



European Securities and
Markets Authority

Supervisory Convergence

Work Programme 2019

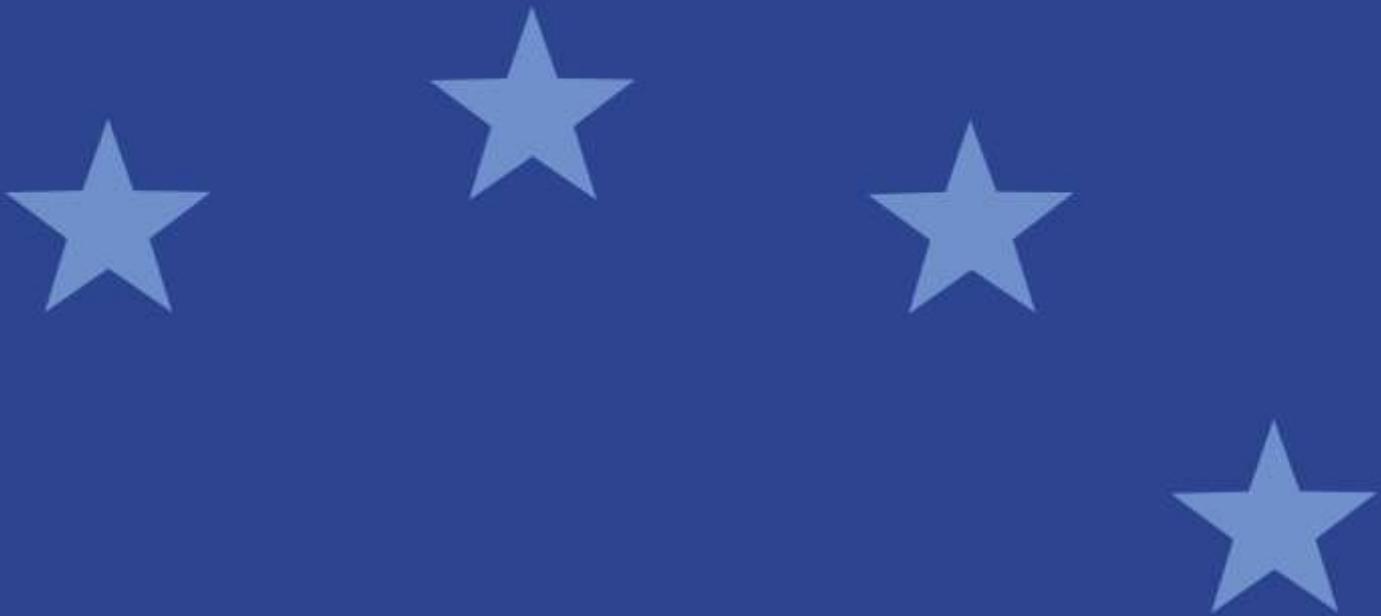




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Table of Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
AIF	Alternative Investment Fund
AIFMD	Alternative Investment Fund Managers Directive
BMR	Benchmark Regulation
CCP	Central Counterparty
CESR	Committee of European Securities Regulators
CFD	Contract For Differences
CMU	Capital Markets Union
CPMI	Committee on Payments and Market Infrastructures
CSD	Central Securities Depository
CSDR	Central Securities Depository Regulation
DLT	Distributed Ledger Technology
DVC	Double Volume Cap Register
EBA	European Banking Authority
EC	European Commission
EMIR	European Market Infrastructure Regulation
EMIR REFIT	Regulation amending EMIR in the context of its Regulatory Fitness and Performance (REFIT) programme
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
EuSEF	European Social Entrepreneurship Fund



EuVECA	European Venture Capital Fund
FinTech	Financial Technology
FIRDS	Financial Instruments Reference Data System
FITRS	Financial Instruments Transparency System
IASB	International Accounting Standards Board
ICO	Initial Coin Offering
IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
ITS	Implementing Technical Standard
LEI	Legal Entity Identifier
MAR	Market Abuse Regulation
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MMFR	Money Market Fund Regulation
NCA	National Competent Authority
OTC	Over-The-Counter
PFMI	Principles for Financial Market Infrastructures
PRIIPs	Packaged Retail Investment and Insurance Products
Q&As	Questions and Answers
RegTech	Regulatory Technology
RTS	Regulatory Technical Standard
SCWP	Supervisory Convergence Work Programme
SFTR	Securities Financing Transaction Regulation
SME	Small and Medium-sized Enterprises



SSR	Short-Selling Regulation
STS	Simple, Transparent and Standardised securitisation
TREM	Transaction Reporting Exchange Mechanism
T2S	TARGET2-Securities
UCITS	Undertakings for Collective Investment in Transferable Securities



1 Executive Summary

1. ESMA is mandated to take an active role in building a common supervisory culture among NCAs to promote sound, efficient, and consistent supervision throughout the EU. With the annual Supervisory Convergence Work Programme (SCWP), ESMA aims at driving forward its supervisory convergence agenda to ensure a level playing field of high-quality regulation and supervision without regulatory arbitrage or a race to the bottom between Member States. In the interest of the Single Market and the CMU, ESMA fosters a common understanding of EU regulatory requirements and their convergent application by NCAs in their authorisation, supervision and enforcement activities. To shepherd this process, priorities for supervisory convergence are established in close cooperation with NCAs, having regard to national supervisory priorities, the current market environment as well as regulatory developments.
2. Supporting the Single Market and the building of a true CMU lies in the shared interest of the EU, its citizens, and its industry. ESMA is eager to contribute to this objective, to foster a consistent development and coordination of effective national supervisory approaches for consistent supervisory outcomes and to facilitate sharing of information and experience between NCAs.
3. In line with the 2019 Annual Work Programme ([ESMA20-95-933](#)) ESMA continues having its focus on promoting supervisory convergence. Building on the work already achieved and monitoring the progress in supervisory convergence, ESMA further develops its priorities and the direction of relevant work items. As such, the SCWP aims at identifying areas to focus on and work streams to further progress with to achieve a true level playing field on the Single Market.
4. For 2019, ESMA identified the following priorities for supervisory convergence:
 - Ensuring supervisory convergence in the context of the UK's decision to withdraw from the EU
 - Making data and its use more robust and consistent by developing and further clarifying reporting methodologies and providing guidance to ensure complete and high-quality data
 - Driving forward consistency in the application of MiFID II/MiFIR and getting to a common understanding on arising supervisory challenges
 - Safeguarding the free movement of services in the EU through adequate investor protection in the context of cross-border provision of services
 - Fostering supervisory convergence in the field of financial innovation.



2 Context for ESMA's Supervisory Convergence Work

5. The EU financial regulation sets a common framework to ensure that entities can fully make use of their rights of free movement of services in the Single Market and equally warrants that investors benefit from an appropriate level of protection. Taking this common framework as a basis, ESMA aims for consistent supervision of entities across the EU. This is the essence of ESMA's supervisory convergence work, undertaken in close cooperation with NCAs.
6. ESMA's supervisory convergence agenda is as heavily influenced by the regulatory and market environment as it is by the priorities for supervision set at the national level. Bringing together all these perspectives helps ESMA to identify the priorities and topics on which emphasis should be put. At the same time, the EU convergence priorities should also foster the coordinated setting of supervisory priorities at national level.
7. Evidently, 2019 will pose significant challenges to the market environment in the context of the UK withdrawing from the EU. Risks arising in this context need to be dealt with through common EU solutions to ensure that the Single Market remains unharmed and regulatory arbitrage is prevented. Efficient supervisory convergence work is essential to minimise risks and uncertainties on the market and detriments to investors. Taking into the account the unknowns ahead in 2019, the SCWP needs to be considered with a certain degree of flexibility allowing a response to new challenges that might arise.
8. The following sections (2.1, 2.2 and 2.3) set out the main factors that influence ESMA's supervisory convergence agenda, namely the regulatory and market environments respectively as well as NCAs' supervisory priorities.

2.1 The Regulatory Environment in 2019

CMU and main legislative proposals

9. Under the CMU Action Plan, the EC drives forward several ambitious work streams to mobilise capital for an integrated capital market in the EU. The CMU aims at fostering a genuine Single Market where businesses can raise capital from a variety of sources and across borders, whilst maintaining effective investor protection. ESMA follows closely the projects within its remit, including those requiring supervisory convergence work.
10. In particular, the legislative proposals regarding the facilitation of cross-border distribution of UCITS and AIFs and initiatives in the field of sustainable finance will be among the relevant ones in 2019. Equally, ESMA may be involved in proposing technical solutions for the development of SME growth markets. These initiatives are in line with further attention paid to cross-border issues through the supervisory convergence priorities.
11. The EC's Action Plan on Sustainable Finance comprises a number of activities in the remit of ESMA, such as considering asset managers' and institutional investors' duties



regarding sustainability or strengthening the transparency of companies on their environmental, social and governance (ESG) policies. ESMA is called to work towards a common application of these developments in the interest of the Single Market.

12. As part of the EC's Fintech Action Plan, a regulation on crowdfunding service providers is currently discussed in the legislative process. This proposal builds on ESMA's past supervisory convergence work and may lead to a new stage through introducing EU level authorisation of crowdfunding service providers, and establishing a publicly available and up-to-date register of these entities. The EC's Fintech Action Plan confirms ESMA prolonging financial innovation as a priority area for supervisory convergence.
13. Regarding new projects on top of these action plans, significant change to the regulatory environment may impact the prudential oversight and framework for investment firms including an impact on their supervision. ESMA will closely follow this initiative as well.
14. One of the main changes to the regulatory landscape in 2019 will come under the new Prospectus Regulation for which the majority of provisions will apply from 21 July 2019. One of the significant provisions in this regulation relates to the requirements for NCAs on the review of prospectuses, which is key to align the practices of competent authorities concerning prospectus scrutiny and approval.

