



European Securities and
Markets Authority

ESMA supervision of Credit Rating Agencies and Trade Repositories

Annual report 2014 and work plan

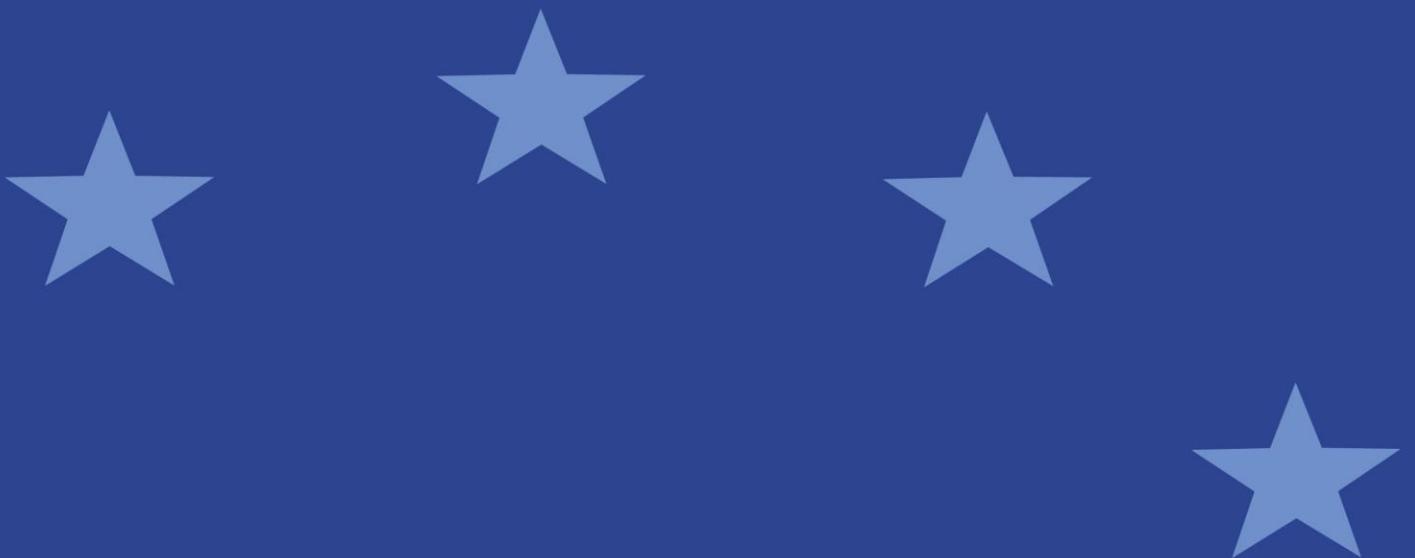




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Acronyms used

ASIC	Australian Securities and Investments Commission
BCP	Business Continuity Planning
CAP	Cumulative Accuracy Profile
C&V	Collateral and Valuation
CCP	Central Counterparty
CEO	Chief Executive Officer
CEREP	ESMA Central Repository for publishing the rating activity statistics and rating performance statistics of credit rating agencies.
CRA	Credit Rating Agency
EEA	European Economic Area
EMIR	Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories
ERP	European Ratings Platform
ESA	European Supervisory Authorities
ESMA	European Securities and Markets Authority
ESFS	European System of Financial Supervision
ESRB	European Systemic Risk Board
ETD	Exchange Traded Derivatives
EU	European Union
IIO	Independent Investigating Officer
INED	Independent Non-executive Director
IOSCO	International Organisation of Securities Commissions
ISIN	International Securities Identification Number
IT	Information Technology



NCA	National Competent Authority
OTC	Over the Counter
Q&A	Questions & Answers
REMIT	Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale Energy Market Integrity and Transparency
RMBS	Residential Mortgage Backed Securities
RRM	Registered Reporting Mechanisms
RTS	Regulatory Technical Standards
SME	Small and Medium-sized Enterprises
SOCRAT	ESMA's internal Supervision of Credit Rating Agencies Tool, to which CRAs periodically report data on individual rating actions
TR	Trade Repositories

1 Executive Summary

This document reports on the direct supervisory activities carried out by ESMA during 2014 regarding credit rating agencies (CRAs) and trade repositories (TRs) within the European Union (EU). It sets out ESMA's key areas of action during 2014 and outlines ESMA's main priorities for 2015.

ESMA adopts a risk based approach to the supervision of both CRAs and TRs in order to perform its supervisory duties efficiently and effectively. This requires the analysis of information from a variety of sources to determine the behaviours of the supervised entities which pose the highest risks to investor protection, financial stability and well-functioning financial markets. ESMA seeks to improve compliance with the provisions of the relevant regulations by publishing guidelines and Q&As. ESMA may also require supervised entities to adopt and implement action plans and will take enforcement action in appropriate cases.

As regards the supervision of CRAs, ESMA approved the registration of 2 CRAs and certified 2 third country CRAs during 2014, bringing the total number of CRAs registered and certified in the EU to 27. A decision by ESMA to reject an application for registration from a CRA was upheld by the Board of Appeal of the European Supervisory Authorities in 2014.

As regards the ongoing supervision of CRAs, ESMA concluded its investigation into the issue of certain structured finance ratings, completed its review of small and medium-sized CRAs and conducted work regarding sovereign ratings.

In addition, ESMA issued its first enforcement decision through a public notice under the CRA Regulation in respect of internal control failings.

Furthermore ESMA issued Q&A to CRAs, published a consultation paper for the revision of its guidelines on the periodic information to be submitted by CRAs and produced draft Regulatory Technical Standards (RTS) relating to structured finance instruments, fees charged by CRAs to their clients and the European Ratings Platform.

The supervision of TRs by ESMA started in 2013 with the registration of TRs in accordance with Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). ESMA had registered six TRs by November 2013, which triggered the trade reporting obligations to TRs set out in EMIR.

The reporting of derivatives trade information began in February 2014. ESMA's supervision of TRs in the run-up to this period was focused on achieving a smooth start to the new reporting regime. This included ensuring that adequate IT systems and controls were in place to enable trade reporting and reconciliation, ensuring that TRs were ready to start receiving data, were transparent in their commercial offerings and could provide

access to both counterparties and national competent authorities.

Since February 2014, a total of almost 10 billion reports have been received and processed by the EU TRs while the number of entities which have direct reporting agreements with TRs is nearly 5,000. As of early January 2015, around 300 million trade reports were being submitted on a weekly basis by the counterparties subject to the reporting obligation and then processed by the six registered TRs.

Following the successful start of derivatives contract reporting to TRs in February 2014, ESMA's focus for supervision shifted to the quality of the reported data and to ensuring appropriate data access to regulators. ESMA's internal analysis and feedback from National Competent Authorities (NCAs) showed a need to improve the quality of TR data. Data quality is a serious concern and needs to be improved to enable public authorities to monitor effectively risks in the derivatives markets. TRs (and also the reporting entities) will need to overcome some of the initial difficulties of the new, complex and voluminous reporting and ensure that their systems are set up to deal with this data flow effectively (ensuring confidentiality, reconciliation and proper reporting). ESMA is putting considerable effort into the improvement of the TR data quality and is cooperating closely with the NCAs, as each of the parties involved in the reporting regime plays a key role in reaching this goal. ESMA has also produced guidance regarding data validation during 2014.

ESMA will continue to exercise its direct supervisory powers in 2015 through on-going supervision and monitoring and through individual and thematic reviews and investigations as well as through complaints handling and enforcement.

Contents

Following a brief introduction, Section 3 of this report focuses on ESMA's supervision of CRAs during 2014 and Section 4 sets out ESMA's CRA supervision work plan for 2015 and beyond. Section 5 highlights the main supervisory tasks and activities performed by ESMA with regard to TRs and Section 6 of this report provides ESMA's TR supervision work plan for 2015.

2 Introduction

1. The European Securities and Markets Authority (ESMA) is one of the three European Supervisor Authorities (ESAs) which, together with the European Systemic Risk Board (ESRB), make up the European System of Financial Supervision (ESFS).
2. The ESFS was established in the wake of the global financial crisis with the aims of improving the quality and consistency of national supervision, strengthening the oversight of cross-border groups and establishing a single rule book for all financial market participants within the European Union.¹
3. In 2011 ESMA was designated as the single supervisor of credit rating agencies within the EU in accordance with the provisions of Regulation 1060/2009 on credit rating agencies.² The following year, ESMA was given direct responsibility for the registration and the supervision of trade repositories within the EU in accordance with Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories.³ This direct supervision responsibility became effective on November 2013 with the registration of six TRs.
4. This report provides an overview of the activities undertaken by ESMA in 2014 pursuant to these two Regulations. There are some clear similarities in ESMA's approach to supervision in both areas as ESMA has similar powers and tools available to it under the CRA Regulation and EMIR.
5. ESMA adopts a risk based approach to supervision of both CRAs and TRs, in order to perform its supervisory duties efficiently and effectively. The implementation of a risk-based approach requires the analysis of information from a variety of sources in order to determine the behaviours of supervised entities which pose the highest risks to investor protection, financial stability and well-functioning financial markets. This analysis includes information obtained from registration, notifications, complaints, requests for information, on-site inspections and investigations, market data and from meetings with market participants.
6. ESMA also seeks to improve compliance with the provisions of these Regulations by publishing guidelines, Q&As and by requiring supervised entities to adopt and implement action plans as well as by taking enforcement action in appropriate cases.
7. ESMA produces annual work plans for its supervisory activities. The work plans may be implemented through a variety of means, including through formal requests for

¹ Regulation EU No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority, OJ L 331/84 of 15.12.2010 at recital 5 (hereinafter the ESMA Regulation).

² Regulation EU No 1060/2009 of 16 September 2009 on credit rating agencies, OJ L 302/1 of 17.11.2009 as amended by Regulation 513/2011 of 11 May 2011, OJ L145/30 of 31.5.2011 at recital 5-6 and further amended by Regulation 462/2013 of 21 May 2013, OJ L146/1 of 31.5.2013 (hereinafter the CRA Regulation).

³ Regulation EU No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L201/1 of 27.07.2012, titles VI and VII (hereinafter EMIR).

information, the conduct of inspections and investigations as well as other supervisory activities necessary to ensure the effective application of these Regulations.⁴

8. The first half of this report focuses on ESMA's supervision of CRAs during 2014. It gives an overview of the CRA industry, provides details of the registration and certification of CRAs during 2014 and considers some of the main CRA supervisory and enforcement action taken by ESMA in 2014. The report then sets out ESMA's CRA supervision work plan for 2015 and beyond.
9. The second half of this report highlights the main supervisory tasks and activities performed by ESMA with regard to TRs. It gives an overview of the TR industry and then provides detailed information about ESMA's on-going supervision, thematic reviews and individual investigations. It also refers to some of the major guidance provided regarding data reporting and validation as well as ESMA's international work regarding TRs. The report then sets out ESMA's TR supervision work plan for 2015.

⁴ In accordance with Article 53 of the ESMA Regulation.

