under the IFD on common procedures and methodologies for the supervisory review and evaluation process.

### **Markets in Financial Instruments Directive / Regulation (MiFID II / MiFIR)**

- ESMA has published:
  - a supervisory briefing on supervisory expectations in relation to firms using tied agents;
  - guidelines on certain aspects of remuneration requirements; and
  - 1 Q&A on investor protection and intermediaries topics.

### **Money Market Fund Regulation (MMFR)**

- ESMA has delivered:
  - an opinion on the review of the MMFR; and
  - guidelines on stress test scenarios.

### **Packaged Retail Investment and Insurance-based Products (PRIIPs) Regulation**

- As part of the Joint Committee of the ESAs, ESMA has contributed to the preparation of:
  - a joint advice on the review of the PRIIPs Regulation;
  - a joint supervisory statement on expectations regarding the 'What is this product?'; section of the Key Information Document (KID) for PRIIPs; and
  - 9 Q&As.

### **Corporate finance and reporting**

- ESMA has issued:
  - a statement on European common enforcement priorities for 2021 annual financial reports.
  - 2 reports on:
    - the application of IFRS 7 and IFRS 9 requirements regarding banks' expected credit losses, and
    - enforcement and regulatory activities in 2021 on corporate reporting;
  - a public statement on transparency regarding the implementation of IFRS 17 insurance contracts;

- 2 Q&As on alternative performance measures;
- 4 letters to the International Accounting Standards Board (IASB) on financial reporting proposals;
- 2 letters to the IFRS Interpretations Committee (IFRS IC);
- an additional extract of financial reporting enforcement decisions from the European Enforcers Coordination Sessions (EECS) database;
- the annual update of the RTS on the European Single Electronic Format (ESEF);
- the annual update of the ESEF Reporting Manual, including for the first time guidance with respect to block tagging;
- the annual update of the ESEF conformance suite; and
- the annual update of the ESEF XBRL taxonomy files.

## 5. Markets and infrastructures

### MiFID II / MiFIR

- ESMA has published:
  - a report on draft RTS for commodity derivatives (also in relation to EMIR);
  - a report on draft RTS on the derivatives trading obligations in view of the benchmark transition to risk-free rates (also in relation to EMIR);
  - an annual report on the application of waivers and deferrals;
  - 2 opinions on:
    - the classification of third-country financial entities in weekly position reports under MiFID II, and
    - the assessment of pre-trade transparency waivers for equity and non-equity instruments;
  - 3 consultation papers on:
    - ESMA's opinion on the trading venue perimeter;
    - amending the RTS on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition,
    - ESMA's guidance on market outages;
  - reports on the review of RTS 1 on equity transparency and RTS 2 on non-equity transparency;
  - 2 Q&As on market structure topics and 3 on transparency topics, as well as 28 updated Q&As on commodity derivatives topics to reflect the amendments introduced by the Recovery Package;

- 1 opinion on third-country trading venues for the purpose of transparency; and
  - an assessment of the notification of one trading venue for extending the exemption under Article 36(5) of MiFIR in respect of exchange traded derivatives; and
  - a letter to the European Commission on reverse solicitation and demand on the own initiative of investors.
- Finally, following the publication of the European Commission's proposal on the review of MiFIR in November 2021, ESMA published a letter in March 2022 with its recommendations, notably in the area of transparency and for the establishment of a consolidated tape.

### **European Market Infrastructure Regulation (EMIR)**

- ESMA has delivered:
  - a response to the EC's consultation on the targeted EMIR Review;
  - a report on highly liquid financial instruments for CCP investment policies;
  - a consultation paper on the review of EMIR RTS on anti-procyclicality margin measures;
  - a feedback report on the review of the clearing thresholds under EMIR (not covering the commodity clearing);
  - 2 risk-based supervision statements:
    - a statement on the clearing and derivative trading obligations (also in relation to MiFIR) in view of the benchmark transition, and
    - a statement and a letter on the clearing obligation for Pension Scheme Arrangements; and
  - an EMIR 2.2 report on staffing and resources;
- With regards specifically to EU CCP convergence, ESMA has also:
  - issued 4 opinions on NCA decisions on CCP service extensions;
  - adopted 9 validations of significant changes to risk models and parameters;
  - published a supervisory briefing on indirect clearing arrangements and segregation;
  - established guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event; and
  - delivered 2 Q&As.
- As part of the Joint Committee of the ESAs, ESMA has finally contributed to the preparation of:
  - a joint statement proposing to adapt the EMIR implementation timelines for intragroup contracts with third-country group entities; and