Regulatory challenges in the context of the UK withdrawing from the EU

15. The decision by the UK to leave the EU fundamentally changes financial markets in Europe and has significant impact on ESMA's work in the years to come, including from a supervisory convergence perspective. Risks and challenges can emerge for ESMA and NCAs, as well as financial firms, investors and consumers. Should the EU regulatory framework evolve in the context of the UK's withdrawal, including on the equivalence of the UK regulatory regime, ESMA will monitor whether supervisory convergence work is necessary.

2.2 The Market Environment

16. Risks and vulnerabilities identified in ESMA's surveillance of EU financial markets¹ are an essential element of input for the identification of supervisory convergence work.
17. In the second half of 2018, positive tailwinds from the macroeconomic outlook were more subdued, as growth started to slow down in the EU. At the same time, political risks related to Brexit, mounting trade tensions at international level, and turmoil in some Emerging Economies weighed on financial markets. The tightening of global financial conditions was coupled with a spike in volatility and an equity selloff that started in October. Reduced global monetary stimulus resulted in an increase in yields, leading to negative performance for bonds funds and significant outflows. Going forward, weakened economic

¹ Cf. [ESMA Report on Trends, Risks and Vulnerabilities \(TRV\), No. 2, 2018](#); [ESMA Risk Dashboard, No. 4, 2018](#).



fundamentals and continued political uncertainty can be expected to provide an increasingly risky backdrop for financial market activity.

18. Trading across venues following the introduction of MiFID II/MiFIR was smooth with no disruptions reported. For equities, dark pool trading decreased following introduction of the MiFID II Double Volume Cap measures. There has also been an increase in the number of systematic internalisers. Some of these developments may need to be looked at from a supervisory convergence perspective as well to ensure that they are handled in a consistent manner by NCAs.
19. Within the product and innovation space, FinTech continue to drive innovation in financial services. Massive cash inflows to virtual assets and ICOs have been recently detected and therefore have become a focal point of regulatory attention. Other applications such as DLT and RegTech are also witnessing interesting developments.
20. Clear, comprehensive and comparable information on retail investment products can help investors assess the past performance and costs of products offered across the EU. ESMA's EU-wide analysis of cost and past performance of retail investment products, such as UCITS, AIF marketed to retail investors and Structured Retail Products (SRPs), shows in particular for UCITS significant cross-EU heterogeneity of cost data, which is partly due to different national disclosure requirements.²

2.3 NCAs' Supervisory Priorities in 2019

21. Presenting NCAs' supervisory priorities is an important aspect which helps ESMA to focus on certain topics from a supervisory convergence perspective, especially when it comes to highlighting priorities with cross-border impact that might have implications for a number of Member States. NCAs have a direct link with and deep insight of their national markets and can therefore identify trends, risks and potential areas of interest to other NCAs and ESMA to build on for the SCWP.

Supervision of investment firms and market infrastructures

22. With regard to infrastructures, more than half of the NCAs signalled that work to ensure compliance with EMIR will continue to be one focus. In particular, supervision of derivatives markets, of financial and non-financial counterparties, intra-group transactions, impact of legislative proposals such as EMIR Refit, recovery & resolution have been mentioned as points of attention. The majority of NCAs indicated further the implementation of CSDR to be a main emphasis. A number of NCAs will be processing applications for CSDs under the CSDR.

² Cf. [ESMA Annual Statistical Report Performance and costs of retail investment products in the EU \(2019\)](#), ESMA 50-165-731.



23. Concerning trading venues, NCAs mentioned focusing on their compliance with MiFID II obligations, for example through periodic checks, on the unintended consequences on market structures, systematic internalisers, on new forms of market manipulation through algorithmic trading and high-frequency trading, or on short selling and the creation of short position.
24. More than half of the NCAs will continue working on the implementation of the key requirements of MiFID II/MiFIR, focusing on product governance, suitability assessment, providing clients with required information about risks of investment instruments, inducements, costs and charges, and compliance with the rules of conduct of business. A third of NCAs plan to act on raising the quality and completeness of data reported by the industry in relation to MiFID II, EMIR, SFTR. NCAs also indicated to focus for 2019 on risk-based approach to supervision. Developing and enhancing supervisory structures to meet legislative and regulatory requirements of MiFID II/MiFIR remain key considerations for around half of the NCAs, focusing inter alia on on-site inspections as supervisory tool.
25. Some NCAs will do specific supervisory work regarding CFDs and binary options, including a horizontal review of compliance of firms with new restrictions applicable to CFDs.

Supervision of investment funds

26. In general supervision in the investment management sector aims to ensure that firms act as good agents to their retail and institutional investors and as effective participants in wholesale markets. This is especially important in a continued low interest-rate environment that drives a 'search for yield' and where technology advances rapidly.
27. Half of the NCAs indicated their continued monitoring of compliance with UCITS/AIFMD requirements in particular with regard to organisational requirements, delegation of operations (specifically delegation of portfolio management and risk management), business model, remuneration and performance fees.
28. Other activities will include further work to identify potential closet indexing practices and the application of the MMFR.

Supervision of issuers

29. Priority in the supervision of issuers reflects the change in legislation. Half of the NCAs will therefore work on the implementation of provisions set out in the Prospectus Regulation and adjusting their supervision accordingly. A number of NCAs indicated planned work on the application of the new IFRS standards, in particular in relation to financial instruments and revenue recognition. A few NCAs indicated their focus on enhancing SMEs' direct access to primary and secondary markets.



30. Several NCAs highlighted their focus on supervision of compliance with various MAR requirements, such as the identification of inside information and reasons for delaying disclosure of inside information.

Specific markets and other topics

31. A third of NCAs mentioned plans for work associated with the implementation of PRIIPs. A few NCAs will engage in work streams surrounding sustainable finance.
32. Activities in the area of cyber/IT security, such as detecting and preventing cyber security threats, determining the specific risks faced by investment firms, market infrastructures, management companies and funds will be a focal point for a third of NCAs. Half of the NCAs will work on topics of FinTech, RegTech, ICOs, crypto assets and financial innovation in general.
33. An additional topic that will be a supervisory priority for a third of the NCAs is the development and improvement of IT systems and tools in various areas. Issues in this field range from IT infrastructure underpinning MAR, EMIR, MiFID II to whistle-blowing tools.



3 Supervisory Convergence Priorities for 2019

34. Priorities are identified to drive forward ESMA's mission to enhance convergence of supervisory practices at an EU level as well as to foster consistency in the supervisory priorities set at a national level. Identifying these priorities relies on a well-established process between ESMA and the NCAs and considers the current market and regulatory environment as well as the NCAs' own supervisory priorities, as detailed in the previous sections. In addition, the monitoring activity that has been conducted on the implementation of the previous years' work programmes shows that ESMA's work regarding supervisory convergence was well received by NCAs and had a positive impact on the convergence landscape in the EU.
35. Considering the gravity and scale of the supervisory convergence priorities, it comes as no surprise that the priorities that were already identified for the 2018 SCWP remain valid in 2019. The overarching principles of the priorities are upheld while the emphasis of the individual priorities reflects the progress achieved in the respective area and highlights new points of attention.
36. The following supervisory convergence priorities are identified for 2019:
 - **Ensuring supervisory convergence in the context of the UK's decision to withdraw from the EU:** The UK's withdrawal from the EU will continue to raise convergence related questions to be considered by ESMA and NCAs in relation to the relocation of UK based firms, their activities and functions to the EU27, as well the preparedness in terms of contingency planning. In addition to the discussion on concrete cases of relocation by UK-based entities to the EU27, ESMA will investigate the prospect for further convergence on certain topics such as back-branching, and minimal presence requirements in the EU27. ESMA will also consider forms of enhanced supervisory cooperation among authorities in the aftermath of the UK's withdrawal. A peer review will be launched at the end of 2019, looking into NCAs' handling of relocation requests.
 - **Making data and its use more robust and consistent by developing and further clarifying reporting methodologies and providing guidance to ensure complete and high-quality data:** ESMA will continue to strive for a comprehensive approach to data, supported by the newly created Data Standing Committee. The experience with regard to the EMIR data quality action plan will be improved and further extended to other reporting regimes, in particular under MIFIR and AIFMD. The implementation of MiFID II/MiFIR has increased both the volume and quality of data received by ESMA to fulfil its coordination and implementation role under various reporting requirements. ESMA will work on further improving the functioning of those systems, including double-volume cap, transparency and systematic internaliser test calculations. Concerning quality of data reported under EMIR, the currently ongoing peer review is expected to have real added value to convergence in supervisory practices. Regarding AIFMD, the further completion of the available data will allow



ESMA and NCAs to concentrate on the reported content and provide clarifications to the reporting regime.

