



## Annex to the Statement by ESMA Interim Chair to the ECON hearing, 14 October 2021

### Facts and figures from 13 October 2020 to 14 October 2021

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

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

#### 1. **Governance**

The mandate of Steven Maijoor as Chair of ESMA came to an end on 31 March 2021. In line with the ESMA Regulation, the Chair of ESMA is appointed by the Council of the European Union after confirmation by the European Parliament. Since 1 April 2021, ESMA Vice-Chair and Director-General at the FIN-FSA, Anneli Tuominen, has been acting as Interim Chair.

On 26 November 2020, ESMA submitted a list of three suitable candidates to the Council and the European Parliament. On 22 September 2021, the Council selected Verena Ross as its candidate for the position of ESMA Chair. For the Council to proceed with the appointment, the candidate needs to be confirmed by the European Parliament.

On 20 May 2021, ESMA appointed Natasha Cazenave as its new Executive Director. She took up her position on 1 June 2021. Ms. Cazenave is appointed for a five-year term, renewable once. She replaced Verena Ross as Executive Director. ESMA launched the recruitment process for the position of Executive Director on 4 September 2020 with the publication of its vacancy notice. ESMA selected Ms. Cazenave as its candidate for the position on 12 March 2021. The Board of Supervisors confirmed the appointment at its meeting on Thursday 20 May, following the European Parliament's confirmation of Ms. Cazenave's candidature in its Plenary Session on 18 May.

## **2. 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 across the EU, the Authority has undertaken the following work since 13 October 2020:

- **24 draft Technical Standards** (TSs), including draft Regulatory Technical Standards (RTS) and draft Implementing Technical Standards (ITS):
  - 1 RTS on the clearing obligation and 1 Joint ESA RTS on bilateral margining under EMIR;
  - 1 RTS on relating to changes to central counterparty (CCP) services and activities, as well as models and parameters under EMIR;
  - 1 RTS and 1 ITS regarding standards and arrangements for reporting to Trade Repositories (TRs) under EMIR, as amended by EMIR Refit;
  - 1 RTS on data quality procedures by TRs under EMIR, as amended by EMIR Refit;
  - 1 RTS and 1 ITS on registration of TRs under EMIR, as amended by EMIR Refit;
  - 1 RTS on data access under EMIR, as amended by EMIR Refit;
  - 1 RTS and 1 ITS for SME issuers under MAR;
  - 1 RTS and 1 ITS regarding the content and format of the STS notification templates for on-balance sheet securitisations under the amended Securitisation Regulation (SECR);
  - 1 RTS on the transparency regime for non-equity instruments under MiFIR (annual RTS 2 review);
  - 1 RTS on the 2021 update of the taxonomy on ESEF;
  - 1 ITS on standardised information provided by NCAs under the Regulation on cross-border distribution of funds;
  - 4 Joint RTS on entity and product sustainability disclosures under SFDR;
  - 1 Joint RTS on PRIIPs;
  - 2 Joint ITS on ECAI Mapping under CRR and Solvency II; and
  - 1 Joint ITS on intra-group transactions and risk concentration reporting templates for conglomerates under FICOD.

- **8 Technical Advice (TAs):**

- 1 TA on supervisory fees for Benchmarks Administrators under BMR;
- 1 TA on procedural rules for penalties imposed on Benchmark Administrators under ESMA's direct supervision under BMR;
- 1 TA on fees charged to Credit Rating Agencies (CRAs) by ESMA under CRAR;
- 1 TA on the application of administrative and criminal sanctions under MiFID II/MiFIR;
- 1 TA on fees for Data Reporting Service Providers (DRSPs) under MiFIR;
- 1 TA on the criteria for derogation for DRSPs under MiFIR;
- 1 TA on procedural rules for penalties imposed on DRSPs under MiFIR; and
- 1 TA on KPIs according to Article 8 of the Taxonomy Regulation.

Aside from these draft TSs and TAs, during the same period, ESMA published consultation papers, delivered review reports mandated by legislation, and provided input on current and upcoming legislative texts through responses to consultations and letters.

- **10 Consultation Papers (CPs):**

- 1 CP on draft RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources (second skin in the game, Article 9(15) of CCPRRR);
- 1 CP on draft RTS specifying the conditions for recompense (Article 20(2) of CCPRRR);
- 1 CP on draft RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan (Article 10(12) CCPRRR);
- 1 CP on Disclosure Requirements for Initial Reviews and Preliminary Ratings under CRAR;
- 1 CP with draft RTS on the derivative clearing obligation under EMIR and the derivative trading obligation under MiFIR covering the benchmark transition to risk free rates;
- 1 CP on draft RTS regarding suitability assessments of DRSP management body members under MiFIR;
- 1 CP on the review of the RTS on equity transparency and non-equity transparency under MiFIR;
- 1 CP on draft RTS on commodity derivatives under the MiFID II recovery package;

- 1 CP on a TA on potential review of the Short Selling Regulation; and
- 1 joint CP on draft RTS under the Taxonomy Regulation.
- **14 Review Reports:**
  - 5 reports under MiFID II/MiFIR: on the functioning of the regime for SME Growth Markets (GM), on the functioning of Organised Trading Facilities (OTFs), on the review of transaction and reference data reporting obligations, on algorithmic trading, and on the assessment of resources needs for the provision of investment services and by third-country firms;
  - 4 reports on CSDR implementation: on CSD Cross-Border Services and Application Handling, on Internalised Settlement, on Banking-Type Ancillary Services, and on the Use of FinTech by CSDs;
  - 3 reports under EMIR: on Post Trade Risk Reduction services (PTRR), on the clearing solutions for Pension Scheme Arrangements (PSAs), and on the supervisory measures and penalties with regards to OTC derivative requirements;
  - 1 report under SFTR on Guidelines on the calculation of positions in Securities Financing Transactions (SFTs) by TRs; and
  - 1 joint report on the implementation and the functioning of SECR.