- joint RTS amending the bilateral margin requirements with regards to intragroup contracts.

## **CCP Recovery & Resolution (CCPR&R)**

- ESMA has delivered:
  - 7 reports on draft RTS on:
    - the Methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources,
    - specifying the conditions for recompense,
    - further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan,
    - the resolution colleges,
    - the content of CCP resolution plans,
    - valuation of CCPs' assets and liabilities in resolution, and
    - the safeguards for clients and indirect clients.
  - 6 final reports on guidelines on:
    - CCP recovery plan indicators,
    - CCP recovery scenarios,
    - the consistent application of the triggers for the use of early intervention measures,
    - circumstances for temporary restrictions on dividends,
    - application of the circumstances under which a CCP is deemed to be failing or likely to fail, and
    - the methodology to value each contract prior to termination;
  - 1 consultation paper on RTS on the elements and the criteria for CCP reorganisations plans;
  - 4 consultation papers on guidelines on:
    - the types and content of the provisions of cooperation arrangements,
    - written arrangements and procedures for the functioning of resolution colleges,
    - the assessment of resolvability, and
    - the summary of resolution plans.





## Central Securities Depositories Regulation (CSDR)

- ESMA has issued:
  - a supervisory approach on the implementation of the CSDR buy-in provisions;
  - a final report presenting draft RTS suspending the application of the mandatory buy-in rules provided in a Commission Delegated Regulation;
  - technical reporting instructions for settlement fails reporting under Article 7 of CSDR;
  - a consultation paper on amending Article 19 of CSDR RTS on settlement discipline; and
  - 10 Q&As (7 answered by ESMA and 3 by the European Commission).
- ESMA, together with the NCAs, has also been monitoring CSD settlement fails and internalised settlement data.
- ESMA has notably conducted the annual calculation for the CSDR indicators on:
  - the most relevant currencies in which settlement takes place; and
  - the substantial importance of a CSD for host Member States.
- As of January 2022, ESMA publishes information on the trading venues with the highest turnover for bonds, which can be used by CSDs for calculating cash penalties for bonds under CSDR.
- ESMA has decided to grant access to the central banks, through the dedicated ESMA IT system, to the settlement fails reports that relevant authorities are entitled to receive from CSDs.

## Securitisation Regulation (SECR)

- ESMA has published:
  - a final report on the content and format of the Simple, Transparent and Standardised (STS) notification for on-balance sheet securitisations setting out:
    - draft RTS specifying the information that the originator, sponsor and securitisation special purpose entity are required to provide in order to comply with the STS notification requirements for synthetic securitisations, and
    - draft Implementing Technical standards (ITS) specifying the templates for notifying ESMA; and
  - 10 Q&As.
- ESMA has also launched its register for the notifications of STS securitisations.

- As part of the Joint Committee of the ESAs, ESMA has also contributed to the preparation of:
  - a joint consultation paper on the adverse impact of STS securitisations on ESG factors; and
  - 1 Q&A.

### **Market Abuse Regulation (MAR)**

- ESMA has published:
  - an annual report on administrative and criminal sanctions and other administrative measures imposed;
  - an annual report on the application of accepted market practices (AMP);
  - revised guidelines on delay in the disclosure of inside information and interactions with prudential supervision;
  - 2 opinions on the European Commission's proposed amendments to:
    - the draft ITS on the precise format of insider lists and for updating insider lists adopted under MAR, and
    - ESMA's draft RTS on liquidity contracts for SME Growth Market Issuers adopted under MAR;
  - one opinion on an intended AMP on liquidity contracts;
  - a call for evidence on pre-hedging; and
  - 3 Q&As on the interactions between MAR and CRAR adopted by the European Commission based on ESMA's input.