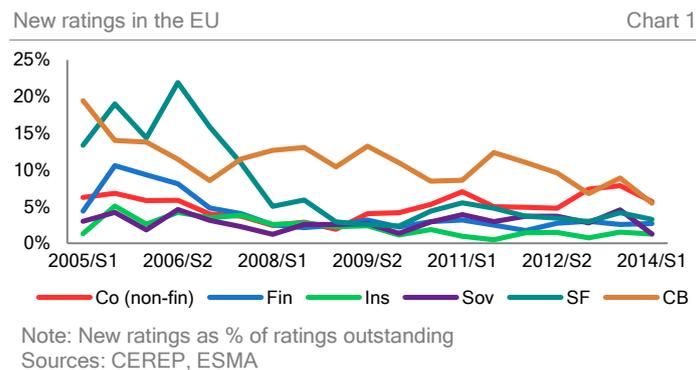
3 Credit Rating Agencies

3.1 Introduction

10. The CRA Regulation⁵ introduced a common approach to the regulation and supervision of credit rating agencies (CRAs) within the European Union. This approach was designed to enhance the integrity, transparency, responsibility, good governance and independence of credit rating activities to ensure quality ratings and high levels of investor protection.⁶
11. This section of the report describes ESMA’s activity in the field of CRAs’ supervision including the related risk analysis and policy activity. An overview of the credit industry is also provided highlighting those aspects which have influenced the definition of the supervisory strategy going forward. This section also contains ESMA’s CRA work plan for 2015-16.

3.2 Industry overview

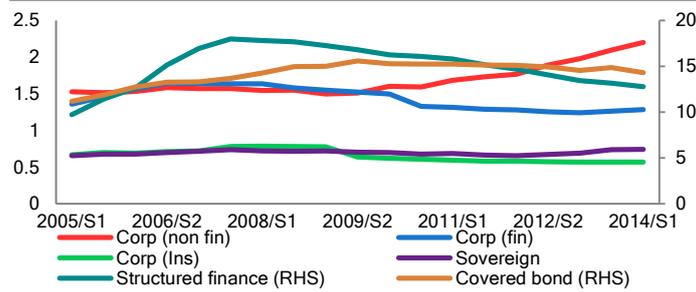
12. Analysis of credit ratings dynamics in 2014 has showed a continuation of the trends observed in 2013. In particular, following the financial crisis and consequent decline in new rating issuance (Chart 1) and outstanding ratings (Chart 2) in several rating categories (the most remarkable decline was observed in the structured finance category), more stable numbers and a return to growth in some cases started in 2013.



⁵ OJ L302/1 of 17.11.2009, as amended by Regulation 513/2001 of 11 May 2011, OJ L145/30 of 31.5.2011 and Regulation 462/2013 of 21 May 2013, OJ L146/1 of 31.5.2013.

⁶ See Article 1 of the CRA Regulation.

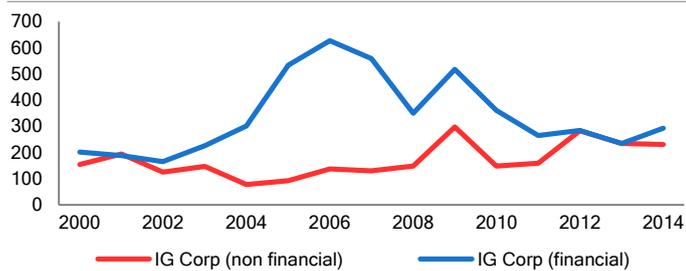
Outstanding ratings in the EU Chart 2



Note: Thousands, count of
Sources: CEREP, ESMA

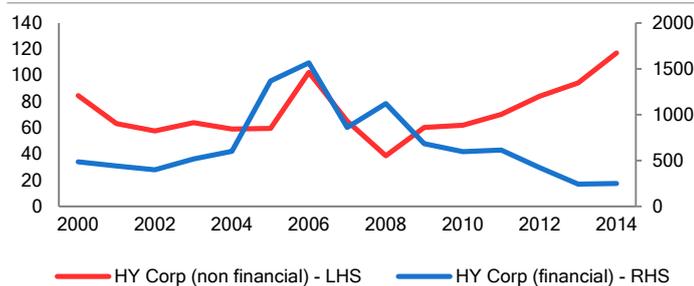
13. At the same time, credit markets’ dynamics emerging from the crisis, including bank deleveraging process and increased disintermediation of non-financial corporations’ funding model, resulted in other rating categories (i.e. non-financial corporates) and the related financial instruments (most notably, high-yield non-financial corporate bonds) growing markedly in recent years (Charts 2, 3 and 4).

Volume of investment grade corporate bonds issuance Chart 3



Note: EUR/bln
Sources: DEALOGIC, ESMA

Volume of non-investment grade corporate bonds issuance Chart 4

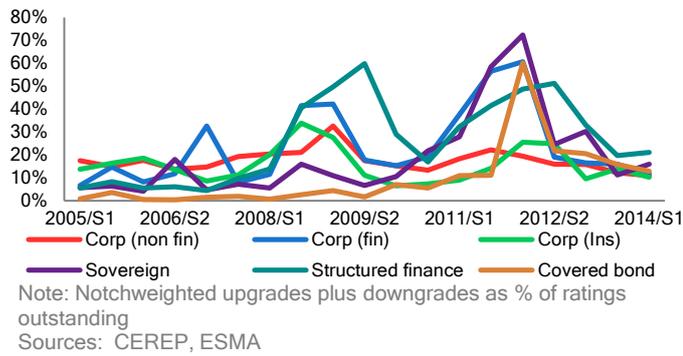


Note: EUR/bln
Sources: DEALOGIC, ESMA

14. With regard to some relevant rating performance metrics such as volatility (frequency of credit rating changes – Chart 5) and drift (direction of credit rating changes – Chart 6), 2014 represented a year of ratings stabilisation with a broad tendency towards positive ratings drift.

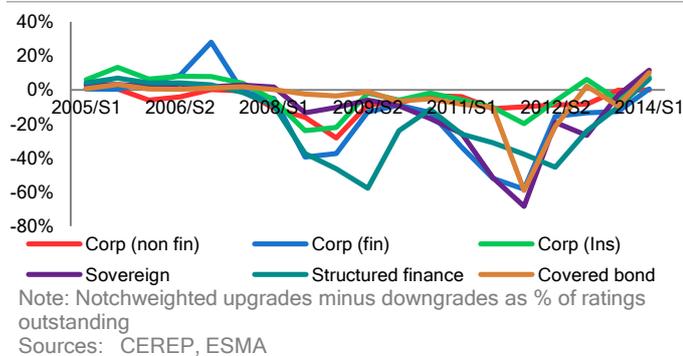
Volatility

Chart 5



Drift

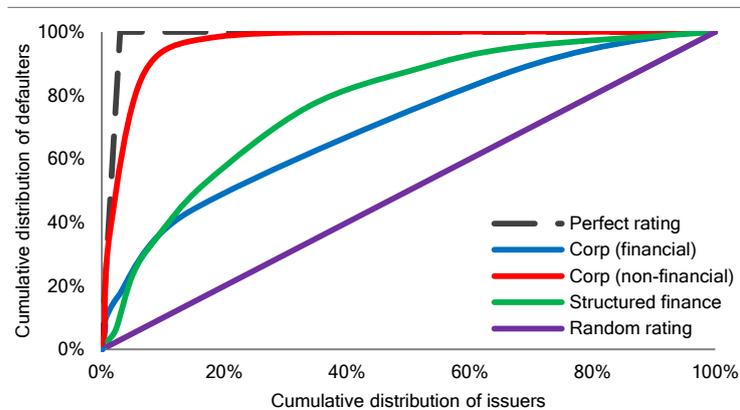
Chart 6



15. 2014 has seen low levels of defaults across asset classes. However, the 5-year Cumulative Accuracy Profile (CAP), which is a measure of historical default occurrence on rating scale (Chart 7), still shows a notable difference in the ability of respective rating systems to rank order defaults. As can be seen in the chart, the CAP for structured finance and financial corporate ratings are substantially lower than the CAP for non-financial corporate ratings. This suggests that instruments with higher credit ratings were defaulting more frequently in the structured finance and financial corporate categories compared to non-financial corporate. However, this could be attributable to 'legacy' defaults which occurred during the crisis. More recent defaults have had a strong tendency to occur among lower rated issuers (BBB- and lower), which may also be attributable to the more stable economic environment compared to the years of the crisis.

CAP Curves - Financial, non-financial and SF

Chart 7



Note: Cumulative accuracy profile curves for the 3 largest credit rating agencies. 2009h1-2014h1. The CAP curve plots cumulative proportion of issuers/issuances by a rating grade (starting with the lowest grade on the left) against the cumulative proportion of defaulters by rating grade. The closer the curve is to Perfect rating the higher the ability of the rating system to rank-order defaults. The closer the curve is to Random rating the lower the discriminatory power of a rating system is. Sources: CEREP, ESMA

16. In addition, the analysis of public financial data available for McGraw Hill Financial (holding company of Standard & Poor's) and Moody's Corporation (holding company of Moody's Investors Service) also show that their rating business volume's growth in recent years is mainly driven by transactional business (e.g. new debt issuance, bank loans and other one-time fees), compared to non-transactional business (e.g. rating of entities/issuers and recurring rating monitoring), see Tables 1 and 2.

Table 1

McGraw Hill Financial (rating-business only)	2007	2009	2011	2012	2013	Cagr 2007- 2009	Cagr 2011- 2013
Revenues (\$mln)	2,264	1,748	1,767	2,034	2,274	-12%	13%
Of which, non-transactional	1,223	1,210	1,116	1,131	1,239	-1%	5%
% of non-transactional revenues	54%	69%	63%	56%	54%		
Of which, transactional	1,041	538	651	903	1,035	-28%	26%
% of transactional revenues	46%	31%	37%	44%	46%		

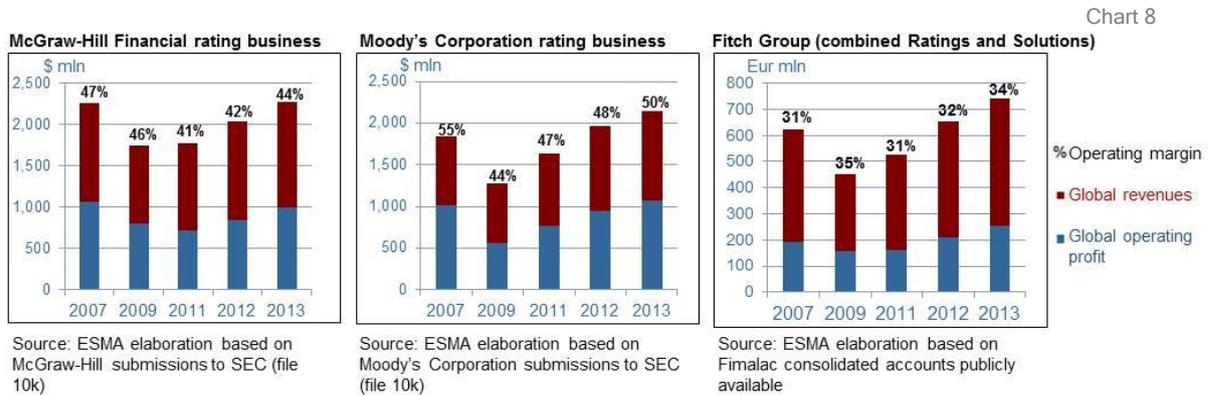
ESMA elaboration based on McGraw Hill Financial submissions to SEC (file 10k)

Table 2

Moody's Corporation (rating-business only)	2007	2009	2011	2012	2013	Cagr 2007- 2009	Cagr 2011- 2013
Revenues (\$mln)	1,835	1,278	1,635	1,958	2,138	-17%	14%
Of which, non-transaction	587	639	687	744	812	4%	9%
% of non-transactional revenues	32%	50%	42%	38%	38%		
Of which, transactional	1,248	639	948	1,214	1,326	-28%	18%
% of transactional revenues	68%	50%	58%	62%	62%		

ESMA elaboration based on Moody's Corporation submissions to SEC (file 10k)

17. Furthermore, data show that revenues and margins of the three largest CRAs have been growing materially since 2010, with 2013 figures back to the levels last seen before the financial crisis hit in 2008 (chart 8).