## **22 Responses to Consultations / Letters:**

- 16 responses to public consultations:
  - one to the EC on the European Single Access Point (ESAP),
  - two to the IFRS Foundation on sustainability reporting (one of which accompanied by an ESAs joint comment letter),
  - one to EFRAG on endorsement of IFRS 17,
  - one letter and report to the International Accounting Standards Board (IASB) on its Post Implementation Review of its Consolidation standards,
  - one letter to the IASB and one to EFRAG on Goodwill and impairment,
  - one letter to the IASB and one to EFRAG on Business Combinations under Common Control,
  - one letter to the IASB and one to EFRAG on amendments to IAS 21,
  - one letter to the IASB and one to EFRAG on rate-regulated activities,
  - one letter to the IASB and one to EFRAG on the IASB's Agenda Consultation,
  - one letter to the IFRS Interpretations Committee on its tentative agenda decision regarding TLTRO III transactions;
  - one letter to the European Commission responding to its consultation on the establishment of the EU Green Bond Standard;

- 4 letters outlining recommendations to improve: the Transparency Directive (following the Wirecard case), CSDR, ELTIF, and ESG rating in the context of sustainable finance; and
- 2 joint letters: one to EFRAG to confirm participation in an observer capacity in EFRAG's new Sustainability Reporting Pillar and one to Co-legislators and to the EC on governance aspects related to the proposed Digital Operational Resilience Act (DORA).

### **3. Direct supervision of financial entities by ESMA**

ESMA exerts direct supervisory powers in 3 areas: CRAs, Trade Repositories (TRs) both under EMIR and SFTR, and Securitisation Repositories (SRs). ESMA also recognises Third Country Central Securities Depositories (TC-CSDs) and, through the work of the CCP Supervisory Committee, recognises and tiers Third Country CCPs (TC-CCPs) and supervises TC CCPs tiered as systemically important for the EU. Finally, ESMA is actively preparing its supervisory responsibilities over benchmark administrators and Data Reporting Service Providers (DRSPs) that will begin on 1 January 2022.

- **Supervision of CRAs**

- As of October 2021, ESMA supervises 29 CRAs and 3 certified CRAs.
- Since 13 October 2020, ESMA de-certified Kroll Bond Rating Agency and withdrew the registrations of:
  - INC Rating Sp. z o.o and ACRA Europe;
  - Fitch France, Fitch Polska, Fitch Italia and Fitch Ratings España, following the merger with Fitch Ratings Ireland; and
  - AM Best Europe-Rating Services Ltd, DBRS Ratings Ltd, Fitch Ratings Ltd, Fitch Ratings CIS Ltd, Moody's Investors Service Ltd, and The Economist Intelligence Unit Ltd, following the end of the transition period of the United Kingdom's (UK) withdrawal from the EU, which occurred on 31 December 2020.
- While during the period no new CRAs were registered, ESMA published an update to its March 2019 statement on the endorsement of credit ratings from the UK to provide clarity on whether endorsement can proceed following the end of the transition period.

- In line with its 2021 work programme, ESMA has notably:
  - Finalised several investigations and reviews:
    - Investigation into the rigorousness and systematic application of the corporate methodology of a big CRA;
    - Investigation into a small CRA in light of its difficulties in monitoring outstanding credit ratings and regularly conducting its rating activities; and concerns of not meeting initial conditions for registration;
    - Investigation into independence, governance, and controls into seven recently registered CRAs, including a firm under surveillance by the EFTA Surveillance Authority (two out of seven investigations were unannounced);
    - Thematic review on the risks and reasons for discontinuation of credit ratings from CRAs' webpages.
  - Monitored and addressed new risks posed by industry and capital markets developments, such as those stemming from the COVID-19 crisis and developments in ESG products. As a response to the COVID-19 crisis, ESMA continued to engage with CRAs to monitor the impact of COVID-19 on their operations, focussing on business continuity and adherence to key requirements of the CRA Regulation. With respect to ESG factors, ESMA has reviewed the status of the implementation by the CRA industry of the ESMA Disclosure Guidelines. This review focused on the disclosure of the impact of ESG factors on credit ratings through the use of natural language processing techniques.
  - Identified risks in outstanding credit ratings. ESMA significantly enhanced its market monitoring capabilities by implementing improved technical solutions to its data-related processes. The data-driven approach, based on daily ratings' data reported to ESMA, resulted in the preventative detection of concerns (such as potential lack of surveillance of existing ratings) and more widespread trends.
  - Ensured that CRAs employ independent, robust, and well-structured rating processes and methodologies, for instance by providing enhancements in the rigorousness of corporate ratings' methodology and its systematic application in a large CRA following the closing of an investigation.
  - Engaged with CRAs to address identified concerns on IT and information security controls, including cybersecurity and cloud outsourcing.