### **Short-Selling Regulation (SSR)**

- ESMA has delivered:
  - a statement on how to report net short positions when the reporting threshold changed from 0.2% to 0.1%; and
  - A report on technical advice to the European Commission on a review of certain aspects of the SSR.

## **6. Risk assessment**

- ESMA has published:
  - 2 Trends, Risks and Vulnerabilities (TRV) reports, one issued in February and the other one in September 2022; and
  - an ad-hoc risk update in June 2022 due to the significant market developments following the February TRV publication.



- The Joint Committee of the ESAs has also published two reports on risks and vulnerabilities in the EU financial system to which ESMA contributed.

## 7. Data reporting and management

### MiFIR

- ESMA has delivered:
  - a statement on transfer of competences and duties relating to certain data reporting services providers from National Competent Authorities (NCAs) to ESMA;
  - draft RTS on the management body of Data Reporting Service Providers; and
  - 4 Q&As on MiFIR data reporting.

### Securities Financing Transactions Regulation (SFTR) and EMIR

- ESMA has delivered:
  - guidelines on calculation of positions in SFTs by Trade Repositories and
  - guidelines on transfer of data between Trade Repositories under EMIR and SFTR;
  - a third statement on the implementation of Legal Entity Identifier (LEI) requirements for third-country issuers under the SFTR reporting regime; and
  - 4 Q&A on SFTR reporting.

## 8. Direct supervision of financial entities by ESMA

- ESMA exerts direct supervisory powers in relation to: Credit Rating Agencies (CRAs), Trade Repositories (TRs) both under EMIR and SFTR, Securitisation Repositories (SRs) and certain benchmark administrators and Data Reporting Service Providers (DRSPs).
- ESMA also recognises Third Country Central Securities Depositories (TC-CSDs) and recognises and tiers Third Country CCPs (TC-CCPs), and supervises TC CCPs tiered as systemically important for the EU.

### Supervision of CRAs

- As of 30 September 2022, ESMA supervises 24 CRAs and 3 certified CRAs.
- ESMA has notably:
  - finalised several investigations and reviews, including:
    - a thematic investigation into the application and rigorousness of the methodologies that CRAs used to rate RMBS and CMBS during the pandemic (outcome: Dear CEO letter to the whole industry setting up best practices and expectations for firms to be ready to address future crisis scenarios),

- an investigation into the conflicts of interest presented by the multiple roles played by a shareholder in a CRA (outcome: remediation requested),
  - a thematic review on CRAs' end-to-end process for the identification, resolution, and reporting of errors (outcome: remediation requested to ensure consistent practices across the industry), and
  - a thematic review on how ESG factors are incorporated in credit rating methodologies (outcome: recommendations to CRAs and contribution to the EU Commission Strategy for Financing the Transition to a Sustainable Economy);
- monitored and addressed new risks posed by industry and capital markets developments (COVID-19 crisis, war in Ukraine, development of non-rating products);
  - significantly enhanced its market monitoring capabilities by implementing improved technical solutions to its data-related processes;
  - further assessed whether CRAs employ independent, robust, and well-structured rating processes. ESMA has also evaluated the risk and impact of new technologies, the implementation of cost savings and outsourcing on the rating process.
  - engaged with CRAs to address identified concerns on IT and information security controls, including cybersecurity and cloud outsourcing and sent supervisory expectations letters on these matters to small and medium-sized CRAs.
- To contribute to the establishment of a robust supervisory and regulatory framework, ESMA has:
    - delivered a report on CRA market share calculation to help issuers and related third parties in their evaluation of a CRA with no more than 10% total market share in the EU, to help stimulate competition in the credit rating industry by encouraging issuers and related third parties to appoint smaller CRAs; and
    - co-operated with EBA and EIOPA to provide a mapping to newly registered External Credit Assessment Institutions (ECAIs) and monitored the mapping provided to already registered ECAIs in order to promote a consistent implementation of CRR and Solvency II.