- **Driving forward consistency in the application of MiFID II/MiFIR and getting to a common understanding on arising supervisory challenges:** Detecting and handling issues that emerge in the application of the MiFID II/MiFIR framework will continue to be in the focus, including the sharing of practices and experiences on concrete supervisory cases. ESMA will continue fulfilling its coordinating role between NCAs to agree on common supervisory actions. ESMA's MiFID guidelines on 'suitability', 'product governance' and on the 'compliance function' requirements are planned to be updated. Work is also expected on requirements related to information provided to clients, including on the topic of costs and charges, and best execution. In the area of secondary markets, ESMA will pursue activities on transparency and market structure issues as well as on commodity derivatives. In particular, periodic auction trading systems, which gained traction since the application of MiFID II, the provision of market data by trading venues and approved publication arrangements (APAs) will continue to be looked into together with pursuing the development of opinions on pre-trade waivers and position limits.
- **Safeguarding the free movement of services in the EU through adequate investor protection in the context of cross-border provision of services:** ESMA will look into facilitating an appropriate level of exchange of information among home NCAs and host NCAs on cross-border activities. Following the evidence from the 2019 Annual Statistical Report on the performance and costs of retail investment products in the EU, which demonstrated the need for asset managers and investment firms to act in the best interest of investors, ESMA will consider implications for its supervisory convergence work. The above-mentioned activities on the implementation of MiFID II/MiFIR investor protection topics, such as work on transparency on costs and charges, will also be relevant in this context. Furthermore, strengthened cooperation and coordination is also essential to make sure that product intervention works as an efficient new tool. Consistent introduction and application of national measures for certain CFDs and binary options is key for investor protection, based on the measures by ESMA. Finally, bringing together NCAs' specialists to exchange experience on concrete supervisory and enforcement cases will be continued.
- **Fostering supervisory convergence in the field of financial innovation:** Among the major areas of focus is work associated with financial technology as set out in the EC FinTech Action Plan. ESMA will actively monitor market developments and provide a forum to share views and experience among NCAs on the regulation and supervision of ICOs and crypto assets. Further to that, ESMA will map current authorising and licensing approaches for innovative FinTech business models across Member States and strive to foster further cooperation and coordination across national innovation hubs and regulatory sandboxes. ESMA will also progress on its work in the field of cyber security and cyber resilience.



37. While not formally included in the priorities mentioned above, the enhanced and convergent supervision of CCPs will continue to receive high attention at EU level. This is of relevance especially in the context of the UK's withdrawal from the EU, considering the systemic relevance and the cross-border activity of these entities. ESMA will continue using its wide set of convergence tools through its participation in Colleges, conducting model valuations, a peer review and importantly a further EU wide CCP stress test. ESMA will as well develop the necessary Q&As, guidelines and opinions in this field.
38. As for the Joint Committee of the ESAs, ESMA will actively contribute to its supervisory convergence related work, such as on the implementation of PRIIPs, in the context of the ongoing work on the PRIIPs review (level 2) and the implementation of the Securitisation Regulation. ESMA will also assess the way financial institutions have implemented the EBA/ESMA Guidelines for complaints handling for the securities and banking sectors with the overall aim to achieve a consistent standard of application across the EU.
39. Considering the changing EU environment that contains uncertainties for ESMA, the work programme needs to be considered with a certain degree of flexibility allowing a response to new challenges that might arise, for example in the context of ongoing negotiations at the EU level in relation to the UK's withdrawal from the EU.



4 Thematic and Cross-cutting Activities

40. This section provides an overview of the key objectives pursued in each area to underpin the implementation of the 2019 convergence priorities. Building on the key objectives, ESMA's full convergence work programme is set out in Annex I of this document containing the presentation of relevant deliverables and output.

4.1 Thematic activities

Intermediaries and Investor Protection

41. The new MiFID II/MiFIR regime became applicable in January 2018. Given the innovative aspects of the new framework, ESMA will continue to pay high attention to the implementation of MiFID II/MiFIR, identified as a priority area for convergence work in 2019. New requirements such as those related to information provided to clients or best execution will be further dealt with. Furthermore, on product intervention, work will continue to ensure strengthened coordination when dealing with technical issues and with the application of ESMA measures and their supervision by NCAs. ESMA will also receive notifications concerning national product intervention measures. An update of certain existing ESMA guidance under MiFID I will also be performed such as guidelines on the compliance function.
42. Further to the growing emphasis put on sustainability at the EU level, suitability and product governance guidelines will probably need to be updated. More attention will be given to discussions among NCAs on challenges faced in the implementation of MiFID II/MiFIR, including by sharing supervisory practices and experience on real cases. Convergence work in the context of the UK's withdrawal will also continue, for example looking into issues arising around the relocation of entities to EU27 (see Section 4.2).

Secondary Markets

43. Promoting a consistent implementation of the new MiFID II/MiFIR framework will remain a priority for ESMA in the secondary markets area as well. Emerging issues will be dealt with, including those arising from the UK's withdrawal in the context of the MiFID II/MiFIR regime, and the relocation of trading venues to the EU27 will continue to be monitored (see Section 4.2). It is expected that questions of practical implementation will continue to be coming from the industry and from NCAs, including in the area of transparency requirements. More emphasis will be put on discussions among NCAs on challenges faced in the implementation, on exchanging views on specific supervisory cases and on sharing supervisory knowledge. Opinions on waivers from pre-trade transparency, on position limits and on third country trading venues will continue to be issued, expectedly in a large number of cases.
44. In addition, and as required under MiFID II/MiFIR, ESMA will start working on the reports to be submitted to the EC by 2019/2020 on the application of some MiFID II/MiFIR



provisions. Pre-trade transparency waivers in equity instruments granted by NCAs under MiFIR will be reviewed to assess compliance with the new MiFID II framework. ESMA may also continue looking at the emergence of certain new market structures post-MiFID II application. If important issues are being discovered, ESMA will also use additional guidance to address adverse developments.

Investment Management

45. The key objective will be to continue fostering common supervisory approaches under the UCITS and AIFMD frameworks, such as on performance fee structures, closet indexing or funds' liquidity stress testing. Convergence work in the context of the UK's withdrawal from the EU will also continue for example by looking into issues arising around the relocation of entities to EU27 (see Section 4.2). PRIIPs, in close cooperation with the other ESAs under the auspice of the Joint Committee, may deserve the development of further guidance and technical Q&As. More emphasis will be put on discussions among NCAs on challenges faced at the implementation and on exchanging views on specific supervisory cases.
46. ESMA will contribute to supervisory convergence regarding the MMFR, for instance by issuing guidelines on MMF managers' reporting obligations and MMF stress testing. Depending on the evolution of negotiations on the EC's proposal on facilitating cross-border distribution of funds, preparatory supervisory convergence related work may need to be initiated. Equally, ESMA will pursue the increased focus on sustainability in the investment management sector to investigate potential demand for supervisory convergence activity.

Market Integrity

47. Fostering supervisory convergence in the context of MAR, the SSR and facilitating the consistent implementation of the BMR will remain at the heart of ESMA's activity as regards market integrity in 2019. Further ESMA guidance may need to be developed or existing guidance reviewed such as supervisory briefings, guidelines and Q&As. In the MAR context, sharing of practical supervisory experience will gain importance in areas such as the possible links between MAR and crypto assets, ICOs or other non-financial instruments, further specificities of cases where inside information may arise or the identification of algorithmic trading activity potentially constituting market manipulation. A peer review on the collection and use of suspicious transactions and orders reports under MAR as a source of information in the context of market abuse investigations is currently ongoing and will be finalised in late 2019. In the BMR context, convergence work in the context of the UK's withdrawal will also continue, for example looking into issues arising around the relocation of UK administrators of benchmarks to EU27 (see also Section 4.2).



Post-Trading

48. Through its participation in CCP Colleges and the use of other tools such as assessing and validating model changes, ESMA already fulfils an important role in the promotion of supervisory convergence in the CCP area. In addition to the envisaged mandatory peer review focusing in 2019 on liquidity stress tests for CCPs, a new EU wide CCP stress test will also be initiated, based on currently ongoing preparatory work. ESMA will also continue supervisory convergence activity in the other areas of post trading, i.e. regarding OTC derivatives as well as CSDs, developing Q&As, guidelines or opinions. Several new or potentially upcoming legislations may also have an impact on ESMA's supervisory convergence activity in the post trading area, such as the EMIR REFIT.

Corporate Finance

49. The new Prospectus Regulation will enter into application in July 2019. A number of provisions in this text aim at fostering supervisory convergence such as through requirements to NCAs on the how prospectuses are being reviewed. Existing ESMA guidance developed under the Prospectus Directive will be reviewed such as Q&As, the "ESMA update of CESR recommendations", opinions, supervisory briefings. Further, ESMA will consider whether additional guidance is necessary in relation to the application of the Prospectus Regulation and the transition to the new prospectus regime. The Guidelines on risk factors under the new Prospectus Regulation will be published in 2019. To further progress, it will be considered how to enhance exchanges among NCAs on specific supervisory cases.

Corporate Reporting

50. Attention will be paid to issues related to the enforcement of IFRS 9 "Financial Instruments" and IFRS 15 "Revenue from Contracts with Customers" as 2019 will be the first year of enforcement on annual financial statements prepared using these standards. Guidance on narrative/non-financial information will need to evolve in the context of enhanced attention to sustainability at EU level.
51. Building on the results of the 2017 peer review³, guidance to NCAs will be completed through supervisory briefings and eventually updating the existing ESMA Guidelines on Enforcement of Financial Information. The application of the Guidelines on Alternative Performance Measures by issuers is planned to be assessed. Finally, certain issues may arise in the context of the UK's withdrawal from the EU, such as a presentation of adverse scenarios, risks for the valuation of assets. Consequently, issues arising from the closing of accounts on 31 March 2019 may need to be closely monitored.

³ See the [Peer Review Report on Guidelines on Enforcement of Financial Information](#), 2017, ESMA42-111-4138.