Data also suggest that profitability of transactional business is higher compared to non-transactional/relationship business since margins tend to increase when the proportion of transactional revenues grows.

18. ESMA observes that the number of participants in the credit rating industry is continuing to grow in the EU as companies continue to apply for registration as CRAs. However, this growth has not had a significant impact on the overall market shares of CRAs, which remain largely unchanged since 2013.⁷

3.3 Risk and strategy

19. ESMA's supervision of CRAs is based on risk assessments developed following the analysis of industry trends (such as those presented in the previous section) and risks as well as the individual compliance risks of each CRA.

20. Our core risk analysis model is developed around the following two pillars:

- CRA impact, expressed in terms of damage to the stability of the financial system or investor protection caused by potential breaches of the Regulation. This is calculated for each CRA on the basis of a pre-defined set of factors and weightings; and
- Event probability, expressed in terms of likelihood of regulatory failures and infringements. This is calculated based on four main risk categories (environmental risk, operational risk, business model risk, and governance risk) and related sub-categories (13 in total). It is determined through individual supervisory judgement based on a pre-defined set of criteria to ensure consistency and comparability.

⁷ See for example, [ESMA/2013/1933 \(16 December 2013\)](#) and [ESMA/2014/1583 \(22 December 2014\)](#), respectively ESMA's 2013 and 2014 market share calculations for the purposes of Article 8d of the CRA Regulation.

The outcome of the risk analysis model feeds into the preparation and the implementation of the annual supervision work plan.

21. Industry wide trends and risks are identified by ESMA's market monitoring, research and analysis. This includes following developments in financial services markets and the credit market conditions which could have an impact on the credit rating industry. For example, ESMA's risk analysis considers the development or rise of new funding instruments or sources which could impact CRAs' business either enhancing or reducing business opportunities or need for ratings, as well as how CRAs react to changing market conditions.
22. ESMA also analyses information received as part of its investigations, individual CRAs' notifications, periodic reports, transparency reports, reports to the CEREP and SOCRAT databases, complaints and any supervisory activity.
23. Together these assessments allow ESMA to develop Key Risk Indicators for individual CRAs. These indicators are used by ESMA to determine its supervisory focus and plan its cycle of engagement with CRAs to ensure that its resources are directed towards mitigating and managing the biggest potential risks identified at both firm and industry level.
24. On the basis of its risk analysis, ESMA identified a number of areas which have the highest potential to negatively impact the integrity, transparency, responsibility, good governance and independence of credit rating activities. These areas of supervisory focus will include:
 - governance and the effectiveness of the control functions of all CRAs supervised;
 - IT systems and controls used by the largest CRAs; and
 - strategy risks related to the business development of CRAs.

3.4 Registration and certification

3.4.1 Registration

25. Registration is a key part of the EU's approach to the regulation and supervision of CRAs. In order to issue credit ratings which can be used for regulatory purposes, a CRA established in the EU must be registered with ESMA.⁸ For this reason, the number of applications for registration has remained high since ESMA's creation and this trend seems likely to continue in the near future.
26. Compared to 2013, when ESMA examined five applications (which resulted in three registrations), in the course of 2014, ESMA examined seven applications for registration.

⁸ Subject to the proportionality requirements set out in Article 5(4) of the CRA Regulation.

At the end of 2014, three of these were still being considered by ESMA, two were successfully completed and two were rejected by the Board of Supervisors.

27. The two successful applicants, EuroRating Sp. z.o.o., based in Poland, and Moody's Investors Service EMEA Limited, based in the UK, were registered as CRAs as of 7 May 2014 and 24 November 2014, respectively.
28. The two unsuccessful applicants were not able to demonstrate their compliance with the requirements of the CRA Regulation in a number of key areas regarding internal controls and the absence of conflicts of interest.
29. For example, ESMA identified a number of ways in which either the independence of the persons involved in credit rating activities or of the independence of the review and compliance functions required by the CRA Regulation were being hindered. For example:
 - a lack of clarity regarding staff roles and responsibilities;
 - the lack of an effective compliance function;
 - the involvement of ratings analysts in business development;
 - an unmitigated concentration of powers and responsibilities in the CEO, who was a shareholder of the company, was involved in the CRA's business development, and was also responsible for key internal review activities; and
 - a lack of controls aiming at ensuring compliance with the regulatory requirement that a CRA should share the proposed credit ratings with the rated entities or issuers for factual errors prior to publication.
30. Compliance with a number of these points could not be demonstrated, typically because policies and procedures did not describe in sufficient detail the different steps of the process followed or did not clearly allocate roles and responsibilities. ESMA strongly encourages applicants to ensure that their processes and procedures are documented in detail so that the registration process can be completed quickly and efficiently.
31. Indeed, the findings of the Board of Appeal of the European Supervisory Authorities (the Board of Appeal) in the first appeal against a decision by ESMA to reject a CRA's application for registration⁹ highlights the need for CRAs to submit clear and complete information and supporting documents in their applications for registration. The Board of Appeal found that *'the onus must be on an applicant to satisfy ESMA that the relevant requirements are met. The application and its contents must be very clear, and it is not ESMA's responsibility as regulator to remedy deficiencies.'*

⁹ BoA 2013/14 (10 January 2014) – The Board of Appeal's decision in an appeal by GPRC against a decision of ESMA

3.4.2 Certification

32. ESMA may certify CRAs established in third countries so that they can issue ratings for use in the EU if:

- the CRA is authorised and subject to supervision in a jurisdiction with an equivalent legal and supervisory framework recognised by the European Commission;
- a cooperation arrangement is established between ESMA and the third country supervisory authority;
- the credit rating issued by the CRA and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more EU Member States.

33. In the course of 2014 ESMA examined 2 applications for certification, compared to one in 2013. The certification application from Mexican CRA HR Ratings de México, S.A. de C.V. resulted in the adoption of a certification decision by ESMA on 7 November 2014. The certification application from Egan-Jones Ratings Co. (based in the USA) was also approved by ESMA on 12 December 2014.¹⁰

3.5 Supervision

3.5.1 Introduction

34. Once a CRA has been registered with or certified by ESMA, they may issue ratings which can be used for regulatory purposes in the EU. ESMA supervises registered and certified CRAs to ensure that they continue to fulfil the conditions of their registration and certification and to ensure compliance with the key objectives of the CRA Regulation.

35. ESMA relies on information from a variety of sources to conduct its supervision, from the periodic reports and transparency reports provided by CRAs to individual notifications from CRAs of changes to their initial conditions for registration, to queries and complaints from market participants and information received through international cooperation.

36. The tools which ESMA can use to carry out its ongoing supervision include requests for information, interviews with staff and senior management, on-site and desk-based supervisory monitoring as well as individual and thematic investigations.

37. In the event that ESMA identifies issues of concern through the use of its supervisory tools, these concerns will be discussed with the CRA(s) in question. ESMA's supervisory actions may result in the adoption of a remedial action plan in appropriate cases or in the appointment of an Independent Investigating Officer (IIO) to investigate matters for which

¹⁰ The list of CRAs registered or certified in accordance with the CRA Regulation is published on ESMA's website at the following link: <http://www.esma.europa.eu/page/List-registered-and-certified-CRAs>.

ESMA finds serious indications of potential breaches of the Regulation. Equally, where ESMA identifies issues or examples of good practice with industry-wide implications, it may publish these in a report.

3.5.2 Changes to initial conditions for registration

38. In 2014 registered CRAs notified ESMA of some important changes to their initial conditions for registration, including changes to:

- shareholders;
- organisational structure, such as the creation of new subsidiaries or the outsourcing of certain operations;
- Chief Executive Officer or board of directors, including independent directors;
- internal controls, such as the appointment of compliance officers or changes to the review function;
- business model, for example the issue of new types of credit ratings, use of endorsement, the provision of new services or the launch of new products in both the rating and non-rating businesses.

39. ESMA carefully analysed the information received in each case. Some of the changes notified required ESMA to take action, for example by withdrawing exemptions for CRAs with more than 50 employees.

3.5.3 Complaints

40. In 2014, ESMA received three complaints regarding CRAs' compliance with the CRA Regulation, compared to 13 in 2013. ESMA notes this decrease and wishes to encourage market participants to bring any concerns they have about CRAs' compliance with the CRA Regulation to ESMA's attention. In order to make the complaints process more user-friendly, ESMA is currently developing a template for reporting these specific complaints and will make this available on ESMA's website shortly.

3.5.4 Individual and thematic investigations

41. ESMA stated in its 2013 Annual Report that some of its key deliverables for 2014 would include individual investigations as well as thematic investigations into the structured finance market and the verification of small and medium sized CRAs registered during 2012 and 2013.

42. During the course of 2014, ESMA launched an individual investigation into the rating process at one of the CRAs. The preliminary findings of this investigation are currently

being discussed with the CRA in question, with a view to preparing a remedial action plan.

43. Investigations into the validation of methodologies and IT internal controls and information security are ongoing and are referred to in detail in the section on the work plan below (see 3.8).

3.5.4.1 Structured Finance thematic investigation

44. This investigation was identified as a priority in ESMA's 2013 CRA Annual Report. The investigation started in October 2013 with the aim of assessing the approach of the 4 largest CRAs to the rating of Residential Mortgage Backed Securities (RMBS). ESMA considered each of the key stages of the rating monitoring and review process, from the structure and functioning of the teams responsible for analysing and reviewing ratings, to the actual rating and monitoring process, including the annual review of methodologies, the models used, the fees charged and the disclosure of ratings to the public.

45. ESMA conducted over 60 on-site interviews at the four largest CRAs during the course of its investigation. ESMA published a report of its findings in December 2014.¹¹ This report identifies a number of concerns as well as some good practices.

46. The critical issues ESMA identified in one or more CRAs Include:

- lack of quality controls over information used and received from data providers;
- incomplete application of the full methodology during the rating monitoring process aggravated by insufficient disclosure of the different analytical frameworks used;
- delays in the completion of the annual review of ratings;
- need to strengthen the role of the internal review function and the activities it performs during the review of methodologies, models and key rating assumptions applied to structured finance ratings in order to ensure effective independence from the business lines responsible for credit rating activities.