## **Supervision of Trade Repositories (TRs) under EMIR**

- As of September 2022, there are 4 TRs registered under EMIR by ESMA.
- There are 50 EU regulatory authorities that have access to at least one TR as of October 2022. They include NCAs, national central banks, ESRB, ECB, EIOPA, EBA, ACER and ESMA. 39 of these authorities access EMIR data via the TRACE infrastructure created by ESMA.
- Since the EMIR reporting start date back in 2014, the TR industry has collected more than 155 billion derivatives reports in total.

- For the last three months, there has been on average more than 57 million trade reports submitted each day to TRs.
- In line with its 2022 work programme, ESMA has continued working on the enhancement of the quality and security of data reported to TRs under EMIR, and in particular on:
  - performing re-validations on data submissions, assessing completeness and accuracy of Trade State and Trade Activity reports, assessing inter-TR reconciliation, as well as implementing the EMIR Data Quality Action plan;
  - drawing up action plans to address the areas where ESMA has most concerns (e.g. data quality, IT strategy, IT system development, and third-party risk management); and
  - ensuring that firms' regulatory change implementations comply with its expectations, in particular on cloud computing, and in relation to ESMA's expectations as set out in EMIR Q&As.

### **Supervision of Trade Repositories (TRs) under SFTR**

- As of October 2022, ESMA supervises 3 TRs under SFTR.
- ESMA withdrew the registration of UnaVista TRADEcho B.V. under SFTR in September 2022 following the notification by the TR of its intention to renounce its SFTR registration.
- As of October 2022, there are 36 EU regulatory authorities that have access to SFTR data, 28 of them via the TRACE infrastructure (including NCAs, national central banks, ESRB, ECB, and ESMA).
- Since the SFTR reporting starting date in July 2020, the TR industry has collected more than 2.3 billion SFTs reports in total.
- For the last three months, there has been on average 3.7 million SFT reports submitted each day to TRs.
- In line with its 2022 work programme, ESMA has continued working on the enhancement of the quality and security of data reported to TRs under SFTR, and in particular on:
  - verifying and monitoring performance of SFTR reconciliation by TRs;
  - implementing the SFTR Data Quality Engagement Framework;
  - drawing up action plans to address the areas where ESMA has most concerns (e.g. data quality, IT strategy and IT system development, resource allocation to SFTR);
  - ensuring that firms' regulatory change implementations comply with its expectations, in particular on cloud computing;
  - assessing the efficiency of the reporting, taking into account the appropriateness of single-side reporting, as well as developments in market practices with a focus on transactions having an equivalent objective or effect to an SFT.
- Finally, ESMA has supervised the implementation of SFTR validation rules, as well as of the SFT Positions guidelines.

## Supervision of Securitisation Repositories (SRs) under SECR

- As of September 2022, ESMA supervises 2 SRs under SECR, both of which were registered in June 2021.
- In line with its 2022 work programme, ESMA has continued to focus on the enhancement of the quality of the data reported to and made available by SRs, as well as on the operational resilience of SRs; in particular, ESMA has worked on:
  - identifying shortcomings to data quality by assessing the completeness and consistency of SR data;
  - performing re-validations on SR data to ensure correct implementation of validation rules;
  - addressing feedback from the users of SR data; and
  - verifying the reliability and continuity of SRs' IT systems by monitoring SR IT and information security incidents.
- ESMA has also engaged and cooperated with relevant stakeholders and other regulatory and supervisory bodies at EU and third-country levels in order to promote the use of SR data and collect feedback to identify data quality issues.