- To contribute to the establishment of a robust supervisory and regulatory framework, ESMA has also:
  - 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, with a view to increase competition by encouraging the use of smaller CRAs.
  - 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.
  - Published its final report providing TA to the EC on supervisory fees charged to CRAs, which proposes a fixed registration fee of €40k and an annual supervisory fee of 0.5% of turnover to CRAs with annual revenues of between €4 million and €15 million.
  - Initiated work to support the European Commission's strategy for financing the transition to a sustainable economy in the area of credit ratings. In particular this has involved assessing CRAs ESG disclosure practices and assessing the level of consideration of ESG factors in their credit ratings.
  - Provided an own initiative Opinion to the institutions highlighting barriers to providing greater access to and use of credit ratings in the EU and proposing changes to the CRA Regulation, or alternative actions, that could address these.
  - Launched a public consultation on disclosure requirements for initial reviews and preliminary ratings.
  - Updated its Q&A on the implementation of CRAR and communicated to the ECB observations on the impact that the eligibility criteria for the Eurosystem's Collateral Assessment Framework for marketable assets is having on credit rating agencies in the EU.
- **Supervision of TRs under EMIR**
  - As of October 2021, there are 4 TRs registered under EMIR by ESMA.
  - Since 13 October 2020, ESMA registered one new TR under EMIR - DTCC Data Repository (Ireland) PLC - and withdrew the registration of 4 TRs as a result of the UK's withdrawal from the EU:
    - DTCC Derivatives Repository Plc;

- UnaVista Limited;
- CME Trade Repository Ltd; and
- ICE Trade Vault Europe Ltd.
- There are 50 EU regulatory authorities that have access to at least one TR as of October 2021. They include NCAs, national central banks, ESRB, ECB, EIOPA, ACER and ESMA.
- Since the EMIR reporting start date back in 2014, the TR industry has collected more than 140 billion derivatives reports in total.
- For the last three months, there has been on average more than 50 million trade reports submitted each day to TRs.
- In line with its 2021 work programme, ESMA has continued to work on its main supervisory objective, i.e. the enhancement of the quality and security (integrity, confidentiality, and availability) of data reported to TRs under EMIR. More specifically, ESMA has worked on:
  - implementing the Data Quality Action Plan for TR supervision, particularly on access to data by ESMA and other public authorities, accuracy and integrity of EMIR reports, anomaly detection, and EMIR reconciliation.
  - drawing a holistic action plan to address the areas where ESMA has most concerns (e.g. data quality, IT strategy, IT system development, and IT outsourcing);
  - ensuring an uninterrupted and stable TR EMIR service in the context of Brexit (switch from UK to EU entities).
- Finally, ESMA has updated its Q&A on EMIR implementation and reviewed EMIR validation rules.
- **Supervision of TRs under SFTR**
  - As of October 2021, ESMA supervises 4 TRs under SFTR.
  - There are more than 30 EU regulatory authorities that have access to SFTR reporting via the TRACE infrastructure as of October 2021. They include NCAs, national central banks, ESRB, ECB, and ESMA.



- Since the SFTR reporting starting date (July 2020), the TR industry has collected more than 700 million SFTs reports in total.
- For the last three months, there has been on average 2.5 million trade reports submitted each day to TRs.
- In line with its 2021 work programme, ESMA has:
  - continued to develop its methods and tools for the application of its data-driven and risk-based approach to the supervision of TRs for SFT data, reusing and extending, where possible, the existing methods and tools developed for EMIR data supervision;
  - focused its supervisory work on performing re-validations on SFTR submissions to ensure reports are in line with validation rules, assessing completeness and accuracy of SFTR trade state and activity reports, and evaluating SFTR reconciliation;
  - monitored resource allocation to SFTR and IT performance, and the capacity of the SFTR system;
  - ensured uninterrupted and stable TR SFTR service in the context of Brexit (switch from UK to EU entities) and COVID-19.
  - To contribute to the establishment of a robust supervisory and regulatory SFTR framework, ESMA has also published its first set of Q&A relating to reporting under SFTR and a final report and guidelines on the calculation of positions in SFTs by TRs.
- **Common areas of work on TRs**
  - ESMA has worked on issues that are relevant both for TRs under EMIR and TRs under SFTR. Specifically, ESMA has:
    - updated, in relation to Brexit, its public statement of February 2019 to provide certain clarifications relating to the derivatives reported under EMIR and to the SFTs reported under SFTR after the end of the transition period on 31 December 2020;
    - published its first report on data quality under EMIR and SFTR, which outlines improvements but also stresses the need for NCAs to further facilitate the monitoring of systemic risk and financial stability;

- issued a final report and guidelines on reporting of periodic information and material changes by TRs, with a view to increasing transparency of TRs supervised under EMIR and SFTR;
  - delivered a TA to the EC regarding the simplification and harmonisation of its fee regulations applicable to TRs under EMIR and SFTR;
  - released a consultation paper on the review and update of the guidelines on transfer of data between TRs under EMIR and SFTR.
- **Supervision of SRs under SECR**
    - Under SECR, ESMA has direct responsibilities regarding the registration and supervision of securitisation repositories (SRs), which centrally collect and maintain the records of securitisation transactions and securitisation disclosure information in the EU.
    - ESMA has approved the registrations of the first two SRs under SECR, namely European DataWarehouse GmbH (based in Germany) and SecRep B.V. (based in the Netherlands).
    - These registrations became effective on 30 June 2021, which means that, as of this date, a reporting entity, i.e. the originator, sponsor, or securitisation special purpose entity (SSPE) of a securitisation, must make its reports available through one of these two registered SRs.
    - ESMA has focused on the timely assessment of registration applications and has engaged with individual SRs, identifying risks, and requesting remediation in alignment with key supervisory priorities.
    - ESMA has also prepared for the direct supervision of SRs; in particular ESMA has extended and further enhanced its supervisory tools and processes to apply its risk-based and data-driven supervisory approach to SRs.
    - ESMA has set out a communications channel on its website for market participants, reporting entities and users of securitisation data to contact and report to ESMA with feedback on data quality issues or concerns related to securitisation data and SRs.
  - **Recognition of TC-CSDs**
    - Following the EC's equivalence decision determining, for a limited time period, that the regulatory and supervisory framework applicable to CSDs established in the UK is equivalent in accordance with CSDR, ESMA announced that Euroclear UK &

Ireland Limited (EUI), the CSD established in the UK, would be recognised as a TC-CSD after the end of the transition period on 31 December 2020.