47. The good practices identified by ESMA include:

- a data control framework which uses highly automated systems for initial identification of errors and alerts on the data received by third parties, further integrated with expert intervention (e.g. dedicated data group or analyst intervention) through information controls performed in subsequent stages of the rating process;
- the use of IT systems which allow for the running of the CRAs' full models on expected-losses and cash-flows each time updated loan-level data is received;

¹¹ [ESMA/2014/1524 \(16 December 2014\) – ESMA's investigation into structured finance ratings](#)

- the conduct of annual rating reviews by rating committees followed by the publication of rating comments;
- the annual review of methodologies finalised by an independent standing committee;
- the production of detailed reports on the review of methodologies by the internal review function.

48. The concerns identified are being addressed with each CRA individually. ESMA has requested that individual CRAs put in place remedial action plans to resolve the individual concerns identified. In some instances the CRA involved has already taken remedial steps to address the issues identified. ESMA is looking to each CRA's independent non-executive directors (INEDs) to play an active oversight role to ensure effective implementation of their individual action plans.

49. During the course of 2015, ESMA will individually follow up on this work with each CRA subject to the investigation in order to ensure that remedial actions are fully implemented.

3.5.4.2 Small and Medium-sized CRA thematic investigation

50. ESMA also completed an investigation into the Corporate Governance and Internal Review functions in 18 Small and Medium-sized (SME) CRAs during the course of 2014. The key issues identified related to the:

- roles and responsibilities of senior management;
- independence and operation of the control functions;
- publication of ratings.

51. In general, ESMA observed deficiencies in record-keeping and in the documentation of processes such as the rating committee process. ESMA also noted that a number of CRAs had insufficient controls enhancements in light of increased complexity derived from business developments, or cases of policies and procedures not being updated to reflect the 2013 amendments to the CRA Regulation. ESMA wrote to each of the CRA involved separately, asking it to address the issues of concern identified.

Roles and responsibilities of senior management, including INEDs

52. ESMA expressed concerns to one or more CRAs regarding corporate governance, including unclear structures, board members' limited knowledge of regulatory obligations, insufficient meetings of the Supervisory Board and limited interaction between the Supervisory Board and the control function of the CRA.

53. ESMA queried the independence of certain independent members of the supervisory board because of their business interest in the CRA and concluded that the monitoring activities of a number of independent directors should be reinforced.

54. CRAs have taken steps to appoint new independent directors, introduced compliance issues as a standing item on the supervisory board agenda, and implemented new reporting lines.

Independence and operation of the control functions

55. ESMA was concerned about the lack of independence of the Compliance and/or Review functions in one or more CRAs in the light of the involvement of rating analysts, shareholders or business development staff in the approval of methodologies.

56. ESMA expressed concerns that the compliance's functions responsibilities were not clearly allocated and inadequate resources were allocated to the compliance function.

57. ESMA also found that a number of procedures for validation and back-testing of methodologies lacked clarity and detail.

58. In response to ESMA's findings, a number of CRAs have established new compliance functions or have appointed compliance officers, even if an exemption was granted to them at registration, the resources dedicated to compliance have increased and the number of compliance trainings to staff has been raised.

59. Regarding the review of methodologies, in order to strengthen the quality of it, review officers have been replaced or appointed or CRAs have decided to outsource this function to an external specialist. The assessment of the way CRAs comply with the regulatory requirements to validate methodologies based on historical experience also fed into the ongoing thematic investigation into the validation of methodologies.

60. One CRA has taken steps to remove the voting rights from a shareholder in the rating committee in response to concerns raised by ESMA so as to make sure that the business interests of the shareholder did not affect the credit ratings issued.

Publication of ratings

61. The CRA Regulation requires CRAs to inform the rated entity or the issuers one working day prior to publication of the rating, in order to allow them to check for factual errors. However, ESMA found that some SME CRAs were allowing this review process to go on for several weeks.

62. The risk of confidential information being leaked and the risk of the issuer influencing the decision of the CRA increases with the length of time between ratings decisions being made, sent to the issuer for the checking of factual errors and then published.

63. As a result of ESMA's investigation, one or more CRAs have reduced the length of the time between ratings decisions being made and published to three working days.

3.5.4.3 Sovereign rating investigation

64. Following the investigation into the sovereign rating process in 2013,¹² ESMA asked CRAs to implement remedial action plans to deal with a number of failings and risks that could affect the independence of the ratings process.
65. ESMA has monitored and assessed the implementation of these action plans as part of its 2014 ongoing supervision.
66. Key actions taken by CRAs in 2014 to implement remedial action plans have related to the definition of roles and responsibilities for analysts, management, executives and communications staff and the reorganisation of the review function to ensure effective independence from ratings activities; measures to ensure lead analysts have sufficient knowledge, expertise and experience to carry out sovereign ratings; controls to protect confidential rating information from unauthorised access or disclosure; revision of the research publication activity to protect the independence and integrity of the rating process and the quality of ratings; improvements to the rating committee process; and the implementation of procedures to ensure the timely publication of ratings actions and the advance notification of rating actions to rated entities.
67. Where applicable, CRAs have applied the remedial actions to all rating types, rather than just sovereign ratings.

3.5.5 Selected themes from 2014 supervisory activities

68. In last year's Annual Report,¹³ ESMA noted that in 2014 it would focus its ongoing supervisory activities on CRAs' compliance with the requirements introduced by the 2013 amendments to the CRA Regulation regarding disclosures and in particular with regard to sovereign ratings. ESMA also highlighted the importance of the role of INEDs and the special responsibilities assigned to them by the CRA Regulation.

Implementation of new disclosure requirements

69. ESMA conducted supervisory work on the compliance of CRAs issuing sovereign ratings with the new disclosure requirements introduced by the 2013 amendments to the CRA Regulation.
70. ESMA considered CRAs' practices in accordance with the new requirements found in Articles 8, 8a and Annex 1 Section D of the CRA Regulation. As a result of the analysis of CRAs' rating outlooks and public reports explaining the assumptions, parameters, limits and uncertainties and other relevant information about sovereign ratings, ESMA asked a number of CRAs to take action to ensure their practices were in line with the CRA Regulation. For example, ESMA has asked CRAs to:

¹² [ESMA/2013/1775 \(2 December 2013\) – ESMA's Report on CRA sovereign ratings investigation](#)

¹³ [ESMA/2014/151 \(21 February 2014\) – ESMA's Annual Report 2013 on Credit Rating Agencies](#)

- publish sovereign ratings and related rating outlooks on a Friday after the close of business of the last regulated market to close in the European Union, rather than during the morning;
- be clear about the length of ratings outlooks and how qualitative and quantitative assumptions, factors and relative weights are presented in public reports regarding changes in sovereign ratings;
- clearly state whether the rating was solicited or unsolicited, and where unsolicited explain the extent to which the rated entity participated in the rating process and whether the CRA had access to internal documents of the rated entity, or related third party, in preparing its rating, as per Article 10(5) of the CRA Regulation.

71. In light of the requirement that CRAs should inform the rated entity in advance of the public disclosure of a rating action, ESMA also asked CRAs to take necessary actions in order to ensure that the rated entities are notified of any rating action at least 24 hours in advance of informing the market, which should include at least an 8 hour period corresponding with the working hours of the rated entity as established by the relevant national legislation.

INEDs

72. ESMA has concerns about the effectiveness of independent directors on some CRAs' supervisory boards. These concerns led ESMA to increase the frequency of its interaction with independent directors as a part of its ongoing supervision during 2014, aiming at promoting the fulfilment of the INEDs' role and responsibilities in line with the requirements of the Regulation.

73. ESMA has been encouraging independent directors to challenge the views of other members of the supervisory board where appropriate. As the term of office of some independent directors ended towards the end of 2014, ESMA has also sought to ensure that new independent directors being appointed by CRAs are mindful of their role and prepared to fulfil the specific requirements of their function with regards to credit ratings. To this end, ESMA also conducted preliminary meetings and interviews with the proposed new Independent Directors prior to their appointment.

3.5.6 Cooperation with competent authorities and third countries

74. Chapters III and IV of Title III of the CRA Regulation provide for cooperation with other competent authorities and third countries through the exchange of information.

75. Specifically, cooperation with third countries' authorities has been strengthened in recent years, for example by the establishment of supervisory colleges for the three largest CRAs operating internationally in 2013 (Fitch Ratings, Moody's Investor Service and Standard & Poor's). Supervisory colleges aim to promote information-sharing and cooperation between supervisors operating in different jurisdictions.

76. The participation of third country supervisors in the supervisory colleges grew this year, reflecting the increasingly global nature of both CRAs' activities and of the regulation and supervision of these activities. ESMA is the chair of the supervisory college for Fitch Ratings while the US Securities and Exchange Commission is the chair of the supervisory colleges for Moody's Investor Service and Standard and Poor's.
77. This cooperation helps to ensure a joined up approach to the supervision of the three largest internationally active CRAs. Since the first meeting held in New York in November 2013, four supervisory colleges' discussions occurred in 2014 via conference calls, while a further full meeting held in December 2014 at ESMA's premises in Paris.
78. ESMA also engages in bilateral regular discussions with several third country supervisors. These discussions allow supervisors to identify issues of common concern and to share best practices.
79. In order to exchange information with third country supervisors for the purposes of ongoing supervision, ESMA may conclude cooperation agreements or enter into Memoranda of Understanding. In 2014, ESMA entered into a Memorandum of Understanding on the supervision of CRAs with the Dubai Financial Services Authority.

3.6 Enforcement of the CRA Regulation

3.6.1 Investigations

80. ESMA considers CRAs' compliance with the CRA Regulation during the course of its ongoing supervision. In accordance with Article 23e of the CRA Regulation, ESMA will appoint an IIO to investigate where it finds that there are '*serious indications of the possible existence of facts liable to constitute*' an infringement listed in Annex III of the CRA Regulation. These infringements relate to conflicts of interest, organisational or operational requirements, to obstacles to the supervisory activities and to disclosure provisions.
81. An IIO has been appointed to investigate in three cases to date.

3.6.2 Supervisory measures and fines

82. The IIO submits its findings to ESMA's Board of Supervisors at the end of its investigation. The Board of Supervisors will then decide if the CRA has committed one or more of the infringements listed in Annex III of the CRA Regulation. If they decide that a CRA has committed one or more of these infringements they will take one or more of the following decisions, reflecting the nature and seriousness of the infringement or infringements:
- to withdraw the registration of the CRA;

- to temporarily prohibit the CRA from issuing credit ratings throughout the EU until the infringement has been brought to an end;
- to suspend the use of the CRA's ratings for regulatory purposes in the EU until the infringement has been brought to an end;
- to require the CRA to bring the infringement to an end;
- to issue a public notice.