## Recognition and supervision of Third-Country CCPs

- During the reporting period, ESMA has notably:
  - performed the ongoing monitoring of Tier 1 CCPs and enhanced scrutiny of risks related to EU activities;
  - reviewed and conducted the recognition and tiering of 34 Third-Country CCPs (TC-CCPs), renegotiated 16 existing Memoranda of Understanding (MoUs) with 20 jurisdictions, negotiated 2 enhanced MoUs with US authorities (CFTC and SEC);
  - operationalised the supervision of systemically important TC-CCPs (Tier 2 CCPs), including with regards to the supervisory approach and processes;
  - published the outcome of its comprehensive assessment of the Tier 2 CCPs established in the United Kingdom (UK), and of the risks they may pose to the financial stability of the EU or one of its Member States – the concerned CCPs are LCH Ltd and ICE Clear Europe Ltd.;
  - delivered a statement announcing its decision to extend the application of the recognition decisions under Article 25 of EMIR for the CCPs established in the UK;
  - announced its recognition of two central counterparties (CCPs) established in the United States (US) as Tier 1 CCPs under EMIR; and
  - issued an update on the way forward for TC-CCPs whose applications for recognition were suspended until 28 June 2022.
- ESMA has also delivered its 4<sup>th</sup> Stress Test Exercise for CCPs.

## Benchmarks

- Since January 2022, ESMA is directly supervising the administrators of EU critical benchmarks and recognised third country benchmarks.
- As of September 2022, ESMA supervises 10 benchmarks administrators (of which 1 is based in the EU and 9 in third countries).
- Following the discontinuation of EONIA as of January 2022, EURIBOR remains the only benchmark recognised as critical in the EU and ESMA has direct supervisory responsibilities over its administrator, European Money Markets Institute (EMMI).
- Since January 2022, ESMA is also the competent authority of third-country administrators under the BMR recognition regime and during 2022 has finalised the recognition of 2 third-country administrators; including those 2 recognitions ESMA now supervises 9 third-country administrators, of which 7 had been recognised by NCAs before the transfer of supervisory responsibilities to ESMA.
- In line with its 2022 work programme, ESMA has focused its first year of supervision of benchmarks administrators on establishing and implementing a data-driven, risk-based and outcome focused supervisory approach.
- As the Competent Authority of the administrator of EURIBOR, ESMA has:
  - focused its supervisory activity on robustness and resilience of the EURIBOR benchmark methodology and EURIBOR's representativeness of the underlying market in particular considering the periods of stress that EU financial markets experienced during 2022; and
  - chaired the EURIBOR College of Supervisors, where supervisors exchange information and coordinate supervisory actions.
- ESMA has also focused on ESG benchmarks and launched in this respect an EU-wide survey to take stock of the state of the market in order to identify possible opportunities for supervisory actions in coordination with NCAs.
- Finally, ESMA has also been acting as the Secretariat of the EURO Risk-Free Rate Working Group, a working group composed of market participants and public authorities supporting the delivery of the interest rate reform in the EU.

## Data Reporting Service Providers (DRSPs)

- Since January 2022, ESMA holds the supervisory powers to authorise and supervise DRSPs, i.e. Approved Publication Arrangements (APAs), Authorised Reporting Mechanisms (ARMs) and, once they will be established, Consolidated Tape Providers (CTPs).
- Following the handover of supervisory duties from the NCAs, ESMA has focused on ensuring continued compliance by DRSPs with the regulatory requirements.

- As part of its new supervisory tasks, ESMA has:
  - identified those DRSPs it directly supervises, as well as those derogated entities which remain under the supervision of NCAs due to their more limited relevance for the EU market;
  - finalised the development of an IT system based on big data technologies to facilitate processing, storage, and supervisory analysis of large volumes of MiFIR transaction data;
  - engaged and co-operated with NCAs to ensure timely and accurate access to transaction data reported by ARMs;
  - extended and further enhanced its supervisory tools and processes to apply its risk-based and data-driven supervisory approach to DRSPs; and
  - finalised the supervision handover from NCAs and therefore started its ongoing supervisory activities, including:
    - assessment of notifications of material changes and IT incidents and periodic information submitted by DRSPs,
    - meetings and requests for information to DRSPs, and
    - regular assessment of data related aspects and initiation of specific supervisory analytic projects.