- ESMA's decision to recognise EUI as a TC-CSD after the end of the transition period has allowed EUI to continue providing the following services in the EU:
    - notary and central maintenance services in respect of securities constituted under the law of Ireland;
    - central maintenance services in respect of underlying securities constituted under the laws of Cyprus, Luxembourg, and the Netherlands.
  - The equivalence decision and related ESMA recognition decision in respect of EUI expired on 30 June 2021. All concerned EU issuers have transferred their securities to EU CSDs for the purpose of the provision of notary and central maintenance services.
- **Supervision and recognition of TC-CCPs**

#### **Recognition of TC CCPs including tiering**

- Following the publication of equivalence decisions, one of the conditions for recognition, for 17 third countries made so far by the EC, a total of 35 CCPs established in the corresponding jurisdictions are currently recognised by ESMA. This includes the three UK CCPs that have been temporarily recognised as of 1 January 2021 until 30 June 2022.
- In addition, ESMA is processing the recognition application of 3 US CCPs under US Securities and Exchange Commission (SEC) supervision, which equivalence decision was adopted by the Commission on 28 January 2021.
- In this context, ESMA has initiated the establishment of the TC-CCP college, seeking nomination of the representatives of the college members and developing a proposal for the terms of reference for the college.

#### **Review of legacy recognition decisions**

- Under EMIR 2.2 Article 89(3c) on transitional provisions, before 22 March 2022, ESMA must have reviewed the 32 recognition decisions adopted before 21 September 2020 using the new EMIR 2.2 framework including tiering.

#### **Tier 1 CCP monitoring**

- Furthermore, the amendments brought in EMIR 2.2, especially on the monitoring of third-country Tier 1 CCPs and the sharing of information, require an upgrade of

the Memoranda of Understanding currently in place between third-country authorities and ESMA. The new standard template was approved in May 2021. The existing MoUs are currently being renegotiated with the relevant third-country authorities.

- In particular, ESMA has signed a new Memorandum of Understanding with the US Commodity Futures Trading Commission (CFTC) regarding cooperation and the exchange of information with respect to certain CCPs recognised by ESMA under EMIR and is currently finalising a similar MoU with the SEC.

### **Supervision of Tier 2 CCPs**

- Two of the UK CCPs, LCH Ltd and ICEU, have been recognised as Tier 2 CCPs and are hence subject to direct supervision by ESMA. ESMA has built up its supervisory activities towards the supervised entities on their ongoing activities and new initiatives, such as changes to their risk models and new services. ESMA already received 5 applications for validation of significant changes to risk models, which are currently under review. It also initiated a direct interaction with their home supervisor, the Bank of England, for the exchange of regular information.
- Moreover, ESMA has initiated a review of the temporary recognitions of the Tier 2 CCPs under Article 25(2c) of EMIR under the lead of the CCP Supervisory Committee. Early this year, ESMA developed a methodology for assessing whether a T2 CCP or some of its clearing services are of such substantial systemic importance that the CCP should not be recognised to provide certain clearing services or activities in the EU, which was published in July 2021. Based on the methodology, ESMA engaged with the various stakeholders to collect the necessary data and information for its assessment, which is ongoing with a view to determine whether or not to issue a recommendation to the European Commission in December 2021.

- **Benchmarks**

- From January 2022, ESMA will have direct supervisory responsibilities on EU critical benchmarks and their administrators, and it will be responsible for the recognition and supervision of third-country administrators of benchmarks.
- In the context of these upcoming supervisory powers, ESMA prepared 2 TAs: one on the fees that third country administrators and critical benchmark administrators will have to pay to ESMA for registration under BMR, and one referring to ESMA's future power to impose fines or periodic penalty payments on benchmark administrators.

- To ensure a proper transition of BMR supervisory duties from NCAs, ESMA has also started adapting its internal organisational structure, and began developing a BMR supervisory strategy.
- **Data Reporting Service Providers (DRSPs)**
  - Starting January 2022, ESMA will also have the supervisory powers to authorise and supervise DRSPs, i.e. Approved Publication Arrangements (APAs), Authorised Reporting Mechanisms (ARMs) and, if applicable, Consolidated Tape Providers (CTPs).
  - ESMA started adapting its internal organisational structure, setting up the required processes and systems, and developing the IT systems to collect and analyse transaction reporting data, which is key to perform effective data-driven supervision.
  - ESMA continued throughout 2021 the preparatory activities for the handover process of the supervisory mandate from the NCAs to ESMA and the setting up of ESMA's DRSP supervisory function. Among others, such handover process focussed on:
    - ensuring a comprehensive knowledge transfer from NCAs to ESMA both in terms of supervisory approach as well as onboarding all relevant firm-specific supervisory information; and
    - defining ESMA's supervisory process for DRSP, including the design of a robust supervisory data quality framework to timely detect and ensure resolution of key data quality issues.
  - Finally, ESMA and the NCAs agreed on a common set of principles and expectations concerning operational separation to be applied to situations where a supervised entity is active both as a DRSP and in other capacities, such as market operator or investment firm. This will enable ESMA and NCAs to efficiently supervise the firms under their jurisdictions, without overstepping into each other's mandates.
- **Enforcement and sanctions**
  - Enforcement
    - ESMA has referred one new enforcement case relating to a TR to an Independent Investigating Officer (IIO).
    - 2 IIO investigations were finalised, and the corresponding files and IIO findings were submitted to ESMA's Board of Supervisors.