4.2. Cross-cutting Activities

Dealing with the impact of the UK's withdrawal from the EU

52. Monitoring the impact of the UK's withdrawal from the EU and taking actions for supervisory convergence will continue to be a priority for ESMA in 2019. It will translate into prominent work streams across the organisation. Analysis of relevant risks as well as NCAs' preparedness in terms of contingency planning will be pursued, including on the need to issue any further supervisory convergence guidance and/or direct investor communications. The UK's withdrawal will lead to substantial consequences in the data systems set up under the different EU legislation that may require readjustments in 2019 and beyond. ESMA will monitor the development in this area closely to ensure that necessary work can be initiated in time to respond accordingly.
53. ESMA's Supervisory Coordination Network (SCN) will continue discussions regarding market participants seeking to relocate entities, activities or functions from the UK to the EU27. Common approaches will be fostered on arising convergence issues, including on the phenomenon of back-branching, or on the minimal presence required in entities in the EU. Forms of enhanced supervisory cooperation among authorities (such as voluntary colleges for certain firms) will be further explored. A peer review on relocation to EU27 in the context of the UK's withdrawal from the EU will be launched at the end of 2019.
54. Relocation issues are also monitored for UK administrators of benchmarks. In the area of corporate reporting and finance, issues which might be particularly relevant and require close monitoring or additional guidance relate to financial reporting as of 31 March 2019 or matters related to the application of the home Member State provisions under the Prospectus and Transparency Directives and the use of prospectuses approved by the UK FCA in the case of a "no-deal" scenario.
55. ESMA also stands ready to assist the EC in relation to providing advice, including on third country equivalence by giving priority to areas with the highest impact.

Data Reporting

56. In line with its Data Strategy, ESMA will reinforce its data related activities through the newly established transversal Data Standing Committee. Developing aligned regulatory reporting requirements under the respective sectoral legislation, addressing issues related to enhancing the quality of the regulatory and market data reported to EU and NCAs, key data infrastructures and the market, ensuring consistency and coherence between various reporting regimes. The ongoing data quality methodologies related to MiFID II/MiFIR and MAR (FIRDS, TREM, FITRS, DVC), EMIR as well as to AIFMD will be further refined and new ones will be completed for the requirements under the SFTR and the Prospectus Regulation. Going forward, emphasis should be growing on data use, including development and application of risk indicators in daily supervisory practice. In this context,



ESMA will work on developing common risk indicators based on AIFMD, EMIR and MiFID II data, aiming at a common application of risk measures.

Financial Innovation

57. Among the major areas of focus is work associated with financial technology as set out in the EC FinTech Action Plan. First, as a follow up to the Advice on ICOs and crypto assets⁴ that ESMA delivered to EU Institutions in January 2019, ESMA will actively monitor market developments and provide a forum for NCAs to share views and experience on the regulation and supervision of crypto assets. Second, after having jointly published a comparative analysis of innovation facilitators in the EU⁵ in January 2019, the ESAs may undertake follow up work to foster further cooperation and coordination across national innovation hubs and regulatory sandboxes. Third, ESMA is mapping the Member States' current authorising and licensing approaches for innovative FinTech business models. Fourth, ESMA is exploring the need for guidelines on cloud computing in the securities sector and will communicate its intention to the EC. Finally, ESMA is coordinating with the other ESAs in its response to the EC's request on possible legislative improvements to promote cyber security, as well as on the cost-benefit analysis for cyber resilience testing frameworks.
58. Regarding the general framework for the MiFIR product intervention powers, ESMA will review and update as necessary its supervisory briefing to promote a consistent approach across Member States for potential use of the powers in future. This will build on experience gained from existing and ongoing cases.

IT Infrastructure supporting convergence

59. Continue enhancing the performance of IT systems supporting MiFID II/MiFIR and EMIR as well as adjusting those IT systems impacted by the UK's withdrawal from the EU are the most important topics expected to be dealt with. Projects already started in 2018 that will continue in 2019 are related to the Prospectus III Regulation, MMF, as well as to the delegated project "TRACE phase 3", which includes reporting under SFTR and some additional standard EMIR reports.

Peer reviews and increasing effectiveness of convergence tools

60. ESMA will continue to conduct peer reviews in the interest of fostering convergent application of the EU regulatory framework and supervisory approaches. Peer reviews, whether own initiative or mandatory, and follow-up work have proven to be an effective tool, which ESMA is committed to use. In 2019, two own initiative peer reviews (i.e. those that are launched on the basis of the ESMA Regulation) will be finalised, one on

⁴ [ESMA Advice on ICOs and crypto assets](#) (2019), ESMA-157-1391.

⁵ ESA Joint [Report on FinTech: Regulatory sandboxes and innovation hubs](#) (2018), JC 2018 74.



supervisory actions to enhance the quality of data reported under EMIR, and one on NCAs' use of suspicious transaction and order reporting to detect market abuse.

61. As for new own initiative peer reviews, ESMA is conscious that the challenges and uncertainties in 2019, particularly the outcome of negotiations with the UK in the context of its withdrawal from the EU, will impact the available resources of NCAs and ESMA and demand substantive diligence. At the same time, this event is a major driver for supervisory convergence work, unparalleled in its relevance and effect. For that reason, a peer review on "NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU" will be undertaken. Preparatory scoping work may start, as resources permit, in relation to a peer review on the supervision of cross-border activities to pave the way for a future exercise.
62. In addition, ESMA will follow-up with NCAs on the actions they have taken to address the recommendations of the peer review on the Guidelines on Enforcement of Financial Information, finalised in 2017.
63. Concerning mandatory peer reviews (i.e. those mandated by sectoral legislation), EMIR provides for ESMA undertaking annually a peer review on CCP supervision. In 2019, the review will focus on liquidity stress tests.
64. ESMA will continue to increase the effectiveness of supervisory convergence tools. This could focus on a subset of such tools to foster better understanding of their characteristics and situations for which they are suitable.

Towards a more consistent approach to supervision and enforcement

65. Exchange of experience between supervisors is key to promote a consistent and efficient supervision of cross-border provision of services. ESMA will facilitate these discussions through its existing group structure, including through the Enforcement Network or the Senior Supervisors' Forums.
66. The Enforcement Network's focus for 2019 is to continue the sharing and development of best practices in key areas, including the determination of financial penalties. The Network will also focus on sharing practical enforcement investigations skills and techniques such as investigative interviewing skills. Concerning the Senior Supervisors' Forums, ESMA will shed light in 2019 on the risk-based supervisory approaches applied by NCAs and their impact on the daily work of NCAs.
67. ESMA will also foster sharing information on NCAs' responsibilities, organisation, resources and local market specificities.



Training

68. Training of NCAs' staff is a true convergence tool establishing a common ground to share experiences among NCAs and learn from one and another. The detailed training activities planned for 2019 are presented in Annex II.

Annex I: Key objectives and main outputs for 2019

Thematic Areas

Investor Protection and Intermediaries

Key objective

The new MiFID II/MiFIR regime has entered application in January 2018. Given the innovative aspects of the new framework, ESMA will continue to pay high attention to the implementation of MiFID II/MiFIR, identified as a priority area for convergence work in 2019. New requirements aimed at strengthening the protection of investors such as those related to information provided to clients, including cost and charges or the upgraded provisions on best execution will be further dealt with. Furthermore, on product intervention measures, taken to address the significant investor protection concerns arising from certain products, work will continue to ensure strengthened coordination when dealing with technical issues and with the application of ESMA measures and their supervision by NCAs. ESMA will also receive notifications concerning national product intervention measures. An update of certain existing ESMA guidance under MiFID I will also be performed.

In 2019, ESMA will also consider whether additional initiatives are needed in relation to any investor protection issues arising from cross-border offering of consumer products. In this area, ESMA will also work to facilitate an appropriate level of exchange of information among (home/host) NCAs on cross-border activities.

Further to the growing emphasis put on sustainability at the EU level, suitability and product governance guidelines will probably need to be updated. More attention will be paid to discussions among NCAs on challenges faced in the implementation of MiFID II/MiFIR, including by sharing supervisory practices and experience on concrete supervisory cases.

The UK's withdrawal from the EU will continue to be a prominent work stream in both the lead up to the withdrawal, and the subsequent period afterwards (see Section 4.2).

Product intervention

Follow-up work will be conducted in relation to ESMA's prohibition of the marketing, distribution or sale of binary options to retail clients and the restrictions for CFDs, including the review and possible renewal of these measures. Continued monitoring of the markets will allow to determine whether the use of these powers is further needed. ESMA is



expecting NCAs to issue their national product intervention measures on which it will issue opinions in order to ensure consistency across the Member States.

Convergence in the context of the UK's withdrawal from the EU

ESMA will engage in supervisory convergence activities in the context of the UK's withdrawal from the EU, as the need arises, taking into account relevant risks as well as NCAs' preparedness. This work will continue to look to ensure common practices in cases of relocation of investment firms, address the identification and mitigation of potential cliff edge effects, and to coordinate NCAs in the management of any adverse developments.

Review of Guidelines on MiFID II product governance requirements and the Guidelines on certain aspects of the MiFID II suitability requirements

Update of the above mentioned ESMA guidelines to incorporate the topic of sustainability risks and factors

Developing/Reviewing Q&As on MiFID II investor protection and intermediaries topics

Q&As will be developed on MiFID II conduct of business and organisational requirements

Reviewing the existing MiFID I guidance

Review of the existing MiFID I guidance to assess compatibility with MiFID II, strengthen these in line with the new requirements. In particular, review of the Supervisory briefing on suitability and appropriateness or previous ESMA Guidelines (such as the ones on the compliance function).

Exchanges among NCAs on supervisory experience under MiFID II

Workshops with NCA staff to share experiences on national implementation/application of the MiFID II requirements on topics such as product governance. The objective is to share information on supervisory approaches/methodologies and results of supervisory activities of NCAs. Within the workshops, ESMA will also consider broader investor protection issues/trends such as the impact of technical developments on distribution (for example the phenomenon of 'gamification').