83. Where the Board of Supervisors finds that one of the infringements listed in Annex III of the CRA Regulation has been committed intentionally or negligently it will adopt a decision imposing a fine in accordance with Article 36a of the CRA Regulation.¹⁴

3.6.3 First public notice

84. On 3 June 2014, an investigation by ESMA resulted in the issue of a public notice under the CRA Regulation for the first time.¹⁵ The public notice censured Standard & Poor's Credit Market Services France SAS and Standard & Poor's Credit Market Services Europe Limited (S&P) for failing to meet some of the organisational requirements set out in the CRA Regulation. These failures were identified following ESMA's investigation into an email alert sent to subscribers of S&P's Global Credit Portal on 10 November 2011. The alert erroneously informed subscribers that S&P had downgraded its unsolicited rating of France, whereas in fact the rating had not been downgraded.

85. ESMA identified breaches of the organisational requirements set out in Annex I, Section A, points 4 and 10 of the CRA Regulation relating to sound internal control mechanisms, effective control and safeguard arrangements for information processing systems and the monitoring and evaluation of control and safeguard arrangements, decision-making procedures and organisational structures.

86. ESMA decided that the issue of a public notice was the proportionate supervisory measure to take in this case, taking into account the voluntary measures taken by S&P to bring the infringement to an end. ESMA was not satisfied that the infringement was committed with intention or negligence and so it did not impose a fine in this case.

3.7 Policy

87. During the course of 2014, ESMA produced Regulatory Technical Standards (RTS), issued guidelines, Q&As and Technical Advice and published a resource report relating

¹⁴ See also Commission Delegated Regulation No 946/2012 of 12 July 2012 with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions, OJ L 282/23 of 16.10.2012.

¹⁵ [ESMA/2014/544 \(20 May 2014\): ESMA's decision to adopt a public notice regarding a release by S&P erroneously suggesting a downgrade of the Republic of France.](#)

to CRAs. It has also promoted the development of a single rule book for financial supervision within the EU through its work with the Joint Committee of European Supervisory Authorities (ESAs) and increased harmonisation of the supervision of CRAs at international level through its work with the International Organisation of Securities Commissions (IOSCO).

3.7.1 Development and adoption of draft Regulatory Technical Standards

88. During the course of 2014, ESMA has prepared draft RTS on three topics relating to CRAs: structured finance instruments, fees charged by CRAs to their clients and the European Ratings Platform.

89. ESMA issued a Public Consultation to receive the views of market participants on the nature and content of the RTS on 11 February 2014. It also held a Public Hearing on 14 March 2014 to discuss the proposals for the draft RTS. This input was used to produce the final draft RTS which were sent to the Commission on 20 June 2014.¹⁶

3.7.2 Guidelines on the periodic information to be submitted to ESMA by CRAs

90. On 16 July 2014, ESMA issued a Consultation Paper on the periodic information to be submitted to ESMA by Credit Rating Agencies in order to develop new supervisory Guidelines which would help ESMA ensure that it obtains the high quality, relevant and timely data it needs in order to ensure the efficient and effective supervision of the CRA sector.

91. The draft Guidelines aim to clarify the reporting to ESMA of material changes to the initial conditions for registration and the information that ESMA expects to receive from CRAs in order accurately calculate the supervisory fees and CRAs' market shares.

92. The draft Guidelines were discussed during a public hearing at ESMA on 15 October 2014. During the hearing, participants considered a number of proposed changes to the information to be provided by CRAs on an annual, semi-annual and quarterly basis including material changes to the initial conditions of CRAs' registration and CRAs' market share calculations for the purposes of Article 8d of the CRA Regulation. Responses from market participants were analysed after the consultation closed on 31 October 2014 and are being used to finalise the new Guidelines. The new Guidelines are due to be published in early 2015.

¹⁶ The RTS were published in Official Journal (OJ) on 6 January 2015 and entered into force on 26 January 2015: [OJ L 2/57 of 6.1.2015: RTS on disclosure requirements for structured finance Instruments](#); [OJ L 2/1 of 6.1.2015: RTS for the periodic reporting on fees charged by CRAs to their clients](#); [OJ L 2/24 of 6.1.2015: RTS for the presentation of the information that CRAs make available to ESMA](#)

3.7.3 Publication of Q&As

93. The first set of Q&As regarding the CRA Regulation were issued by ESMA on 17 December 2013, followed by a second on 2 June 2014¹⁷. These Q&As gave ESMA the opportunity to clarify its interpretation of some of the new requirements introduced by the 2013 amendments to the CRA Regulation.

94. The Q&A covered issues including the publication of sovereign ratings on Fridays, the obligation to publish ratings on the dates announced in the sovereign calendar, announcing deviations from the sovereign calendar and whether collective portfolio managers should be considered as shareholders for the purpose of Article 6a of the CRA Regulation.

3.7.4 CRA Roundtable

95. ESMA held a round table meeting for CRAs on 15 October 2014. The round table setting provided ESMA with an opportunity to update CRAs on its recent work and future priorities. It also allowed ESMA to ask CRAs whether there were other areas on which future guidance would assist in the implementation of the CRA Regulation.

3.7.5 Technical advice, guidelines and reports to EU institutions and international cooperation

96. In July 2014, ESMA published its Technical Advice to the Commission on the appropriateness of the development of a European creditworthiness assessment for sovereign debt as required by Article 39b(2) of the CRA Regulation.¹⁸

97. On 5 August 2014, ESMA submitted a report to the European Parliament, the Council and the Commission on ESMA's staffing and resources needs arising from the assumption of the powers and duties under the CRA Regulation.¹⁹

98. ESMA is also involved in various projects being run by the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA) and which may impact the CRA industry and supervision in the future. During the course of 2014 it has participated in the preparation of guidelines on reducing contractual reliance on ratings, a Consultation Paper on mapping of the credit ratings of External Credit Assessment Institutions (ECAIs) and a report on inconsistencies between financial services legislation on due diligence and disclosure requirements on securitisation.

¹⁷ [ESMA/2014/578 \(02 June 2014\): Questions and Answers - Implementation of the Regulation \(EU\) No 462/2013 on Credit Rating Agencies.](#)

¹⁸ [ESMA/2014/850 rev \(17 September 2014\): updates Technical Advice regarding the appropriateness of the development of a European creditworthiness assessment for sovereign debt.](#)

¹⁹ [ESMA/2014/939 \(5 August 2014\): Report on ESMA's staffing and resources needs arising from the assumption of its powers and duties under the Regulation \(EU\) No 462/2013 amending Regulation \(EC\) No 1060/2009 on credit rating agencies](#)

99. ESMA also plays an active role within IOSCO. During 2014, CRA-focused efforts have mainly related to the revision of the Code of Conduct for CRAs (the IOSCO Code) and developing and maintaining a dialogue with third country supervisory authorities through IOSCO's Committee 6.

3.8 CRA work plan for 2015-16

3.8.1 Introduction

100. This work plan sets out ESMA's vision with regard to its supervisory responsibilities in the field of CRAs. It explains ESMA's overriding objectives, how they are supported by the risk based approach ESMA pursues, and sets out some of the prioritisation principles used to assess whether to devote resources to new projects going forward. The work plan then presents the key areas for future action identified.

3.8.2 Vision

101. ESMA aims to be a credible and effective direct supervisor aiming at lasting impact, known for its ability to be both pro-active and responsive and recognised for its knowledge by the CRA industry, policy makers and other relevant stakeholders.

3.8.3 Promoting a risk based approach

102. ESMA aims to promote the development of a risk-based approach to CRA supervision through strengthening its understanding of the key opportunities and challenges faced by the industry overall as well as by individual firms. It will use the full range of tools available under the CRA Regulation and the ESMA Regulation to develop, refine and implement this approach.

103. In order to ensure that the risks faced by CRAs as well as rating users are fully factored into its supervisory strategies, ESMA is particularly keen to ensure that its analysis accurately reflects the impact that factors such as changes in global financial markets, changes in individual market dynamics, regulation and supervisory action have on supervised entities.

104. ESMA therefore calls on CRAs to support this evolution through regular and open engagement with ESMA, including the submission of reasoned responses to Consultation Papers, Calls for Evidence, requests for information and requests for meetings with CRA staff involved in each of the key stages of the ratings process as well as in the provision of ancillary and non-ratings services.

105. ESMA's approach to direct supervision should naturally evolve over time to reflect legislative objectives, evolving risks and market developments.

106. In order to make the most efficient and effective use of its resources, ESMA needs to prioritise the supervisory activities that it can take on in furtherance of its obligations under the CRA Regulation and to meet the overarching objectives in the ESMA Regulation.
107. ESMA will consider what supervisory activities to undertake, including the definition of the current work plan described below, on the basis of the key risks and trends identified for individual CRAs, the industry overall as well as the users of ratings, and the potential for ESMA's actions to address such risks, make lasting changes in the CRA industry and deliver ESMA's statutory objectives.
108. The key areas of ESMA's ongoing and future work in 2015-2016 are highlighted under the headings below. The areas highlighted are indicative only, as changes in market dynamics or in the risks being identified at industry or individual CRA level may lead ESMA to launch other projects or work streams on an ad-hoc basis. The value of new projects will be assessed by ESMA using the approach to prioritisation explained above and may result in new projects being prioritised over the key areas for action set out below if they are of significant strategic importance.

3.8.4 Key priorities for 2015-2016

109. The 2008 financial crisis demonstrated how risks can become systemic when profit generation is prioritised over effective risk management and sound governance and controls. The CRA Regulation aims to tackle these issues by seeking to minimise conflicts of interest in the rating process and promoting effective risk management, strong governance and controls.
110. In order to assess the extent to which these aims are being achieved, ESMA should ensure that it has a complete and accurate view of how the internal decision making and business development processes of CRAs work in practice and the degree of influence that these have on the issue of credit ratings.
111. During 2015-16, ESMA will therefore seek to better understand the influence of the following on the process of issuing credit ratings:
- CRAs' governance, risk management and internal decision making processes;
 - CRAs' business development processes.
112. Increasing its understanding of how CRAs' internal structures and external processes work in practice will allow ESMA to identify how these can best be used to manage conflicts of interest and to contribute to the issuance of independent, objective and high quality credit ratings by supervised CRAs. ESMA will seek to achieve these objectives through ongoing supervision wherever possible. However, it may also decide to launch individual or thematic reviews or investigations where these are likely to be most effective.

3.8.4.1 CRAs' governance, risk management and internal decision making processes

113. ESMA will carry out a comparative analysis of CRAs' internal decision making processes, bodies and drivers focusing on their risk assessment and risk management processes.
114. More specifically, ESMA aims to further examine the empowerment and independence of the internal risk and control functions and their input into the decision making process.
115. Following up on its work with INEDs and the independent review function in 2014, ESMA will continue to follow the appointment of independent directors and their involvement in CRAs' governance processes going forward.
116. ESMA will in particular consider the monitoring activities of independent directors, the consideration of compliance issues by CRAs' supervisory boards and the influence that CRA's compliance and review functions have on CRAs' decision making processes.