## 9. Enforcement and sanctions

- ESMA has referred one new enforcement case to an Independent Investigating Officer (IIO).
- One IIO investigation was finalised, and the corresponding file and IIO findings were submitted to ESMA's Board of Supervisors.
- As a result of which the ESMA Board of Supervisors decided to adopt supervisory measures and impose fines amounting to 186 000 EUR against REGIS-TR, S.A. for failing to ensure the integrity of the data reported to it and to provide regulators with accurate and timely reports

## 10. Transversal supervisory convergence work

### Union Strategic Supervisory Priorities

- As a follow-up to the identification of “Costs and performance of retail investment products” and “Market data quality” as the two Union-wide Strategic Supervisory Priorities, ESMA has published:
  - a report on the analysis of EMIR and SFTR Data quality across the EU/EEA which sets out conclusions following coordinated supervisory actions;





- a report on the Common Supervisory Action (CSA) on costs and fees in UCITS, that was carried out with NCAs during 2021; and
- the findings of a CSA on the application of MiFID II product governance rules were presented in a public statement.

## Peer reviews

- ESMA concluded one discretionary peer review, namely the peer review on the supervision of cross-border activities of investment firms. The peer review assessed how NCAs supervise the investment services that investment firms and credit institutions provide to retail clients on a cross-border basis using a MiFID II passport and identified the need for home NCAs to significantly improve their approach in the authorisation, ongoing supervision, and enforcement work relating to investment firms' cross-border activities.
- ESMA also concluded two mandatory peer reviews as required under sectoral legislation, covering:
  - the scrutiny and approval procedures of prospectuses; this peer review assessed all NCAs in how they scrutinise and approve prospectuses and identified that, while NCAs generally scrutinise prospectuses in a satisfactory manner (albeit in various ways), there is scope for efficiency improvements in respect of some NCAs' approval processes; and
  - CCPs' business continuity in remote access mode; this peer review showed that, though participating NCAs have broadly met the supervisory expectations, some aspects of business continuity in remote access mode were not always specifically assessed, which in most cases is explained by the fact that, at many CCPs, remote working was already common practice or part of existing business continuity arrangements.

## Supervisory Independence

- In parallel with EBA and EIOPA, ESMA published in October 2021 its individual report on the supervisory independence of NCAs.
- ESMA has also continued building supervisory networks, amongst others through the Senior Supervisory Forum (SSF); as part of this work, and following Russia's invasion of Ukraine, ESMA has notably facilitated:
  - exchanges among NCAs on the impact of sanctions on supervised entities and on their supervisory practices; and
  - the prompt exchanges of information among NCAs on material cybersecurity incidents affecting supervised entities.



## **Mediation, breach of Union law (BUL) and complaints handling**

During the reporting period, ESMA has

- not been involved in formal procedures on binding mediation under Article 19 of the ESMA Regulation;
- received 360 new complaints (excluding complaints from a Russian advising its clients to file BUL complaints);
- closed 334 inadmissible complaints and 7 admissible cases;
- sent, regarding the admissible cases, 6 requests for information to NCAs under Article 35 of the ESMA Regulation; and
- responded to 466 queries in relation to fraudulent use of ESMA logo and identity.

## **11. ESMA's institutional and international cooperation**

- Throughout the year, ESMA has worked closely with the EU institutions to ensure its accountability. In line with the ESMA Regulation, ESMA has advised the European Commission, the European Parliament, and the Council of the EU on legislative initiatives.
- From an international perspective, ESMA has contributed to the work of standard-setting bodies, such as FSB and IOSCO, where it played an important role in shaping standards that are likely to affect EU legislation and markets.
- In particular, ESMA engaged in FSB's and IOSCO's work around the risks stemming from non-bank financial intermediation and specifically liquidity issues caused by redemption pressure on MMFs and open-ended funds during the March 2020 turmoil.
- ESMA also co-chaired the work stream on ESG ratings and data providers of IOSCO's Sustainable Finance Taskforce, where it made a significant contribution to the associated report published in November 2021.
- Moreover, ESMA continued to enhance its cooperation with third-country regulators and supervisors. ESMA participates along with the European Commission in regulatory dialogues with the EU's key economic partners, in particular the USA, Japan, and Canada, notably to monitor regulatory development and work towards the convergence of international standards. In addition, ESMA maintained strong supervisory relations with key non-EU supervisors.
- Finally, ESMA conducted an assessment of selected equivalence decisions and jurisdictions as part of its equivalence-monitoring mandate – the findings of this exercise informed a confidential report which was shared with the European Parliament, the Council of the EU, and the European Commission in December 2021, as mandated by the ESMA Regulation.