- Finally, ESMA has published its methodology to calculate fines for CRAs, TRs, SRs and TC-CCPs, in line with the BoA's recommendations.
- Sanctions
  - Scope Ratings GmbH

On 12 January 2021, the Board of Appeal (BoA) of the ESAs decided in ESMA's favour in the appeal lodged on 28 August 2020 by Scope Ratings GmbH (Scope) against ESMA's decision. As a reminder, ESMA imposed a fine of €640k to Scope for breaches of the CRAR in relation to the systematic application of its 2015 covered bonds methodology and its revision (adoption on 28 May 2020, publication on 4 June 2020).
  - Moody's Group

On 30 March 2021, ESMA fined five entities in the Moody's Group, based in France (Moody's France S.A.S), Germany (Moody's Deutschland GmbH), Italy (Moody's Italia S.r.l.), Spain (Moody's Investors Service España S.A.) and the UK (Moody's Investors Service Ltd), a total of €3.7 million and issued public notices for breaches of the CRAR regarding independence and the avoidance of shareholder conflicts of interest.
  - DTCC

On 8 July 2021 ESMA fined DTCC Derivatives Repository Plc (DDRL) a total of €408k for seven infringements of EMIR regarding data confidentiality, data integrity, and direct and immediate access to data. The breaches, which were committed between 2014 and 2018, were found to have resulted from negligence on the part of DDRL.
  - UnaVista

On 21 September 2021 ESMA fined trade repository UnaVista Limited a total of €238,500 for eight breaches of EMIR regarding failures in ensuring the integrity of data and providing direct and immediate access to regulators. The breaches, committed between 2016 and 2018, were found to have resulted from negligence on the part of UnaVista.

#### **4. Promoting supervisory convergence**

Following the enhanced role and additional tools to promote supervisory convergence provided by the ESAs' Review, ESMA completed the implementation of the new supervisory convergence tools and integrated and assimilated them into its approach and work. For example, in November

2020, ESMA identified the (i) cost and performance of retail investment products and (ii) market data quality as the two Union Strategic Supervisory Priorities (USSP) for NCAs.

ESMA has supported supervisory convergence through a variety of tools, notably by issuing Guidelines, Opinions, Questions and Answers (Q&As), fostering discussion of supervisory cases, conducting peer reviews and organising workshops, webinars or training sessions.

In particular, ESMA has issued:

- **13 sets of Guidelines:**

- 1 set of Guidelines on AIFMD leverage limits;
- 1 set of Guidelines on methodology, oversight function and record keeping under BMR;
- 1 set of Guidelines on written agreements between members of CCP colleges;
- 1 set of Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR;
- 1 set of Guidelines on common procedures and methodologies on supervisory review and evaluation process of EU-CCPs;
- 1 set of Guidelines on settlement fails reporting under Article 7 of CSDR;
- 1 set of Guidelines on marketing communications under the Regulation of cross-border distribution of funds;
- 1 set of Guidelines on outsourcing to cloud service providers;
- 1 set of Guidelines on certain aspects of the MiFID II compliance function requirements;
- 1 set of Guidelines on the MiFID II/ MiFIR obligations on market data;
- 1 set of Guidelines on stress test scenarios under the MMF Regulation;
- 1 set of Guidelines on calculation of positions in SFTs by TRs; and
- 1 set of Guidelines on periodic information and notification of material changes by TRs under EMIR and SFTR.

- **10 Consultation Papers on draft Guidelines:**

- Draft Guidelines on CCP recovery plan scenarios (Article 9(12) CCPRRR);
- Draft Guidelines on CCP recovery plan indicators (Article 9(5) CCPRRR);
- Draft Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) CCPRRR);
- Draft Guidelines further specifying the circumstances for temporary restrictions on dividends in the case of a significant non-default event in accordance with Article 45a of EMIR;
- Draft Guidelines on Disclosure Requirements for Initial Reviews and Preliminary Ratings under CRAR;
- Draft Guidelines on transfer of data between Trade Repositories under EMIR and SFTR;
- Draft Guidelines on reporting under EMIR;
- Draft reviewed Guidelines on delay in the disclosure of inside information and interactions with prudential supervision under MAR;
- Draft Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements; and
- Draft Guidelines on certain aspects of the MiFID II remuneration requirements.

ESMA has to inform the European Parliament, the Council and the EC of the Guidelines and Recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follows its recommendations and Guidelines in the future.

For all Guidelines issued by ESMA since its inception, there are currently 28 instances in which an NCA has declared non-compliance with a set of Guidelines (instead of 21 instances in October 2020). This new number takes into account the deduction of 2 non-compliance notifications from the UK NCAs and the inclusion of 9 new non-compliance instances reported in the last twelve months.



- **259 Opinions / Decision:**

- 1 Opinion under AIFMD on collection of information for the effective monitoring of systemic risk;
- 1 Opinion under MAR on an Accepted Market Practice;
- 1 updated Opinion under MiFIR providing guidance on the assessment of pre-trade transparency waivers for equity and non-equity instruments;
- 60 Opinions under MiFIR on pre-trade transparency waivers;
- 12 Opinions under MiFID on position limits for commodity derivatives;
- 154 Opinions determining third-country trading venues for the purpose of transparency under MiFIR;
- 25 Opinions determining third-country trading venues for the purpose of position limits under MiFID II;
- 1 updated Opinion on ancillary activity calculations providing the estimation of the market size of commodity derivatives and emission allowances for 2020;
- 1 Opinion on AFM product intervention measures relating to turbos;
- 1 Opinion for the permanent adjustment of the threshold for the notification of net short positions in shares under the SSR;
- 1 joint Opinion to the EC on the Jurisdictional Scope of Application of the Securitisation Regulation; and
- 1 Decision on delegation to the ESMA Chair of the assessment regarding third country trading venues for the purposes of Articles 20 and 21 of MiFIR.