3.8.4.2 CRAs' business development processes

117. ESMA also aims at assessing CRAs' business development processes, including interactions with issuers and sponsors and how these interactions could potentially influence credit rating activities.
118. ESMA will seek to enhance its use of business model analysis in 2015-16 by considering information on CRAs' business cycle, strategy, revenue streams, risks to profitability, competition and barriers to entry, innovation and cross selling.
119. ESMA's ongoing monitoring and analysis of market data, industry trends and individual reports from CRAs in 2015-16 will also include an analysis of the pricing policies and fees charged for ratings and ancillary services, private ratings, evaluation services and reports.
120. Specifically on ancillary services, ESMA will investigate whether the provision of ancillary services by CRAs present conflicts of interest which need to be mitigated or eliminated.
121. In 2015, ESMA will also consider the links between agreements and fees charged for ratings and ancillary services in order to inform the development of a strategy to ensure that fees charged by CRAs are not discriminatory.

3.8.5 Supervisory focus

122. In 2015 and 2016, ESMA's supervision of CRAs will continue to involve the assessment of applications for registration and certification, the day to day supervision of CRAs, the handling of complaints about CRAs' compliance with the CRA Regulation and enforcement.

123. In line with current market trends, ESMA expects that it will continue to receive a number of applications for registration and certification in 2015, which it will consider in addition to the three applications currently pending.

124. The day to day supervision of CRAs in 2015 and beyond will continue to involve ongoing monitoring and analysis of market data, industry trends and reports from individual CRAs as well as the handling of complaints and the appointment of an IIO in appropriate cases.

125. ESMA will continue to meet with CRAs as a part of its ongoing supervision, in accordance with the cycle of engagement established for each CRA following the application of ESMA's risk assessment framework.

3.8.6 Ongoing investigations

126. ESMA will continue a number of major thematic and individual investigations during 2015-16. These include the thematic investigations into the review and validation of ratings methodology, IT internal controls and security and the individual investigation in to the ratings process, focusing on elements which could have a significant impact on the quality of ratings. ESMA will also follow up on recently concluded investigations regarding Structured Finance and SMEs in order to ensure the effective implementation of the remedial action plans.

3.8.6.1 Review and validation of rating methodologies

127. In its 2014 Work Plan, ESMA committed to launch an in-depth thematic investigation into how CRAs review and validate their rating methodologies. The investigation was launched during 2014 to help further develop ESMA's understanding of current industry standards. ESMA is in particular considering the use of historical experience such as back-testing. The investigation is due to conclude during the course of 2015 with the identification of industry best practices and/or the adoption of remedial plans or other actions, as appropriate.

3.8.6.2 IT internal controls and information security

128. In last year's Work Plan, ESMA announced its intention to continue its work on IT systems and controls, with a particular focus on information security.

129. The successful operation of CRAs' credit rating businesses is increasingly dependent on the efficient performance of its IT systems and its IT environment. In order to ensure the confidentiality, integrity and availability of the information underpinning the ratings process, CRAs need to have effective internal processes, controls and information security measures in place as well as the staff to develop, implement and oversee them. During the course of its supervisory activity, ESMA identified a number of risks in individual CRAs' IT internal control environment relating to:

- access controls and user access management;
- IT architecture and systems and their related control mechanisms supporting the publication and dissemination of ratings;
- organisational structure, policies and procedures governing the dissemination of ratings;
- oversight, monitoring and internal audit.

130. During 2014, ESMA carried out the preparatory work needed to launch a thematic risk assessment at the beginning of 2015. Given the importance of IT internal controls and information security for the rating business and the risks identified by ESMA, this has included an assessment of information held regarding CRAs' IT systems and their planned IT projects to determine the scope of the initial phases of the project.

131. ESMA intends to investigate the practices of the 3 largest CRAs in this area during 2015-16 to fully identify and understand the risks in their internal IT control environments. The findings of this assessment will help ESMA to consider the needs related to CRAs' IT supervision going forward.

4 Trade Repositories

4.1 Introduction

132. According to Titles VI and VII of Regulation EU n°648/2012²⁰ (“EMIR”), ESMA has direct responsibilities regarding the registration, supervision and recognition of TRs. TRs centrally collect and maintain the records of derivatives and play a central role in enhancing the transparency of derivative markets and reducing risks to financial stability. Supervision of TRs by ESMA is therefore crucial to ensure that TRs comply on an on-going basis with all EMIR requirements, thereby enabling regulators to access data and details of derivative contracts in order for them to fulfil their respective mandates.

133. Under EMIR, the supervision of TRs has been entrusted directly and exclusively to ESMA. ESMA has to supervise the six registered TRs and for that purpose, ESMA has the right to require information, to conduct general investigations and on-site inspections, and if needed, to take enforcement measures. In that respect, and in order to efficiently use its resources, ESMA will conduct its supervisory activities using a risk-based approach adapted to the structure of the TR industry and will adequately calibrate its supervisory effort towards the relevant TRs.

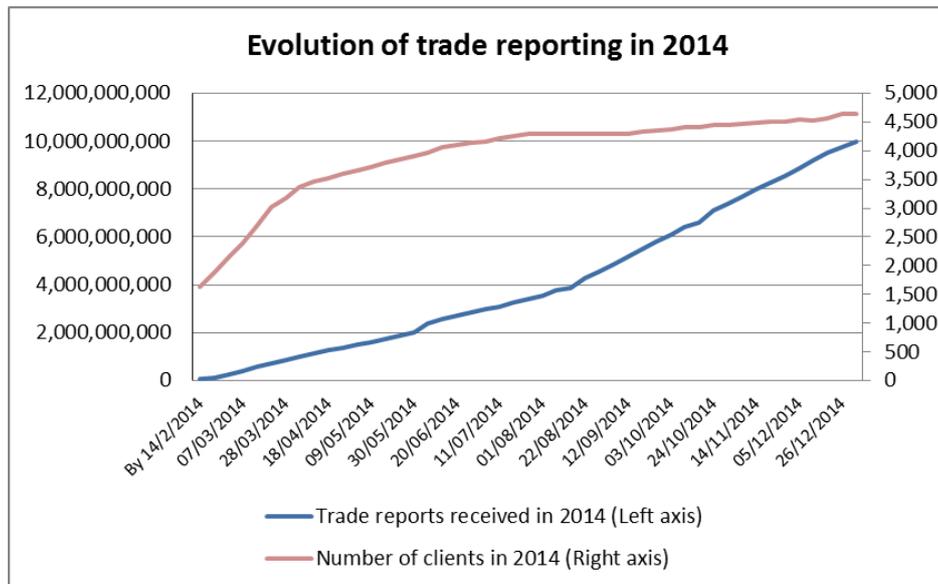
134. This section of the report highlights the main features of ESMA’s supervisory tasks and activities performed during 2014 and describes ESMA’s TR supervision work plan for 2015.

4.2 Industry overview

135. The reporting obligation under EMIR started on 12 February 2014. The registered TRs were in general ready to receive the reports from the on-boarded customers. However, as with the introduction of every major reporting regime, there have been a number of issues that required clarifications or adaptations. Some of those resulted in Q&As that ESMA constantly updated throughout the year.

136. As of early January 2015, there are around 300 million trade reports which are submitted on a weekly basis by the counterparties subject to the reporting obligation and processed by the six registered TRs. In total since February 2014, there are almost 10 billion reports that have been received and processed by the EU TRs. The number of entities which have direct reporting agreements with TRs is nearly 5,000. The graph below presents the evolution of the derivatives trade reporting during 2014.

²⁰ Regulation EU n°648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ 27/7/2012, L201/1.



137. The actual reporting landscape in the EU is mainly based on the group structure of each TR and on the already existing economic, shareholding and technological relationships between TRs and market participants. Out of the six, DDRL covers mainly the reporting of OTC derivatives and supports multi-jurisdictional reporting for the major swap dealers. The other five TRs, although keeping their singularities, share as a common feature the fact that they are all part of integrated market infrastructure groups, where a derivatives exchange and/or a CCP exists.—Regis-TR (BME Group and DB Group), UnaVista (LSE Group), CME TR (CME Group), ICE Trade Vault Europe (ICE Group) and KDPW (KDPW Group). These five TRs serve primarily, but not only, as repositories of the ETD derivatives traded on the exchanges of their group or of the OTC derivatives cleared by the relevant CCPs.

138. Currently four out of the six registered TRs are London-based, and three of them are part of market infrastructure groups with headquarters in the US. Moreover, it is not unlikely that some reporting service providers may also decide to launch a TR.

139. Furthermore, the Securities Financing Transactions reporting to TRs and the possibility to use TRs as Registered Reporting Mechanisms (RRMs) under REMIT or as Approved Reporting Mechanisms for MiFID II/MiFIR transaction reporting will further add commercial attractiveness for entities to apply for registration as TRs.

140. Given that the trade repositories which are part of the market infrastructure groups offering data repository service in the most relevant jurisdictions are already registered in the EU, no third country recognition is expected to take place soon.

4.3 Trade Repositories registration

141. During 2014 no further TRs have been registered by ESMA. After the reporting of derivatives trades has commenced, some inquiries of potential applicants have been

received by ESMA. ESMA provided potential applicants with references to all relevant documents as well as with practical information about the registration process and the relevant EMIR requirements. At this stage ESMA is unable to predict how many of those potential applicants will actually materialise.

4.4 Trade Repositories supervision

4.4.1 On-going supervision

142. ESMA's supervisory team has grown since last year so as to further increase the scrutiny and supervision of the registered entities.

143. The bulk of activities that ESMA has performed in terms of on-going TR supervision since the reporting start date in February 2014 were desk-based. These activities mainly followed the annual TR work program published early in 2014, with some adjustments, where needed, depending on priorities and emergencies.

4.4.1.1 Monitoring of the on-boarding of counterparties

144. On-boarding of counterparties to TRs was one of the biggest challenges at the start of the new EMIR reporting regime, especially because it affected thousands of counterparties with a limited 90-day period between the registration of the first TRs and the start of reporting.

145. This issue required a lot of supervisory attention during the first months of 2014. Mainly due to a rush of a large number of counterparties to some of the TRs in the weeks just before the reporting start date, delays were experienced by some counterparties in being able to contract and report to these TRs. TRs tried to reduce as much as possible these on-boarding queues by increasing the number of their staff dealing with the on-boarding process. ESMA has not been made aware of any queues for entities to on-board to TRs in the second half of 2014.

4.4.1.2 Monitoring of the on-boarding of authorities

146. Since the reporting start date, ESMA has been liaising with National Competent Authorities (NCAs) to monitor the progress on the access to TRs by competent authorities and also ensured TRs' swift reaction to requests for access by authorities.

147. ESMA shared its experience on the technical side of accessing TRs. The fact that close to the reporting start date ESMA had access to all the TRs already set up enabled ESMA to address practical questions of NCAs efficiently.

148. Following ESMA's recommendation, TRs regularly contact and offer their assistance to those regulators, which have contacted TRs but did not complete the relevant documentation for accessing TR data.