## 12. ESMA as an organisation

- ESMA has notably:
  - published a decision of the Board of Supervisors adopting a (revised) policy for its governing bodies on independence and decision-making processes for avoiding conflicts of interest;
  - adopted an anti-fraud strategy for 2022–2025 to:
    - enhance the anti-fraud culture across the organisation,
    - strengthen measures for the detection of fraud, and
    - maintain an efficient reporting system;
  - published a decision of the Board of Supervisors regarding rules of procedure on mediation; and
  - pursuant to requests from the EU Court of Justice, ESMA also provided input in two different Cases (Case C-352/20 and Case C-473/20) stemming from requests for preliminary rulings on the interpretation of certain provisions of AIFMD and UCITSD.

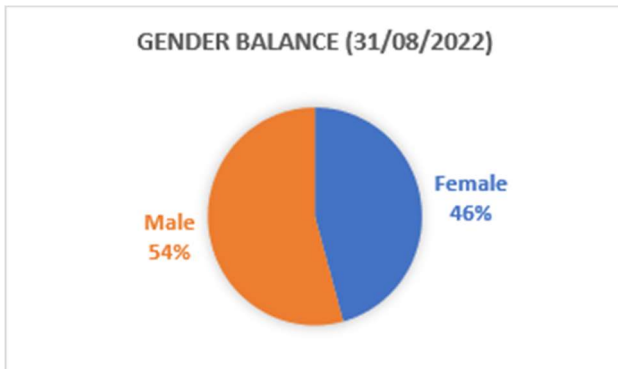
### Number of staff (FTEs, as of 31 August 2022)

Years	Number of staff
2011	56
2012	83
2013	139
2014	153
2015	186
2016	204
2017	224
2018	231
2019	233
2020	250
2021	292
2022	317

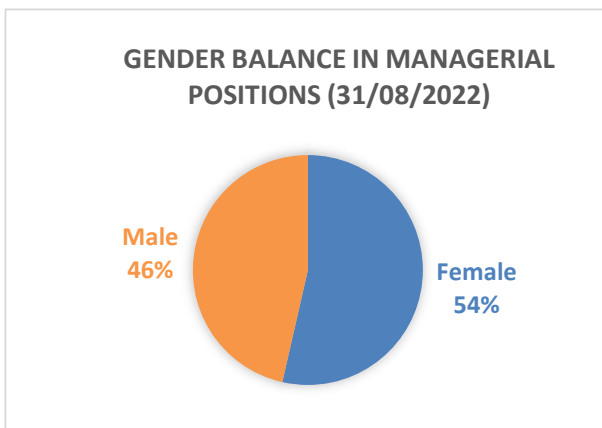
**Staff per contract type (FTEs, as of 31 August 2022)**

Contract type	Total staff
Temporary Agents	217
Contract Agents	91
Seconded National Experts	9
<b>Total</b>	<b>317</b>

**Gender balance of all staff (as of 31 August 2022)**



**Gender balance in managerial positions (as of 31 August 2022)**



### Staff by nationality (FTEs, as of 31 August 2022)

Nationality	Count of staff
AT	2
BE	4
BG	7
CZ	4
DE	24
DK	2
ES	16
FI	2
FR	83
GB	4
GR	24
HU	7
IE	9
IT	66
LT	4
LV	4
MT	1
NL	8
NO	1
PL	12
PT	4
RO	17
SE	6
SK	3
HR	1
SI	2
<b>Grand Total</b>	<b>317</b>