Main outputs

Potential Renewal of ESMA product intervention measures. (H1 2018)

Product intervention: Opinions on national product intervention measures (as needed)

Review of the Guidelines on the MiFID II product governance requirements, in the context of the work on sustainability (Q2 2019)

Review of the Guidelines on certain aspects of the MiFID II suitability requirements, in the context of the work on sustainability (Q2 2019)

Developing/Reviewing Q&As on MiFID II investor protection and intermediaries topics (ongoing)

Reviewing the existing MiFID I guidance to assess compatibility with MiFID II and strengthen them (Q3 / Q4 2019)

Workshops with NCAs on MiFID II topics (as needed)

Secondary Markets

Key objective

ESMA decided to maintain MiFID II/MiFIR implementation as a supervisory convergence priority for 2019, with the emphasis moving towards detecting and handling new emerging issues, for example in relation to the provision of market data on a reasonable commercial basis or the compliance of periodic auction trading systems with the MiFID II/MiFIR transparency requirements. The development and refinement of Q&As as well as the preparation of ESMA opinions on pre-trade transparency waivers or position limits for commodity derivatives will continue, expectedly in substantial number of cases.

The implementation of MiFID II/MiFIR has significantly increased the volume of data received by ESMA in order to fulfil its central role for performing and publishing various calculations required by the new legislation. ESMA will work on further improving the completeness and quality of data received to those data systems as well as the functioning of those systems, including double-volume cap, transparency and systematic internaliser test calculations. Tying this in with the 2019 supervisory convergence priority to enhance NCAs' data capabilities, ESMA will continue to execute its coordination role in order to agree on common actions and on the consistent application of reporting requirements. Concurrently, ESMA will seek to promote discussions between NCAs on -implementation issues including exchanging views on specific supervisory cases.

MiFID II/MiFIR mandates ESMA to produce annual reports on the application of some MiFID II/MiFIR provisions such as on waivers from pre-trade transparency and the deferred publication of transactions in equity and non-equity instruments. Additionally, ESMA is to review the pre-trade transparency waivers in equity instruments granted by NCAs under MiFID I by 3 January 2020 to assess their compliance with the new MiFID II framework.

Finally, the UK's withdrawal from the EU will continue to be a prominent work stream in both the lead up to the withdrawal, and the subsequent period afterwards.

Convergence work will continue to include the assessment of third country trading venues for the purpose of post-trade transparency requirements and the position limits regime.

Addressing challenges arising in the implementation of MiFID II/MiFIR

Addressing challenges arising from the implementation of MiFID II/MiFIR and promote a uniform approach across various issues by providing and updating appropriate guidance. Topics should include obligations for market operators and investment firms to make pre- and post- trade data available on a "reasonable commercial basis" (RCB), transparency issues and the risks that the emergence of new market structures such as certain periodic auctions or other functionalities may pose, and the numerous challenges arising from the UK's withdrawal from the EU.

Convergence in the context of the UK's withdrawal from the EU

The UK's withdrawal from the EU will continue to be a prominent work stream in both the lead up to the withdrawal, and the subsequent period afterwards. This work will continue to foster common practices in cases of relocation of trading venues, identify and mitigate potential cliff edge effects, and to coordinate NCAs in the management of any adverse developments.

Ensuring convergent application of the commodity derivatives regime

This work will include, inter alia, the issuing of opinions on position limits for commodity derivatives incorporating the finalisation of pending position limit notifications and ensuring a uniform ongoing approach to new position limits received, and the development of the concept of ancillary activity including the management of ongoing calculations and data requirements. Particular emphasis will be placed on any amendments required to both position limits, and ancillary activity calculations following the UK's withdrawal from the EU.

Developing/Reviewing Q&As in relation to the commodity derivatives regime

Clarifications on the MiFID II commodity derivatives related requirements, such as on position limits, position reporting, or the concept of ancillary activity.

Exchanges among NCAs on supervisory experience under MiFID II

Promoting supervisory convergence by facilitating discussion among NCAs of specific supervisory cases and challenges, with the aim of sharing supervisory knowledge. Topics

of particular interest are likely to centre on trade transparency, market structure, and commodity derivatives issues.

Ensuring high quality publications with respect to transparency, double volume cap and systematic internaliser

Providing a coordinating role with regard to the smooth functioning of the IT systems that facilitate the implementation of MiFID II/MiFIR, such as the double-volume cap mechanism, the transparency calculations (measuring instruments’ liquidity, LIS and SSTI thresholds etc.) and the systematic internaliser calculations. This includes working on improving data completeness and quality in close cooperation with NCAs.

Opinions pre-trade waivers

Issuing of opinions on pre-trade transparency waivers for equity and non-equity instruments to contribute to the convergent application of waivers from pre-trade transparency. Focus is likely to surround the ongoing issuance of waiver opinions and the management of any waiver applications ESMA may receive as a consequence of the potential relocation of trading venues following the UK’s withdrawal from the EU. In addition, the review of existing pre-trade waivers under MiFID I is to be undertaken by 3 January 2020.

Regular reporting and monitoring tasks under MiFID II/MiFIR

Commencing the work on a number of monitoring and reporting tasks under MiFID II/MiFIR, such as annual reports on the use of pre-trade transparency waivers and the application of deferred publication as well as the monitoring of the implementation of position limits and position management controls.

Assessment of third country trading venues

Work will continue on the assessment of third country trading venues and issuance of related assessments pursuant to a set of objective criteria for the purpose of post-trade transparency and the position limit regime.

Main outputs

- Developing Level 2 measures or Level 3 guidance on periodic auctions
- Developing Level 3 guidance on reasonable commercial basis
- Developing guidance dealing with the UK’s withdrawal from the EU
- Developing/Reviewing Q&As on MiFID II/MiFIR requirements relating to transparency, market structure, and commodity derivatives issues
- Opinions pre-trade waivers (ongoing, and new applications anticipated following the UK’s withdrawal from the EU)



	<p>Opinions on position limits (pending position limits and their future revisions)</p> <p>Assessment of third country trading venues</p> <p>Annual reports on the application of waivers from pre-trade transparency and deferred publication, and on the implementation of position limits and position management controls</p> <p>Review of existing pre-trade waivers under MiFID I</p> <p>High quality and timely publications on an ongoing basis with regard to the double volume cap mechanism, transparency and systematic internaliser calculations</p>
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Investment Management

<p>Key objective</p>	<p>The key objective will be to continue fostering common supervisory approaches under the UCITS and AIFMD frameworks, such as an analysis of permissible performance fee structures across the EU, further work on closet indexing or moving ahead with guidance on liquidity stress testing. Strengthening investor protection in cross-border situations will continue to receive high attention. More emphasis will be put on discussions among NCAs on challenges faced in the implementation of the framework by facilitating the exchange views on specific supervisory cases.</p> <p>ESMA will contribute to supervisory convergence regarding the MMFR, for instance by issuing guidance to clarify MMF managers' reporting obligations and ensure consistent data collection by NCAs as well by updating its guidance on MMF stress testing. Depending on the direction that the negotiations on the EC's legislative proposal to facilitate cross-border distribution of investment funds will take, ESMA might initiate preparatory work related to the new legislation, also in keeping with its objective to support the CMU initiative. Through the Joint Committee, supervisory convergence related activities will continue on the appropriate and consistent application of PRIIPs throughout the EU. The UK's withdrawal from the EU will continue to be a prominent work stream in both the lead up to the withdrawal, and the subsequent period afterwards.</p>
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Performance fees

ESMA will continue its work in ensuring supervisory convergence as there are currently different practices across NCAs regarding performance fee structures as well as on the



circumstances in which performance fees can be paid. This creates risks of regulatory arbitrage and inconsistent levels of investor protection.

Developing/Reviewing of AIFMD and UCITS Q&As

Issues of clarifications of the UCITS and AIFMD frameworks will be addressed by developing/reviewing ESMA's AIFMD and UCITS Q&As. This may include different issues, e.g. the application of depositary rules.

Money Market Funds

The Guidelines on reporting obligations will provide clarity to MMF managers on what they should report. This will help ensure that there is a consistent approach across the EU. These guidelines will complement the corresponding implementing technical standards on the reporting requirements published by the EC on 17 April 2018. In 2019, ESMA will also develop a system to maintain a central public register identifying each MMF authorised in the EU.

The MMFR obliges each MMF to have in place sound stress testing processes that allow for the identification of possible events or future changes in economic conditions which could have unfavourable effects on the MMF. ESMA will develop guidelines with a view to establishing common reference parameters for the scenarios for the stress tests that MMF managers are required to conduct. In 2019 ESMA will publish its first update of the 2018 Guidelines focusing on the common reference stress test scenarios, the results of which should be used for the purpose of the reporting under the MMFR.

Liquidity stress testing and leverage

In light of the Recommendations issued by the ESRB, ESMA will work on developing guidance on the practice to be followed by managers for the stress testing of liquidity risk for individual AIFs and UCITS and the imposition of leverage limits under the AIFMD. On the latter ESMA will have regard to the ongoing developments at IOSCO level.

Closet indexing follow-up

ESMA's statement on closet indexing in 2016 identified a number of possible issues to be addressed in future work streams. Building on ESMA's 2018 activities, namely the information gathered from NCAs on their work and a workshop held to facilitate insights and good practices amongst peers, ESMA will continue to coordinate NCAs' work in this area and also consider the need for policy changes, such as improving disclosures on the extent to which a fund has discretion in relation to a benchmark.

Convergence in the context of the UK's withdrawal from the EU

ESMA will continue its engagement in supervisory convergence activities in the context of the UK's withdrawal from the EU as the need arises. ESMA will foster common practices



in cases of relocation of fund managers, addressing the identification of potential cliff edge effects, and coordinating NCAs' actions in the management of any adverse developments.