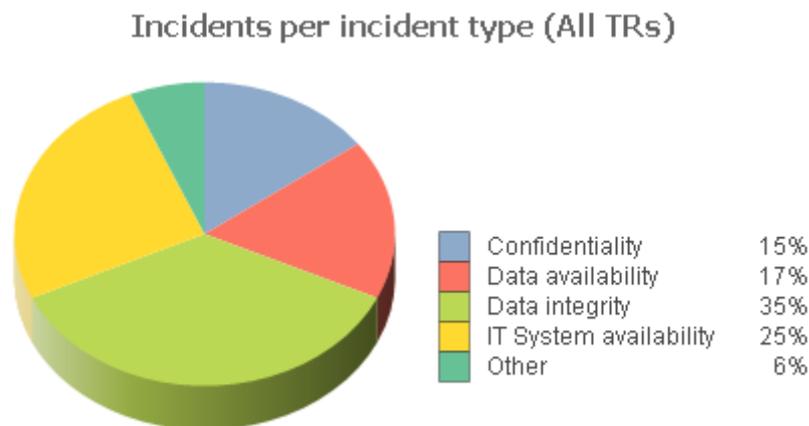
149. Finally, in some cases, following ESMA's requests, TRs simplified their process and documentation to on-board authorities, thus reducing the number of pending applications.

4.4.1.3 Monitoring of incidents

150. Since the reporting start date, ESMA has received several notifications from TRs about incidents that resulted in TR system or service unavailability or inability for market participants and/or regulators to access data. In other cases, the incidents resulted in the disclosure of information to non-authorized parties and in some cases data integrity issues. All reported incidents have been recorded to a specific incidents database that has been created for this purpose. As explained below, this database is one of the elements to be taken into account for the risk based approach to focus our supervisory efforts. Furthermore, depending on the gravity and impact of the incidents, specific supervisory measures might have been taken.

151. Many of these incidents have been caused by technical problems relating to software bugs, system and infrastructure configuration errors, hardware failures, and administration errors but also potentially to more fundamental architecture and design inadequacies or faults. Few of them can also be attributed to reporting participant errors, operational errors or procedural omissions.

152. The following graph presents aggregated statistics for all TRs per incident type.



4.4.1.4 Monitoring of notifications of material changes to the condition of registration

153. Since the registration of TRs, ESMA has received many notifications of material changes to the conditions of the TR registration, as well as notifications of periodic information (annual reports, interim financial statements, compliance reports). During their registration process, all TRs agreed to notify the same type of events (material changes to the conditions of registration and periodic information) and to follow the same notification procedure.

154. These notifications cover a wider scope of changes affecting the TR than the incidents mentioned above, such as changes to TR key staff / board members, modification of TR's fee policies, launch of new ancillary services, etc. Through the assessment of the notifications of material changes, ESMA' objective is to check that TRs comply at all times with EMIR. For example, the notification of changes to key staff ensures that ESMA has the relevant information to monitor that every TR has adequate human resources. The notification of changes to TR's pricing policy enables ESMA to monitor whether the fees are in line with the transparency and cost-relatedness of the EMIR requirements. The notification of launch of new services allows ESMA to supervise whether there will be always sufficient resources dedicated to the EMIR reporting and whether the new business activities of the supervised entities may expose to different and unforeseen risk the entity providing TR services. These notifications of material changes are also taken into account in the risk-based approach since they feed the key risk indicators.

4.4.1.5 Monitoring of complaints

155. In February 2014, a complaint form was published on ESMA's website (in the TR dedicated webpage). The complaint form facilitates voluntary submission of information about an ESMA supervised trade repository, which might not be fulfilling its obligations under EMIR. The form was elaborated to ensure that ESMA receives complete, structural and detailed information. The submitted complaints were further used for the on-going supervision and risk analysis of TRs.

156. In practice, upon the receipt of the complaint, it is assessed on the substance by the relevant supervisors by reviewing the information available and, if needed, by requesting the specific information from the TR concerned. If the complainant has requested so, the identity of the complainant is not disclosed to the supervised entity. After assessing the complaint and taking relevant actions, the complainant is briefly informed about the outcomes.

157. Most of the complaints related to the lengthy customers on-boarding process. As explained above, this reflected the situation which arose close to the reporting start date in the market when there were a lot of entities wishing to on-board at the same time to the same TR. The problem was effectively solved in a relatively short time.

158. Other issues which were raised by the complainants separately or together with the access problems²¹ were IT issues, difficulties in submitting/modifying reports and inadequate record-keeping. Most of the information supplements the notifications of incidents already reported by TRs.

²¹ the complaint form allows the complainant to specify several subject matters

4.4.1.6 Collection and analysis of statistical information on TR activity

159. In order to monitor the status of reporting activity at each TR and for ESMA to be informed at aggregate level about the reporting progress in all the TRs, soon after the reporting start date all the TRs were asked to provide to ESMA basic statistical information on reporting to their TRs and update the information on a weekly basis.

160. The number of reports submitted to TRs was increasing rapidly, especially after the collateral and valuation reporting went live in mid-August. The number of reports to be processed on a weekly basis by the six TRs has doubled since then: from 140 million on average until end of July 2014 to around 300 million on average since 12 August 2014.

4.4.2 On-site inspections

161. In line with the annual program, ESMA organised in 2014 two on-site inspections related to TR issues.

162. ESMA selected the TR subject to the on-site inspection and the subject-matters of these inspections on the basis of the results of the risk-based assessment performed by ESMA.

163. The purpose of the inspections was to review the documentation, procedures, practices and controls in place within the TR in relation to its obligation under the relevant EMIR articles.

164. ESMA is still in the process of analysing all the information collected during these inspections and determining potential remediation actions if needed.

4.4.3 Individual reviews

165. A number of individual reviews were performed during 2014, mainly to investigate and further follow up on specific incidents notified by the TRs. The issues were related to data confidentiality, regulatory access to data and TR system operational reliability.

166. ESMA organised meetings and conference calls and sent requests for information to collect the necessary information and assess the nature and extend of the problems, their impact to regulators and market participants and their root causes. ESMA also collected information and followed up the implementation of the appropriate corrective actions required to ensure a permanent solution to the identified issues.

4.4.4 Thematic reviews

4.4.4.1 Inter-TR reconciliation process setup

167. According to EMIR and the respective technical standards *'an application for registration as a trade repository shall contain the procedures put in place by the*

applicant in order to verify that data can be reconciled between trade repositories if counterparties report to different trade repositories. The main issue in this respect was that the procedures put in place by one TR needed to be compatible with those of the rest. All the TRs that applied for registration committed during the registration process to follow a common approach for the reconciliation of the data between them.

168. In this regard, ESMA received at the end of 2013 and early 2014 detailed information regarding each of the phases (business specification, technical specification, test plan, testing and actual implementation) of the reconciliation process, which were included in the initially-submitted milestone plan. ESMA actively monitored the testing phase and the subsequent implementation of the system for TRs to be ready to reconcile from the reporting start date (12 February 2014).

169. Furthermore and in order to improve the reconciliation process, ESMA put in place and closely monitoring an action plan consisting of general, across TRs, and individual measures to be implemented by each TR in order to increase the data quality and the respective reconciliation rates.

4.4.4.2 Transparency of fees

170. According to EMIR, TRs shall publicly disclose the prices and fees associated with services provided under EMIR. During the registration process they committed that, once registered, the relevant fee schedules will be publicly disclosed through their websites.

171. Prior the reporting start date the websites of TRs have been checked and it was ensured that the fee schedules were publicly disclosed.

172. EMIR requires that the prices and fees charged by a TR shall be cost-related. ESMA had assessed cost-relatedness of fees during the TR registration process and carefully examined every new notification of a TR's fee structure change.

173. Since TRs have committed to regularly provide ESMA with interim (semester) and annual financial accounts, this information will enable ESMA to monitor that the fees are effectively cost-related.

4.4.4.3 Valuation and collateral reporting readiness

174. Collateral and valuation (C&V, thereafter) reporting kicked off on 11 August 2014. The EU was the first jurisdiction worldwide to require the submission of daily mark-to market or mark-to-model data by the reporting participants. Given the expected increase in the number of reports to each of the registered TRs, early in July ESMA undertook a formal round of requests via email to the TRs to determine their readiness for the C&V reporting regarding several aspects such as the existence of new inbound and outbound messages, the existence of new types of reports for the participants and regulators, and the current and estimated processing capacity of each TR's system vis-à-vis the current and expected number of reports to be processed.

175. A related activity performed by ESMA to ensure market readiness for collateral and valuation reporting was of a more regulatory nature, which resulted in a number of Q&As on the subject matter.

4.4.5 Data quality action plan

176. The continuous monitoring of the data reported to the TRs allowed ESMA to detect certain areas where the quality of TR data needed to be quickly improved.

177. In order to improve the data quality from different perspectives, ESMA put in place a plan which includes 1) measures to be implemented by the TRs and 2) measures to be implemented by the reporting entities. The first ones were/will be adopted and monitored by ESMA. The second ones are under the responsibility of NCAs. This plan was complemented by regulatory actions related to the on-going provision of guidance on reporting, as well as the elaboration of a proposal for the update of the technical standards on reporting, leveraging on the lessons learnt so far by ESMA and the NCAs.

178. As part of the data quality action plan, the TRs have to put in place the following measures: (i) implement harmonised data validations, (ii) improve the functioning of the inter-TR reconciliation process and (iii) implement harmonised publication of data.

4.4.5.1 Data validations (Level 1, Level 2)

179. The implementation of harmonised validation rules is a key step for the achievement of better quality of the data reported to the TRs. The data validations have been prepared jointly by ESMA staff and NCAs. They refer to two different levels, namely (i) format validations and (ii) content validations. The first level refers to determining which fields and under what conditions can be left blank, meaning non-relevant fields for the trade reported, or can be filled with the value 'NA', denoting non available values at the time of reporting. The second level refers to content related validations, such as (i) conditional population of certain fields, i.e. if a trade is cleared, there should be identifier for the CCP, or if a trade takes place on an EU trading venue, then the derivative should be identified with an ISIN or Aii code; or (ii) logical population of fields, such as maturity date to be later than or equal to execution date or the first report, for a given trade ID, to be with action type 'New', etc.

180. An important feature of these validations is that the TRs should reject those reports which do not comply with the specifications sent by ESMA. TRs had been requested to implement the Level 1 validations by 1 December 2014 and to provide weekly statistics which should allow ESMA and the NCAs to have an overview of the status of compliance with the data validations by the reporting entities and counterparties. In addition, ESMA put in place an internal data validation process to supervise the correct implementation of the validations by the TRs. The implementation of the Level 2 validations will leverage on the experience around Level 1 and is expected to take place by the second quarter of 2015.

181. Furthermore, ESMA has developed a data validation tool which is used to analyse data files downloaded from TRs and to assess the implementation and effectiveness of the Level 1 data validations by them. The tool will be further revised and adjusted so as to accommodate also a similar type of simulation, analysis and tests with regard to the forthcoming Level 2 data validations.

4.4.5.2 Inter-TR reconciliation process improvement

182. The reconciliation process is a two stage process which involves (i) seeking the TR which holds the other side of the trade (pairing) and (ii) comparing the material terms reported by both counterparties (matching). When there is a reconciliation break, it means that the data reported by the counterparties is not the same or it is not represented in the same way; in both cases data quality is poor.