- **18 Statements:**

ESMA published 8 Statements in relation to Brexit, on reporting under EMIR and SFTR and on the operation of ESMA databases and IT systems after the end of the UK's transition from the EU, STS securitisations, the share trading obligation and derivative trading obligation, as well as reverse solicitation and corporate disclosures. In addition, ESMA also published:

- 1 Statement on implementation of the FRANDT commercial terms to provide clearing services;

- 1 Statement on MiFIR open access provisions for exchange traded derivatives;
- 1 Statement on the application of the temporary suspension of best execution reports;
- 1 Statement on the supervisory approach to position limits;
- 1 Statement to retail investors on the risks of trading decisions based on social media;
- 1 Statement on the prospectus disclosure and investor protection issues raised by Special Purpose Acquisition Companies (SPACs);
- 1 updated Statement on the implementation of LEI requirements for third-country issuers under the SFTR reporting regime;
- 1 Statement on transparency disclosures related to the accounting for the third series of the ECB's Targeted Longer-Term Refinancing Operations;
- 1 Annual Statement defining the European common enforcement priorities for 2020 annual financial reports of listed companies; and
- 1 Joint Statement (with EBA, ECB and European Commission) on the forthcoming cessation of Libor.

- **121 Questions and Answers (Q&As):**

Following the revision of the ESMAR, ESMA has set up a web-based tool to facilitate the submission of questions. As required under the revised ESMAR, ESMA is forwarding questions that require the interpretation of Union law to the Commission to be treated by the Commission. The Q&A tool is accessible through ESMA's website.

- 11 Q&As under AIFMD;
- 14 Q&As under BMR;
- 4 Q&As under CRAR;
- 5 Q&As under CSDR;
- 5 Q&As under crowdfunding service providers for business Regulation;
- 10 Q&As under EMIR;

- 3 Q&As under MAR;
- 7 Q&As under MiFID II/MiFIR;
- 35 Q&As under the Prospectus Regulation;
- 5 ESMA Q&As and 5 joint Q&As under SECR;
- 10 Q&As under SFTR;
- 1 updated Q&A under the Transparency Directive; and
- 6 Q&As under UCITS.
- **1 Supervisory briefing:**
  - ESMA issued a supervisory briefing on Benchmark Administrators' presence in their Member State of location and outsourcing under BMR.
- **Peer reviews**

ESMA completed two peer reviews during the period:

- In November 2020, ESMA published the results of its fast-track peer review which assessed the events leading to the collapse of Wirecard AG and the supervisory response by BaFin, the central competent authority, and by FREP, the authority responsible for examining whether information referred to in the Transparency Directive is drawn up in accordance with the relevant reporting framework. The peer review, based on the assessment, identified a number of deficiencies, inefficiencies, and legal and procedural impediments. These relate to the following areas: the independence of BaFin from issuers and government; market monitoring by both BaFin and FREP; examination procedures of FREP; and the effectiveness of the supervisory system in the area of financial reporting. The peer review provides recommendations to address these shortcomings. The report was prepared in response to a request received from the EC inviting ESMA to conduct a fact-finding analysis of the events leading up to the collapse of Wirecard AG. This was the first peer review carried out by ESMA under the revised ESMA Regulation and the new peer review methodology, in the form of a fast-track procedure and focusing on only one jurisdiction and one issuer.
- In April 2021, ESMA published its 2020 annual peer review report on the supervision of EU CCPs by NCAs. The review found that NCAs' supervisory activities on CCPs' liquidity stress testing are satisfactory. However, the peer review showed that the assessment of some areas of liquidity stress testing was

not always performed or being evidenced sufficiently. In particular, NCAs should make sure that the settlement of obligations of defaulting clearing members are fully reflected in the liquidity stress testing framework. The report also identified several best practices and considerations to further enhance supervisory convergence with respect to CCPs' liquidity stress testing. On the functioning of CCP colleges, the review of colleges' activities during the reporting period remains overall positive.

- Moreover, ESMA launched two discretionary peer reviews: one on NCAs' supervision of cross-border activities of investment firms in late 2020 and one on NCAs' handling of the relocation of entities and activities to the EU in the context of the UK's withdrawal in early 2021.
- In addition, in 2021 ESMA launched three mandatory peer reviews on the supervision of CCPs, the supervision of CSDs providing cross-border services or participating in interoperable links, the scrutiny and approval procedures of prospectuses.
- **Other key supervisory convergence actions:**
  - In the context of COVID-19, ESMA has continued to monitor the impact on markets of the pandemic.
  - In March 2021, in light of GDP forecasts showing moderate optimism for recovery, volatility decreasing, and the main EU stock indices close to pre-pandemic levels, ESMA decided not to renew its decision to require holders of net short positions in shares traded on an EU regulated market, to notify the relevant national competent authority if the position reaches, exceeds or falls below 0.1% of the issued share capital.
  - The decision was taken as the situation in financial markets no longer resembled the emergency situation required by the Short Selling Regulation to maintain the measure. However, in May 2021 ESMA recommended to the EC to permanently lower the threshold to notify net short positions on shares to NCAs from 0.2% to 0.1%.
  - The opinion delivered by ESMA was based on additional evidence gathered after the successive emergency decisions taken from March 2020 onwards, which lowered the notification threshold to 0.1% on a temporary basis.
  - The analysis showed that there was a substantial amount of additional information which became available to NCAs due to the reporting of net short positions at the lower level, which translated into greater transparency and therefore into an improved ability by NCAs to conduct market oversight.

- **UK's withdrawal from the European Union**

- At the end of 2020, ESMA continued to prepare for the end of the transition period, in line with its mission to enhance investor protection and promote stable and orderly financial markets.
- A systematic analysis of the potential impact of the UK's withdrawal across EU securities markets and for financial market participants was prepared and ESMA worked closely with EU NCAs, the EC and the UK Financial Conduct Authority (FCA) to mitigate any issues that arose.
- ESMA urged financial market participants to finalise preparations and implement suitable contingency plans in advance of the end of the UK transition period on 31 December 2020.
- Since the end of the transition period, ESMA continues to monitor supervisory developments to ensure consistent approaches by EU NCAs to Brexit-related issues.