Main outputs

- Performance fees (guidance: Q3/Q4 2019)
- Guidelines on stress testing for money market funds (Q1 2019)
- Guidelines on reporting obligations for money market funds (Q2 2019)
- Developing/Reviewing of AIFMD and UCITS Q&As (ongoing)
- Liquidity stress testing (CP: Q1 2019)
- Closet indexing follow-up (ongoing)

Market Integrity

Key objective

Fostering supervisory convergence in the context of MAR, the SSR and facilitating the consistent implementation of the BMR will remain at the heart of MISC activities in 2019. Further ESMA guidance may need to be developed such as supervisory briefings, guidelines and Q&As. In the MAR context, sharing of practical supervisory experience will gain importance, including an increase in sharing supervisory experience with ACER and energy regulators and executing a peer review.

Developing/Reviewing Q&As and/or supervisory briefings

The main aim of the work in this area is to facilitate the convergent application of the MAR, BMR and SSR following the requests for clarification received from NCAs and market participants.

Exchange among NCAs on supervisory experience

In addition to the regular exchange of views on the interpretation and application of regulatory provisions in MAR, SSR and BMR, the analysis of specific supervisory cases will be set up in order to allow discussions based on the lessons learnt from the monitoring and enforcement experience of the NCAs involved in a changing scenario where issues such as the interaction between financial and non-financial instruments, the rise of crypto currencies and ICOs or algorithmic trading activity will be addressed. These discussions facilitate the exchange of experience among market integrity experts and the development of common approaches towards market abuse cases and their coordination by ESMA where needed. In particular, exchanges of views with ACER are also envisaged to share experience and improve the supervision of energy derivatives markets.



In the context of the BMR, a workshop on the first year of implementation of the Regulation will be organised. Experts from NCAs will share views and opinion on a number of practical issues, including supervision of users of benchmarks during the transitional period, supervision of contributors of input data, approaches implemented by NCAs for the registration and authorisation of administrators.

Advice to NCAs for recognition applications under BMR

ESMA will issue advice for each application for recognition that NCAs will receive from third country benchmark administrators. Every advice will focus on the types of benchmarks provided by the applicants and the requirements applicable to their provision. The number of advices to be issued depends on the number of applications for recognition and they will be issued by ESMA as requests arise.

Safeguarding retail contracts on major interest rate benchmarks

Benchmarks measuring inter banking money markets are currently undergoing substantial changes both in Europe and worldwide. ESMA has joined other European authorities in a common effort to examine and support contract robustness in respect of financial products referencing such benchmarks. ESMA will continue steering industry efforts to adapt legacy consumer contracts, as well as other types of financial instruments, to transfer to possible alternatives if existing benchmarks materially change or cease to be provided.

Convergence in the context of the UK's withdrawal from the EU

In the context of the BMR, ESMA will continue its engagement as the need arises, including through fostering common practices in cases of relocation of administrators of benchmarks to the EU27, addressing the identification of potential cliff edge effects, and coordinating NCAs' actions in the management of any adverse developments.

Main outputs

Developing/Reviewing Q&As and/or supervisory briefings for NCAs under the MAR, BMR and SSR (as the need arises)

Discussions and workshops based on the lessons learnt from the monitoring and enforcement experience by NCAs (ongoing)

Exchanges of views with ACER (ongoing)

One supervisory workshop on BMR first year of implementation

Advices to NCAs for recognition under BMR (as the need arises)

Coordination of a European industry working group on the adoption of alternative interest rates



Post-Trading

Key objective

The enhanced and convergent supervision of CCPs will continue to receive high attention at EU level, especially in the context of the UK's withdrawal from the EU, considering their systemic relevance and cross-border activity. ESMA will continue using its wide set of convergence tools through its participation in Colleges, conducting model valuations, a peer review and importantly a further EU wide CCP stress test. ESMA will as well develop the necessary Q&As, guidelines and opinions in this field.

In addition, ESMA will carry on its supervisory convergence work in the area of derivatives requirements and settlement. In respect of the former, the EMIR REFIT proposal may require further convergence action. With respect to the latter, important focus will be put on supervisory convergence measures in relation to the CSDR settlement discipline requirements.

CCPs

Coordinating and ensuring supervisory convergence across Colleges

Provide interpretative aids through convergence tools, such as Q&As, opinions, guidelines, recommendations and raising awareness on good practices

Assess and validate significant changes in CCP risk models

Initiate an EU-wide CCP Stress Test exercise

Conduct a peer review on NCAs supervisory activities on CCPs

Consistent application of EMIR

Define and coordinate common supervisory actions by NCAs and ESMA

Continue monitoring compliance with the clearing obligation and bilateral margining obligation as well as the activity of non-financial counterparties and their systemic relevance

Developing/reviewing Q&As, guidelines or opinions in the scope of the bilateral margin requirement RTS, in collaboration with the ESAs where applicable

Potentially ESMA guidance in relation to EMIR REFIT

Deliver an annual report to the European Parliament, the Council and the EC on penalties imposed by competent authorities

Post trading aspects of MiFIR

Q&As may be issued for example in relation to compression, to the certainty of clearing, or indirect clearing provisions of MiFIR

Settlement and CSDs

Ensuring the consistent application of CSDR through Q&As, and Guidelines in the areas of internalised settlement and settlement discipline

Co-ordinating work for NCAs regarding the supervision of CSDs participating in T2S

Possible guidance on PFMIs

The further CPMI-IOSCO guidance for PFMIs will be analysed and further incorporated in the EU framework for CCPs where necessary. ESMA might need to give dedicated guidance to NCAs for this.

Main outputs

CCPs

- Conduct an EU-wide CCP stress test
- Conduct a peer review on NCAs' supervisory activities regarding CCPs
- Q&As, opinions, guidelines in the scope of CCPs, as need arises

EMIR

- Annual report on penalties imposed by competent authorities
- Q&As, Guidelines or Opinions in the scope of the bilateral margin requirement RTS, in collaboration with the ESAs (as need arises)
- Subject to the timely adoption of the Regulation, supervisory convergence work in the scope of EMIR REFIT

MiFIR

- MiFIR Q&As in relation to compression, to the certainty of clearing, or indirect clearing provisions of MiFIR

CSDs and CSDR

- Q&As in respect of CSD requirements and settlement discipline
- Guidelines on the reporting of settlement fails
- Guidelines on the standardised procedures and messaging protocols to be used in order to prevent settlement fails



Corporate Finance

Key objective

The focus will shift to supervisory convergence in light of the new prospectus regime becoming applicable in July 2019. ESMA will continue to review and update existing Q&As and other Guidance and will address novelties brought by the new regime through new Q&As, as the need arises. In addition, supervisory convergence work will be undertaken in the areas of transparency, corporate governance and takeover bids.

Guidelines on risk factors under the Prospectus Regulation

Finalisation of Guidelines to assist NCAs in their review of risk factors on the basis of the criteria set out in Article 16(4) of the Prospectus Regulation. The Guidelines should facilitate a more consistent approach by NCAs to risk factors, in the review of the specificity and materiality of risk factors as well as of the presentation of such risk factors across categories, depending on their nature. These Guidelines will build on the findings of the 2016 peer review on NCAs' prospectus approval process.

Review of existing ESMA guidance and preparation of new Q&As

Continued review and update of the existing ESMA Guidance as well as development of new Q&As as needed, given the entry into application of the new Prospectus Regulation on 21 July 2019. Furthermore, review of the ESMA update of the CESR recommendations on Prospectus and the Supervisory Briefing on prospectus scrutiny will be undertaken. This work is necessary to update new legislative references, identify gaps and also to convert the recommendations into ESMA Guidelines on disclosure requirements.

Supervisory convergence in the area of major holdings, corporate governance and takeover bids

Use of supervisory convergence tools to create increased consistency in the area of major holdings, corporate governance and takeovers focusing on those specific cases where there is potential to enhance convergence of application of rules and NCA practices.

Discussions of specific supervisory cases

Exchange of NCAs regulatory and supervisory experience in all corporate finance areas which includes mainly discussing specific live supervisory cases.

Convergence in the context of the UK's withdrawal from the EU

ESMA stands ready to provide guidance to clarify arising questions such as those currently considered on the application of the PD and TD rules on the choice of the home MS and the use of prospectuses approved by the UK FCA in the case of a "no-deal" scenario.



Main outputs	Publication of the Guidelines on risk factors under the Prospectus Regulation (Q1 2019)
	Review of ESMA update of CESR recommendations on prospectus and conversion into guidelines (Q4 2019)
	Review of existing ESMA guidance in the prospectus area (Q1 2019 – Q4 2019)
	Consultation Paper in view of Guidelines on disclosure requirements under the Prospectus Regulation (Q3 2019)
	Live supervisory case discussions (ongoing)

Corporate Reporting

Key objective	Supervisory convergence is at the heart of ESMA’s activities in relation to corporate reporting, in particular in the enforcement of financial information, non-financial reporting (NFR) and alternative performance measures (APM). ESMA will continue fostering increased co-operation between accounting and auditing enforcers.
	The elaboration of annual common enforcement priorities will continue to focus supervisory attention at the national level on shared topics when reviewing annual accounts of issuers across the EU. Specific attention will be paid to the implementation of new accounting standards, such as IFRS 9, IFRS 15 and IFRS 16 as well as application of the Directive on non-financial information and ESMA Guidelines on Alternative Performance Measures. The evaluation of the implementation of the common enforcement priorities, the annual report on enforcement activities, will be developed.

Continued regular work in the area of enforcement of financial information in the IFRS financial statements

Discussion on live cases, proactive identification of divergent practices, development and evaluation of common enforcement priorities (ECEP), elaboration of the annual report on NCAs enforcement activities, publication of decisions (extract from database). In addition, ESMA will specifically focus on the implementation and consistent supervisory practices on the new accounting standards, especially IFRS 9 *Financial Instrument* and IFRS 15 *Revenue from Contracts with Customers* (enforcement of the first set of financial statements prepared using these standards) and IFRS 16. Furthermore, on specific matters, ESMA plans to further enhance the co-operation between accounting and audit

enforcers as well as co-operation and, to the extent possible, exchange of information between accounting enforcers and the prudential regulators.