183. In light of the low reconciliation rates, the TRs were requested to streamline the inter-TR reconciliation process and to comply with the specifications agreed among them. The improvements mainly refer to the validation of certain key fields (e.g. basic trade identifiers), the exchange of standardised information and datasets and the disclosure of the conflicting values to the counterparties.

4.4.5.3 Public data harmonisation

184. According to EMIR, TRs are required to publish a breakdown of the aggregate open positions per derivative class, a breakdown of aggregate transactions volumes per derivative class and a breakdown of aggregate values per derivative class.

185. After the reporting start date (12 February 2014), the TRs started publishing the aggregate data in their websites. However, the aggregate public data which was published was difficult to compare and impossible to aggregate. The format, content, granularity and functions available varied across TRs.

186. In this respect, ESMA has prepared and circulated to TRs a proposal on public data harmonisation which included (i) a uniform methodology of calculation and reference period (ii) pre-established publication frequency and availability of historical publications (iii) unconditional accessibility and usability of public data (iv) disaggregation between ETD and OTC trades and (v) disaggregation between single sided non-EEA, single-sided EEA and double sided trades.

4.4.6 Involvement in policy work

4.4.6.1 EMIR reporting Q&As

187. As mentioned previously, in the first year of the EMIR reporting regime, there have been a number of issues that required guidance from ESMA. The great majority of them resulted in a set of Q&As on reporting to TRs which has been continuously updated to cover new areas and to give response to new or existing issues in the market.

4.4.6.2 Proposal for amendment of the technical standards on reporting to TR

188. Based on the intelligence gathered in the first months of reporting and in order to provide the competent authorities and the public with data that captures better the nature of the derivatives trading, ESMA has proposed a slight amendment to the technical standards on reporting to TRs. The amendments contain purely technical aspects aimed to improve the overall quality of the data and to increase its usefulness. The proposal is for public consultation until mid-February 2015.

4.4.6.3 Position calculation guidance

189. ESMA is also working on the elaboration of proposed guidelines for calculation of positions by the TRs. The proposal will define the common conventions, rules, and methodologies for the determinations and calculations of the different data sets relevant for the accurate calculation of position, as well as the frequency of such calculations.

4.4.7 International activities

190. In accordance with EMIR, ESMA may establish international cooperation arrangements for access to data held in TRs. The EMIR provisions distinguish between two types of international cooperation arrangements for access to data held in TRs. First, Article 76 of EMIR provides that relevant authorities of third countries that do not have any trade repository established in their jurisdiction may establish cooperation arrangements with ESMA with a view to access information on derivatives contracts held in EU TRs. Second, pursuant to Article 75 of EMIR, an international agreement regarding mutual access to TR data can be entered into, under certain specific conditions (including a declaration of equivalence by the Commission), between the European Union and the relevant third countries where a trade repository is established. Following the signature of such an international agreement, cooperation arrangements between ESMA and the authorities of the relevant third countries can be established in order to specify in particular the mechanisms for the exchange of information about TR data.

191. In this respect, it should be mentioned that ESMA and the Australian Securities and Investments Commission (ASIC) concluded in November 2014 a Memorandum of Understanding for the access by ASIC to data on derivatives contracts held in European trade repositories which is relevant for its supervisory tasks.²²

192. A number of similar memoranda of understanding are under discussion with third country authorities and some of them should be finalised soon.

²² http://www.esma.europa.eu/system/files/esma_asic_mou.pdf .

4.5 TR supervision work plan for 2015

4.5.1 Introduction

193. In order to plan and prioritise ESMA's TR supervisory activities and efficiently allocate resources, a risk-based approach is used by ESMA to define a risk profile for each TR or for certain activities within a TR. ESMA's supervisory powers will therefore be exercised as a result of a risk analysis/assessment and will be concentrated, to a certain extent, on those TRs (or certain activities of the TRs, such as the IT functions) where the probability of infringement, the impact of the lack of compliance and the effect of contagion are higher.
194. During 2014, ESMA had identified a number of risks and issues regarding data quality; on-boarding and access to data by authorities; systems performance and operation; and confidentiality of data. Specific measures and action plans were developed and applied in order to mitigate those risks and improve the overall TR landscape.
195. Nevertheless, since many of these action plans require a considerable effort by TRs and market participants alike, their implementation horizon is extended well beyond the end of 2014. Therefore, it is anticipated that a significant amount of supervisory efforts during 2015 will be directed towards the successful implementation of these initiatives.
196. Furthermore, ESMA had performed a risk analysis study to identify the potential risks that may affect TR's operation. In accordance with the documented risk assessment approach, ESMA had considered various sources of information that had been:
- collected during previously performed supervisory activities (e.g. requests for information, on-site inspections, thematic reviews, general investigations, etc.);
 - identified through the implemented key risk indicators;
 - reported by the TRs (e.g. material changes, notifications of incidents, periodically reported information);
 - communicated by the NCAs on a bilateral basis or through the respective working groups;
 - reported by counterparties and reporting entities (e.g. complaints through ESMA complaint form published in the website); or
 - identified through other sources.
197. This analysis contributed to the determination of the TRs and the specific areas to be targeted and included in the annual supervisory work programme.

4.5.2 On-going supervision

198. ESMA will continue to monitor the TR activities and operations in order to identify promptly supervised entities which might not be compliant with the applicable EMIR requirements. In this respect, the established communication channels will be used to collect and analyse information with regard to:

- statistical information on TRs weekly activity, reconciliation, rejection of submissions, etc.
- material changes made by TRs and which may affect their operation and/or the conditions for their registration;
- periodic information and reports received from the TRs regarding their financial, operational, risk and compliance status;
- incidents notified by TRs regarding the conditions of their operation, their systems' status, access by regulators and participants, confidentiality, etc.
- complaints made by reporting participants, counterparties or other entities.
- key risk indicators relating to TRs risk profile and exposure.

4.5.3 Monitoring improvement action plans

199. A significant part of the on-going supervision relates also to the monitoring of the action plans and improvement plans the TRs are already implementing in response to ESMA requests (e.g. data quality improvement plan and inter-TR reconciliation, systems performance, etc.).

4.5.3.1 Data quality action plan

200. The implementation of some of the measures included in the data quality action plan, such as the harmonisation of data validations (Level 1) was done by the majority of the TRs within a very short timeframe, i.e. before the end of 2014. The consistent and effective implementation by TRs and the results in terms of improved data quality that Level 1 validations brought are still under analysis at the time of this report.

201. Other measures such as for instance (i) the improvement of reporting practices by the reporting entities, (ii) the Level 2 of data validations, and (iii) the harmonisation of the public data need some more time to take place and will span across 2015, given that they will involve regulatory changes or changes in IT systems, which require proper planning and testing. Several statistics on reconciliations and rejections were introduced and continue to be reported to ESMA to allow monitoring the quality of the data received and processed by the TRs and made available to regulators.

202. Furthermore, taking into account the experience since the reporting start date, ESMA, together with the NCAs, is proposing a slight amendment to the formats and data included in the current reporting framework. This proposal is for public consultation until mid-February and will create some more clarity on and consistency in the information reported by counterparties as well as it will bring better quality of the data made available to the regulators.

4.5.3.2 Monitoring system operation and changes deployment

203. Within the context of the supervisory activities undertaken in the areas of data validation and quality, public data harmonisation, inter-TR reconciliation, etc. a considerable amount of systems changes and software development efforts have been piled up for TRs.

204. Many of the undertaken projects have timelines that coincided with the end of 2014, however, there are others like the inter-TR reconciliation process, the Level 2 data validations and potentially some other harmonisation efforts (e.g. position calculation, etc.) that will have significant implementation activities within 2015.

205. Therefore, it is imperative to closely monitor the changes to be performed in the TR systems, the corresponding timelines and the resulting outcomes, identify deviations and proceed with corrective actions in a timely manner.

4.5.4 Thematic reviews and investigations

206. Thematic reviews and investigations will be performed for the horizontal issues detected during the on-going supervision or through the risk assessment exercise that has been performed. A short description of the main issues to be addressed through these thematic reviews follows below.

4.5.4.1 Inter-TR reconciliation process

207. The inter-TR reconciliation process is an EMIR derived obligation for TRs, it is coupled with the data validations performed by the TRs and therefore is one of the main indicators of data quality.

208. As part of the overall data quality action plan, a set of horizontal (across TRs) and vertical (per individual TR) measures to substantially improve the currently poor reconciliation rates have been determined. Although the implementation of some of these measures concluded within 2014, there are others whose implementation will span across 2015 in alignment with the overall data quality action plan implementation time line. The analysis of statistical information received periodically and targeted reviews of the different parts of the reconciliations process and its implementation will continue to be performed until the process matures and produces the desired results.

4.5.4.2 Business continuity planning

209. Due to the system changes and developments that are scheduled by TRs during 2015 and through the information collected by ESMA for some TRs, a potential risk has been identified with regard to TRs business continuity planning (BCP) capabilities and specifically as it pertains to their adequate maintenance, update and readiness.

210. During 2015 thematic reviews or individual investigations, if necessary, will be performed to assess the BCP readiness and testing activities of the TRs as well as their capabilities to transfer their data and redirect their reporting flows to other trade repositories in case of a potential wind-down or registration withdrawal as required by EMIR.

4.5.4.3 Cost relatedness of fees

211. Further to the continuous monitoring of the transparency of the TR's fees, ESMA intends to undertake a review of their cost-relatedness, as prescribed by Article 78(8) EMIR. The purpose of this review will be to ensure the existence of level playing field in the competitive TR industry and to prevent commercial practices which may have negative impact on the EMIR reporting regime.

4.5.4.4 Other thematic reviews

212. Depending on the issues arising from the analysis of collected information by the ESMA through the different sources, communication channels and tools available, further thematic reviews may be conducted to identify and manage potential non-EMIR compliant activities.

4.5.5 Individual reviews and investigations

4.5.5.1 TR systems software development lifecycle

213. For a number of TRs there have been indications of potential weaknesses in their software development lifecycle and change management processes. The identified issues in these areas may affect to a certain extent the accuracy and completeness of the data stored in the TR as well as the timeliness and the quality of the data that are made available to the respective authorities. If deemed necessary, individual investigations and on-site inspections will be scheduled to further analyse and followed up on these issues.

4.5.5.2 Data availability and regulators' access to TRs

214. The main objective of EMIR is to provide the competent authorities with information regarding the derivatives trades which enables them to fulfil their mandates and responsibilities. Throughout 2014 several issues have been identified with regard to availability of data to the respective authorities.

215. Furthermore, there have been many queries by NCAs and in some cases potential claims that they may not be getting access to the extent and nature of the data they are entitled according to their mandate.

216. In light of the above, ESMA will perform during 2015, as appropriate, on-site inspections and individual reviews to TRs in order to ensure that access to regulators is appropriate and according to their mandate.

4.5.5.3 Confidentiality of TR data

217. ESMA has received notifications and complaints that relate to specific events that affect the confidentiality of the exchanged TR data.

218. In order to ensure the confidential treatment of the TR data and assess the controls that have been put in place by the TRs for this purpose, individual reviews or on-site inspections will be performed in 2015 depending on the information collected and the relevant risk indicators.