- **Horizontal supervisory convergence work**

- In addition to the activities identified above, to foster high quality and consistent supervisory outcomes across NCAs, ESMA acted at different levels to promote (i) coordinated supervisory work where needed, (ii) consistent supervisory activities among NCAs and (iii) the development of effective supervisory capabilities and methods. These activities were prioritised based on the enhanced framework developed in 2020 to support risk-based supervisory convergence and the annual risk/problem identification exercise that ESMA, together with NCAs, carried out accordingly.
- In particular, ESMA facilitated a voluntary supervisory college (VSC) for a large third-country integrated financial institution, achieved to build supervisory networks through the Senior Supervisory Forum (SSF), and finalised a clear framework to promote discussions among supervisors around concrete supervisory cases.

- **Enforcement Network**

- In 2021, the Enforcement Network continued to facilitate closer dialogue and the exchange of practices among NCAs in the enforcement field. This work included convergence initiatives on the sanctions and measures available to NCAs, improvements to the quality of reporting to ESMA's sanctions registers, and efficient methods of concluding enforcement action. Further, the network continued to engage in thematic real case discussions, which have recently focused on the

process of referral to enforcement and the calculation of appropriate financial penalties.

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

- ESMA has not been involved in formal procedures on binding mediation under Article 19 of the ESMA Regulation in the last year.
- ESMA monitors and assesses complaints received within the breach of Union law framework. ESMA received 363 new complaints between 13 October 2020 to 17 September.
- During this period, ESMA closed 353 complaints which were considered inadmissible and 8 admissible complaints. The 2 admissible complaints that are still opened are under ESMA's preliminary assessment.
- Regarding the admissible complaints, ESMA sent, in 2021, one request for information to NCAs under Article 35 of the ESMA Regulation.

- **Other actions**

- ESMA published reports on:
  - Implementation of ESRB recommendation on liquidity risks in investment funds;
  - the 25<sup>th</sup> extract of enforcement decisions from its European Enforcers Coordination Sessions (EECS) enforcement database.
- ESMA also published annual/biannual reports on:
  - administrative and criminal sanctions and other administrative measures under MAR;
  - MiFID II/MiFIR annual review report on RTS 2;
  - sanctions and measures imposed under MiFID II;
  - supervisory measures and penalties under EMIR;
  - enforcement and regulatory activities related to corporate reporting in the EEA;
  - prospectus activity and sanctions;
  - national thresholds for shareholder identification under the revised Shareholder Rights Directive;
  - sanctions under the UCITS Directive;
  - sanctions under the AIFMD;
  - marketing requirements and marketing communications under the Regulation on cross-border distribution of funds.
- ESMA launched a common supervisory action with NCAs on the application of MiFID II product governance rules across the EU.

- ESMA launched a common supervisory action on the supervision of costs and fees of UCITS and published a report on the 2020 Common Supervisory Action (CSA) on UCITS liquidity risk management.
- ESMA published two lists of third-country trading venues for the purpose of post-trade transparency and position limits. To that end, over the past 12 months ESMA has assessed 172 UK trading venues and 8 trading venues from other third countries.
- ESMA updated the ESEF Reporting Manual as well as the ESEF XBRL Taxonomy files and published the ESEF Conformance Suite.
- ESMA organised a series of hearings, workshops, and forums, including on:
  - supervision of funds' cross-border marketing and cross-border management activities;
  - UCITS liquidity management;
  - CCP margins and procyclicality in times of crisis;
  - public and private feed dynamics at trading venues;
  - market manipulation in a joint Energy Trading Enforcement Forum with ACER;
  - SFDR application (jointly with the other ESAs).

## **5. Assessing risks to investors and financial stability**

Over the last 12 months, ESMA has:

- issued 2 reports on Trends, Risks and Vulnerabilities (TRV) in the EU, accompanied by webinars;
- published 2 Risk Dashboards, covering market volatility in recovering from the COVID-19 crisis and outlining the heightened risk of possibly significant market corrections;
- issued its Annual Statistical Reports on performance and costs of retail investment products, alternative investment fund markets, securities markets and derivatives markets; accompanied by two webinars;
- issued a call for evidence and organised a webinar on digital finance;
- published a working paper on equity funds and derivatives;
- published a working paper on funds and single-name CDS: Hedging or Trading?;
- published a working paper on and organised a webinar on MiFID II research unbundling;
- published a working paper on High-Frequency Trading and Ghost Liquidity; and
- launched the 4th CCP stress test exercise.



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

The revised ESMA Regulation expanded ESMA's mandate in the area of international cooperation, strengthening its role in advising the EC in the preparation for new equivalence decisions. Furthermore, ESMA was assigned a new role in monitoring existing equivalence decisions, which also requires it to submit an annual report to the European Parliament, the Council, the European Commission and the other ESAs.

ESMA delivered to the EU Institutions in late 2020 its first Report on Equivalence Monitoring Activities, outlining its approach to this exercise and presenting a heatmap of existing equivalence decisions to facilitate prioritisation of the forthcoming assessments. In 2021, ESMA has been working to deliver a second report focusing on selected equivalence decisions and jurisdictions. ESMA's work also covered its assistance to the EC on matters related to the UK's departure from the EU. ESMA's contribution in this area has included assisting the preparation of two time-limited equivalence decisions in relation to the UK which were followed by recognition steps by ESMA. These are the equivalence decisions on the UK's legal and supervisory framework for CSDs and ESMA has signed MoUs with the Bank of England on the recognition of UK CSD. ESMA also assisted the EC with both the preparation and assessment of UK responses to multiple equivalence questionnaires.