Changes to the Guidelines on Enforcement of Financial Information (GLEFI) and development of supervisory briefing(s) on particular issues (such as selection) stemming from the GLEFI Peer Review

Review of accounting practices on particular accounting issues linked to the post-implementation review performed by the IASB (depending on timing and scope of the IASB Post Implementation Review)

Promote convergence of supervisory practices on narrative reporting also by means of fostering a shared understanding of non-financial reporting frameworks and development of a common supervisory culture

Collecting an inventory of non-financial disclosure practices and discussion on supervisory approaches for NFR.

Assessment of application of the Guidelines on APM.

Preparatory work related to the entry into force of ESEF in 2020

In the context of the implementation of the European Single Electronic Format (ESEF), dealing with the emerging need for convergence on supervision of electronic reporting.

Convergence in the context of the UK’s withdrawal from the EU

Dealing with emerging convergence issues (such as presentation of adverse scenarios, risks for the valuation of assets) as the need arises.

Main outputs

Continued work in the area of enforcement of financial information in the IFRS financial statements (Discussions: ongoing; Annual report: Q1; ECEP: Q4; Extracts publication: Q2, Q4 2019)

Consequences to the GLEFI Peer Review (Supervisory Briefing(s): Q3, Revised Guidelines: Q4 2019)

Convergence of supervisory practices on narrative reporting (Discussions: Continuous, APM follow-up report: Q4 2019, Monitoring the NFR frameworks and supervisory approaches: Continuous)

Review of accounting practices on particular accounting issues (linked to the timing of a post-implementation review by the IASB)



Cross-cutting Activities

Data Reporting

Key objective

In line with its Data Strategy, ESMA will reinforce its data related activities through the newly established transversal Data Standing Committee. Improving the quality of the data reported, through enhancing the functionalities of the systems, among others, under MiFID II/MiFIR and through the ongoing data quality action plan and peer review looking into EMIR data quality. Data quality methodologies related to EMIR as well as to AIFMD will be further refined and completed for the requirements under the SFTR, in addition to dedicated guidelines on reporting under the SFTR. Going forward, emphasis should be growing on data use, including development and application of risk indicators in daily supervisory practice. Depending on the outcome of negotiations between the EU27 and the UK in the context of its withdrawal, major readjustments may need to be made to the EU data systems.

Data Quality under EMIR, SFTR, AIFMD and Prospectus

Improving data quality will remain a focus in 2019 and issues such as the use of appropriate identifiers, and data standards will be looked at. The Data Quality Action Plan will continue for EMIR and AIFMD or be developed for those data sets for which they currently do not exist (SFTR and Prospectus).

Developing/Reviewing Q&As under EMIR and SFTR reporting

Common interpretation and application of EMIR and SFTR reporting related requirements

Developing guidelines under EMIR and SFTR

Guidelines on reporting scenarios under EMIR and SFTR. Development of such guidelines under EMIR will depend on the advancement of EMIR review work.

Guidelines on periodic data submission under EMIR and SFTR.

Guidelines on position calculation under SFTR.

Data Quality Methodologies under MiFIR, e.g. MiFIR transaction reporting, reference data, transparency calculations and double volume cap

The objective is for NCAs to receive high quality, complete data under MiFIR through the application of the Data Quality Methodologies.



Developing/Reviewing Q&As and/or supervisory briefings for NCAs under MiFID II data reporting, e.g. transaction reporting, reference data, order record keeping

Common interpretation and application of MiFID II data reporting related requirements. Development of necessary arrangements to facilitate and coordinate the access to order data by competent authorities.

Elaborating common risk indicators for AIFMD, EMIR and MiFID II

ESMA's work will aim at fostering common application of risk measures through common risk indicators.

Main outputs	<p>Data Quality Action Plans</p> <p>Developing/reviewing Q&As under EMIR reporting (ongoing)</p> <p>Data Quality Methodologies under MiFIR, e.g. MiFIR transaction reporting, reference data, transparency calculations and double volume cap (ongoing)</p> <p>Developing/reviewing Q&As and/or supervisory briefings for NCAs under MiFID II data reporting, e.g. transaction reporting, reference data, order record keeping (ongoing)</p> <p>Developing protocols and procedures as necessary to facilitate appropriately co-ordinated implementation of the data systems related to the areas of competence of DSC (e.g. data correction procedures, data mapping tables, CFI based validations)</p> <p>Facilitating the implementation of EU legislation in the areas of competence of DSC by coordinating a convergent implementation of data-related issues across the Union and by assisting the implementation of provisions imposing direct obligation on ESMA (i.e. implementation of necessary IT systems at ESMA level)</p> <p>Developing a number of guidelines regarding various reporting requirements under EMIR and SFTR</p>
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Financial Innovation

Key objective	<p>ESMA's financial innovation work is closely associated with financial technology as set out in the EC FinTech Action Plan.</p> <p>As a follow-up to the Advice on ICOs and crypto assets that ESMA delivered to EU Institutions in January 2019, ESMA will actively monitor market developments and provide a forum for NCAs to share views and</p>
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experience on the regulation and supervision of crypto assets. Further, after having jointly published a comparative analysis of innovation facilitators in the EU in January 2019, the ESAs may undertake follow up work in 2019 to foster further cooperation and coordination across national innovation hubs and regulatory sandboxes. ESMA is as well mapping across the Member States' current authorising and licensing approaches for innovative FinTech business models. It will deliver the results of the analysis to the EC in Q1/19.

ESMA is exploring the need for guidelines on cloud computing in the securities sector and will communicate its intention to the EC and is coordinating with the other ESAs in its response to the EC's request on possible legislative improvements to promote cyber security, as well as on the cost-benefit analysis for cyber resilience testing frameworks.

Finally, ESMA will review and update as necessary its MiFIR Product Intervention Supervisory Briefing to promote a consistent approach for the potential use of these powers, building on experience gained from existing and ongoing cases.

Innovation Facilitators

Undertake an analytical and empirical understanding of the various types of innovation facilitators in place and planned across the EU while identifying best practices.

FinTech licensing mapping exercise

Conduct a mapping of current licensing approaches taken by supervisory authorities. Where appropriate, provide advice to EC on need for changes to regulatory frameworks.

Distributed Ledger Technology

The objective is to enhance analytical and empirical understanding of NCAs of how DLT is being deployed in financial services. Continue to analyse DLT applications and where needed update the published DLT Report accordingly.

Product Intervention framework

Based on lessons learned from existing product intervention cases, review and update as necessary the MiFIR Product Intervention Supervisory Briefing.

ICO market analysis

Undertake a thorough analysis of the regulatory implications of ICOs with an effort to determine when they fall into regulatory scope.

RegTech

Analytical and empirical understanding of how RegTech is employed on the part of supervisors and market participants. An analysis of two test cases in which supervised data uses such technologies is envisaged.

Cyber security and cloud-based outsourcing

Building on mapping of existing supervisory practices around ICT security and governance requirements, and together with the other ESAs, provide technical advice on the need for legislative improvements and advise on the costs and benefits of developing a coherent cyber resilience testing framework. Facilitate NCA coordination on cyber security and cloud issues.

Main outputs

- RegTech: analysis of test cases (tbd)
- Exchanges on innovation facilitators (ongoing)
- FinTech licensing mapping exercise (Q1 2019)
- ICO market analysis (ongoing)
- Advice on cyber security-related topics (Q1 2019)
- Review of the MiFIR Product Intervention Supervisory Briefing (Q4 2019)

IT Infrastructure supporting convergence

Key objective

Continue enhancing the performance of IT systems supporting MiFID II/MiFIR as well as adjusting those IT systems impacted by the UK's withdrawal from the EU, and potentially kicking-off new projects are the most important topics expected to be dealt with. Projects already started in 2018 that will continue in 2019 are related to the Prospectus III Regulation, MMF, as well as to the delegated project "TRACE phase 3", which includes reporting under SFTR and some additional standard EMIR reports.

Continue enhancing the performance of IT systems supporting MiFID II/MiFIR

Adjusting those IT systems impacted by the UK's withdrawal from the EU

Reporting under CSDR



Setting up the IT infrastructure for the reporting of NCAs regarding data on settlement fails and internalised settlements to ESMA

Public Register for Money Market Funds

Setting up a public register of Money Market Funds under the new regulation, as well as a central database with aggregated reports collected from the Money Market Fund Managers.

Expanding the prospectus register

Expanding the current prospectus register with collection of more meta data on EU prospectuses and central publication of all collected prospectuses, as well as exchange of information necessary for prospectus passporting between the NCAs.

Main outputs	Public register for securitisations (Q4 2019)
	IT infrastructure for CSDR reporting (Article 9, Q1 2019 and Article 7, Q4 2019)
	Public register for Money Market Funds (Q4 2019)
	Expanding the prospectus register (Q4 2019)

Peer reviews and Horizontal supervisory convergence work

Key objective	ESMA will continue to conduct peer reviews in the interest of fostering convergent supervisory approaches and application of rules in the EU. In 2019, two own initiative peer reviews will be finalised, one on supervisory actions to enhance data quality under EMIR, and one on the use of suspicious transaction and order reporting to detect market abuse. A new peer review will be launched end 2019, on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU. ESMA will follow-up on the findings of the 2017 peer review on the Guidelines on Enforcement of Financial Information (GLEFI).
	Concerning mandatory peer reviews (i.e. those mandated by sectoral legislation), the 2019 EMIR peer review on CCP supervision will focus on liquidity stress tests.
	ESMA will continue to increase the effectiveness of supervisory convergence tools.
	Exchange of experience between supervisors are key to promote a consistent and efficient supervision of cross-border provision of services.

ESMA will facilitate these discussions through its existing group structure, including through the Enforcement Network or the Senior Supervisor's forums that will deal with risk-based supervision in 2019. ESMA will also foster the exchange of information on NCAs' responsibilities, organisation, resources and local market specificities.

Finalisation of the two ongoing peer reviews

- Supervisory actions aiming at enhancing the quality of data reported under EMIR

To act upon data quality concerns and to enhance the overall quality of reporting, a peer review on the supervisory actions under EMIR is currently ongoing, to be finalised by H2 2019. This exercise will assess NCAs and ESMA against the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated.

- Use of Suspicious Transaction and Orders Reports

A peer review, commenced in late 2018, will be finalised by end 2019 on the use of Suspicious Transaction and Orders Reports as a source of information in the context of market abuse investigations.

Launching a new peer review

A peer review will be launched at the end of 2019 on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU. This peer review will look into NCAs' authorisation of relocating firms, activities and will also consider NCAs' supervisory steps to address any shortcomings identified at the authorisation stage. The peer review will be based on the relevant requirements to grant authorisation at Level I, on the 2017 ESMA Opinions but will also build on the work of the Supervisory Coordination Network.

Preparatory scoping work may start, as resources permit, in relation to a peer review on the supervision of cross-border activities to pave the way for this peer review to be included in the 2020 SCWP.

Follow-up to a previous peer review

ESMA will follow-up with NCAs on the actions they have taken to address the recommendations of the 2017 Peer review on the Guidelines on the Enforcement of Financial Information.

Increasing the effectiveness of supervisory convergence tools

Discussions will be held, resource permitting, on convergence tools. These discussions could focus on mapping a subset of such tools to foster better understanding of their specific characteristics, effectiveness and suitability in addressing supervisory



convergence issues. Outcomes may include a more accurate identification and alignment of the correct tool to use when addressing supervisory convergence issues.

Enforcement Network

The Network will continue fostering closer collaborative relationships amongst enforcement specialists in NCAs which can facilitate cooperation in cross-border enforcement investigations. The Network's focus for 2019 is to continue to share and develop, best practices in key areas, including the determination of financial penalties. The Network will also focus on sharing practical enforcement investigations skills and techniques such as investigative interviewing skills.

Senior Supervisors' Forums

ESMA is committed to bringing together high-ranking supervisors from NCAs to exchange views on strategic supervisory issues. In 2019, ESMA will shed light on the risk-based supervisory approaches applied by NCAs and their impact on the daily work of NCAs.

Exchange of information on NCAs' responsibilities, organisation, resources and local market specificities

The objective will be to foster an enhanced common knowledge about NCAs' responsibilities, organisation, resources and local market specificities

Main outputs

Peer review on supervisory actions in relation to EMIR data quality (H2 2019)

Peer review on STORs (Q4 2019)

Mandate for the peer review on relocation to EU27 in the scope of the UK's withdrawal from the EU (Q4 2019)

Follow-up to the Peer Review on GLEFI (H2 2019)

Meetings of the Enforcement Network, development of 1-2 convergence initiatives to run in 2019, continued best practice sharing based on real cases in 2 thematic areas and development of bespoke enforcement training on investigative interview skills to be developed in 2019 and likely take place in 2020 (Q4 2019)

Senior Supervisors Forum on risk-based supervision (Q1 2019)

Sharing information across NCAs on their responsibilities, organisation, resources and local market specificities (H1 2019)



Annex II: ESMA 2019 external training programme

Training of NCAs' staff is a true and thoroughly tested convergence tool establishing a common ground to share experiences among NCAs and learn from one and another. ESMA's external training programme takes note of the need to exchange experience and information in the relevant fields and structures the course offers according to the demand of NCAs and the ESAs.

CROSS-SECTOR SEMINAR					
	Course title	Target group	Course objectives	Date	Host
1	Securitisation	Experts dealing with or interested in securitisation	Participants will get an update on (upcoming) EU legislation and ESMA's approach on the reform of the EU securitisation markets (EU future regulation on securitisation). The training will also support NCAs in preparing for their supervisory task under the Securitisation Legislation (including sharing best practices/policies/etc).	Q3-Q4 2019	ESMA
2	Working with the ESAs / Framework of EU supervision	All interested staff of the NCAs	The seminar will help participants to understand the work of the ESAs and also to support them in working with the ESAs	2019	TBD
SECTORAL SEMINARS					
	Course title	Target group	Course objectives	Date	Host
3	CSDR implementation – settlement discipline	Experienced supervisory and policy staff working in the area of CSDR	Training on settlement discipline requirements under CSDR and Level 2 measures. The date of the training is subject to the timely endorsement of the technical standards by the EC. As part of the training there will be best practice sharing sessions for the NCAs	2019	ESMA
4	Seminar on MiFID II/MiFIR	This seminar is addressed to supervisory and policy staff working with MiFID	Depending on the needs and the regulatory development of the year, ESMA will either organise the introductory training or the Advanced training on a specific area under MiFID II/MiFIR.	Q4/2019	TBD

5	Seminar on UCITS and AIFMD frameworks	Junior supervisory and policy staff working in the area of UCITS and AIFMD	Depending on the needs and the regulatory development of the year, ESMA will either organise one or two seminars from these: - Introduction to the UCITS and AIFMD frameworks - Advanced seminar on the UCITS and AIFMD frameworks - Money Market Funds - Stress testing workshop (applicable to fund management)	2019	ESMA
6	Training on on-site inspections of asset managers	All interested staff of the NCAs	A training focusing on the particular areas of asset management such as risk management, IT risk supervision, assessing BCP/DRP framework etc.	2019	MFSA (tbc)
7	Training on MAR	Experts dealing with or interested in MAR	Obligation to disclose inside information as soon as possible and the relevant delays with particular reference to accounting data and financial information	03/2019	TBD
8	Training on Fintech	Experts dealing with or interested in Fintech	A training focusing on the issues linked with Fintech supervision based on the experiences of the NCAs; on the EC's Fintech action plan and on the expectations of the market involving external speakers.	2019	CMVM (tbc)
9	Training on EMIR	Experts dealing with or interested in EMIR	A training focusing on the issues related to Refit	2019	TBD
10	Training on Benchmark	Experts dealing with or interested in Benchmarks	A training focusing on the issues related to Benchmarks	30/01/2019	AFM
IT SEMINARS					
11	CSDR implementation – internalised settlement reporting – training on the IT system	NCAs, Supervisory and policy staff working in the area of CSDR and IT experts in charge of reporting for new system	Reporting under Article 9: I) An overview of the CSDR legislation and the business context II) An overview of the report content (message xsd/validation) III) What the NCAs need to ensure they are capable of doing re sending reports received by them from settlement internalisers to ESMA. iv) Using the ESMA solution, late-submissions, extracting data, user support.	Q1/Q2 2019 and potentially Q4 2019 for item (iv)	ESMA
12	Access to Trade Repositories Transaction data –	NCAs' business experts involved in the implementation	The seminar focuses on the improvements made in the TRACE system with regards to the extension of the TRACE IT Delegated Project in relation to EMIR.	Q1 2019	ESMA / Online

	Extension of TRACE System – new EMIR project implementation	and the use of the TRACE delegated project.			
13	Prospectus III – The new prospectus and final terms notification and exchange IT portal	NCAs’ prospectus business and IT experts in charge of implementation and reporting via the new portal	Reporting and passporting authorisations, supplements and final terms with the new prospectus IT portal – reporting cycle, data requirements and implemented quality standards.	Q2 2019	HANFA
14	Access to Trade Repositories Transaction data – Extension of TRACE System – new SFTR project implementation	NCAs’ business experts involved in the implementation and the use of the TRACE delegated project	The seminar is addressed for the business experts involved in the SFTR implementations and focuses on the improvements made in the TRACE system with regards to the extension of the TRACE IT Delegated Project in relation to SFTR.	Q3 2019	ESMA
15	SFTR reporting requirements	NCAs’ IT staff (or subject matter experts) involved in the implementation of the SFTR regulation	The technical seminar will focus on the SFTR reporting requirements	2019	TBD
16	MiFID II/MiFIR data quality management	NCA staff working in the area of MiFID II/MiFIR	The technical seminar will focus on the data quality management under the new MiFID II/MiFIR Directive/Regulations	2019	KNF
17	SFTR implementation	NCAs’ IT staff (or subject matter experts) involved in the implementation of the SFTR regulation	The seminar is addressed for the IT experts involved in SFTR implementations and aims to give an overview of IT/data implications for NCAs with regards to the implementation of the SFTR regulation. The training will cover details related to the data formats and interfaces for the SFTR data reporting.	2019	ESMA



Annex III: List of new guidelines to be elaborated in 2019

	Name of Guidelines	Relevant Legislative Text
1	Guidelines on reporting obligations for MMF to NCAs	MMFR
2	Guidelines on stress test scenarios under MMF Regulation	MMFR
3	Guidelines on funds' liquidity stress testing	UCITS, AIFMD
4	Guidelines on the reporting on settlement fails	CSDR
5	Guidelines on the standardised procedures and messaging protocols to be used in order to prevent settlement fails	CSDR
6	Update of Guidelines on certain aspects of the MiFID II suitability requirements	MiFID II
7	Update of Guidelines on MiFID II product governance requirements	MiFID II
8	Update of Guidelines on certain aspects of the MiFID compliance function requirements	MiFID II
9	Guidelines on Portability ⁶	SFTR
10	Guidelines on calculation by TRs of named and sectoral positions in SFTs	SFTR

⁶ Subject to timely endorsement of the respective technical standards



11	Guidelines on reporting requirements under SFTR	SFTR
12	Guidelines on risk factors under the Prospectus Regulation	Prospectus Regulation