ESMA has worked extensively with IOSCO. ESMA's memberships with IOSCO includes a seat at the IOSCO Board and a number of policy committees, groups and task forces. Work in these committees and groups also included ESMA's coordination of EU positions within IOSCO and engagement in areas of relevance to both the EU and the international community, such as COVID-19 developments and sustainable finance matters. ESMA has also been advocating the EU perspective on sustainable finance as part of its participation in the IOSCO Sustainable Finance Task Force and as co-Chair of the Workstream 3 (WS3) on ESG rating and data products providers.

ESMA has been also represented at the Financial Stability Board's (FSB) Standing Committee on Assessment of Vulnerabilities (SCAV), Steering Committee on Non-Bank Financial Intermediation (SCN), and on a Technical Expert Group on MMFs (TEG). ESMA's engagement with the FSB has also been key to discuss topics stemming from the COVID-19 crisis, including developing policy responses around risks within Non-Bank Financial Intermediation sector. ESMA was also involved in FSB work related to calibration of credit ratings by CRAs and potential procyclicality arising from the COVID-19 crisis as well as through the IOSCO Financial Stability Engagement Group (FSEG).

ESMA retains active involvement through other international fora, including CPMI-IOSCO, FSB and ROC, in the adoption and promotion of the global reporting identifiers (e.g. LEI, UPI, UTI) as well as development of the global reporting standards (e.g. ISO 20022 messages on the Critical Data Elements for OTC derivatives reporting).

Finally, as an organisation responsible for the development of regulations affecting the EU's financial markets and for the supervision of key market participants, ESMA is closely involved in





day-to-day cooperation with its regulatory and supervisory counterparts in third country jurisdictions. International engagement is carried out on the basis of formal and informal meetings. Of particular relevance are the virtual meetings that ESMA has held in 2021 with the EC and other ESAs in country-specific fora, such as the Regulatory Forums (with, among others, the US and Canada).

## **6. ESMA as an organisation**

ESMA is keen to promote high ethical standards throughout the organization. With this in mind, ESMA introduced changes to the conflict of interest (Col) policy for staff in 2020. These mainly concerned (i) addressing revolving doors issues by providing further guidance and clarity regarding the rights and obligations of staff, and possible restrictions applicable in the context of taking up a new occupational activity after leaving ESMA; (ii) the possibility to temporarily prohibit dealing in financial instruments by ESMA staff in case of market turbulences; and (iii) reflecting institutional changes stemming from the introduction of the CCP Supervisory Committee. As regards the further guidance on the rules applicable to post-employment activities, the Col policy for staff now includes an express prohibition regarding moves to directly supervised entities and a formalised process for cutting-off leaving staff from confidential information.

2021 has been a year of consolidation and raising awareness of the new ethical rules. In addition to the checks on the yearly mandatory submission of Declarations of Interests, and other declarative duties, ESMA Ethics Officer has also undertaken an *ad hoc* enquiry into how conflict of interest rules were applied in practice in a selection procedure. ESMA also launched two surveys at national competent authorities, to learn more on national rules and practices as regards (i) dealing in financial instruments and (ii) professional secrecy. Finally, ESMA is finalising its new anti-fraud strategy for 2022-2025.

Equally, ESMA continued to raise awareness and foster compliance with data protection rules. Most of the activities in autumn 2020 and over the year 2021 were focused on ensuring compliance with the EUDPR as regards specific measures and new tools implemented at ESMA to ensure business continuity in the specific context of the covid pandemic and new remote working conditions. In addition, in August 2021, ESMA has adopted its implementation strategy for the Commission's new standard contractual clauses, published in June 2021; particular attention is paid to international transfers of personal data in the light of the CJEU decision of July 2020 ("Schrems II") and further guidance from the EDPS. This led inter alia to the adoption of a third-party engagement procedure. Last but not least, the public register of all (37) records for operations related to processing of personal data at ESMA continued to grow and to be updated on a timely manner. The new records added to the central register reflects well on the new areas of concern for ESMA as an organization as they cover inter alia cybersecurity processes (security awareness training and security logging and auditing, Identity and Access Management Services) as well as business continuity processes (covid 19 measures, inter-agency volunteer support group, audio and video communication). Importantly, the EDPS found ESMA's register of records fully compliant with the EDPR in the context of an enquiry launched in 2020.

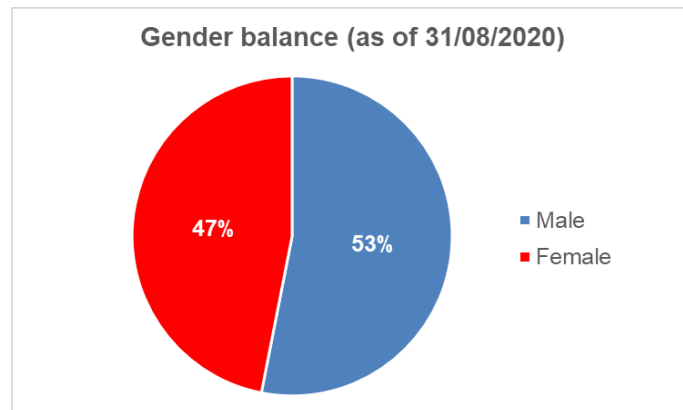
## Number of staff

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

(\*number of Staff as of 31/08/2021)

## Staff per type (status on 31/08/2021):

	Total staff
TA	203
CA	80
SNE	9
<b>Total</b>	<b>292</b>



**Staff by nationality (status on 31/08/2021):**

Nationality	Count of TA
AT	2
BE	4
BG	7
CZ	4
DE	20
DK	2
ES	16
FI	1
FR	74
GB	8
GR	21
HR	1
HU	6
IE	8
IT	62
LT	4
LV	3
MT	1
NL	8
NO	1
PL	12
PT	4
RO	15
SE	6
SK	2
<b>Grand Total</b>	<b>292</b>